



W.P(MD)Nos.4575 of 2022 & 10588 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.4575 of 2022 & 10588 of 2021

and

W.M.P.(MD)Nos.3842 & 3843 of 2022

and

W.M.P.(MD)Nos.8242, 8244, 8247 , 8250 & 9062 of 2021

In W.P.(MD)No.4575 of 2022

Madurai Aruppukottai Nadar Uravinmurai
Girls Higher Secondary School Paribalana Sabai,
Rep. By its Secretary,
P.Pandiyarajan,
S/o.Pitchaikutti Nadar,
No.3, Melathoppu, Keerathurai,
Madurai-625 001.

... Petitioner

Vs.

1.The District Registrar (Societies),
Madurai South,
Palace Road,
Madurai-625 001.

2.The District Educational Officer,
Tallakulam,
Madurai-625 002.

3.V.N.Sivakumar

... Respondents



W.P(MD)Nos.4575 of 2022 & 10588 of 2021

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 relating to the impugned order dated 05.05.2021 in impugned proceedings in Na.Ka.No. 2685/E1/2021 on the file of the 1st respondent and consequential impugned order dated 27.10.2021 in impugned proceedings in Mu.Mu.No.1678/A4/2021 on the file of the 2nd respondent, quash the same as illegal.

For Petitioner : Mr.AN.Ramanathan

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1 & R2
: Mr.M.Ajmalkhan
Senior Counsel
for Mr.N.Sathish Babu for R3

In W.P.(MD)No.10588 of 2021

P.Seenivasan

... Petitioner

Vs.

- 1.The District Registrar,
Madurai South,
Palace Road,
Madurai 625 001.
- 2.The Chief Educational Officer,
Madurai District,
Madurai.
- 3.The District Educational Officer,
Chinnachokkikulam,
Madurai-2.
- 4.The Madurai Aruppukottai Nadar Uravinmurai
Girls Higher Secondary School Paribalanasabhai,



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Rep. By its Secretary,
D.No.3, Melathoppu Street,
Keeratithurai,
Madurai 625 001.

5.V.N.Sivakumar

... Respondents

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 relating to the proceedings of the 1st respondent made in Na. Ka.No.2685/E1/2021 dated 05.05.2021 and quash the same and consequently direct the 2nd and 3rd Respondents not to act upon the form VII submitted in terms of Tamil Nadu societies Registration Act for the purpose of approving the School secretary of the 4th Respondent School.

For Petitioner : Mr.K.Govindarajan
for Mr.R.Murali

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1, R2 & R3

: Mr.M.Ajmalkhan
Senior Counsel
for Mr.N.Sathish Babu for R4 & R5

COMMON ORDER

Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned Senior Counsel assisted by the learned counsel appearing for the private respondents.



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2. In both these writ petitions, the order dated 05.05.2021 passed by the District Registrar, Madurai South in favour of the fifth respondent (V.N.Sivakumar) is under challenge.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned senior counsel appearing for the private respondents contended as follows:-

(1) Thiru.Seenivasan as well as Thiru.Pandiarajan have been removed from the membership rolls. Therefore, they have no locus standi to maintain the writ petitions.

(2) The period for which the impugned order was issued has since expired. The matters have become infructuous.

(3) Issues raised in these petitions have to be necessarily resolved only before the jurisdictional civil Court and invocation of the writ jurisdiction under Article 226 of the Constitution of India is misconceived.



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5. The learned Senior Counsel relied on the full Bench decision reported in **2005 (2) CTC 161** (C.M.S.Evangelical Suvi David Memorial Higher Secondary School Vs. District Registrar), **2008-2-L.W.75** (R.Muralidaran Vs. District Registrar) & **2007 (5) CTC 432** (A.Chinnaraj Vs. Saroja Ammal). He called upon this Court to dismiss the writ petitions.

6. The stand of the learned senior counsel is endorsed by the learned Additional Government Pleader appearing for the official respondents.

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

8. These writ petitions pertain to the affairs of Madurai Aruppukkottai Nadar Uravinmurai Girls Higher Secondary School Paribalana Sabai. It is a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. It was founded in the year 1967. Dispute appears to have arisen among the members of the society in the year 2016. While Thiru.V.N.Sivakumar is on the one side, Thiru.Pandiarajan and Thiru.Seenivasan are on the other. According to Pandiarajan, an extraordinary General Body Meeting was convened on **18.02.2018**. Form VII was filed on **21.02.2018**. According to Thiru.V.N.Sivakumar, election was held on 13.05.2018 and he filed Form VII on 13.05.2018. Thiru.V.N.Sivakumar would claim that he was elected as Secretary for the period 2018-2021.



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On 29.04.2019, the District Registrar, Madurai (South) passed an order accepting Form VII filed by Thiru.Pandiarajan and declining to take on file the Form VII filed by Thiru.V.N.Sivakumar. The District Registrar also informed the District Educational Officer, Madurai vide letter dated 29.04.2019 that Form VII filed by Thiru.V.N.Sivakumar was not taken on file. Challenging these two communications, Thiru.V.N.Sivakumar filed W.P.(MD)Nos.11634 & 6100 of 2019. On 15.05.2019, a learned Judge of this Court granted an order of interim stay till 04.06.2019. This was subsequently extended on 25.07.2019. The writ petitions were listed for final disposal on 02.03.2022. On the said date, the Writ Petitions were dismissed as infructuous. The order of this Court reads as follows:-

“The learned Counsel appearing for the petitioner submits that the matter has become infructuous. The said statement is recorded.

2. Accordingly, this writ petition is dismissed as infructuous.”

In the meanwhile, Thiru.V.N.Sivakumar filed Form VII claiming that election was held on 11.04.2021. The impugned order purports to accept the said Form VII submitted by Thiru.V.N.Sivakumar on that basis.

9. The learned senior counsel appearing for the private respondents would now urge before this Court that an order of the District Registrar



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accepting or rejecting Form VII is not amenable to judicial review in exercise of jurisdiction under Article 226 of the Constitution of India. For this proposition, reliance is placed on the decision of the Hon'ble Division Bench reported in **2008-2-L.W.75 (R.Muralidaran Vs. District Registrar)**. The very same V.N.Sivakumar had filed W.P.(MD)Nos.11634 of 2019 and 6100 of 2019 challenging the order dated 29.04.2019 which was against him and was in favour of Thiru.Pandiarajan. It is beyond dispute that on the strength of the interim order granted in the aforesaid writ petitions, he purported to convene the general body meeting on 11.04.2021. These writ petitions were dismissed as infructuous on 02.03.2022. I had extracted the order of this Court dismissing the writ petitions as infructuous. The Hon'ble Judge who disposed of the writ petitions had not rendered any finding that the writ petitions had become infructuous. On the other hand, the learned counsel who appeared for Thiru.V.N.Sivakumar submitted that the matter had become infructuous. That statement was recorded. Para No.2 of the order reads that “Accordingly, the writ petition was dismissed as infructuous”. The expression “accordingly” is significant. “Accordingly” had been defined in *P.Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition*, as “in a similar manner”. It was a mere recording of the stand of Thiru.V.N.Sivakumar. The Court had not adjudicated the issue. The expression “infructuous” means unfruitful, unproductive and ineffective



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[(2005) 6 SCC 106 (Union of India Vs. Narender Singh)]. The orders

impugned in the writ petitions filed by V.N.Sivakumar had not been wiped out or rendered redundant. The orders remain. Only the challenge has fizzled out.

10. The issue can be approached from yet another angle. Thiru.V.N.Sivakumar had taken advantage of the interim order. Therefore, he ought to have gone for a full-fledged adjudication on merits. Having failed to secure an adjudication on merits, Thiru.V.N.Sivakumar stands to forfeit the benefits of the earlier interim order. As rightly pointed out by the learned counsel appearing for the petitioners, Sivakumar convened the general body meeting only in his capacity as Secretary of the society. He was able to stake such a claim only because of the interim order granted in W.P.(MD) Nos. 11634 & 6100 of 2019. In fact, I fail to understand as to how the grant of interim stay could have enabled Thiru.V.N.Sivakumar to function as Secretary. Admittedly, Form VII filed by Thiru.V.N.Sivakumar was not taken on file. Vide order dated 29.04.2019, Pandiarajan's Form VII was taken on file. This order was stayed. The effect of the stay can only be that Pandiarajan's Form VII also could not have been considered as taken on file. It could not have led to any positive consequence for Thiru.V.N.Sivakumar. The net result of the interim order is that Form VII filed by both the parties should be treated as not taken on file. In



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other words, Sivakumar and Pandiarajan were put on the same pedestal. When a Court grants an interim order of stay, the resultant effect has been spelt out in the decision reported in **1992 (3) SCC 1 (Shree Chamundi Mopeds Ltd v Church of South India Trust Association CSI Cinod Secretariat, Madras)** as follows:-

“10.....While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.....”

11. Thiru.V.N.Sivakumar had not obtained an order of any direction or declaration in his favour. The grant of interim stay could not have conferred any positive status on him as Secretary of the society. This order was not made absolute. I therefore hold that action taken by Thiru.V.N.Sivakumar in convening the general body meeting for electing the office bearers for the block period 2021-2024 is non-est and of no legal consequence. The authority erred in recognizing the same.



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12. The impugned order is vulnerable on yet another ground. The authority accepting Form VII was obliged to see if the statutory requirement was *prima facie* fulfilled. In this case, no such finding has been given. The authority was obliged to render such a finding, since factional disputes had already come to fore. The reasons set out in the impugned order are utterly irrelevant. The authority was not supposed to take sides. The parties have already gone to Court. They were locked in litigation. Therefore, the authority ought to have advised the parties to await the final outcome of the litigation. Instead of doing so, the authority had chosen to favour Thiru.V.N.Sivakumar. It was clearly arbitrary.

13. I must also deal with the objection of the learned senior counsel that these writ petitions are not maintainable. Thiru.V.N.Sivakumar cannot be permitted to raise such a contention. Be that as it may, the Hon'ble Full Bench of the Madras High Court in the decision reported in **2005 (2) CTC 161 (C.M.S.Evangelical Suvi David Memorial Higher Secondary School Vs. District Registrar)** had held as follows:-

“18.The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under [Section 36](#), the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of [section 36](#) shows that the Registrar could look only the provisions of the Act and the Rules and



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prima facie materials to arrive at a conclusion either to believe or not to believe Form No. VII in order to effect change in the register. The power of the Registrar to call for information and explanation under [Section 34](#) does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the Writ Jurisdiction.”

14. If there is arbitrariness in acceptance of Form VII, the writ court cannot be approached. For the reasons set out already, the impugned order is liable to be set aside. The learned senior counsel further had argued that Thiru.Seenivasan having been removed as a member in the year 2019 cannot maintain this writ petition. Admittedly, Sivakumar's Form VII was not taken on file. Even though Sivakumar had obtained stay of the said order in W.P. (MD)Nos.11634 & 6100 of 2019, they had been dismissed as infructuous. It only means that the order dated 02.03.2022 would hold good. Therefore, this contention has to be rejected. Thiru.Sivakumar has played with the process of this Court and his claim that the petitioners are no longer members cannot be endorsed by this Court. The learned counsel for the petitioner draws my attention to the order dated ***17.09.2018 in W.P.Nos.22948 & 30567 of***



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2002(A.Bose and others Vs. District Registrar). I am inclined to adopt the very same approach in this case.

15. The orders impugned in the writ petitions are set aside. The writ petitions are allowed with the following directions:-

(I) The District Registrar, Madurai (south) is directed to finalise the list of members. The undisputed membership list filed with the first respondent in the year 2016 will be taken as a basis. Those members who are no more will be deleted from the members list.

(II) Notice will be issued to all the members through E-mail. Based on the said voters list, the election process will be conducted for electing new set of office bears. All the procedure set out in the statute such as publication etc., will be scrupulously complied with. The District Registrar will also appoint an observer to oversee the election process. The entire proceedings of the general body meeting will be duly videographed.

(III) I make it clear that the District Registrar is finalising the voters list and holding the election only pursuant to the direction given by this Court under Article 226 of the Constitution of India.



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(IV) I am constrained to issue such direction because the society is running an educational institution which is receiving aid from the State. Therefore, the society in question though a private body should be considered as discharging public duties.

16. With the aforesaid directions, the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The District Registrar,
Madurai South,
Palace Road,
Madurai 625 001.
- 2.The Chief Educational Officer,
Madurai District,
Madurai.
- 3.The District Educational Officer,
Chinnachokkikulam,
Madurai-2.



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G.R.SWAMINATHAN, J.

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