



**S.A.(MD).No.22 of 2022**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**RESERVED ON : 02.08.2024**

**DELIVERED ON : 21.10.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE G.ILANGO VAN**

**S.A.(MD).No.22 of 2022**  
**and C.M.P.(MD).No.240 of 2022**

1.I.K.Subramanian  
2.I.A.Chidhambaram  
3.T.S.Kalyanasundar ... Appellants/Respondents 1 to 3/Plaintiffs

**Vs.**

1.ILANJI KALVI SANGAM, Tenkasi District, Ilanji,  
through its President, Registration No.1/1918,  
Office at Ramasami Pillai Higher Secondary School, Ilanji.

2.S.Gandhimathinathan ... Respondents 1 & 2/Appellants/  
Defendants 1 & 4

3.Government of Tamil Nadu through its  
Tirunelveli District Collector, Tirunelveli.

4.The Society Registrar and District Registrar,  
Tenkasi.

5.The Branch Manager,  
Indian Overseas Bank Ltd.,  
Ilanji, Tenkasi Taluk. ... Respondents 3 to 5/  
Respondents 4 to 6/Defendants 2, 3 & 5.



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**PRAYER :** Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed dated 15.12.2021 made in A.S.No.51 of 2021 on the file of the Additional District and Sessions Judge (FTC), Tenkasi reversing the judgment and decree dated 15.07.2021 made in O.S.No.117 of 2019 on the file of the Principal Sub Court, Tenkasi.

For Appellants : Mrs.N.Krishnaveni, Senior Counsel for  
Mr.P.Thiyagarajan

For Respondent : Mr.V.Meenakshi Sundaram for R1 & R2

### **JUDGMENT**

This appeal has been filed against the Judgment and Decree passed dated 15.12.2021 made in A.S.No.51 of 2021 on the file of the Additional District and Sessions Judge (FTC), Tenkasi reversing the judgment and decree dated 15.07.2021 made in O.S.No.117 of 2019 on the file of the Principal Sub Court, Tenkasi.

#### **2.The plaint averments are in brief:**

The plaint in O.S.No.117 of 2019.

The first defendant called Ilanchi Kalvi Sangam is a registered Society as per the provisions of Tamil Nadu Societies



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Registration Act, 1975. There are 51 members including the plaintiff. It has its own By-Laws. As per the By-Laws, the office bearers are elected once in three years by the General Body Members. There was an issue in the election for the period 2016-2019. W.P.(MD).No.12668 of 2015 was filed and in pursuance of the order passed by this Court, Election was conducted by the Election Officer on 23.01.2016. It expired on 22.01.2019.

3.The first defendant's society is running a School called Ramasamy Pillai Higher Secondary School, Ilanchi, acting as Educational Agency. As per the By-Laws, the Office Bearers are acting as Educational Agency.

4.On 23.01.2016 Election, the President by name P.G.Pitchaiah was removed and in his place the 4<sup>th</sup> defendant namely Gandhimathi Nathan was elected and he was acting as President of the Educational Agency. But even after the expiry of the tenure on 22.01.2019, they claimed that they are the Office Bearers for another three years for the period 2019-2022. They also proclaimed that resolutions is going to be



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passed in the General Body Meeting and registered with the competent authorities. By the letter, dated 09.01.2019, the plaintiff sent a representation for conducting the election for the Office Bearers. It was intimated that General Body Meeting will be held on 17.02.2019 through the letter dated 18.01.2019. Against the proposal the third plaintiff filed a petition in W.P.(MD).No.2748 of 2019 against the defendants 1, 3 and 4. The order was passed by the writ Court dismissing the third plaintiff's petition, granting liberty to the third plaintiff to approach the civil court for appropriate remedies on that issue.

5.The observation made by the writ Court was intimated to the first defendant by the third plaintiff on 11.01.2019. A reply was sent on 15.02.2019 stating that there is no need to appoint Election Officer.

6.In the meeting held on 17.02.2019, except 17 members including the first and third plaintiff, others about 34 General Body Members did not participate in the meeting. On that date, representation was made by the first and third plaintiffs to conduct the election in a democratic manner. Since there was no quarrel, objection was made by the first and



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third plaintiff when resolution was made to appoint Office Bearers no proper quorum for the meeting, the meeting itself is not valid under law.

The resolution was sent to the third defendant's Office. So this is the clear violation of the order passed by the writ Court.

7.On that ground the plaintiffs 1 and 3 made objection to the third defendant not to approve Form No.7. That objection was made on 20.02.2019. The Election Observer from the third defendant's also filed the report, which also indicates only through resolution Office Bearers were appointed and not by way of election.

8.The suit is filed for declaration that the Office Bearers were elected against the observation made by this Court in W.P.(MD).No.2748 of 2019 and the By-Laws of the society. The resolution dated 17.02.2019 and election of the new Office Bearers for the period 2019-2022 is not valid under law and further permanent injunction directing the third defendant not to give approval to the Form No.7 submitted by the first defendant and further permanent injunction against the fourth defendant and the fifth defendant not to operate the first defendant's savings



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account A/c.025901000000066.

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9.The averments made in the Written statement was filed by the defendants 1 and 4:

Originally the members were numbering about 51 during the year 2018-2019. Arunachalam, Gandhimathi and Deivanga Perumal resigned their membership of General Body. Their resignation were accepted by the Extraordinary meeting held on 21.10.2018. So as on date there are only 48 members. So it is denied that totally 51 General Body Members are available.

10.Among the 9 Office Bearers one is hereditary membership and are elected by the General Body once in three years. But, right from the beginning in the General Body Meeting, a practice was adopted, by which, a member will propose the Office Bearers, that will be approved unanimously. So it is denied that once in three years, Office Bearers were elected through election.

11.For the year 2012 – 2015 against the usual practice, more than



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8 members wanted to contest. So election was conducted. Office Bearers were elected. For the period 2016-2019, as per the order passed by this Court in W.P.(MD).No.12668 of 2015 direction was issued to the District Registrar, election was conducted. So whenever the occasion arises, unanimously the Office Bearers is to be elected.

12.The President of the Society for the period 2016-2018, acting against the interest of the society. His name is P.G.Pitchaiah. So he was removed from the membership and as well as the post for the year 2017-2018. So after that only, at his instigation trouble are being frequently created by supporters.

13.For the period 2019-2022, election was proposed to be conducted on 06.01.2019. Notice was issued to the persons. But at the instigation of P.G.Pitchaiah his supporter V.Gomathinayagam filed a suit in O.S.No.2 of 2019 before District Munsif Court, Shenkottai for preventing the General Body Meeting. Exparte order was passed. So meeting could not be conducted on 06.01.2019. Later that petition was dismissed as not pressed. Again meeting was convened on 18.01.2019 by



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issuing notice to 48 members. On 17.02.2019, General Body Meeting convened and out of the 48 members only 18 attended. As per the amended By-Law 22, if the quorum is below 1/3<sup>rd</sup>, it will be considered non-quorum. So as per the amended By-Law two members in excess of the 1/3<sup>rd</sup> were present. Even before the commencement of meeting the plaintiffs 1 and 3 walked out.

14. 16 members were participated. So that was considered to be a proper quorum. The old practice was adopted by unanimously electing the Office Bearers. So there is no illegality in the election held for the period 2019-2022. So the contra averments made in the plaint are denied as not correct and false.

15. In the writ petition W.P.(MD).No.2748 of 2018, no notice was ordered to the first defendant. In spite of the dismissal order, again the third plaintiff filed writ petition in W.P.(MD).No.5106 of 2019 with a prayer to direct the District Registrar to conduct election. Later that was also dismissed as withdrawn. Even as per the observation made by the writ court, if the election is conducted against the By-Laws, aggrieved



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parties can approach the Court. Only at the instigation of P.G.Pitchaiah the plaintiffs filed the suit and making continuous trouble.

16. On the basis of the pleadings, the trial court framed the following issues.

1. Whether the plaintiffs are entitled to get the relief of declaration with regard to the selection of new Executive Committee Members through the Resolution passed in the General Body Meeting as null and void?
2. Whether the plaintiffs are entitled to get the relief of Permanent Injunction restraining the 3<sup>rd</sup> Defendant from granting approval to the Form VII submitted by the new Executive Committee?
3. Whether the plaintiffs are entitled to the relief of permanent injunction against the 5<sup>th</sup> defendant restraining from permitting to withdraw the amount by the 4<sup>th</sup> defendant or his men and agents from the Savings Bank Account No.025901000000066?
4. What is the order to the Cost?
5. To what other reliefs?



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17.To substantiate the case on the side of the plaintiffs one witness was examined and 26 documents were marked. On the side of the defendants one witness was examined and 22 documents were marked.

18.At the conclusion of the trial process, the suit was decreed declaring that the resolution and the election, dated 17.02.2019 is not valid under law and the third defendant was directed not to give the approval for Form No.7 and preventing 5<sup>th</sup> defendant from operating the savings Account No.025901000000066.

19.Against which, appeal was preferred before the Additional District and Sessions Judge, Tenkasi in A.S.No.51 of 2021. The appellate Court allowed the appeal with cost setting aside the judgment and decree of the trial Court and suit was dismissed. Against which this second appeal is preferred.

20.Before we go further, the record of proceedings before this Court may be briefly summarized for better understanding the proceedings before this Court. It came up for admission on 12.01.2022.



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It was heard along with C.M.P.(MD).No.240 of 2022. That was dismissed as infructuous stating that Form No.7 and the amendment of the By-Laws were taken on file by the third defendant.

21.C.M.P.(MD).No.238 of 2022 was filed seeking interim injunction restraining the first respondent from convening General Body meeting on 18.01.2022 as per the notification dated 24.12.2021 for election of new Executive Committee members for the period 2022-2025.

22.Per contra, it was submitted by the respondent that due intimation was given to the members prior to convening of General Body Meeting scheduled to be held on 18.01.2022. So the petitioners can participate in the General Body Meeting and make objections. At the request made by the petitioners a Commissioner was appointed to conduct the election in a smooth manner. Commissioner was directed to file their report on 31.01.2022. On 31.01.2022, the Commissioner filed the report and liberty was granted to the objectors to approach the concerned authority. With the above said second appeal was ordered to



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be listed for hearing. That is how the proceedings went on.

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23. When the matter was taken up for hearing, the learned counsel for the respondent would submit that since already election was conducted, new Office bearers have taken charge and report is also submitted by the Commission, now the second appeal itself has become infructuous. But, however, the learned counsel for the appellant wants to argue the matter on merits. So on 18.07.2024, the following substantial question of law was framed.

1. Whether the cause of action still survives for the second appeal in view of the subsequent development in the form of conducting election in pursuance of the order passed by this Court?

24. After framing the above said substantial question of law, the learned senior counsel appearing for the appellant pressed the matter to be decided on merits, since the issue under the second appeal must be decided on its own merits without taking note of further development before this Court. On that ground both were heard at length.



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25.At the first leg of argument the learned senior counsel appearing for the appellant would submit that there were totally 51 members in the General Body. But in 2019 no election process was undertaken. But only selections were made. So that led to various litigations.

26.In reply to the above said, the learned counsel for the respondent has submitted that in view of the subsequent development in the form of the interim order as noted above, now the matter has become infructuous. Not only that on the very same cause of action a suit in O.S.No.60 of 2022 was also filed by the appellant, challenging the present election that was conducted. In pursuance of the order passed by this Court and Office Bearers were also functioning. So according to him, the matter has become infructuous. It is further submitted by him that regarding the conduction of General Body Meeting findings were given by the appellant Court in para No.15 and 16. The amended By-Laws were taken on file in the course of official business.

27.At that time, the following elaborate submission was made by



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the learned senior counsel for the appellant. According to the learned senior counsel, the amendment of By-Laws Rule 14(2) and Rule 16(4) must be complied; Since there was non compliance writ petition was filed; Only the President sent the reply and not the secretary as per the By-Laws; The contention on the part of the respondent that out of 51 members 3 resigned, there was no resolution accepting the resignation; No Form No.7 was also submitted in this regard; Even in the Extraordinary General Body Meeting there is no communication regarding the previous General Body Meeting. The original members cannot be reduced to 48. Even with regard to the resignation of 3 members no document was produced by the respondent. So in effect, according to her, there was no quorum at the time of the General Body meeting. So the resolution passed selecting the members has no legal validity. Since she wants a specific finding from this Court in this regard. Only on that ground the matter was heard at length.

28.At the outset it is seen that repeated writ petitions and repeated suits are filed challenging the election or selection of the Office bearers continuously. Still the issue is not over. As mentioned by the respondent



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even now challenge is made in respect of the election held in the presence of the Commissioner appointed by this Court. So it appears that it is never ending issue between the members who are opposed the election or selection as the case may be and the society.

29.The persistent stand of the appellant is that as per the By-Laws only election must be conducted once in three years and selection is not permissible, that was the observation made by this court in one of the writ petition's orders. But as mentioned above it is the contention of the respondent that some times there were no rival contestants for the very same post. In those circumstances, there is no necessity for conducting the election and by unanimous resolution Office bearers are elected/selected. So it is illegal. So I am not expressing any opinion on this now. It is subject to the By-Laws and the General Body to take the decision on the particular date of meeting. There cannot be any universal condition that in all elections unanimous resolution should not be passed. Such cannot be a direction as mentioned above. Society has its own By-Laws and as observed by the writ court in the above said matter, if there is any violation of the By-Laws, it is for the aggrieved member to



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approach the Court namely civil court. But as mentioned above, repeatedly the problem exists, ignoring the purpose for which the society was formed the members are indulged in continuous litigation, which may not be in the interest of the society and that too when the society is running a school. The ultimate sufferers will be the school. But except making this observation in anguish, this court cannot go beyond that.

30. Now coming back to the arguments as mentioned above, whether quorum was available on the particular date of meeting. It is admitted by the respondent that originally there were 51 members. But 3 resigned. The resignations were accepted in the meeting held on 21.10.2018. It was extraordinary General Body Meeting in the presence of S.Gandhimathi Nathan as the President, wherein, a resolution has been passed to accept their resignations. It was also accepted by PW1 during the course of evidence that those 5 persons resigned. But denies, knowledge over the acceptance of the resignation. But he has not attended the meeting held on 21.10.2018. So he is unaware of the resolution. Now he may not expected to say that it was not properly accepted by the society.



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31.Now the grievance or argument of the appellant is that as per the Rule 15(4) any change in the General Body membership Form 7 must be submitted within 14 days. So according to the appellant, the above said intimation of acceptance of resignation of the General Body Members were not submitted to the authorities in time. So it is violation. So when there is a violation the members must be construed only as 51 and not 48. By taking the members as 51 quorum might have been decided.

32.Per contra, the learned counsel for the respondent would submit that Form 7, admitting the same is only official function to be performed by the District Registrar and nothing more is required by him. He is referring to the Judgment of ***V.Sobana Kumar Vs. The District Registrar*** reported in 2008-4-L.W.760, wherein it has been held that

*“19.A careful reading of the provision does not show that it either clothes the Registrar with any power of enquiry or determines the rights of parties. It does not provide as suggested by the appellant that a decision taken by the Registrar will visit with civil consequences on the parties. As rightly observed by the Division bench in Muralidaran's*



*case that it only involves an ministerial act and nothing more. If the appellant can be described as the "Form Filler", then the Registrar u/s 34 will be "Form Filer". We are not persuaded to take any different view on Muralidaran's case. We do not find any inconsistency between the Full Bench decision and the subsequent decisions of the Division Benches."*

33. According to him the resolution accepting the resignation is sufficient enough to show that the society members were reduced to 48. In the light of the specific admission made by the appellant during evidence, itself is sufficient to hold that the membership was reduced to 48.

34. Regarding the quorum it is submitted by the appellant that any amendment made to the By-Law, must submitted to the District Registrar within 15 days. Now according to the respondent a resolution was adopted to decide the quorum to 1/3<sup>rd</sup> of the members presenting and voting. The meaning of this is that even though there were totaling 48 members, it is not necessary 2/3<sup>rd</sup> must be present. It is enough 1/3<sup>rd</sup> is



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present. So that important resolution was not properly intimated. There is no resolution to that effect also. But as mentioned above, PW1 himself admits that as per the amended By-Laws the minimum quorum was only 16 for the meeting in 2019. So when there is clear admission on the part of PW1 himself in this regard now it is too late for the appellant to argue that it is not properly intimated. So this argument on the side of the appellant is not tenable.

35. Whether election is mandatory in the meeting, this specific observation for obvious reason as mentioned above repeated writ petitions and repeated suits are filed by the appellants questioning the election of the office bearers continuously. So it is left open to the parties to finally decide these issue in the pending suit itself. Because there is no specific finding in this regard in the suit.

36. Reading of the By-Laws shows that out of the 9 Executive members 8 must be elected. Now according to the appellant election means elected office bearers and not selecting the office bearers by unanimous resolution. I can extract the verbatim of the By-Laws in this



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regard. By law 14(2) is extracted hereunder.

"14(2).நிர்வாகக் குபவினர் ஒன்பது பேரில்  
பரம்பரை உறுப்பினர் தவிர எட்டுபேர்  
பொதுக்குழுவினரால் முன்று ஆண்டுகளுக்கு  
ஒருமுறை தேர்ந்தெடுக்கப்படுவார்கள்."

37.As mentioned above, it is the contention on the part of the respondent that it is not mandatory that election must be conducted apparently even if the members are unanimous in their selection of particular persons as office bearers. The meaning and the contention on the part of the appellant that this is referring only to election and not selection requires proper interpretation on the basis of the evidence to be let in.

38.Now coming back to the finding of the appellate Court in this regard. By pointing out this evidence on the part of PW1 the following finding was recorded by the appellate Court.

*"16.The next issue to be decided is whether there is any violation of by-law for passing the resolution on 17.02.2019. As per the above stated amended by-law i.e., 22 rule 6(v) for passing a resolution, there must*



*be a quorum of 1/3<sup>rd</sup> member present on that day. The main argument of the respondents is that there was no quorum on that day. But the respondents' learned counsel in his argument stated that out of 51 members, 3 members resigned from their membership and there are 48 members. Even though, all the 48 members received the Notice of General Body Meeting, only 18 members attended on 17.02.2019. Therefore, the Respondents' argument that the members were denied equal opportunity cannot be accepted. And attendance Register was marked as Ex.B19. And from Ex.B19, it is also established that the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs attended the Meeting. And P.W.1 had also admitted this fact in the cross examination. As per the Attendance Register, it is established that 18 members attended the Meeting. And as per the by-law 22 rule 6(v), the quorum for passing the resolution is 1/3<sup>rd</sup>. And from this attendance register itself it is clearly proved that there is quorum on that day."*

39.These are the arguments advanced by the appellant, which requires no further discussion at the hands of this Court. But, as



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mentioned, reductive in number was not discussed. But, I find no reason to differ or take contra view from the finding of the appellate Court in para No.16, In the light of the above said the interim order passed by this Court assumes importance as noted above. In view of the conduction of the election and further challenge made by the appellant, in the form of filing suit in O.S.No.62 of 2022 before the sub Court, Tenkasi, the second appeal itself become infructuous, all the discussions made now are only academic in nature answered the arguments advanced on either side and placing the submissions. In the light of the above substantial question of law is answered, that the second appeal itself has become infructuous and in the circumstances of the case and in view of the discussion made above the second appeal is liable to be dismissed.

40.In the result, this second appeal stands dismissed. No costs. The Judgment and Decree passed by the appellate Court is hereby confirmed. Consequently, connected miscellaneous petition is closed.

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To

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- 1.The Additional District and Sessions Judge (FTC), Tenkasi.
- 2.The Principal Sub Judge, Tenkasi.
- 3.The Section Officer, E.R.Section/V.R.Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN,J.**

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