



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.A(MD)No.1750 of 2021

and

C.M.P(MD)No.7414 and 7415 of 2021

K.Haafil

... Appellant/Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.
- 2.The Inspector General of Registration (Societies),
No.100, Santhome High Road,
Chennai - 600 029.
- 3.The District Registrar (Societies),
Heber Road,
Contonment, Trichy - 620 020.
- 4.Majlisul Ulama,
Represented by its General Secretary,
Majlisul Ulama Campus,
Kaja Nagar, Trichy - 620 020.
- 5.The Election Officer,
Majlisul Ulama Campus,
Kaja Nagar, Trichy - 620 020.

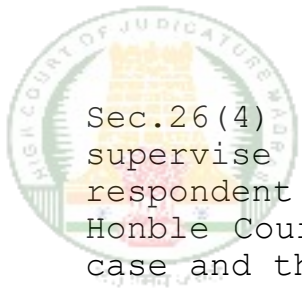
6.A.S.Kajamian Akthar

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 18.08.2021 made in W.P(MD)No.12454 of 2021 on the file of this Court.

Prayer in WP(MD). 12454/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ in the nature of a Writ of Mandamus to direct the respondent 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 3rd 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 and pass such further order or orders as this Honble Court may deem fit and proper under the circumstances of the case and thus render Justice.

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For Appellant : Mr.R.Thiyagarajan
for Mr.N.Balaji

For RR 1 to 3 : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.P.Thilak Kumar
Government Pleader

For R - 4 : Mr.V.Ramanujam
Senior Counsel

For R - 6 : Mr.T.Mohan
for Mr.M.Saravanan

JUDGMENT

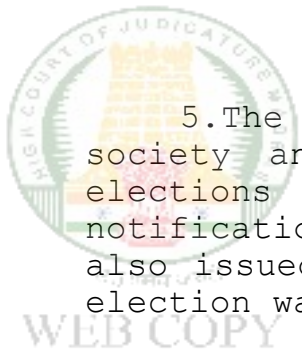
(Judgment of the Court was delivered by
M. DURAISWAMY, J.)

Challenging the order passed in W.P.(MD) No.12454 of 2021 dated 18.08.2021, the Writ petitioner has filed the above Writ Appeal.

2.The appellant filed the Writ Petition to issue a Writ of Mandamus, directing the respondents to hold election to the fourth respondent society by providing the petitioner and other members an opportunity to participate in the election by appointing a former Judge of this Court to act as an observer along with the officer to be nominated by the third respondent in terms of Section 26(4) of the Tamil Nadu Societies Registration Act, 1975 to supervise and observe the fair conduct of election to the third respondent society.

3.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.

4.It is not in dispute that the appellant is a member of the general body of the fourth respondent society. The said society was registered under the Societies Registration Act, 1860. The appellant alleged factionalism in the society and complete failure of administration and also misappropriation of funds and alienation of assets in society in contravention of law.



5.The third respondent issued an election notification for the society and the main grievance of the appellant is that such elections are sham elections without real contest. The election notification was issued on 06.07.2021 and the election schedule was also issued on the same day. As per the election notification, the election was scheduled to be held on 29.07.2021.

6.Subsequent to the issuance of the election notification, the appellant filed the Writ Petition seeking for the prayer as mentioned above and the learned Single Judge by order dated 26.07.2021 granted an order of interim injunction not to proceed further with the election. Further, the learned Single Judge has also directed the parties to maintain status quo until further orders. Thereafter, the Writ Petition was taken up for final hearing and the learned Single Judge by his order dated 18.08.2021 dismissed the Writ Petition. The order passed by the learned Single Judge is impugned in this Writ Appeal.

7.It is not in dispute that the third respondent had already issued an election notification.

8.It is settled law that after the issuance of election notification, the Courts shall not interfere with the electoral disputes in respect of the election process.

9.The learned counsel appearing for the petitioner relied on the decision of the Full Bench of this Court in **C.M.S.Evangelical Suvi David Memorial Higher Secondary School and others Vs. The District Registrar Cheranmahadevi, Tirunelveli District and others** reported in 2005 (2) CTC 161 and in paragraph Nos.18 to 20, it has been held as follows:-

"18. The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. The power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of



members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the Writ Jurisdiction.

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19. In this context it could also be kept in mind the intention of the Legislature not to confer a power of supersession of the Committee on the Registrar as by insertion of Tamil Nadu Act 16 of 1994, such power is vested only in the Government and even when the Registrar is satisfied after enquiry under Section 36 that the society which has contravened any of the provisions of the Act or the Rules made thereunder or the society is insolvent or must necessarily become so or that the business of any such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum filed with the Registrar, he may only cancel the registration.

20. As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form VII, the provision of Sub-Section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of the Registrar to issue such direction under Sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to the power under Section 37 to cancel the registration. Hence, the power under Sub-Section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such



power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the civil Court for appropriate orders and thereafter shall act as per the orders of the civil Court. Accordingly, the issue is answered. Post the Writ Appeals for disposal accordingly."

9.The learned counsel appearing for the sixth respondent relied on the judgment of the Hon'ble Supreme Court in **Supreme Court Bar Association Vs. B.D.Kaushik** reported in **2011 (13) SCC 774** and in paragraph No. 43, 60 and 61, it has been held as follows:-

"43.It hardly needs to be emphasized that in any body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder. The contention of the respondents that the amendment to the Rule whereunder the right to be eligible to contest for any post for the Association or the eligibility to cast the vote at the election, takes away the right completely, is misconceived since by the amendment the right is not taken away but is preserved subject to certain restrictions on its exercise and this could always be done.

60.Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process.



61. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 CPC the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of the SCBA would have been required to prepare a new voters list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the plaintiffs/respondents which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge."

10. The settled position of law is that after the commencement of the electoral process, the Court should not interfere in the election process and stall the election. In view of the judgment of the Hon'ble Supreme Court, we are of the considered view that the Writ Petition itself is not maintainable. The learned Single Judge, while dismissing the Writ Petition, has also considered this aspect and rightly dismissed the Writ Petition. We do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeal is devoid of merits and the same is dismissed.

11. Mr. R. Thiyagarajan, learned counsel appearing for the petitioner submitted that there are about 15 suits are pending in Tiruchirappalli District in different Courts. In these circumstances, the learned counsel for the petitioner submitted that the trial Court may be directed to dispose of the suit at the earliest.

12. Having regard to the submission made by the learned counsel for the petitioner, we direct the trial Court to dispose of the suits as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petitions are closed.

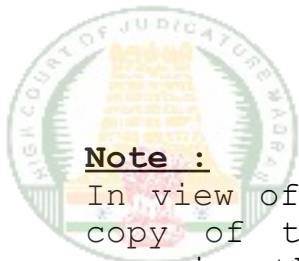
Sd/-

Assistant Registrar (CS-II)

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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.

To

- 1.The Secretary,
Represented by the Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.
- 2.The Inspector General of Registration (Societies),
No.100, Santhome High Road,
Chennai - 600 029.
- 3.The District Registrar (Societies),
Heber Road,
Contonment, Trichy - 620 020.
- 4.The Election Officer,
Majlisul Ulama Campus,
Kaja Nagar, Trichy - 620 020.

Copy to

The Principal District Judge,
Tiruchirappalli.

+1 CC to M/s.M.SARAVANAN, Advocate (SR-28773[F] dated 09/09/2021)

**W.A(MD)No.1750 of 2021
09.09.2021**

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