



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.08.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.12454 of 2021

and

W.M.P(MD) .Nos.9750 & 9752 of 2021

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K.Haafil

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai.
- 2.The Inspector General of Registration (Societies),
No.100, Santhome High Road,
Chennai 29.
- 3.The District Registrar (Societies),
Heber Road,
Contonment,
Trichy.
- 4.Majlisul Ulama
Rep. by its General Secretary,
Majlisul Ulama Campus,
Kaja Nagar,
Trichy.
- 5.The Election Officer,
Majlil Ulama Campus,
Kaja Nagar, Trichy.
- 6.A.S.Kajamian Akthar ... Respondents
(R-6 impleaded vide order of this Court
dated 18.08.2021 in W.M.P(MD)No.10501 of 2021)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to hold election to the 4th respondent society by providing the petitioner and other members opportunity to participate in the election by appointing a former judge of this Court to act as a observer along with officer to be nominated by the third respondent in terms of Sec.26(4) of the Tamil Nadu Societies Registration Act, 1975 to supervise and observe the fair conduct of



election to the 3rd respondent society.

For Petitioner : Mr.Mahaboob Athif
For Respondents : Mr.Veera.Kathiravan,
Senior Counsel assisted by Mr.P.Subbaraj,
Counsel for State, for R1 to R3.
Mr.T.Ramanujam,
Senior Counsel for R4.
Mr.S.Sankar for R5
Mr.T.Mohan
for Mr.M.Saravanan for R6
For Intervenor : Ms.D.Geetha

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ORDER

The petitioner seeks a direction to hold the election to the fourth respondent Society after providing the petitioner and other members an opportunity to participate in such election by appointing a former Judge of this Court to act as an observer in respect thereof.

2.The Writ Petition is filed by a member of the General Body of the fourth respondent Society. The said Society was registered under the Societies Registration Act, 1860. According to the petitioner, there is factionalism in the Society and a complete failure of administration. As a consequence, it is alleged that the relevant returns of the Society have not been taken on record by the Registrar. There is a further allegation with regard to misappropriation of funds and alienation of the assets of the Society in contravention of law.

3.As regards elections, the principal grievance of the petitioner is that such elections are sham elections without real contest. By adverting to the election results for two previous triennia, namely, 2015-2018 and 2018-2021, the petitioner contends that in each of those cases, the nominees were elected unopposed. Likewise, it is alleged that the present election is also a sham and that the nominees would be elected unopposed. The request for the appointment of an observer and for an opportunity to the petitioner is made on the basis of the aforesaid complaints and allegations.

4.The fourth respondent Society refutes the aforesaid allegations. Indeed, the fourth respondent refers to the election results for the triennium 2015-2018 and points out that the petitioner's name features in the list of elected candidates at Sl.No.3 of the election results report. The fourth respondent accuses the petitioner of wilful suppression of the material fact that the petitioner was one of the persons elected in the same fashion without any contest in 2015. In a similar way, the fourth respondent points out that the petitioner's brother was also elected for the triennium 2015-2018. Consequently, the fourth respondent



contains that the electoral process cannot be interfered with merely on such basis.

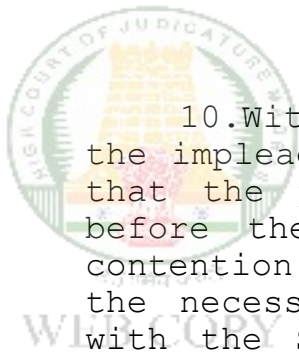
5. With regard to the allegation of misappropriation of funds and unlawful alienation of the assets of the Society, the fourth respondent refers to the Inspection Report of the District Registrar. On the basis of such report, the fourth respondent contends that the District Registrar did not find any discrepancies or irregularities in the administration of the Society, including in particular, with regard to the assets of such society.

6. The fourth respondent also says that notices were duly sent in respect of the elections. The allegation that there was mass removal of members is strongly refuted. In fact, the fourth respondent points out that only 13 members were removed and that the petitioner participated in the resolution relating to the removal of said 13 members.

7. As regards the allegation that relevant returns have not been filed by the Society, the fourth respondent draws reference to the filing details of the Society and points out that almost all the forms relating to change in committee members/ members and annual filings were approved upon filing. Only one annual filing on 06.10.2020 is said to be pending. For all these reasons, the fourth respondent says that the petitioner has completely failed to make out a case to interfere with the electoral process.

8. The State is represented through Mr. Veera. Kathiravan, learned Senior Counsel. His submissions are brief: the principal contention is that a Writ Petition in respect of the affairs of a private society is not maintainable. His second contention is that no statutory obligation is imposed on the Registrar in relation to such election and, therefore, no interference is warranted by the Writ Court.

9. Extensive submissions were made by a candidate at the present election, who filed an impleading petition, namely, W.M.P(MD). No.10501 of 2021. The first submission on behalf of the impleading petitioner was that the petitioner has suppressed the fact that he was elected for the triennium 2015-2018. The impleading petitioner asserts that there has been no alienation of the properties of the Society. As regards the removal of members, the impleading petitioner joins hands with the Society and points out that the petitioner was a party to such removal. The petitioner had relied upon a statement made by Mr. A.K. Khaja Jiavudeen. Both learned Senior Counsel for the Society and learned counsel for the impleading party pointed out that the said A.K. Khaja Jiavudeen resiled from and indeed withdrew his earlier statement alleging maladministration of the Society. On such basis, the contention is that such statement cannot be relied upon.



10. With regard to the electoral process, learned counsel for the impleading party refers to the election schedule and points out that the petitioner shot off a complaint to the Registrar even before the time for filing nominations expired. The additional contention in such regard is that the petitioner could not muster the necessary support to challenge the proceedings in accordance with the Societies Registration Act. Consequently, it is alleged that the petitioner has resorted to filing multiple proceedings to stall the elections instead of contesting the same. As regards the filing of relevant returns, it is pointed out that the Society is obligated to file returns, but once such returns are duly filed, the entry in the relevant registers maintained by the Registrar is not within the control of the Society.

11. The impleading petitioner also relies upon the judgments of this Court and of the Supreme Court to the effect that once the electoral process has commenced, it should be allowed to proceed to its logical conclusion and should not be interdicted midway.

12. An intervenor, namely, K.A. Abdul Kareem, made brief submissions highlighting the factionalism in the Society, and the Civil Suits filed by the intervenor to challenge the elections held in respect of earlier triennia.

13. At the outset, certain fundamental aspects should be taken note of. Ordinarily, the Court in exercise of extraordinary jurisdiction under Article 226 declines to interfere with electoral disputes pertaining to a private party. Therefore, it has to be examined whether the petitioner has made out a case warranting such interference. The second aspect is the salutary principle, instructed in judgments cited by the learned counsel for the impleading party, that the electoral process should not, ordinarily, be interdicted once it has been set in motion.

14. The merits of the dispute should be examined by keeping in mind the aforesaid fundamental principles. The principal contention of the petitioner is that the elections are sham elections inasmuch as candidates are being elected without contest. The election of candidates without contest cannot be said to be *per se* inimical to the democratic process. A party seeking interference with an electoral process on such ground should be able to demonstrate that the elections proceeded without contest in spite of the fact that parties willing to contest the election attempted to participate in the electoral process, but were unfairly and unjustly not permitted to do so.

15. There is nothing either in the affidavit filed in support of the Writ Petition or in the documents filed by the petitioner that demonstrates that the petitioner attempted to file his nomination and that such nomination was rejected by the Society. In addition, it was pointed out that the petitioner himself had been elected on



nomination basis at the elections for the triennium 2015-2018. This position is not refuted and, on the contrary, is admitted by the petitioner. In such circumstances, interference is not warranted on this ground.

16.The other ground on which the petitioner seeks interference is the alleged maladministration of the Society. In this regard, the petitioner relies upon the statement that the properties of the Society had been sold illegally. However, the affidavit is completely bereft of details or particulars of the assets that were sold illegally. On the contrary, an order of this Court has been drawn to my attention and such order seems to prohibit the alienation of the assets. The Inspection Report of the Deputy Registrar also does not indicate any unlawful alienation of assets by the Society. The only remaining ground of challenge is that the relevant returns have not been taken on file by the Registrar of Societies. On this issue, the Society and the impleading petitioner contend that such forms were filed and the filing thereof has been approved, whereas the petitioner refers to other documents that indicate that the relevant forms have not been taken on record. There is little doubt that there are factions in the Society and there appears to be in-fighting between them which has resulted in the initiation of proceedings. Such factionalism is, however, a common feature of electoral processes in any context and in the absence of actionable evidence of infirmities in the electoral process, do not justify interference. For various reasons set out above, the petitioner has failed to make out a case to interfere with the electoral process on the basis of the allegations set out in the petition and the documents filed in support thereof.

17.It is brought to the notice of this Court that the term of office of the incumbents ended while the interim order of this Court was in force. It is also pointed out that it is necessary to convene an annual general meeting. In the above facts and circumstances, the incumbent office bearers are permitted to convene and conduct the annual general meeting.

18.Accordingly, W.P(MD).No.12454 of 2021 is dismissed without any order as to costs. Consequently, connected miscellaneous petitions are closed.

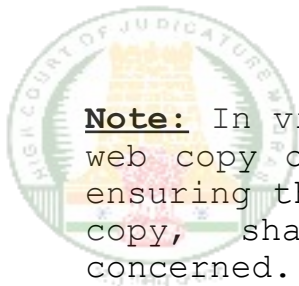
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Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

- 1.The Secretary,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Fort St.George, Chennai.
 - 2.The Inspector General of Registration (Societies),
No.100, Santhome High Road,
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 - 3.The District Registrar (Societies),
Heber Road,
Contonment,
Trichy.
- +1 CC to M/s.M.SARAVANAN, Advocate (SR-26732[F] dated 19/08/2021)
- +1 CC to M/s.M.MAHABOOB ATHIFF, Advocate (SR-26819[F] dated 19/08/2021)
- +1 CC to M/s.S.SANKAR, Advocate (SR-26833[F] dated 19/08/2021)
- +1 CC to M/s.The Special Government Pleader (SR-26948[F] dated 23/08/2021)

W.P(MD)No.12454 of 2021

18.08.2021

RS (06.09.2021) 6P 8C