

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22..12..2020
Orders Pronounced on : 18..01..2021
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.222 of 2014
and
W.M.P.Nos.2 of 2014
33977 of 2017 & 27797 to 27800 of 2018

1.K.P.Sivasubramaniam
2.N.Chandrasekaran

... Petitioners

-Versus-

- 1.Victoria Technical Institute,
180, Anna Salai,
Chennai 600 002,
Rep. by its President
- 2.A.Nageswaran,
Honorary Secretary,
Victoria Technical Institute,
180, Anna Salai,
Chennai 600 002.
- 3.Thiru.D.Bhuloka Reddy,
Governing Council Member,
Victoria Technical Institute,
180, Anna Salai, Chennai 600 002.
- 4.A.Elangovan IAS (Retd),
Governing Council Member,
Victoria Technical Institute,
180, Anna Salai,
Chennai 600 002.
- 5.The District Registrar,
Chennai Central,
Chennai.
- 6.The State of Tamil Nadu,
Rep. by The Principal Secretary to Government,
Commercial Taxes and Registration (MI) Department,
Fort St. George,
Chennai 600 009.

7.V.Chennakesavalu,

Addl. Inspector General of Registration (Guidelines),
Office of the Inspector General of Registration,
Chennai 600 0028.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 6th respondent in G.O.(Ms) No.161, Commercial Taxes and Registration (MI) Department, dated 31.12.2013 and to quash the same.

Prayer in WMP.No.33977 of 2017 : This Miscellaneous Petition to Appoint on Expert/Agency to revise the pay scale of the employees category wise and give appropriate directions for implementing such revised scale of pay to the various categories of employees, the effective date for implementing such revised pay scale.

Prayer in WMP.Nos.27797 and 27799 of 2018 : These Miscellaneous Petitions to implead the petitioner as party Respondent in WP.No.222 of 2014.

For Petitioner : Mr.V.Selvaraj,
for Mr.B.Rabu Manohar

For Respondent(s) : Mr.T.R.Rajagopalan,
Senior Counsel for
Mr.K.V.Sundararajan for R1
Mr.Devadasan & Sagar for R2
Mr.M.V.Venkateshan for R4
Mrs.Narmadha Sampath, AAG
Assisted by Mr.T.M.Pappiah,
Spl. G.P. for RR5 to 7
Mr.Balan Haridas for
proposed respondents
No Appearance for R3

ORDER

This writ petition has been filed challenging the order passed by the 6th respondent Government appointing a Special Officer to Victoria Technical Institute, the 1st respondent herein under Section 34A of the Tamil Nadu Societies Registration Act, 1973 [hereinafter called as "**the State Act**"].

2. The 1st respondent - Victoria Technical Institute is a society which was formed in 1887 and incorporated on 26.03.1889 under The Societies Registration Act, 1860 (Central Act XXI of 1860). [The 1st respondent will hereinafter be referred to as **"the Society"**]. After the enactment of The Tamil Nadu Societies Registration Act, 1975, under Section 53 of the Act, every society registered under the Central Act, XXI of 1860 shall be deemed to be registered under the State Act and the bye-laws of such society shall, in so far as they are not inconsistent with any provision of this Act, continue in force until altered or rescinded. Hence, by virtue of Section 53 of the State Act, the 1st respondent society deemed to be registered under the Tamil Nadu Societies Registration Act, 1975.

3. On the occasion of the Silver Jubilee of Her Majesty, the Queen Empress Victoria, in 1887, a Central Jubilee Committee was formed in the City of Chennai, to commemorate the Fifty Years of her reign and collections were made. The State Government has also offered a grant to the committee on condition that the Government will appoint one-third of the Governing Body and the President. The committee after accepting the offer made by the Government, formed the eight members Jubilee Committee along with the President and four members nominated by the Government, which constituted its first council of the respondent society. The main objects of the society among others are, establishing technical libraries, museums, colleges, schools, workshops in Madras and throughout South India; making grants-in-aid to such technical libraries, museums, colleges, schools, classes or workshops as may be affiliated to the Institute in Madras and throughout South India; training teachers of technical subjects for the whole of South India or granting aid to teachers trained in affiliated and independent institutions; buying and selling or selling on commission articles produced by handicraftsmen or otherwise; selling, leasing and otherwise dealing with any immovable property as the Council may think necessary or advisable for the purpose of the Institute. Now, the respondent society is involved in helping the poor and rural craftsman by purchasing their products directly and displaying exclusive handicrafts items in showrooms. That apart, training centers have been started in various places to impart training in local and rural industries.

4. As per the bye-laws of the society, there are three categories of member viz., (i) Life Members, (2) Annual Members and (3) Honorary Members. Admittedly, now, the life members numbering 15 alone constitute the general body of the society. The society shall be governed by a council consisting of eleven members, out of whom, five members should be elected by the general body, and six members including the President are to be nominated by the State Government. The writ petitioners and the

respondents 2 to 4 are the council members elected by the general body. Even though the Government appointed the President and five members to the council, the above order has been stayed by this court in a separate writ petition, at the instance of the 2nd respondent herein.

5. While so, earlier, on a complaint from the 4th respondent herein, who was also a governing council member, dated 24.03.2012, pointing out certain irregularities said to have been committed by the 2nd respondent herein, who was acting as the Secretary of the governing council, in construction of new building and renovation of the existing building of the respondent society, withholding the cheques payable to number of suppliers to the society and also manipulation of certain records relating to the convening of the general body meeting. Based on such complaint, the Inspector General of Registration ordered for an inquiry. Pursuant to the same, the Inquiry Officer conducted a detailed inquiry and filed his report dated 15.06.2012, holding that the allegations leveled in the complaint were all false and it is all internal matters of the respondent society. The Inquiry Officer further held that the respondent society is not Government Society, therefore, neither the Government nor the Registration Department could interfere with the internal democracy of the respondent society and recommended for certain amendments to the bye-laws of the society.

6. On receipt of such report from the inquiry officer, the Inspector General of Registration, forwarded the same to the District Registrar (North Madras) and also to the 2nd respondent - General Secretary, requiring them to rectify the defects pointed out in the report of the inquiry officer and take further action.

7. Thereafter, once again based on a similar complaint given by the 4th respondent, the Inspector General of Registration, by order dated 06.09.2012, ordered for another inquiry by appointing the 5th respondent - District Registrar (Administration), Central Madras, as the inquiry officer and the inquiry officer in turn on conducting inquiry, submitted his report dated 07.05.2013 to the Inspector General of Registration. In the report, the inquiry officer has held that the construction of new building and the renovation of the existing building were done by the 2nd respondent without any authorization from the governing council and the construction cost exceeded the original estimated cost. That apart, in violation of the bye-laws of the society, the Secretary had given cash payments instead of cheque payments. The inquiry officer has further held that the Secretary withheld the cheques payable to the suppliers unnecessarily without any proper

reasons and by such conduct he had caused bad name to the society. The activities of the society were not transparent and huge loss was caused to the society. This time, the report of the inquiry officer was forwarded to the Government by the Inspector General of Registration. Based on such report, the Government has concluded that the society was not functioning properly and there were gross financial irregularities of serious nature which made out an extra-ordinary situation and that had given rise for the Government to initiate action under the Tamil Nadu Societies Registration Act. The Government further concluded that there was no governing council to manage and control the affairs of the society as the term of the Governing Council Members of the society expired on 29.10.2013 itself, despite the same, the elected governing council members continued to deal with the affairs of the society. The above situation fell under sub-section (1)(c) of Section 34A of the State Act and therefore, the Government decided to appoint the 7th respondent - Additional Inspector General of Registration (Guidelines) as the Special Officer to the Society for a period of one year and issued a Government Order. It is this Government Order which is now under challenge in this writ petition.

8. In the writ petition it is inter alia contended as follows:-

(i) While appointing the inquiry officer, the 5th respondent failed to issue any notice to the petitioners and the other governing council members and a copy of the report was also not furnished to them.

(ii) Though there were serious allegations leveled against the committee member, the society was not put on notice of any such allegations.

(iii) The construction of the new building and renovation of existing building were taken up only pursuant to the decision taken by the committee on 29.12.2009.

(iv) The 2nd respondent was requested to coordinate with the construction work of new building and renovation work of old building. The 4th respondent who was also one of the members of the governing council earlier made certain allegations against the 2nd respondent and those allegations were rejected as unethical by the committee.

(v) The earlier complaint made by the 4th respondent to the Registrar of the Societies culminated into an inquiry by a competent officer and the inquiry officer report dated 13.07.2012 held that the allegations were all false.

(vi) The findings made against the society are mischievous and totally uncalled for. Ever since the inception of the society cheques are signed only by two members in accordance with rules. The utilization of funds have been approved by the society and all the payments made have also been approved by the society.

(vii) The finding of the inquiry officer that there is gross mismanagement in the affairs of the society is unscrupulous and malicious. Such a finding has been given given in total violation of principles of natural justice.

(viii) The impugned Government Order has been passed without giving any opportunity committee to meet the allegations. The allegations are per se defamatory. It casts aspersion on the integrity of the members of the committee including its past President, a Former Judge of the Hon'ble Supreme Court of India.

(ix) The cheques have been withheld since there were grave doubts about the authenticity of the suppliers and as there was an apprehension that the suppliers in whose favour cheques were drawn might be the name lenders and a few suspects were involved in cheating the society by sending supplies in the name of third parties. The society required the suppliers to send their proforma to verify their genuineness and cheques were issued to the suppliers who had responded to the queries. The finding that on account of the withholding of the cheques there was gross financial irregularity of a serious nature is unjustifiable.

(x) The impugned order has not been passed in the interest of the society and it has been passed with an ulterior motive at the instance of few IAS Officers who wanted to take control of the society and the 4th respondent was only acting as their agents.

(xi) The Registrar of the Societies did not serve any communication to the society seeking its reply to any complaint or charge though section 34-A mandates a notice to the Committee before passing any order.

(xii) The report which was the basis for passing the impugned Government Order was also not made available to the Committee.

9. The 1st respondent society filed counter affidavit inter alia contending that the inquiry report of the 5th

respondent dated 07.05.2013 and the order passed by the Inspector General of Registration dated 06.09.2012 which formed the basis for the issuance of the impugned Government Order appointing the Special Officer were not made available to the society and no opportunity was given to the society as required sub-section (4) of Section 34A of the State Act. The inquiry in the instant case appears to have been ordered under Section 36 of the State Act. The power under Section 36 of the State Act could be invoked either suo motu or by an application by a majority of members or by one third members of the society. However, no such application appears to have been filed or referred in the order. Neither the inquiry report dated 07.05.2013 nor the order passed by the Inspector General of Registrations dated 06.09.2012 did not reveal at whose instance the inquiry was ordered and what are the charges and findings. However, all those allegations were already gone in detail in the earlier report dated 15.06.2012 and the inquiry officer concluded that the allegations were false, they were all internal matters of the society and the Registration Department cannot interfere with the functioning of the society. In spite of the above report, another complaint of similar nature appears to have been entertained and an inquiry was ordered by the Inspector General of Registration under Section 36(i) of the State Act which led to the inquiry report dated 07.05.2013 and the impugned GO dated 31.12.2013 appointing the Special Officer to Administer the society. The power under Section 34A of the State Act could be invoked only if there is stalemate in the management on account of extraordinary and unprecedented circumstances, the expiry of the term of the office of the governing council does not call for supersession of the council. The society is a perpetual body. Under Section 2(g) of the State Act, "officer" means Secretary, Member of the Committee or any person authorized by the bye laws of the society. Section 20 of the State Act provides for to initiate legal proceedings by the Committee or any officer of the society authorized in this behalf. Therefore, it is not possible to assume that a vacuum is created and extraordinary situation arises the moment term of office of the council expires. On the date of submission of the inquiry report dated 07.05.2013 the committee was functioning and it has term till 29.10.2013. No opportunity was given to the committee which is mandatory under sub-section (1)(a)(iv) of Section 34A of the State Act. The inquiry report was also not furnished to the committee/society. Thus, obviously, there is a violation of principles of natural justice. That apart, the earlier report dated 15.06.2012 had been overlooked by the Inspector General of Registration.

10. The counter affidavit further details various resolutions passed by the governing council authorizing the 2nd respondent to undertake and complete the construction and

renovation work. It is further stated that the complaint given by the 4th respondent before the committee alleging the very same allegations, which was the basis for passing of the impugned order, was considered by the council in a meeting headed by Justice S.Mohan and the allegations found in the complaint were found to be false and were rejected. It is further contended by the 1st respondent that the initial estimate was tentatively fixed and it was not the final. Absolutely there was no case of mismanagement. It is not fair on the part of the Registrar to take note of one person's complaint overlooking the earlier report on the same complaint and without calling for records and explanation to conclude against the council.

11. The 2nd respondent filed his counter affidavit contending that earlier on the very same allegations, the Inspector General of Registration had ordered for an inquiry and the inquiry report was also submitted on 15.06.2012. Upon receiving such report, the Inspector General of Registration forwarded the report to the District Registrar (North Madras) and also to the 2nd respondent recommending amendments to the bye-laws of the society. The Inspector General of Registration has no power to order a second inquiry on the same subject. The impugned order contains *per se* defamatory imputations against the office bearers of the society and the impugned order came to be passed in total violation of principles of natural justice and therefore it is void.

12. The 6th respondent filed his counter affidavit detailing the formation of the society and stating that even though Section 15 of the State Act mandates that all the members of the executive committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote and the term of such members shall not exceed three years from the date of their appointment, the Government exempted those provisions by virtue of their power conferred under Section 54 of the State Act in G.O.(Ms) No.141, Commercial Taxes and Registration (M1) Department, dated 06.11.2012. The Government also appointed the President and five council members to the governing council as per the bye-laws of the society. However, the same was challenged by the 2nd respondent in W.P.No.24226 of 2012 and this court has stayed the appointment by order dated 04.10.2012 thereby restraining the members nominated by the Government from being in office of the respondent society's governing council

13. It is further contended by the 6th respondent that based on the complaint alleging certain irregularities in the affairs of the society, the Inspector General of Registration ordered for an inquiry under Section 36 of the State Act and appointed

the 5th respondent to conduct the inquiry. The inquiry officer upon conclusion of the inquiry submitted his report. The said report was forwarded to the 6th respondent Government who in turn upon examining the inquiry report came to a conclusion that (i) in the construction of new building and renovation of old building more funds have been utilized than what was approved in the executive committee meeting held on 23.12.2009; (ii) the Honorary Secretary himself has commenced the construction activities without getting approval of the executive committee; (iii) cheques have been signed by the Honorary Secretary and another member, without the signature of the President, which is contrary to clause 28 of the bye-laws of the society; (iv) even though the bye-laws provide that any expenditure exceeding Rs.2,000/- shall be paid by means of cheque, a sum of Rs.12,72,386/- was paid by way of cash ; and (v) as on 16.10.2012 as many as 77 cheques amounting to Rs.27,64,920/- were kept pending without disbursement to the suppliers and became invalid and no valid reason was stated for the same. Such decision has been taken by the Honorary Secretary arbitrarily without obtaining permission from the general body. Finding prima facie evidence of financial irregularities in utilization of funds and mismanagement of the society, by virtue of the powers conferred under Section 34-A of the State Act, the Government by its GO(Ms) No.161, Commercial Taxes and Registration (M1) Department dated 31.12.2013 appointed the 7th respondent as the Special Officer of the Society, to take speedy action to set right the mismanagement and financial irregularities of the society and hand over the society to the proper committee members within a year.

14. It is also contended by the 6th respondent that during inquiry, the inquiry officer enquired the 2nd respondent, the then Honorary Secretary of the society. As the inquiry was conducted in the institution itself, the petitioner cannot claim that they are not aware of the inquiry. Sufficient opportunity was given to the 2nd respondent. Notice cannot be issued to the committee as the inquiry can be held with the executive authority. The term of the non Government members expired on 29.10.2013 and as this court has stayed the nomination of government members, the affairs of the institute have come to standstill. The petitioners are no more members of the committee and in view of the same, no notice was issued to the petitioners. As there is no governing council in which the management and control of the society stand vested, the Government has invoked Section 34-A of the State Act and appointed the Special Officer to set right the mismanagement and financial irregularities of the society and handover the society to the proper committee members. The 2nd respondent has already filed nine writ petitions and most of them were dismissed by this court.

15. The 7th respondent Special Officer filed his counter affidavit stating that he was appointed as Special Officer for a period of one year and consequent upon the appointment of Justice N.Dhinakar, as the Administrator of the society by this Court, he was relieved on 03.03.2014 from the post of Special Officer.

16. This writ petition was admitted on 18.02.2014 and as an interim measure this court appointed Hon'ble Mr.Justice N.Dhinakar, a former Judge of this Court and former Chief Justice of Jharkhand High Court as Administrator of the society till the election of the society is over. Subsequently, the administrator filed a memo dated 13.03.2018 expressing his inability to continue as Administrator of the society for personal reasons. Accordingly, by order dated 17.04.2018, this court appointed Hon'ble Mr.Justice P.Shanmugam, a former Judge of this Court, as Administrator of the society till the election of the institute is over. Accordingly, Hon'ble Mr.Justice P.Shanmugam has been administering and managing the affairs of the society. The administrator has also filed detailed reports explaining the activities and financial position of the society.

17. Mr.V.Selvaraj, the learned counsel appearing for the petitioners would submit that even though a by-law of the society contemplates various categories of members, as of now, fifteen life members alone are available. The society was originally registered under the Central Act. However, after the enactment of the State Act, viz., Tamil Nadu Societies Registration Act, 1975 by virtue of Section 53 of the State Act, the society is deemed to be registered under the State Act and affairs of the the society is governed by the provisions of the State Act. As the existing bye-laws of the society are inconsistent with the provisions of the State Act, the petitioners filed civil suit in C.S.No.745 of 2013, under Section 92 of CPC, before this court seeking to frame a scheme for the administration of the society. The said suit is still pending.

18. The learned counsel would further submit that when the Government appointed its members including the President to the governing council of the society, the 2nd respondent filed a writ petition in W.P.No.24226 of 2012, challenging the order of the appointment of members by the government and this court has stayed the appointment by order dated 04.10.2012, thereby restraining the members nominated by the Government from being in office of the 1st respondent society's committee/council. That writ petition is also still pending. In those circumstances, according to the learned counsel, only five

elected members alone constituting the council and managing the affairs of the society.

19. Further, according to the learned counsel, earlier one of the governing council member viz., the 4th respondent herein said to have sent a complaint dated 24.03.2012 to the Inspector General of Registration alleging certain irregularities in the affairs of the society and based on such complaint, an inquiry was ordered under Section 36 of the State Act, which culminated into a report, wherein it has been held that the allegations made in the complaint were false. That apart, the inquiry officer has also made his recommendations to amend the bye-laws of the society inconsonance with the provisions of the State Act. The Inspector General of Registration having accepted the report, by his order dated 13.07.2012, forwarded a copy of the same to the 2nd respondent with a direction to rectify the defects pointed out by the inquiry officer. While so, once again, based on the another complaint given by the 4th respondent raising the very same allegations which were made in the earlier complaint, the Inspector General of Registration ordered for another inquiry without any notice to the members of the governing council and based on such report, the impugned order came to be passed. According to the learned counsel once the Inspector General of Registration accepted the earlier report and acted upon the same as per Section 36(9) of the State Act, he has no power to order for another inquiry on the very same allegations, which is not permissible under law.

20. The learned counsel would further submit that as per Section 36 of the State Act, an inquiry into the constitution, working and financial condition of a registered society can be ordered by the Inspector General of Registration of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society. But, in the instant case, based on a complaint given by a single individual, an inquiry came to be ordered, therefore, the inquiry itself void ab initio.

21. The learned counsel would further add that under Section 34A of the State Act before appointing any Special Officer, an opportunity should be given to the committee. But, admittedly, without any such notice, the impugned order came to be passed. A copy of the report was also not made available to the committee and thereby the principles of natural justice was violated.

22. The learned counsel would lastly submit that the impugned order has been passed with *mala fide* intention at the instance of a powerful lobby of IAS Officers in order to take control of the society. The 2nd respondent was duly authorized

by the committee to undertake the civil works and there is absolutely no material available on record to show any mismanagement or misappropriation of the funds of the society. In the absence of any such materials, the Government ought not to have appointed the Special Officer to the Society on the basis of a faulty inquiry report.

23. Mr.T.R.Rajagopalan, the learned senior counsel appearing for the 1st respondent society would submit that in an earlier statutory inquiry conducted by the authorized officer, the allegations made in the complaint were found to be false and the inquiry officer had clearly held that there were no irregularities found in the affairs of the society. When the elected committee running the society very well, there is no need to appoint Special Officer. The Government has passed the impugned Government Order with a *mala fide* intention abusing the power vested in them. The learned senior counsel would further submit that the administrator appointed by this court has filed a detailed report regarding the working condition and the financial position of the society which would indicate that the affairs of the society are being managed very well.

24. Mrs.Narmada Sampath, the learned Additional Advocate General appearing on behalf of the 6th respondent would contend that only based on the allegations raised by the one of the members of the governing council of the society, the Inspector General of Registration passed an order under Section 36 of the State Act for conducting an inquiry. Accordingly, the 5th respondent conducted an inquiry and submitted his report. The said inquiry report was forwarded to the Government by the Inspector General of Registration, which culminated into passing of the impugned order. The inquiry officer in his inquiry found that the secretary of the society had undertaken the civil work without getting approval of the governing council and cheques were signed by the Secretary with another member instead of the President and issued to various suppliers in violation of the bye-laws. In respect of construction of new building and renovation of old building, original cost was estimated at Rs.51,00,000/- but, the 2nd respondent Secretary without obtaining the sanction from the council of the general body had spent about Rs.1,11,00,000/- and as such about Rs.45,00,000/- had been spent unauthorizedly. That apart, without any valid reason, the 2nd respondent secretary withheld as many as 77 cheques amounting to Rs.27,64,920/- payable to the various suppliers and the same had become invalid and time barred which brought bad name to the society.

25. The learned Additional Advocate General would further submit that the terms of the elected governing council expired on 29.10.2013 itself and therefore, considering the fact that

there was no valid committee and also considering the mismanagement and financial irregularities committed by the earlier committee, the Government appointed the Special Officer to administer the society. There is no malafide intention on the part of the Government in passing the impugned Government Order. According to the learned Additional Advocate General, the 2nd respondent/ Secretary has filed as many as nine writ petitions against the Government and others only with an intention to hold the post by unjust means and there is no bonafide on his part.

26. The learned Additional Advocate General would further submit that no second inquiry was ordered as pointed out by the petitioners and the inquiry ordered by the Inspector General of Registration on 06.09.2012 was only the continuation of the earlier inquiry. By order dated 13.07.2012, the Inspector General of Registration, directed the District Registrar to take further action and to rectify the defects, pursuant to the same only, the second inquiry was ordered and, therefore, it cannot be said that second inquiry was ordered without jurisdiction.

27. The learned Additional Advocate General would add that the period of elected governing council got expired on 29.10.2013 and as such, there was no necessity to issue any notice to the elected governing council before passing the impugned order. Therefore, the petitioners cannot agitate the order on the ground of violation of principles of natural justice.

28. The learned Additional Advocate General would lastly contend that the Government is interested in conducting election for the smooth functioning of the society, unprecedented circumstances prevailed in the society only warranted the appointment of Special Officer which cannot be found fault with.

29. I have considered the rival submissions and also perused the records carefully.

30. Now, the issues that arise for consideration in the writ petition are:-

(1) Whether a second inquiry is permissible, on the same allegations, that too, based on a complaint given by an individual member of the society?

(2) whether the inquiry was conducted by following the due procedure and strict adherence to the principles of natural justice? and

(3) whether impugned order is tainted with malafide?

Issue No.1:-

31. The 1st respondent society is one of the oldest societies which was formed in the year 1887 with the laudable objects of helping the poor and rural Indian craftsmen by purchasing their products directly and also imparting training to the artisans.

32. The appointment of a Special Officer to manage the affairs of the society is now under challenge. The Special Officer came to be appointed by impugned order based on an inquiry conducted under Section 36 of the State Act into the alleged irregularities and mismanagement of society and also on the ground that the period of elected governing council expired on 29.10.2013 and a vacuum has been created.

33. Admittedly, based on the complaint given by the 4th respondent, one of the members of the governing council, dated 24.03.2012, alleging certain irregularities in the construction of the new building and renovation of the old building of the society and non disbursal of amount payable to the various suppliers by withholding the cheques without any valid reasons. On such complaint, the Inspector General of Registration ordered for an inquiry into the allegations under Section 36 of the State Act. After conducting a detailed inquiry, a report dated 15.06.2012 was submitted by the inquiry officer holding that the first allegation in respect of irregularities in the civil work is false. Insofar as the other allegations are concerned, the inquiry officer found that they were all internal affairs of the society which could be resolved only in the council meeting of the society. The inquiry officer proceeded to hold that the society is not a government society and hence, the Government or the Registration Department cannot interfere with the internal democracy of the society. It was further held that the existing bye-laws are not in tune with the State Act and, therefore, the same require amendment. The concluding portion of the inquiry report reads as follows:-

"Conclusion:

From the findings, it is concluded that the Nos.1 to 4 are all internal matter of the society.

The Victoria Technical Institute is not a Government Society and hence neither the Government nor the Registration Department can interfere with the internal democracy of the society."

34. Upon considering the inquiry report dated 15.06.2012, the Inspector General of Registration forwarded a copy of the

same to the District Registrar and also the 2nd respondent with a direction to rectify the defected pointed out in the inquiry report. The relevant portion of the order passed by the Inspector General of Registration reads as follows:-

"பார்வையில் காணும் புகார் மனுவினைத் தொடர்ந்து விக்டோரியா டெக்னிகல் இன்ஸ்டிடியூட் என்ற சங்கம் நேர்முக உதவியாளர் (சீட்டு) அவர்களால் ஆய்வு செய்யப்பட்டது, மேற்படி ஆய்வறிக்கையின் நகல் இத்துடன் இணைத்தனுப்பப்படுகிறது,

ஆய்வறிக்கையின்படி சங்கம் குறித்து கண்டறியப்பட்ட குறைபாடுகளை களைய சங்கத்திற்கு உரிய அறிவுரைகள் வழங்கி தொடர் நடவடிக்கை மேற்கொள்ள அறிவுறுத்தப்படுகிறது."

35. From the perusal of the above, it could be seen that the Inspector General of Registration, having accepted the inquiry report and thought it fit to give a direction for rectification of the defects pointed out by the inquiry officer in his report. While so, within a period of two months thereafter, based on further complaints dated 31.08.2012 and 01.09.2012 given by the 4th respondent raising the very same allegations, which were raised in the earlier complaint dated 23.04.2012, the Inspector General of Registration ordered for another inquiry by the 5th respondent into the allegations of constitution, working condition and financial position of the society. Based on that order, the 5th respondent conducted an inquiry without any notice to the society or its council members and submitted his report to the Inspector of Registration on 07.05.2013 who in turn forwarded same to the Government. Considering the report, the Government decided to appoint the 7th respondent - Additional Inspector General of Registration (Guidelines) as the Special Officer to the Society under Sub-section (1) of Section 34A of the Act for a period of one year and accordingly passed the impugned Government Order.

36. At this stage, it would be useful to refer to the relevant provisions of the Tamil Nadu Societies Registration Act, 1975. Section 34-A of the Act reads as follows:-

"34-A. Supersession of Committee. - (1) (a)

If, in the opinion of the Government,-

(i) the Committee of any registered society is not functioning properly, or

(ii) the affairs of any registered society are mismanaged, or

(iii) the registered society's activities are not in furtherance of the objects of the society, or

(iv) the committee of any registered society has contravened any of the provisions of this Act or the rules made thereunder, or willfully disobeys or willfully fails to comply with any lawful order or direction issued under the provisions of the Act or the rules made thereunder, the Government may, after giving the committee an opportunity of making its representations, by order in writing supersede the committee and appoint a person (hereafter in this section and in Section 34-B referred to as the special officer) to manage the affairs of the society for a specified period not exceeding one year.

Provided that nothing in this clause shall prevent the appointment of the same person as special officer for two or more registered societies.

(b) The period specified in such order may, at the discretion of the Government, be extended from time to time provided that such order shall not remain in force for more than three years in the aggregate.

(2) The Special Officer appointed under sub-section (1) shall, subject to the control of the Registrar and to such directions as he may, from time to time, give, have power to exercise all or any of the functions of the committee and to take such action as may be required in the interest of the societies.

(3) The Registrar may fix the remuneration payable to the special officer appointed under sub-section (1). The amount of remuneration so fixed and such other expenditure incidental to the management of the society during the period of supersession as may be approved by the Registrar shall be payable from the funds of the registered society.

(4) The Special Officer appointed under sub-section (1) shall arrange for the constitution of a new committee in accordance with the provisions of this Act and the rules made thereunder and the bye-laws of the registered society so that the new committee may be constituted and the members thereof come into office at any expiry of the period of appointment of the special officer.

(5) Nothing contained in this section shall be deemed to affect the power of the Registrar to order the winding up of the society under section

(6) An order under sub-section (1) shall take effect from the date specified therein."

37. Section 36 of the Act reads as follows:-

36. Power of Registrar to inquire into the affairs of registered society.-

(1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or, if so moved by the District Collector, hold, or direct some person authorized by the Registrar by order in writing in this behalf to hold, an inquiry, into the constitution, working and financial condition of that registered society.

(2) An application to the Registrar under sub-section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under sub-section (1) to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.

(4) All expenses of, and incidental or preliminary to the inquiry shall, where such inquiry is held-

(a) on application, be defrayed by the applicants therefor or out of the assets of the registered society or by the members or officers of the registered society, in such proportions as the Registrar may, by order in writing, direct; and

(b) on the District Collector's or Registrar's motion, be defrayed out of the assets of the registered society, and shall be recoverable as an arrear of land revenue.

(5) An order made under sub-section (4) shall, on application, be enforced by any civil court having local jurisdiction in the same manner as a decree of such court.

(6) A person holding an inquiry under this section shall at all reasonable times have free access to all the books, accounts and documents

of the registered society, and shall have power to call upon the registered society and the officers of the registered society to produce such books, accounts and documents and furnish such statements and other information in relation to its business as he may direct.

(7) It shall be the duty of all persons who are or have been officers of the registered society to furnish the inquiring officer with all the books, accounts and documents in their custody or power relating to the registered society.

(8) A person holding an inquiry under this section may summon any person who, he has reason to believe, has knowledge of any of the affairs of the registered society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the person holding the inquiry has reason to believe that such books, accounts or documents contain any entries relating to transactions of the registered society.

9. The result of the inquiry shall be communicated to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action under Section 37, he may issue such direction to the registered society, or any member of the registered society, as the Registrar may deem fit.

38. Section 34-A of the State Act empowers the Government to supersede a committee if, in the opinion of the Government, the committee of any registered society is not functioning properly, or the affairs of any registered society are mismanaged, or the registered society's activities are not in furtherance of the objects of the society, or the committee of any registered society has contravened any of the provisions of this State Act or the rules made, or willfully disobeys or willfully fails to comply with any lawful order or direction issued under the provisions of this Act, or the rules made thereunder. The Government may, after giving the committee an opportunity of making its representation, by order in writing, supersede the committee and appoint a person to manage the affairs of the society for a specified period not exceeding one year.

39. Under Section 36 of the State Act, the Registrar is empowered to inquire into the affairs of the registered Society

either on its own motion or on an application by a majority of the members of the Committee or on an application of not less than one third of the members of the society or under any other circumstances mentioned under Section 36(1) of the State Act. However, application seeking inquiry into the allegations should be supported by such evidence showing that the applicant has good reason for applying for an inquiry.

40. Section 36(8) of the State Act empowers the inquiry officer to summon any person who have knowledge of any of the affairs of the registered society and may examine him on oath and may summon any person to produce any records. Under Section 36(9) of the Act , the result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action under section 37, he may issue such direction to the registered society, or any member of the registered society, as he may deem fit.

41. In the instant case, on the allegations made against the society by complaint dated 24.03.2012, an inquiry was ordered by the Inspector General of Registration which culminated into a report as stated above. That report was considered by the Inspector General of Registration and necessary directions were issued to the Deputy Registrar under Section 36(9) of the Act to rectify the defects pointed out by the inquiry officer in his inquiry report and to give proper advise to proceed further. In such circumstances, once the Registrar satisfied with the earlier report and issued suitable directions under Section 36(9) of the State Act, once again, based on the similar complaint given by a single individual, he ought not to have ordered for second inquiry into the very same allegations without assigning any reason whatsoever. In the considered opinion of this court, the order of the Inspector General of Registration dated 06.09.2012 ordering second inquiry was without jurisdiction, also in violation of the provision contained in Section 36 of the Act and it is void ab initio.

42. Though it is submitted by the learned Additional Advocate General that the inquiry ordered on 06.09.2012 was not a fresh inquiry and it was only a continuation of the earlier inquiry, this court is unable to accept the same. A perusal of the order of the Inspector General of Registration dated 06.09.2012, directing second inquiry makes it clear that it was not continuation of the earlier inquiry whereas it was only a fresh inquiry based on the fresh complaint given by the 4th respondent dated 31.08.2012 and 01.09.2012 and the allegations are nothing but replica of the earlier complaint besides attributing bias on the inquiry officer.

Issue No.2:-

43. Before conducting such inquiry, the inquiry officer - 5th respondent, did not chose to issue any notice to the society or to the elected council members who were all actually functioning in the office at that point of time and submitted an adverse report in violation of principles of natural justice. Nextlty, before appointing the Special Officer, admittedly, no notice was issued by the Government and opportunity was also not given either to the committee or to the society to submit their representations regarding the findings made in inquiry report dated 07.05.2013. Even according to the respondents, the terms of office of the elected members expired only on 29.10.2013 and on the date of inquiry report, the committee was discharging its duties. Thus, it is not open to the Government to contend that the term of the office of the elected council got expired and therefore, no notice was necessary to the committee or society. In the light of the above factual position, this court is of the considered view that the impugned Government Order has been passed in total violation of the provision of Section 34A(1)(a)(iv) of the State Act and in violation of principles of natural justice. Therefore, on this ground also, the impugned Government Order is liable to be set aside.

Issue No.3:-

44. Reverting back to the complaints, the allegations relate to the construction of new building and renovation of the old building. The civil works were undertaken by the 2nd respondent Secretary only after getting approval from the governing council and in fact, the council was headed by a former Judge of the Hon'ble Supreme Court of India and one of the members of the committee was a former Judge of this Court, one of the petitioners before us.

45. From a careful perusal of the counter affidavit filed by the society and also the documents filed in the form of typed set of papers, more particularly, resolutions passed by the committee authorizing the 2nd respondent to undertake the civil works, it could be seen that the 4th respondent was also a member of the committee which had approved the construction and renovation of buildings. The objections raised by the 4th respondent were considered by the council in its meeting held on 22.03.2011 headed by the Chairman, a former Judge of the Supreme Court of India and the same were rejected. Thereafter, the 4th respondent sent a complaint dated 23.04.2012 to the Inspector General of Registration which resulted in ordering of an inquiry under Section 36 of the State Act as stated above. While so, within a short span of two months, based on the

further complaints from the 4th respondent dated 31.08.2012 and 01.09.2012, a second inquiry was ordered for the reason best known to the Inspector General of Registration appointing the 5th respondent as inquiry officer. The 5th respondent on his part without even issuing any notice to the committee or society and without obtaining any statement from the persons who have knowledge of any of the affairs of the society as contemplated under Section 36(8) of the State Act filed his report that there were irregularities committed in the affairs of the society. That report was submitted on 07.05.2013 by the 5th respondent and the same was forwarded to the Government on 24.12.2012 by the Inspector General of Registration. Thereafter, within a period of one week, without even issuing any notice to the committee or society as contemplated under Section 34-A of the State Act, the 6th respondent Government has passed the impugned order holding that the society was not functioning properly and there were gross financial irregularities of serious nature. In none of those proceedings, earlier inquiry report was discussed and not even a reference was made about the earlier enquiry report dated 15.06.2012 and no reason was given for ordering another enquiry. This would clearly show the mala fide intention of the 6th respondent.

46. In the light of the above discussions, this court is of the view that the Government Order of the 6th respondent impugned in this writ petition is not sustainable in the eye of law and the same is liable to be set aside.

47. Coming to impleading petitions, they have been filed by two of the employees of the society who have been suspended from service followed by disciplinary proceedings. They were working as Salesman and Attender respectively in the society. They sought to contend before this court that the council has got no power to initiate disciplinary proceedings against them and hence, want to implead them in the writ petition as party respondents.

48. The learned counsel for the proposed respondents would submit that the proposed respondents are the employees working in the society and now under suspension. They have been victimized by the management when they demanded bonus and other service benefits payable to them.

49. It was strongly opposed by the learned counsel for the 1st respondent society that the present writ petition has been filed challenging the appointment of the Special Officer to the Society which has got nothing to do with the disciplinary proceedings initiated against the proposed respondents. The proposed respondents are not necessary parties to the writ petition their presence is not at all required for the purpose

of adjudication of the issues involved in the writ petition.

50. The grievance of the proposed respondents is that they have been victimized by the management when they made demand for bonus and other service benefits and neither the Chief Executive nor the Superintendent had power to initiate disciplinary proceedings and suspend them from service.

51. Considering the above submissions and taking note of the fact the challenge in the writ petition relates to the appointment of Special Officer to the Society, this court is of the view that they are not at all necessary parties to the writ petition and even if they are impleaded, no relief could be granted to them in the writ petition. If at all, they have got any grievance regarding initiation of disciplinary proceedings, it is always open to the proposed respondents to challenge the same in the manner known to law. Therefore, the impleaded petitions are only liable to be dismissed.

52. Admittedly, as of now, only fifteen life members alone are there in the society. As per bye-laws, five members have been elected to governing council which includes the petitioners and the respondents 2 to 4. Even though the Government nominated five members and the President to the society, that order has been stayed by this court in a writ petition filed by the 2nd respondent and those government nominated members have not taken charge. The above said writ petition is pending. Now, it is stated that the term of elected members also expired as early as on 29.10.2013. A civil suit has been filed by the petitioners herein for framing a scheme for the administration of the society is also pending. In these circumstances, until the disputes between the parties are resolved and a valid governing council for the society is formed, the affairs of the society have to be managed effectively.

53. Now, the society is being managed and administered by Hon'ble Mr. Justice P. Shanmugam, who has been appointed as Administrator by this court pending writ petition. The reports filed by him detailing the activities of the societies would show that the society is being managed effectively. In the above circumstances, this court is inclined to require the present Administrator to continue to manage the affairs of the society until a valid governing council is constituted for the society. The Administrator is at liberty to fix his remuneration.

In the result, the Writ Petition is allowed and the impugned Government Order is set aside. The impleading petitions are dismissed. Hon'ble Mr. Justice P. Shanmugam, a former Judge of this Court, shall continue as Administrator and manage the affairs of the Society till a valid governing council of the 1st

respondent society is constituted. No costs. Consequently,
connected WMPs are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The District Registrar, Chennai Central, Chennai.

2.The Principal Secretary to Government,
Commercial Taxes and Registration (MI) Department,
Fort St. George, Chennai 600 009.

Copy to : The Hon'ble Mr.Justice P.Shanmugam,
Former Judge,
No.204, T.T.K.Road,
Chennai -600 018.

+1cc to Mr.K.V.Sundararajan, Advocate SR.NO.2051
+2cc to Mr.S.Devadasan & Sagar, Advocate SR.NO.2042 & 2625
+1cc to The Government Pleader SR.NO.2253

AKM/02.03.21/ 23P- 8C/

Order
in
Writ Petition No.222 of 2014
18..01..2021