



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.27650, 28053, 28071 and 28282 of 2022
and

W.M.P.(MD)Nos.21764, 21765 & 21766, 22133, 22148, 22149, 22150, 22151
& 22152, 22327, 22328 & 22329 of 2022

in WP(MD)No.27650 of 2022 : -

1.V.Suresh Kumar

2.T.Balasundaram

3.A.Porchezhiyan

4.K.Murugesan

...Petitioners

v.

1.The State of Tamilnadu,
Rep.by the District Registrar,
Palayamkottai, Tirunelveli District.

2.V.Nagarajan, Advocate Commissioner/
Election Officer, Kovilpatti Nadar Uravinmurai Sangam,
Kamarajar International Academy (CBSE),
Pasuvanthanai Road, Pandavarmangalam,
Kovilpatti – 628 501.

3.Kovilpatti Nadar Uravinmurai Sangam,
Kovilpatti, (Registration No.S.23/1955),
Old No.32, New No.65,
Pathrakaliamman Kovil Street,
Kovilpatti – 628 501,
Rep.by its President (Ad-hoc arrangement).



4. The Inspector of Police,
Kovilpatti East Police Station, Kovilpatti.

5. The Inspector of Police,
Kovilpatti West Police Station, Kovilpatti.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order passed by the 3rd respondent dated 03.02.2021 as well as the impugned election notification issued by the 2nd respondent dated 23.11.2022 published in Tamil Daily Newspaper (Tirunelveli Edison 24.11.2022) and quash the same as illegal and consequently direct the 2nd and 3rd respondents to include the name of the petitioners in the final voter list before proceeding with the 3rd respondent, 2022 Election for 65 Executive Members Post by following the Provisions of Association By-Laws.

in WP(MD)No.28053 of 2022 : -

1.K.A.Velumani

2.V.Abraham Ayyadurai

3.M.Paramasivam

4.M.Sudhakar

5.K.A.Balasubramanian

6.K.Thanga Mariappan

... Petitioners

v.

1.The State of Tamil Nadu, Rep.by the District Registrar,
Palayamkottai, Tirunelveli District.

2.V.Nagarajan, Advocate Commissioner/
Election Officer, Kovilpatti Nadar Uravinmurai Sangam,
Kamarajar International Academy (CBSE),
Pasuvanthanai Road, Pandavarmangalam,
Kovilpatti – 628 501.



3.Kovilpatti Nadar Uravinmurai Sangam,
Kovilpatti, (Registration No.S.23/1955)
Old No.32, New No.65,
Pathrakaliamman Koil Street, Kovilpatti – 628 501.
Rep. by its President (Ad-hoc Arrangement)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the second respondent to consider the petitioner joint objection /joint representation dated 30.11.2022 and include the petitioner's name in the final voter list to enable them to contest the 2022' Election for the third respondent.

in WP(MD)No.28071 of 2022 : -

- 1.XXXXXX
- 2.S.Palthurai Nadar
- 3.XXXXXX
- 4.XXXXXX
- 5.J.Kishore Kumar Nadar
- 6.XXXXXX
- 7.K.Sreedhar Nadar
- 8.K.A.Shenbagaraj Nadar
- 9.C.Tamilmani @ Sekar
- 10.B.Suresh Nadar
- 11.J.Jayachandran Nadar
- 12.K.Kadarkarai Selvam Nadar
- 13.A.Sivakumar Nadar
- 14.XXXXXX



15.XXXXXX

16.P.Selvamariappan Nadar

17.XXXXXX

18.A.Shankar Nadar

19.R.Sundaramurthy

... Petitioners

(Petitioners 1, 3, 4, 6, 14, 15 & 17 were deleted from the array of parties vide Court order dated 13.12.2022)

vs.

1.The District Registrar,
Palayamkottai, Tirunelveli District.

2.The President, Kovilpatti Nadar Uravinmurai
Sangam,
Kovilpatti, Tuticorin District.

3.The Secretary,
Kovilpatti Nadar Uravinmurai Sangam,
Kovilpatti, Tuticorin District.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned rejection list dated 12.12.2022 on the file of the 4th respondent in respect of the entries 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 27, 29, 41 and 43 and quash the same as illegal and further directing the 4th respondent to permit the petitioners to contest in the Executive Committee election of Kovilpatti Nadar Uravinmurai Sangam scheduled to held on 25.12.2022.



in WP(MD)No.28282 of 2022 : -

- 1.T.K.T.Thilagarathinam Nadar
- 2.T.V.Shenbagaraj Nadar
- 3.G.Rajan Nadar
- 4.R.Kannan Nadar
- 5.L.Saravanakumar Nadar
- 6.J.Seenivasan Nadar
- 7.A.M.P.Selvamurugan Nadar
- 8.P.Rajasekar Nadar
- 9.K.Jeyapal Nadar
- 10.M.Elango Nadar
- 11.T.R.Ramsingh Nadar
- 12.S.T.Thirupathiraja Nadar
- 13.V.Palraj Nadar
- 14.C.Jegan Nadar
- 15.E.Arulraj Nadar
- 16.R.Vijaya Nadar
- 17.V.Balamurugan Nadar
- 18.S.Suthakaran Nadar
- 19.T.Ashokmaran Nadar
- 20.S.Somasundaran Nadar
- 21.R.Selvakumar Nadar
- 22.K.Monoharan Nadar



23.V.Rameshkumar Nadar

24.K.Ashokan Nadar

25.C.Selvakumar Nadar

26.J.Vijaykannan Nadar

27.G.Kamraj Nadar

... Petitioners

v.

1.The District Registrar & Registrar of
Societies,
Thoothukudi – 628 002.

2.The Secretary,
Kovilpatti Nadar Uravinmurai Sangam,
No.32, Pathrakaliamman Kovil Street,
Kovilpatti – 628 501, Thoothukudi District.

3.The President,
Kovilpatti Nadar Uravinmurai Sangam,
Pathrakaliamman Kovil Street,
Kovilpatti – 628 501, Thoothukudi District.

4.V.Nagarajan, The Advocate Commissioner,
Kamaraj International Academy,
Kovipatti, Thoothukudi District.

...Respondents

In WP(MD)Nos.27650, 28053 & 28071 of 2022 :

For Petitioners : Mr.P.M.Vishnuvarthanan
in WP(MD)Nos.27650 & 28053 of 2022

For Petitioners : Mr.G.Prabhurajadurai for Mr.K.Jeyamohan
in WP(MD)No.28071 of 2022

For Respondents : Mr.N.Satheeshkumar,
Additional Government Pleader for R1

Mr.M.Ajmalkhan, Senior Counsel
for Mr.C.Mayilvagana Rajendran for R3



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Mr.B.Thanga Aravindh,
Government Advocate (Crl.side) for RR4 &5
in WP(MD)No.27650 of 2022

In WP(MD)No.28282 of 2022 :

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
Mr.K.Ragatheesh Kumar

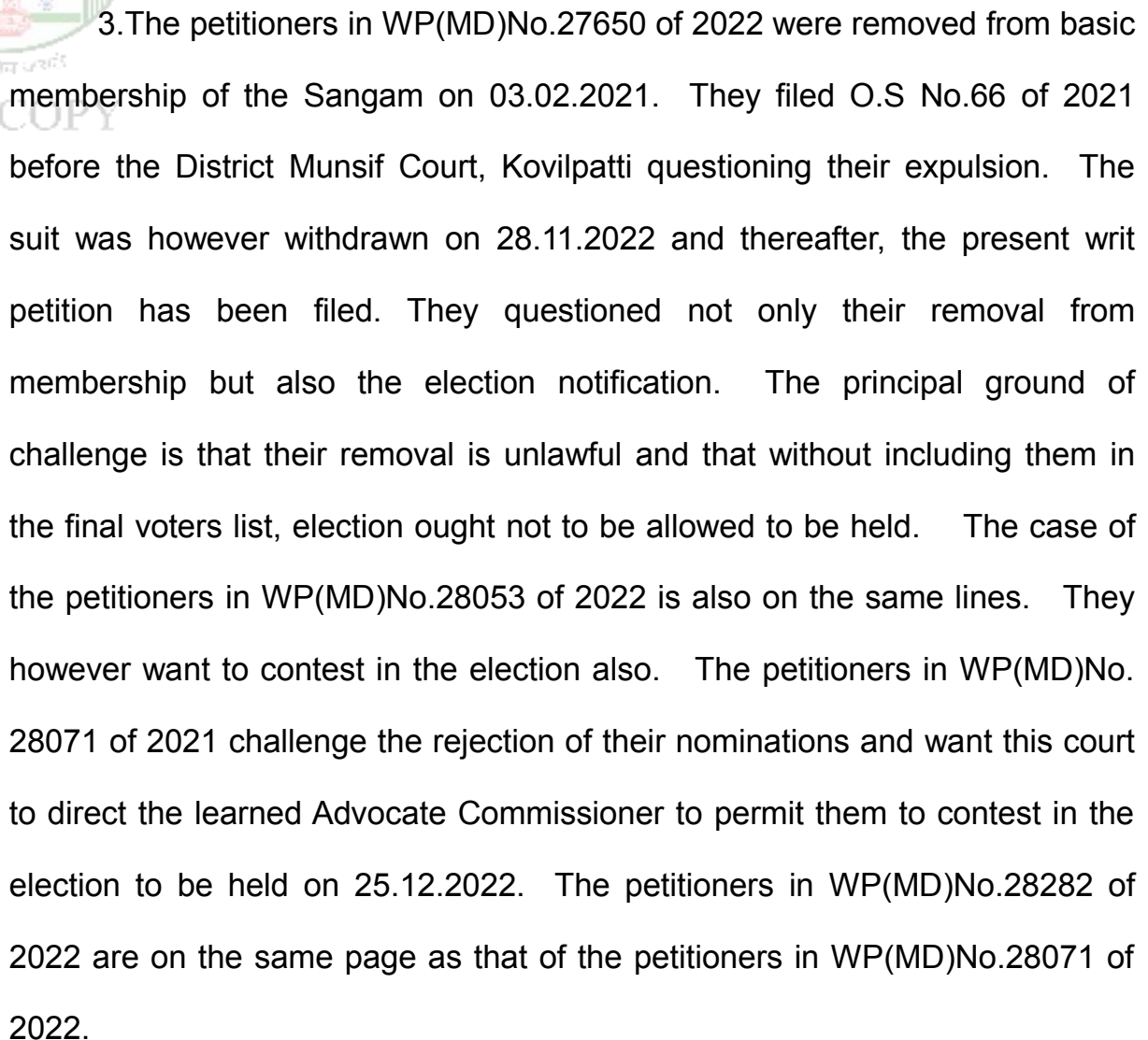
For Respondents : Mr.N.Satheeshkumar,
Additional Government Pleader for R1

Mr.Sricharan Rangarajan for Mr.J.Esakkimuthu
for R2 & R3

COMMON ORDER

Heard both sides.

2.The cases on hand pertain to Kovilpatti Nadar Uravinmurai Sangam. It is a registered Society. Election for electing the office bearers of the Executive Committee is to be held on 25.12.2022. In this background, certain developments took place. Some of the members of the society were removed from the membership rolls. Some of them though recognized as members have not been allowed to lodge their nominations. As a result, they cannot contest in the impending election. These developments led to the filing of these four writ petitions.



4.The respondents have filed counter affidavits. Their primary contention is that these writ petitions are not maintainable. They rely on the order dated 23.02.2022 passed by the Hon'ble Division Bench in W.A Nos.251, 253 and 254 of 2020 & O.S.A Nos.79 to 83 of 2020 (***South Indian Artistes Association v. The Registrar of Societies***) and the order dated 09.06.2022 in WP(MD)No.11290 of 2022 passed by me. The learned Senior Counsel for



the contesting private respondents placed heavy reliance on the recent decision of the Hon'ble Apex Court in **2022 SCC OnLine 1091 (St.Mary's Education Society and another vs. Rajendra Prasad Bhargava and ors)**. He would argue that some of the members had already filed a civil suit challenging their expulsion. They withdrew the suit unconditionally. They had not obtained liberty. Having already availed the common law remedy and not pursued the same, it is not open to them to file the present writ petitions. His third contention is that the election process has already commenced and therefore, it would not be proper for this Court to interfere at this stage. He would also point out that the earlier order passed by this Court in respect of the very same society is subject matter of challenge in WA(MD)Nos.1013 and 1211 to 1219 of 2022. He pressed for dismissal of these writ petitions.

5.I carefully considered the rival contentions and went through the materials on record.

(i) There is no merit in the objection of the learned Senior Counsel appearing for the Sangam that having moved the civil court for relief and having withdrawn the said suit without getting liberty, it is not open to the expelled members to maintain the present writ petitions. The Hon'ble Supreme Court in the decision reported in **(2004) 7 SCC 166 (S.J.S.Business Enterprises (P) Ltd. v. State of Bihar and ors)** had held as follows :



“14. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable, the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If however a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the Court to entertain the writ petition. The Rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another Court. But this Court has also held in *C. B. Gosain Bhan v. State of Orissa* MANU/SC/0213/1963 : 14 STC 766= 1963 (2) SCR 879 that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will



not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 32 AIR 1970 SC 898. Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226. *K.S. Rashid v. Income Tax Investigation Commission* MANU/SC/0123/1954 : [1954]25ITR167(SC) . Therefore the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits.

15. In this case, admittedly the appellant has withdrawn the suit two weeks after the suit had been filed. In other words the appellant elected to pursue its remedies only under Article 226. The pleadings were also complete before the High Court. No doubt, the interim order which was passed by the High Court was obtained when the suit was pending. But by the time the writ petition was heard the suit had already been withdrawn a year earlier. Although the appellant could not, on the High Court's reasoning, take advantage of the interim order, it was not correct in rejecting the writ petition itself when the suit had admittedly been withdrawn, especially when the matter was ripe for hearing and all the facts necessary for determining the writ petition on merits were before the Court, and when the



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Court was not of the view that the writ petition was otherwise not maintainable.”

WP(MD)No.27650 of 2022 was filed only after the withdrawing the suit. In the affidavit itself, there has been a clear disclosure about the filing and withdrawal of the suit. The petitioners therein had not gained any advantage before any forum. An identical issue raised by the petitioners had already been decided by this Court. Therefore, I hold that the writ petitions cannot be dismissed on the ground suggested by the learned Senior Counsel appearing for the contesting respondents.

(ii) The second issue as regards the maintainability of the writ petitions. I had already taken a view in this regard and I therefore cannot depart therefrom. Vide order dated 20.07.2022 in WP(MD)Nos.13642 and 15351 to 15359 of 2022, I had held as follows :

“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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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 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 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



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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.

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 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 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 -1- 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.

11. In this view of the matter, the impugned communications are quashed and the writ petitions are allowed.”

The said order has been put to challenge before the Hon'ble Division Bench in WA(MD)Nos.1013 and 1211 to 1219 of 2022. Interim order was originally granted. When vacate stay petitions were filed, the following consent order was passed :

“4. After elaborate arguments advanced by both the parties, by consent, the parties have agreed for the following order:-

(i) The 1st respondent in all the appeals will approach the 3rd respondent/V.Nagarajan, Advocate Commissioner on 09.12.2022 for submitting their applications complying all the requirements for issuing nomination papers, for contesting the



upcoming Executive Committee Election of Kovilpatti Nadar Uravinmurai Sangam.

(ii) On receipt of such applications by the 1st respondent in all the appeals, the 3rd respondent/V.Nagarajan, Advocate Commissioner has to issue nomination papers to the applicants who have complied all the requirements for nomination.

(iii) On receipt of such nomination papers, the 1st respondent in all the appeals shall submit the filled nomination papers to the 3rd respondent, enclosing all the required papers as per the Election Notification for the Executive Committee of Kovilpatti Nadar Uravinmurai Sangam, on the same day namely, 09.12.2022.

(iv) On submission of such filled nomination papers, the 3rd respondent has to scrutinise the same and consider the nomination papers of the petitioners who have complied the requisite eligibility criteria and those nomination papers of the petitioners which do not comply the requisite eligibility criteria, shall be rejected by the 3rd respondent.

(v) We make it clear that those who have paid Mahamai on or before 15.06.2022, their applications alone have to be considered by the 3rd respondent, if they are otherwise eligible.

(vi) We also make it clear that the aforesaid direction will be subject to the further orders to be passed by us in the present writ appeals.”



The effect of the order of the Hon'ble Division Bench is that the members who were originally expelled are not only eligible to vote in the proposed elections but also contest subject to the conditions set out therein. The petitioners before me are not parties to the writ appeals. I therefore can very well grant relief to the present writ petitioners also. Of course, the rights of the petitioners will necessarily abide by the outcome of the said writ appeals now pending before the Hon'ble Division Bench.

(iii) There is yet another aspect which was not brought to my notice on the earlier occasion. One Shri.Vijayakumar filed WP(MD)No.4304 of 2022 for directing the respondents to conduct the election of office bearers by nominating an officer of the registration department as observer. From the case details that can be downloaded from the High Court website, it is seen that the writ petition was filed on 07.03.2022 and numbered on 09.03.2022. The writ petition was listed for admission on 10.03.2022 and disposed of on the same date based on the consent given by the counsel for Sangam. It can be seen from the case details that the writ petition was disposed of without contest. The relevant paragraphs read as follows :

“3.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner, Mr.J.John Rajadurai, learned Government Advocate, who takes notice on behalf of the respondents 1 and 2



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and Mr.C.Mayilvahana Rajendran, learned Counsel, who takes notice on behalf of respondents 3 and 4.

4.Mr.C.Mayilvahana Rajendran, learned Counsel for the respondents 3 and 4, on instructions, would consent for the request made by Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner for appointment of Advocate Commissioner to conduct the elections.

5.By consent of both the parties, Mr.V.Nagarajan, Advocate (Enrl.No.1295/1993), (Mob.No.98651 15292), having office at No.62, Law Chambers, High Court Building, Madurai-23, is appointed as Advocate Commissioner to conduct election of office bearers of the Kovilpatti Nadar Uravinmurai Sangam (Registration No.23/1995) by issuing election notification in accordance with the bye laws of the Society. The details of the election in accordance with the bye laws of the Society shall be fixed by the Advocate Commissioner. After conducting the election in accordance with the bye laws of the Society and after completion of the election process, the Advocate Commissioner is directed to submit a report to the Registry of this Court.”

It is obvious that the incumbent office bearers of the Sangam had engineered the filing of the writ petition and got an advocate commissioner of their choice.



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I make it clear that this observation of mine shall not be construed to cast any cloud on the competence or integrity of the advocate commissioner. Since the election is being conducted by the advocate commissioner appointed by this Court in a writ proceeding, certainly, his actions can be very well be questioned before this Court. The office bearers of the Sangam had invoked the writ jurisdiction of this Court through an obliging member. They got an order appointing advocate commissioner of their choice to conduct the election. The cannot now contest the maintainability of the writ petitions questioning the action of the advocate commissioner.

6.The learned Senior counsel and counsel appearing for the writ petitioners drew my attention to the earlier order passed by this Court in WP(MD)No.8558 of 2022. The petitioner therein had alleged that the voter list was defective and that it should be corrected. The writ petition was disposed of with a direction to rectify the said defects in the membership list. Complaining that the said order was not complied with, Cont P(MD)No.1160 of 2022 was filed. On 17.11.2022, the respondents filed the voters list. The fundamental contention of the petitioners is that the persons whose names are finding place in the voters list circulated on 17.11.2022 before this Court are very much entitled to contest in the election and that it is not open to the advocate commissioner to reject nominations. Reliance is placed on the following clause in the by-laws :



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26. தேர்தல் முறை நிர்வாகக்குழு உறுப்பினர்கள்

- a. பதவியிலிருந்து வெளியேறும் முன்னாள் நிர்வாகத் துழுவே புதிய நிர்வாகக்குழுவின் தேர்தலுக்கு ஏற்பாடு செய்ய வேண்டும்.
- aa. பொதுக்குழுவிற்கு உயர்நிலைக்குழுவின் வழிகாட்டுதலின்படி தலைவரும், நிர்வாகக்குழு உறுப்பினர்களும் ஏகமனதாக தேர்ந்து எடுக்கப்படுவார்கள். இது முடியாது போனால் கீழ்க்கண்ட தேர்தல் முறை பின்பற்றப்படும்.
- b. தேர்தல் முன்றாண்டு முடிந்த பின் வரும் செப்டம்பர் மாதம் பொதுக்குழுவின் நடைபெறும். கூடிய வரை பொதுக்குழுவில் புதிய நிர்வாகக்குழு உறுப்பினர்கள் ஏகமனதாகத் தேர்ந்தெடுக்கப்படுவார்கள். இது முடியாது போனால் கீழ்க்கண்ட தேர்தல் முறை பின்பற்றப்படும்.
- c. தேர்தல் அதிகாரியாக நாடார் மேல்தலைப்பள்ளி, நாடார் நடுநிலைப்பள்ளி, காமராஜ் மெடிக்லேஷன் பள்ளி, நாடார் உறவினர்களுடன் சங்கம் எஸ்.எஸ். துரைச்சாமி நாடார் - மாரியம்மான் கல்லூரி ஆசிரியர்களை நியமனம் செய்து கொள்ளலாம்.
- d. தேர்தல் அதிகாரிகள் கைவசம் சங்க உறுப்பினர்களின் பட்டியல் கொடுக்கப்பட வேண்டும். பட்டியலில் இடம் பெற்றவர்களே தேர்தலில் நிற்கவும் வாக்களிக்கவும் தகுதிபெற்றவர்கள்.
- e. உறுப்பினர்கள் பட்டியலைப் பொதுக்குழுக் கூட்டம் நடைபெறும் 15 நாட்களுக்கு முன் தயார் செய்ய வேண்டும். உறவினர்களுடைய மகமை அங்கத்தினர் சந்தா & தலைக்கட்டு வரி முதலியவற்றைச் செலுத்தியிருக்கிறவற்றைச் சரிபார்த்தே மேற்படி பட்டியல் தயார் செய்யப்பட வேண்டும். மேற்படி பட்டியல் சங்க அலுவலகத்தில் உறுப்பினர் பார்வைக்கு வைக்கப்பட வேண்டும்.
- f. உறவினர்களுடைய மற்றும் அதன் கீழ் உள்ள நிறுவனங்களில் வேலை செய்து வரும் ஊழியர்களுக்கு வாக்குரிமை கிடையாது.
- g. தேர்தல் அதிகாரிகள் தேர்தலுக்கு நிற்கும் உறுப்பினர்கள் பெயர்களை ஒதுவர் முன்மொழிய இன்மொழுவர் வழிமொழிய எழுதிக்கொண்டே வரவேண்டும். பன் உறுப்பினர்கள் பெயர்களை ஒரே சமயத்திலும் முன் மொழிதல் வழிமொழிதல் மூலம் ஏற்றுக்கொள்ளலாம். இவ்வாறு பெயர்கள் பதிவு செய்யப்படும் நேரம் மொத்தம் 1/2 மணிமே.
- h. வாய்ஸ் பெறுவதற்கு கொடுக்கப்பட்டுள்ள நேரம் அடுத்த 1/2 மணி நேரமே. வாய்ஸ் பெற விரும்புகிறவர்கள் இதற்குள் வாய்ஸ் பெற விரும்பும் விபரத்தை எழுத்து மூலமாக தேர்தல் அதிகாரிகளிடம் கொடுத்தி வேண்டும்.
- i. இறுதி வேட்பாளர்களின் பட்டியல் அடுத்த 30 நிமிடங்களுக்குள் தேர்தல் அதிகாரிகளால் வாசிக்கப்பட வேண்டும்.
- j. வேட்பாளர்களின் பட்டியல் அகர வரிசைப்படி தயாரித்து உறுப்பினர்களின் பார்வைக்கு வைக்க வேண்டும்.
- k. அடுத்த ஒரு மணி நேரத்திற்குள் தேர்தலுக்கு ஏற்பாடு செய்ய வேண்டும்.



I. வாக்காளர்கள் விரும்பினால் தேர்தல் அதிகாரி வேட்பாளர் பெயரை வாசிக்க வாசிக்க உறுப்பினர்கள் எழுந்து நின்று தங்களது ஆதரவைத் தெரிவிக்கலாம். இந்த முறையில் அதிக எண்ணிக்கையில் ஆதரவு பெற்ற முதல் 50 பேர் தேர்ந்தெடுக்கப்படுவர்.

III. வாக்காளர்கள் வெளிப்படையான தேர்தலை விரும்பாவிடில் இரகசிய வாக்குமுறை பின்பற்றப்படும். வருகைக் குறிப்பேட்டில் கையொப்பமிட்ட உறுப்பினர்களைத் தேர்தல் அதிகாரிகள் வாக்களிக்க வகுமாறு அழைப்பர். வாக்களிக்க வரும் உறுப்பினர்கள் தங்கள் அடையாள அட்டையைக் கொடுத்து வாக்குச்சீட்டைப் பெற்றுக்கொள்வர். வாக்குச் சீட்டில் உறுப்பினர்கள் தமக்கு பிடித்த 50 பெயருக்கு முன்னால் X அடையாள முத்திரையைப் பதித்து தங்களது ஆதரவைத் தெரிவிக்கலாம். 50 பேருக்குக் கூடுதலாக அடையாளமிட்ட வாக்குச் சீட்டு செல்லாது. தேர்தல் அதிகாரிகள் வாக்குச் சீட்டுகளை ஒரு பெட்டியில் சேகரித்து எல்லோருடைய முன்னிலையிலும் வாக்குகளை எண்ணுவர். அதிக வாக்குகள் பெற்ற முதல் 50 பேர் வெற்றி பெற்றவர்களாக அறிவிக்கப்படுவர்.

இம்முறையில் வாக்குச் சீட்டுகள் தேர்தல் முடிந்தபின் ஒரு உறையில் சீல் இடப்பட்டு தேர்தல் அதிகாரிகளால் கையொப்பம் செய்யப்பெற்று பத்திரப்படுத்தப்படும்.

Clause 26(e) is particularly relevant. It specifically talks about the payment of Mahamaii, Thalaikattu Vari as well as subscription. It however reads that only those who have remitted the same will be included in the list. Those whose names find place in such a list are entitled to contest and vote in the election. The advocate commissioner could not have rejected the nominations of the persons whose names find place in the said list. In any event, it is not open to the advocate commissioner to go into the correctness of the said entries.

7. There is equally no merit in the contention that this Court ought not to entertain the writ petitions since election process has already commenced.



The precedents and case-laws categorically hold that courts should ordinarily not stay the election process once it has commenced. There can be no quarrel with this fundamental proposition. I do not propose to stay the election process. The election process that is scheduled to be held on 25.12.2022 can go on. The only relief I am granting is rather limited and is anchored on the scheme set out in the by-laws governing the society.

8. In line with the order dated 20.07.2022 made in WP(MD)Nos.13642, 15351 to 15359 of 2022, I hold that the expulsion of the members by the executive-committee whose term has already come to an end is nullity. Such expulsion is declared void and they shall continue to be recognised as members of the society. The prayer for setting aside the impugned election notification is rejected. Having expelled and having terminated them from paying Mahamai, Thalaikattu Vari and Subscription etc., the incumbent office bearers cannot now take advantage of their wrong. The persons who were expelled originally and whose expulsions are declared null and void are very much entitled to pay the subscription, mahamai and thalaikattu vari. Likewise, the persons whose names find place in the voters list circulated on 17.11.2022 are very much entitled to contest the election also. Their entries in the said list indicate that they have paid mahamai, subscription and vari and that cannot be gone into by the advocate commissioner.



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9.The entries made in the list are binding on him. There is another reason why I take such a view. The reason for reading implied limitations in the amending power set out in Article 368 of the Constitution of India is that if such limitations are not read into the provision, a temporary majority in the Parliament can even destroy the fundamental features of the Constitution. Let us come to the facts of the present case. It is obvious that there are two factions in the Sangam. The incumbent office bearers have resorted to throwing out the members of the group opposed to them. They wanted to ensure that the electoral college is packed and loaded in such a way that it would guarantee their re-election. This is akin to what is known as gerrymandering in U.S.A. If that is allowed, it would be nothing sort of subversion of democracy. Democracy is the fundamental feature of the Indian Constitution. It can never be taken away. What applies at national level will apply at grass-root level also. That is why, I have held that the office bearers whose term has already come to an end cannot expel members. It is only the General Body that has to take the final call. The advocate commissioner shall act in line with the directions set out in this order.

10.These writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

20.12.2022

Index : Yes / No
Internet : Yes/ No
skm



To

1. The District Registrar of Societies,
Palayamkottai, Tirunelveli District.



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G.R.SWAMINATHAN, J.

skm

WP(MD)Nos.27650, 28053, 28071
and 28282 of 2022

20.12.2022