IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.20765 of 2013 and W.P.No.51 of 2014 &
M.P.Nos.1 and 2 of 2013 and M.P.No.1 of 2014

Janab M.Abdul Wahab
Managing Trustee
For Haji P.C.Naina Mohameed Educational Trust
24, Enam, Venkatachalam Pillai Street,
Pondicherry – 1 ...Petitioner in both the petitions

Vs.

1. The Secretary to the Government of Tamilnadu
   Commercial Tax and Registration (M II)
   Department, Fort St. George, Chennai – 9

2. The Inspector General of Registration,
   Santhome, Chennai – 600 028

3. The District Registrar Office,
   Dindigul. ...Respondents in W.P.No.20765 of 2013

1. The Director of School Education
   DPI Campus, college Road,
   Chennai – 600 006

2. The District Educational Officer,
   Palani Road, Dindigul

3. Dindigul Muslim Kalvi Sangam
   rep. By its Secretary Haji P.C.Nainar
   Mohammed Oriental Arabi Higher
   Secondary school complex,
   District collector, office road,
   Dindigul – 624 004 ...Respondents in W.P.No.51 of 2014

(R3 impleaded vide court order dated
10.10.2018 made in M.P.No.2 of 2014
in W.P.No.51 of 2014 by SSSRJ)

Prayer in W.P.No.20765 of 2013

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st respondent in G.O.(2D) No.61 Commercial Taxes and Registration (M2) Department dated 09.05.2013 and quash the same.

Prayer in W.P.No.51 of 2014

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Proceedings Na.Ka.No.29592/G1/E4/2013 dated 12.09.2013 and quash the same and thereby directing the 1st respondent, Director of School Education to entrustwith the Management of P.C.Nainar Mohammed Oriental Arabic High School, Dindigul to the petitioner.

W.P.No.20765 of 2013

For Petitioner	:	Mr.AR.L.Sundaresan for M/s AL.Gandhimathi
For Respondents	:	Mr.K.Tippusultan Government Advocate

W.P.No.51 of 2014

For Petitioner : Mr.AR.L.Sundaresan for M/s AL.Gandhimathi

For Respondents : Mr.K.Tippusultan for R1 and R2 Government Advocate
Mr.Ajmal Khan, Standing Counsel for Mr.R.Venugopal for R3

COMMON ORDER

Since the issues involved in both the petitions are interlinked, they are taken up together and a common order is being passed.

2. Writ Petition No.20765 of 2013 has been filed for issuance of a Writ of Certiorari to call for the records of the 1st respondent in G.O.(2D) No.61 Commercial Taxes and Registration (M2) Department dated 09.05.2013 and quash the same.

3. Writ Petition No.51 of 2014 has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Proceedings No.Na.Ka.No.29592/G1/E4/2013 dated 12.09.2013 and quash the same and thereby directing the 1st respondent, Director of School Education to entrustwith the Management of P.C.Nainar Mohammed Oriental Arabic High School, Dindigul to the petitioner.

4. The brief facts of the petitioner's case in W.P.No.20765 of 2013 are as follows:-

(i) The petitioner is the present Trustee of the Dindigul Town Haji P.C.Nainar Mohammed Rowther Chinna Masjid and Manbaul Hazarath Madrasa Dharmam and according to him, an extent of 5 acres 50 cents of land was settled on 16.03.1986 to a registered society called Dindigul Muslim Kalvi Sangam to run the school in the name of Oriental Arabic School. As the Secretary of the Sangam did not follow the procedures and failed to keep the Sangam intact, the Sangam itself has been dissolved with effect from 25.09.1991 by way of a Government Gazette dated 25.9.1991. The said society has become defunct, accordingly, the petitioner has been appointed as Muthavalli of the Trust by the Tamilnadu Wakf Board, duly cancelled the settlement deed dated 16.03.1986 vide Document No.9951 of 2012 dated 10.10.2012.

(ii) Originally, the petitioner's grand father, namely, P.C.Nainar Mohammed Rowther, owned 22 acres and 58 cents of lands, out of this, 11 acres and 29 cents were gifted to Chinna Masjid, Vedasandur and Manbaul Hasanath Madarasa Mosques by deed of settlement dated 03.02.1954 and remaining 11 acre and 29 cents were gifted to Jamiya Mosque on

22.02.1954 and it is registered as document no.472 of 1954 and managed by its trustee A.B.Abdul Kaboor Sahib. The said P.C.Nyanaar Mohammed died in the year 1960 and his second son, namely, Mohammed Meeran succeeded as the Managing Trustee and appointed as Muthavalli to administer the properties and improve the properties. The said Mohammed Meeran settled 5 acres and 50 cents of lands in the Wakf properties by settlement deed dated 16.03.1986 to the Muslim Kalvi Sangam.

(iii) The property settled was not been properly utilised by the Muslim Kalvi Sangam by its secretary, therefore, the 4th respondent in W.P.No.51 of 2014, viz., Dindigul Muslim Sangam itself has been dissolved with effect with from 25.09.1991. While the matter stood thus, the erstwhile society people by influencing the Ministers and Officials managed to get a Government Order passed on 09.05.2013 purported to be passed under Section 54 (1) of the Tamilnadu Societies Registration Act, 1975, [hereinafter referred to as 'Act']. As against the order of dissolving society, appeal has to be filed within one year under Rule 37(3) of Tamilnadu Societies Registration Rules, 1978. [hereinafter referred to as 'Rules']. However, Society filed the appeal belatedly on 03.07.2012, after 21 long years and the delay has not been properly explained. By way of an impugned Government order, the 1st respondent, in exercise of power under Section 54(1) of the Act have exempted Dindigul Muslim Kalvi Sangam from the provisions of Rule 37(3) of the Rule and Government Order has been passed without an opportunity to the petitioner in an arbitrary manner and without conducting enquiry with the petitioner. There is no justification of the State Government to invoke the provisions of Section 54 of the Act and the delay of more than 21 years has not been properly explained, hence the same has been sought to be quashed.

5. The 3rd respondent in W.P.No.20765 of 2013 has filed a counter. It is their contention that Dindigul Muslim Kalvi Sangam, was registered as a Society under the Act in the year 1984. The property measuring an extent of acre 5.50 cents settled in favour of Dindigul Muslim Kalvi Sangam. The 1st respondent has issued orders in G.O.(2D) No.61/CT & Regn. Dept dated 09.05.2013 exempting Dindigul Muslim Kalvi Sangam in terms of Section 54 of the Act and condoned the delay to file an appeal before the 2nd respondent under Section 44(5) of the said Act. A mere cancellation of the name of a Society cannot be presumed to be non-existent in the eye of law, if the same is functioning continuously from its

inception carrying on its objects for which it is formed and the same is also proved by the said society and the settlement deed executed in favour of the Dindigul Muslim Kalvi Sangam cannot be cancelled by the petitioner posing himself as the present Muthavalli of the Donor Society after a period of 27 years. Hence their contention that the Government has exempted under Rule 37 Sub Clause 3 of the Rules which prescribed time relief for filing an appeal under Section 44 Sub Clause 5 of the Act, accordingly, the appeal is also filed and allowed and Society is functioning regularly, there is no irregularity found, hence opposed this petition.

6. The brief facts of the case in W.P.No.51 of 2014 are as follows:-

The petitioner is duly appointed as Muthavalli by the Tamilnadu Wakf Board and the Managing Trustee of the Dindigul Town Haji P.C.Naina Mohammed educational trust Rowther Chinna Masjid and Manbaul Hasanath Madrasa Dharmam. An extent of 22 acres 58 cents were originally owned by the grand father of the petitioner, viz., P.C.Nainar Mohammed Rowther. Out of this, 11 acres and 29 cents were gifted to Chinna Masjid, Vedasandur and Manbaul Hasanath Madarasa Mosques by deed of settlement dated 03.02.1954 and remaining 11 acre and 29 cents were gifted to Jamiya Mosque on 22.02.1954 and it is registered as document no.472 of 1954 and managed by its trustee A.B.Abdul Kaboor Sahib. The said P.C.Nyanaar Mohammed died in the year 1960 and his second son, namely Mohammed Meeran succeeded as the Managing Trustee and appointed as Muthavali to administer the properties and improve the properties till his life time as stated in settlement deed dated 03.02.1954. The said Mohammed Meeran settled 5 acres and 50 cents of lands in the Wakf properties by settlement deed dated 16.03.1986 to the Muslim Kalvi Sangam. The property settled was not been properly utilised by the Muslim Kalvi Sangam, therefore, the Sangam itself has been dissolved with effect with from 25.09.1991 and is not in existence as on date. Further, Dindigul Muslim Kalvi Sangam was dissolved as early as in the year 1991 and not in existence, the property should be entrusted to the petitioner-Society. Despite several representations, the respondents have not considered the petitioner's request, hence seeks a direction.

7. The 2nd respondent in W.P.No.51 of 2014 has filed a counter. It is their contention that though it is admitted in the counter that Dindigul Muslim Kalvi Sangam was dissolved on 25.09.1991, they have not submitted proper accounts, the Government exempted the Dindigul Muslim Kalvi Sangam under the provisions of Rule 37(3) of the Rules by way of

G.O. Ms.No.(2D) 61 dated 09.05.2013 so as to enable the said society to prefer the appeal before the Inspector General of Registration under Section 44(5) of the Act and the appeal is allowed and the Society is restored to its file and the school is run by the Society promptly without any difficulty and it has been continuously functioning. As the school is also a minority aided school and run promptly, the request of the petitioner's to handover the management of the school to the petitioner is declined.

8. The learned senior counsel appearing for the petitioner would submit that the impugned government order passed by the Government exempting under Rule 37(3) of the Rule is arbitrary, exercise of power and appeal has been entertained after 21 years from the date of society dissolved and published in Government Gazettee. Though the exemption is granted in government order, the provision contained under Section 44(5) of the Act has not been followed, therefore, the appeal has not been filed by the Society, who is impleaded as 4th respondent in W.P.No.51 of 2014 within the time period. Hence it is the contention that without any proper reasoning, the Government entertained the appeal, after a period of 21 years and the same is without non-application of mind and no opportunity has been given to the petitioner despite there were serious objections /

representation made by them, hence it is their contention that once the society is dissolved, the properties ought to have been entrusted to the petitioner.

9. It is the further contention of the learned senior counsel for the petitioner that originally the property comprising an extent of 22 and odd acres owned by one Chinna mohammed and his second son appears to have executed a gift deed of 5.5 acres in favour of the society in the year 1986. As annual returns has not been filed continuously for a period of three years, the orders have been passed dissolving the Society and the Society has been struck off from the register on 25.09.1991, thereafter, appeal has not been filed within the time, prescribed under law. Hence it is the contention that once the society is dissolved the said property shall be given to some other registered society or association of the person having same objects or objections similar to such of those registered society. Hence submitted that the impugned Government Order granting exemption is nothing but an arbitrary exercise of power, cannot be sustained in the eye of law, therefore, submitted that the petitioner is entitled to the management of the properties.

10. Further, the learned senior counsel for the petitioner submitted that the exemption cannot be granted retrospectively and any exemption to be given only in respect of the existing society whereas the society has become defunct in the year 1991, therefore, giving exemption to the non-existence society cannot be a valid one in the eye of law.

11. Whereas, the learned counsel appearing for the respondent – Society, would submit that the petitioner has no locus standi to file the writ petition, he is not a member of the society. The petitioner-trust has been registered only on 14.04.2013 only for the purpose of filing the writ petition. It is his contention that society has been dissolved for non-furnishing of the accounts, as per Section 16, such failure to produce the accounts was due to illiteracy of the people and continuous change of office bearers, since the school is run by the society and aided by the Government. Realising the fact that Society has been struck off from the Register they filed an application before the government. The Government by exercising power under Section 54 of the Act, has exempted the 4th respondent-Society, so as to enable the society to prefer an appeal under Section 44(5) of the Act. In support of this contention, he has relied on the decision of this Court

reported in **2008-1-L.W.621 [R.Parthsarathy Vs. The state of Tamilnadu & Others].**

12. The learned counsel for the respondents - authorities would submit that the power is vested with the government by statute. The Government taking note of the fact that society has conducted election properly once in every three years, Annual General Body Meeting of the society was also conducted with proper maintenance of audits and accounts and carrying on business and office continuously and no irregularity found in the School by Education department during enquiry, granted such exemption to file an appeal. Pursuant to such government order, appeal has been filed and is allowed and the society name has been restored to file. Therefore, now the petitioner under the pretext of some association, cannot seek a direction to handover the educational institution to the petitioner. Further, it is his contention that as long as the Government exempted provisions relating to the period of limitation for filing of appeal and appeal is entertained and orders have been passed, now, the society cannot be entrusted to the petitioner, hence submitted that this writ petition is nothing but an abuse of process of law. The alleged cancellation of settlement deed by the petitioner who is not even an

executor of the settlement, has no power at any event, the same is before the civil court . The same is not germane for consideration in this Writ Petition. Hence submitted that once the order has been passed by the government granting exemption of provisions of the Act, the same cannot be questioned in this Writ Petition.

13. I have heard the submissions on either side and perused the documents placed on record.

14. The Writ Petition No.20765 of 2013 is filed challenging the impugned order passed by the Government granting exemption. W.P.No.51 of 2014 has been filed challenging the impugned order passed by the respondent refusing to handover the educational institution to the petitioner. The 4th respondent - Society was ordered to be struck off for failure of submission of annual accounts continuously for a period of three years and the same was published in the Tamilnadu Government Gazette on 25.09.1991 under Section 44(4) of the said Act. Thereafter, it appears that a representation has been given to the Government on 03.07.2012 for exempting the provision relating to limitation for filing the appeal. The Government vide, G.O.(2D) No.61 dated 09.05.2013 taking note of the fact

that society has conducted elections properly once in every 3 years and Annual General Body Meeting was also conducted once in every year with proper maintenance of audits and annual accounts and also there was no complaint by the Education Department, has exercised power under Section 54 of Act and exempted 4th respondent society from the provisions of Rule 37(3) of the Rules so as to enable the society to prefer an appeal to the Inspector General of Registration under Section 44(5) of the Act to restore its name in the Register of Societies.

15. It is relevant to note that the petitioner's trust has been formed in the year 2013, ie., 04.04.2013, thereafter, the Writ Petition came to be filed in the same year. The 4th respondent – Society in W.P.No.51 of 2014 has been declared as defunct and name has been struck off for violation of the provision namely, Section 16 of the Act for non furnishing of the accounts and the name has been struck off by invoking power under Section 44 of the Act.

16. It is also relevant to note that if any society has been struck off from the Register, such registered society or member or creditor may, within such time as may be prescribed from the date of publication in the

Tamil Nadu Government Gazette of the notice of striking off the name of the registered society, appeal to the Government, if the registered society is struck off by the Inspector - General of Registration on such appeal being filed, the Government or the Inspector General of Registration on being satisfied that the registered society was, at the time its name was struck off, carrying on business or in operation or otherwise that it is just and equitable that the name of the registered society be restored to the register, may order such restoration.

17. Sub Clause 7 of Section 44 makes it clear that the registered society whose name is restored to the register under sub-section (5) or sub-section (6) shall be deemed to have been continued in existence as if its name had not been struck off. In the event appeal period is lapsed and the appeal has been filed and appeal has been dismissed and the society has not restored, then the registered society shall not function, if the registration of the society has been cancelled.

18. Section 39 of the Act deals with the Effect of the Cancellation of the Registration, wherein the registered society shall forthwith cease to carry on its business, except as far as may be required for the beneficial

winding-up thereof, for which purpose it shall pass a special resolution and dissolve itself in the manner provided in Section 41 of the Act.

19. Section 41 of the Act deals with the dissolution of registered societies and adjustment of their affairs. A registered society may, by special resolution, determine that it shall be dissolved and thereupon it shall be dissolved forthwith or at the time specified in the resolution and all necessary steps shall be taken for the disposal and settlement of the property of the registered society and its claims and liabilities according to the by-laws, if any, of the registered society and if there are no by-laws, as the committee, or where a special committee is appointed under sub-section (2), the special committee, may find it expedient.

20. Section 42 of the Act deals with the manner in which the property if upon the dissolution of any registered society there shall remain after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society, or any of them, but shall be given to some other registered society or to any association of persons having the same objects or objects similar

to those of such a registered society, to be determined by a special resolution or in default thereof by the court.

21. Though the Society's name has been struck off in the year 1991, none of the procedures either under Section 39 or 41 of the Act has been followed. However, the Society continued to carry on its business, which is not disputed by the respondents 1 and 2. When the name of the society struck off, the appeal ought to have been filed within a period of one year, as per Rule 37 of the Rules, the appeal under sub-section (5) of Section 44 shall be preferred within one year from the date of publication of the notice referred to in subsection (4) of the said section, admittedly, in this case, appeal has not been preferred within a period of one year, as stipulated under Rule 37 of the Rules. However, the application has been given by the society seeking exemption from provision relating to limitation to file an appeal. The Government in exercise of power vested with them under Section 54 of the Act passed the Government Order. Section 54 of the Act is hereby extracted as follows:-

> "*The Government may, by general or special order Exemption whether prospectively or retrospectively,— (1) exempt from all or any of the provisions of this Act or from any rule made under this Act, or (2) direct that any such provisioner*

any such rule shall apply with such modifications as may be specified in the order, to any society or registered society or class of societies or of registered societies."

The above provision makes it very clear that the Government may by general or special order Exemption whether prospectively or retrospectively,— (1) exempt from all or any of the provisions of this Act or from any rule made under this Act, and also can direct any such provision or any such rule shall apply with such modifications, as may be specified in the order, to any society or registered society or class of societies or of registered societies.

22. Pursuant to the power vested to the Government under Section 54 of the Act, the Government has granted exemption to the Society from the provision of Rule 37 of the Rules, so as to enable the Society to prefer an appeal to the Inspector General of Registration under Section 45(4) of the Act to restore its name in the Register of the Societies. Therefore, the Rule which prohibits filing the appeal beyond the period of one year is exempted as far as 4^{th} respondent- society in W.A.No.51 of 2014, by way of a Government order, pursuant to that order, appeal has been filed and the Society has also been restored.

23. It is pertinent to note that Section 44 Sub Clause (5) (b) envisages the Government or the Inspector-General of Registration on being satisfied that the registered society was, at the time its name was struck off, carrying on business or in operation or otherwise that it is just and equitable that the name of the registered society be restored to the register, may order such restoration. While passing order under Section 54 of the Act, the Government has also took note of the fact that the society has conducted business properly, there was no complaint from the Education Department. Further, the elections are conducted every three years and Annual General Body meeting was also conducted once in a year. It is not the case of the Government or the respondents 1 and 2 that Society has never carried out any business or not in operation at the time when the society was struck off or even after the name has been removed from the register.

24. It is not disputed that the school is run by the society, it is aided school and run properly. Such being the position when the Government has exercised the power as per Law, it cannot be said that merely because there is a delay in approaching the Government for seeking the exemption such order suffers from arbitrary exercise of power.

25. It is also to be noted that the violation for removing the name of the society is non furnishing of accounts, as per Section 16 of the Act, other than that, there was no illegality or serious violations found out. When the Government itself accepted that the above violations are bonafide mistakes and granted exemption, it cannot be said that the order has to be passed only after hearing the petitioner. It is to be noted that the petitioner-trust itself formed in the year 2013, just prior to the filing of the present writ petitions, that itself indicates that the petitioner attempt for managing the educational institution is attached with some malafides. This fact is further fortified with the fact that he has also invariably cancelled the settlement deed executed by some other person. All these facts would clearly indicate that writ petitioner has not come to this Court with clean hands. In this regard, it is also useful to refer to the Judgment of the **Division Bench of this Court reported in 2008-1-L.W.-621 [R.Parthasarathy Vs. The State of Tamilnadu rep. By the Secretary to the Government, Commercial Taxes and Registration (M1) Department, Fort St., George, Chennai – 600 009 & Others** at Paragraph No.21, wherein it is held that "whether there was any infraction of the Rules and whether any action has been taken or not is a matter between the Government and the Society and if the Government in its

wisdom thought it fit to pass an exemption order, there is hardly any scope for interference by the High Court in such matters, particularly at the instance of a person who was not even a member of the Society at the time when most of the alleged infractions took place".

26. The above judgment is squarely applicable to the facts of the present case. The petitioner is also not a member at the time of dissolution and the petitioner is a stranger to the society and the challenges action of the respondent merely on the ground that originally the property was owned by the grand father and object of the original trust was not achieved by the association, such contention cannot be a ground to non-suit the order passed by the Government granting exemption.

27. The other contention of the learned counsel for the petitioner that the exemption could be granted only in respect of the society in existence and not in respect of the defunct society, also has no legs to stand. It is relevant to note that except removing the name of petitioner from the society, no other proceedings have been taken under Section 39 or 41 of the Act for distribution of the properties.

28. The impugned Government Order clearly shows that expect non furnishing of accounts at the relevant point of time, society has conducted its business properly. In such view of the matter, it cannot be said that merely the name has been struck off, exemption cannot be granted on such society. The exemption has been granted only with regard to Rule 37(3) of the Rule, which stipulates one year period on limitation of filing of appeal which has been exempted as far as the 4th respondent in W.P.No.51 of 2014 to enable them to file appeal. Consequently appeal has been filed and name has been restored, in such view of the matter, this Court is of the view that the impugned order does not suffer from any infirmity to interfere and the 4th respondent society has already been restored. As per Sub-Clause 7 of the Section 44, the Registered Society whose name is restored to the register under sub-section (5) or sub-section (6) shall be deemed to have continued in existence as if its name had not been struck off. In such view of the matter, the question of distributing the assets and handing over the educational institution to the petitioner does not arise at all and accordingly, both the Writ Petitions lack merit and liable to be dismissed.

In the result, both the Writ Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

28.10.2022

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment

ssd

N.SATHISH KUMAR, J.,

ssd

W.P.No.20765 of 2013 and W.P.No.51 of 2014 &
M.P.Nos.1 and 2 of 2013 and M.P.No.1 of 2014

28.10.2022