



W.P(MD)No.13642 of 2022 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)Nos.13642, 15351, 15352, 15353, 15354,
15355, 15356, 15357, 15358 and 15359 of 2022
and**

**W.M.P.(MD)Nos.9690, 10998, 11006, 11005, 11002,
11011, 11010, 11003, 11012 and 11007 of 2022**

W.P.(MD)No.13642 of 2022:-

M.T.M.Thangaraj

... Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Palayamkottai,
Tirunelveli District.

2.A.P.K.Palani Selvam,
The President,
Kovilpatti Nadar Uravinmurai Sangam,
Kovilpatti, Tuticorin District.

3.S.R.Jayabalan,
The Secretary,
Kovilpatti Nadar Uravinmurai Sangam,
Kovilpatti, Tuticorin District.

4.V.Nagarajan,
The Advocate Commissioner,
Kamaraja International Academy,
Kovilpatti,
Tuticorin District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order dated 24.06.2022 on the file of the 2nd and 3rd respondents and quash the same as illegal.

For Petitioner : Mr.K.Jeyamohan

For Respondents : Mr.P.Thilakumar,
Government Pleader for R1.
Mr.Sricharan Rangarajan,
For Mr.C.Mahilvahana Rajendran for R2 & R3
Mr.V.Nagarajan for R4

COMMON ORDER

Heard the learned counsel for the writ petitioners, the learned Government Pleader for the first respondent, the learned counsel for the second and third respondents and the learned advocate commissioner.

2.The writ petitioners were members of Kovilpatti Nadar Uravinmurai Sangam. By the impugned communications dated 24.06.2022, the petitioners have been informed by the second and third respondents that they have been removed from the fundamental membership of the society. Questioning the same, these writ petitions have been filed.



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3.The learned counsel for the writ petitioners took me through the averments set out in the affidavits filed in support of the writ petitions and contended that the impugned communications will have to be set aside.

4.The learned counsel for the second and third respondents primarily contended that these writ petitions are clearly not maintainable. Relying on catena of decisions of the Hon'ble Supreme Court right from (*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*) reported in (2002) 5 SCC 111 to the decision reported in (2020) 13 SCC 285 (*Maharashtra Chess Assn. v. Union of India*) he contended that the society in question cannot be called as State within the meaning of Article 12 of the Constitution of India. Even if this Court were to assume that since the said society is running aided educational institutions, it should be held amenable to writ jurisdiction, still the issue on hand does not pertain to the so-called public duty that may be attributed to the Society. The only issue that has been raised in these writ petitions is whether the removal of the writ petitioners from the membership of the society is valid or not. This purely concerns the civil rights of the writ petitioners and therefore it is only the jurisdictional civil Court that can entertain the matter and filing these writ petitions was clearly inappropriate. He would also add that the



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petitioners have been removed from the membership roles only after following due process of law. The office bearers of Kovilpatti Nadar Uravinmurai Sangam were elected some time in the year 2017. Though their term came to an end when the pandemic was at its peak, by virtue of the government orders, their tenure got extended right upto December 2021. When the second and third respondents attempted to hold elections, the petitioners herein repeatedly stalled the same by filing writ petitions. Therefore, the elections could not be held in time. The learned counsel drew my attention to the relevant provisions in the bye-laws which provide for extension of the tenure of the executive committee till the next elections are held. The learned counsel for the second and third respondents called upon this Court would to bear in mind that there cannot be any vacuum in administration. If for some reason elections are not held and the tenure of the office bearers are comes to an end, the functioning of the society would be paralyzed. That is why, in terms of the bye-laws, the second and third respondents are very much entitled to continue in office. When once the bye-laws permit the executive committee to continue to be in charge of the management, it goes without saying that it can exercise all its incidental powers. In these cases, the petitioners were issued with notices and only after providing them an opportunity to show cause, the petitioners were removed from their membership. Therefore, the impugned communications



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cannot be faulted. There was no breach of the principles of natural justice. He submitted that these writ petitions deserved to be summarily dismissed and the writ petitioners relegated to the jurisdictional civil Court.

5.I carefully considered the rival contentions and went through the materials on record. It is true that Kovilpatti Nadar Uravinmurai Sangam is not funded by the State. The State does not exercise any control let alone pervasive control over its affairs. It is a body registered under the provisions of the Tamilnadu Society Registration Act, 1975 and therefore, the statutory scheme as set out therein would apply. It is to be noted that the said Society is running as many as five educational institutions. Out of them, two are receiving aid from the State. The Hon'ble Supreme Court in the decision reported in **(2015) 16 SCC 530 (Janet Jeyapaul vs. SRM University and Others)** had held that imparting education is a public function. Apart from educational institutions, the society in question is running a college, hospital, a marriage hall, a burial ground and two temples. It is also owning around forty commercial buildings which have been let out on rent. Therefore, the Society in question cannot be considered as a purely private forum. It is true that the petitioners herein are only questioning their removal from membership. But that role by itself will not mean that the issue has only private law flavour. One cannot look at things



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in isolation. We are here concerned with the management of a Society which is running state-aided.

6.If triable issues are to be considered and if there are contentious facts to be adjudicated, then Writ Court is definitely not the appropriate forum and the parties will have to go only before the jurisdictional civil Court. But I do not find any such factually controversial aspect. There is no dispute that the tenure of the executive committee had already expired. The second and third respondents claim that they continue to be the office bearers of the Society only in view of the provisions in the bye-laws. A learned Judge of this Court in the decision reported ***(2021) 2 CTC 531 (Pennar Senior FC Rep. By its Secretary Mr.K.Tamilselvan, Krishnagiri v. Government of Tamil Nadu, Rep. By its Secretary, Commercial Taxes and Registration Department, Namakkal Kavignar Maligai, Fort St. George, Chennai 600 009)*** held as follows:-

“46.On the question of the tenure of the office bearers, Section 15(4) of the Tamil Nadu Societies Registration Act is mandatory, it provides that the term of the office of the members of the Committee shall not exceed three years from the date of their appointment. This Court in Periyar Self Respect Propaganda v. State of Tamil Nadu and Others, reported in AIR 1988 Mad 27, held that Section 15(3) and 15(4) would have retrospective operation from the date of their incorporation in the main Act. This Court also pointed out that any provision in the bye-law will have to give way to the new provision in view of Section 53



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of the Act, which provides that any old bye-law which is inconsistent with the provisions of the new Act will have to be invoked. Therefore, the tenure of office bearers of the fourth defendant Association expired as early as on 19.09.2018 and they had no right to continue in office after the said date. If they have no right to continue in office after the said date, they do not have any right to convene General Body Meetings or to conduct elections. Therefore, the entire process of the convening of the Annual Congress on 09.02.2019 and the conduct of elections is vitiated not only by non compliance with the Statutes, but also because of noncompliance with the provisions of the Tamil Nadu Societies Registration Act.”

7.A learned Judge of the Allahabad High Court in the case of ***Fahim Ahmad vs State of U.P. And Others***, dated 05.07.2006 held as follows:-

“10.The election of members and office bearers of executive committee will be for three years. In case due to any reason the election is not held after three years then the elected Executive Committee will continue to work till new election...any decision by the office bearers of the society after lapse of period for which the office bearers are elected, shall be nullity in law.”

8.Applying the aforesaid ratios, I have to necessarily come to the conclusion that the office bearers whose tenure had already expired totally lacked jurisdiction to remove the writ petitioners from the membership rolls.



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9. Of course, there is still a question arises as to whether remedy can be granted in writ proceedings. It has been emphatically contended by the respondents that this writ petition is not maintainable. The Hon'ble Supreme Court in the decision reported in *AIR 1966 SC 81 (Dwarka Nath vs. Income Tax Officer, Special Circle D-ward, Kanpur and Ors)* held that Article 226 of the Constitution of India is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. In *Binny Ltd. and Ors. vs. V. Sadasivan and Ors (2005) 6 SCC 657*, it has been held that Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority discharging a public function. The decision sought to be corrected or enforced must be in discharge of a public function. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public. Bodies exercise public functions when they intervene or participate in social or economic affairs in the public interest. Instances of such services are health care, education and personal social services. It was authoritatively held therein that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the



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action challenged by a party. But there must be a public law element. In

Marwari Balika Vidyalaya vs. Asha Srivastava and Ors (2020) 14 SCC 449,

the Hon'ble Supreme Court held that writ petition will lie even against an unaided private school.

10.The second respondent society is running aided educational institutions. Management of such institutions would definitely partake the character of public law element. Illegal exclusion of persons from management of such institutions cannot be casually brushed aside as a private wrong. In ***Marwari Balika Vidyalaya*** [supra] it was held that the role of the High Court under the Constitution is crucial to ensure the rule of law throughout its territorial jurisdiction. Its mandate is to uphold the rule of law. When contentious facts are not involved and it is apparent that the rule of law has been given a go-by, the High Court is obliged to interfere. It is true that the petitioners could have moved the jurisdictional civil court for relief but I can take judicial notice of the fact that such suits are never disposed of in time. In the given facts and circumstances of the case, an alternative remedy cannot be said to be speedy or efficacious. In ***Marwari Balika Vidyalaya***, [supra] it was reiterated that mere existence of alternative forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ



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jurisdiction. I also seek guidance by analogy. The Full Bench of the Madras

High Court in ***K.Nithiyanantham vs. State of Tamil Nadu and Ors*** (2006

-I- LW 363) held as follows :

“...If the power of enrolment of new members is conferred on the Special Officer who is appointed for a limited period with limited power to manage the affairs of the society till the constitution of newly elected board, it would amount to conferring powers on the Special Officer for alteration of the composition of the society itself, which affects not only the democratic set up and management of the society, but also the scheme of the Act itself.”

A Special Officer appointed for a cooperative society cannot enrol new members because he is only a stopgap arrangement to fill up the vacuum caused by the absence of an elected board. Likewise, the executive committee whose tenure has expired may continue to be in office till election is held and the new set of office bearers is elected. But they hold the office only by way of an ad hoc arrangement. They cannot alter the composition of the General Body by removing members. The integrity of the General Body cannot be tinkered with by an executive committee. A medicine whose shelf-life has expired loses its virility and cannot have any effect. The position of an executive committee is also the same. That is why, the precedents earlier referred to hold that the decisions taken by such an executive committee are nullity in law.



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11.In this view of the matter, the impugned communications are quashed and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.07.2022

Index : Yes / No
Internet : Yes/ No
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To:

The District Registrar, Office of the District Registrar, Palayamkottai,
Tirunelveli District.



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G.R.SWAMINATHAN, J.

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