



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.19058 of 2021

and

W.M.P(MD)No.15826 of 2021

V.Kasi

... Petitioner

Vs.

1.The Additional Chief Secretary to Government (FAC),
Commercial Taxes and Registration (M1)
Department,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.

2.The Inspector General of Registration,
Santhome High Road,
Chennai-600 028.

3.The District Registrar of Societies
(Administration),
Madurai North,
Rathinasamy Nadar Street,
Madurai- 625 002.

4.Indirani

5.E.M.Gopalakrishna Kone Yathavar
Mahalirkalluri (Women's College) Association,
Represented by its Secretary,
Thiruppalai,
Madurai-625 014.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondent No.1 herein to supersede the Executive Council and Governing Council of Respondent No.5 Society represented by the Respondent No.4 by appointing a Special Officer to the Respondent No.5 Society and consequently direct the Special Officer to rectify the defects in the execution and implementation of by-laws with regard to General Body, constitution of Executive Council by conducting an election for Executive Members, further conduct of



election of office bearers by contest among elected Executive Members to hold the post of President, Vice President, Secretary & Treasurer in the Executive Council and for constitution of Governing Council.

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For Petitioner : Mr.Y.Prakash
For R-1 to R-3 : Mr.P.Subbaraj,
Counsel for State.
For R-4 and R-5 : Mr.G.Prabhu Rajadurai

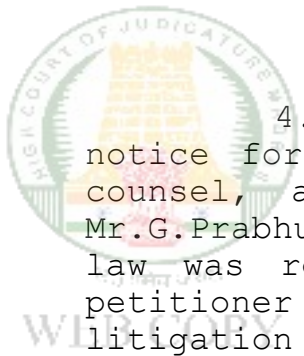
ORDER

The petitioner seeks the supersession of the Executive Council and Governing Council of the fifth respondent Society (the Society) by appointing a Special Officer for the Society.

2. The petitioner asserts that he is one of the founding members of the Society, and that the Society was registered on 12.09.1973. At such time, it is stated that the by-laws of the Society were registered in the Tamil language. The petitioner draws reference to by-law 8 (2), by-law 12 and by-law 13. With specific reference to by-law 13, the petitioner asserts that the said by-law stipulates that the Executive Committee would select the President, Vice President, Secretary and Treasurer. According to the petitioner, the Society was functioning in accordance with the provisions of the Tamil Nadu Societies Registration Act, 1975 (Act 27 of 1975) as long as the founder of the Society was alive. However, it is alleged that after the death of E.M.G.Soundararajan, the fourth respondent has contravened the by-laws and the provisions of Act 27 of 1975. In particular, the petitioner asserts that the English version of by-law 13 is evidently different from the Tamil version. It is alleged that the following sentences have been inserted in the English version.

"Election Rules and Procedures thereto are not applicable to the post of President only. Thiru.E.M.G.Soundararajan shall be the President of LIFE to this Executive Council. After him one among his direct Heirs, selected by and amongst them, shall become the President. His descendants shall hold the office of the President, hereditarily.

3. On such basis, the petitioner seeks to supersede the Executive Council and Governing Council. By way of interim relief, the petitioner seeks an inquiry under Section 36 of Act 27 of 1975 by the official respondents particularly to verify whether the Society is acting on the basis of a false version of the by-laws. The present Writ Petition is filed in these facts and circumstances.



4. Mr.P.Subbaraj, learned counsel for the State, accepts notice for respondents 1 to 3 and Mr.G.Prabhu Rajadurai, learned counsel, accepts notice for the fourth and fifth respondents. Mr.G.Prabhu Rajadurai contends that the English version of the by-law was registered in the year 1984. He points out that the petitioner herein was aware of the English version and that previous litigation between the parties in respect of the elections were contested on the basis of the English version of the by-laws. In addition, he contends that the power to supersede the Executive Council or Governing Council is a drastic power, which should not be exercised lightly. As regards the Society, he points out that the said Society is running an educational institution for a considerable period of time and that the other members of the general body have not raised any issues of impropriety in the functioning of the Society. By pointing out that the Society functions on the strength of funding by a single individual, he points out that the petitioner has completely failed to make out a case to interfere with the management of the Society. He also points out that the general body consists of about 1500 persons and the Executive Committee consists of 50 persons. Out of the said 50 members of the Executive Committee, he points out that only the post of President is reserved for the family of E.M.G.Soundararajan. As regards by-law 13, it is submitted that with the entry into force of Act 27 of 1975 the tenure of members of the Executive Committee and office bearers is limited unless specific exemption is obtained. Such exemption was obtained in the present case. For reasons set out above, it is contended by the fourth and fifth respondents that the Writ Petition is liable to be rejected.

5. In response to the last contention, the petitioner points out that the said exemption has been misused by adverting to the letter dated 15.07.2016 from the Additional Chief Secretary to Government. The petitioner relies upon paragraphs 2 & 3 of such communication to contend that it was concluded therein that the exemption has been misused so as to treat the College administration as a family property of a particular family.

6. In light of the rival contentions, the question that arises for consideration is whether the relief claimed by the petitioner is liable to be granted. In any entity, be it a limited company or Society, democracy is the norm and interference with the management is warranted only in exceptional circumstances. Therefore, an order of supersession is ordered only if the complaining petitioner makes out a compelling case. In the case at hand, the basis for seeking supersession is the variation between the Tamil version of the by-laws and the English version. On this issue, respondents 4 and 5 have pointed out that after the entry into force of Act 27 of 1975, by-law 13 (English version) is not enforceable. Therefore, exemptions were applied for and obtained from the Government. The said contention is not denied by the petitioner. In view of the above, the communication dated 15.07.2016 from the



Additional Chief Secretary to Government, at Paragraph 3, expressly adverts to such exemption and indicates that the exemption is only applicable in respect of four (4) members, i.e. the direct heir of Thiru.E.M.G.Soundararajan and 3 Yadava Community persons nominated either by the trustee or by his heirs and successors among the 50 Executive Council members of the above Society. As regards the rest of the 46 members of the Executive Committee, the said persons are required to be elected and the tenure would be three (3) years. It is not the petitioner's case that persons other than the four (4) exempted Executive Committee members have been appointed in contravention of the exemption.

7. For reasons set out above, the petitioner has completely failed to make out a case to interfere with the management of the fifth respondent Society. In this context, it should also be mentioned that private disputes between the members of a Society or between such members and the Society concerned should ordinarily be carried to the jurisdictional civil courts. Unless the court exercising jurisdiction under Article 226 of the Constitution is convinced that there is a strong public law element or that public interest warrants interference, the Writ Court would be slow to interfere in such matters. The petitioner has failed to establish that his case comes within the exceptions to the general rule.

8. Accordingly, W.P(MD).No.19058 of 2021 is dismissed without any order as to costs. Consequently, W.M.P(MD)No.15826 of 2021 stands closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

tsg/LM

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

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Commercial Taxes and Registration (M1)
Department,
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Secretariat, Chennai-600 009.



2.The Inspector General of Registration,
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3.The District Registrar of Societies
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+1 CC to M/s.SPL.GP (SR-33351[F] dated 01/11/2021)

W.P (MD) No.19058 of 2021
29.10.2021

RD/PM (18.11.2021) 5P 5C