



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2021

PRONOUNCED ON : .02.2022

CORAM

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.A.Nos.251, 253 and 254 of 2020
and O.S.A.Nos.79 to 83 of 2020

W.A.No.251 of 2020 :

South Indian Artistes Association
rep. by its Former General Secretary
Vishal Krishna,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-600 017.

.. Appellant/Petitioner

Vs.

1. The Registrar of Societies,
South Chennai,
District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai-600 032.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

.. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 24.01.2020 made in W.P.No.17583 of 2019.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

W.A.No.253 of 2019 :

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SI.Karthi,
Former Treasurer,
South Indian Artistes Association,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-600 017.

.. Appellant/Petitioner

Vs.

1. The Principal Secretary to Government,
Commercial Taxes and Registration
(M1) Department, Secretariat,
Chennai-600 009.
 2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.
 3. The Registrar of Societies,
South Chennai,
District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai-600 032.
 4. Mrs.P.V.Geetha,
Asst. Inspector General of Registration,
Special Officer, South Indian Artistes Association,
Office of DIG, Registration,
Guindy Industrial Estate,
Chennai-600 032.
- .. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 24.01.2020 made in W.P.No.31755 of 2019.

W.A.No.254 of 2019 :

South Indian Artistes Association
rep. by its Former President,
M.Nasser,



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-600 017.

.. Appellant/Petitioner

Vs.

1. The Principal Secretary to Government,
Commercial Taxes and Registration
(M1) Department, Secretariat,
Chennai-600 009.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

3. The Registrar of Societies,
South Chennai,
District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai-600 032.

4. Mrs.P.V.Geetha,
Asst. Inspector General of Registration,
Special Officer, South Indian Artistes Association,
Office of DIG, Registration,
Guindy Industrial Estate,
Chennai-600 032.

.. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 24.01.2020 made in W.P.No.31752 of 2019.

O.S.A.Nos.79 to 83 of 2020 :

The South Indian Artistes Association
rep. by its Former General Secretary
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-600 017.

.. Appellant/1st Defendant

Vs.



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

1. A.Elumalai

.. 1st Respondent in O.S.A.
Nos.79 to 81 and 83/2020
/Plaintiff in C.S.Nos.353 &
441 of 2019

1. K.Benjamin

.. 1st Respondent in O.S.A.
No.82/2020/Plaintiff in C.S.
No.419 of 2019

2. The Election Officer,
The South Indian Artistes Association
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-600 017.

.. 2nd Respondent in all OSAs/
2nd Defendant in all OSAs

Prayer : Original Side Appeals filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Appeal against the common order and decretal order dated 24.01.2020 made in A.No.3759 of 2019 in C.S.No.353 of 2019, O.A.No.575 of 2019 in C.S.No.353 of 2019, O.A.No.701 of 2019 in C.S.No.441 of 2019, O.A.No.657 of 2019 in C.S.No.419 of 2019 and O.A.No.574 of 2019 in C.S.No.353 of 2019 respectively.

* * *

For Appellant	:	Mr.Om Prakash, Senior Counsel for Mr.Kirshna Ravindran in W.A. Nos.251, 253 & 254/2020
For Appellant	:	Mr.M.K.Kabir, Senior Counsel for Mr.Kirshna Ravindran in O.S.A. Nos.79 to 83/2020
For Respondents	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Muthukumar, Govt. Pleader and Mr.V.Nanmaran, Govt. Advocate for RR 1 and 2 in W.A.No.251/2020 RR 1 to 3 in W.A.Nos.253 & 254/2020



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

Mr.S.S.Rajesh for R1 in all OSAs

No Appearance - R4 in WA Nos.253
& 254/2020

No Appearance - R2 in all OSAs

COMMON JUDGEMENT

PUSHPA SATHYANARAYANA, J.

I always like walking in the rain, so no one can see me crying -
Charlie Chaplin.

2. It is true that behind the brightest smile of some of the Artistes, there may be darkest secrets and sorrow that others cannot understand. To annihilate the difficulties of its member Artistes, both drama and film, to uphill their standard of living, to protect the rights of its members and to find solution for their problems, South Indian Artistes' Association was formed, which were its few objectives, as has been found in its bye-laws. A trust named The Nadigar Sangam Charitable Trust (NSCT) was also established. The election for the office-bearers of the said Association is in turmoil, which is the reason, they are before us in these batch of appeals.

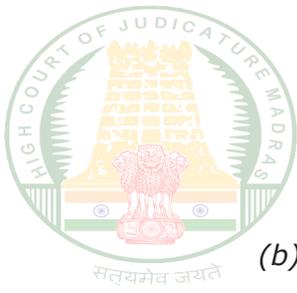


WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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3. The case of the appellants is that South Indian Artistes' Association (in short, "the Association") is a registered association under the Tamil Nadu Societies Registration Act, 1975 and its original registration number was 50/52. Its office-bearers were elected on 18.10.2015 for a period of three years as per bye-laws. The Annual General Body Meeting of the Association was held on 19.08.2018, which extended the term of office-bearers for another six months, i.e. till 18.04.2019, which would have otherwise expired on 18.10.2018. The reason being that the construction of convention hall and office premises for the benefit of the members of the Association was at the crucial phase. Owing to various reasons, they could not conduct the Executive Committee meeting before 18.04.2019 and with a delay of 10 days, the Executive Committee meeting was conducted on 28.04.2019, and a retired Hon'ble Judge of this Court was requested to be the Election Officer. The Hon'ble Election Officer issued the election notification on 29.05.2019 listing the schedule and to conduct the election on 23.06.2019. However, according to the Association, to thwart the free and fair election, C.S.No.353 of 2019 was filed along with applications seeking interim prayers. The prayers made in the suit are :

(a) to declare that the resolution passed in the Emergency Executive Committee Meeting held on 14.05.2019 as null and void in view of the fact that the Executive Committee has ceased to hold office from 18.10.2018 ;



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

- (b) *to declare that any action taken pursuant to 18.10.2018 by the Executive Committee of the First Defendant Association is bad in law and no binding on the members of the Association ;*
- (c) *for a permanent injunction restraining the Defendants, their men, agents, servants, or any other member claiming under them including Executive Committee members from in any way administering the Association by convening any meeting including General Body meeting for conduct of election or otherwise without finalising the proper members list of the First Defendant Association.*
- (d) *for a permanent injunction restraining the Defendants, their men, agents, servants, or any other member claiming under them including Executive Committee members from conducting election for the First Defendant Association, i.e., Executive Committee including the President, Secretary, Treasurer for the period 2019-22 pursuant to the Executive Meeting held on 14.05.2019 in view of the fact that the Executive Committee has ceased to hold office from 18.10.2018 pending disposal of the suit.*
- (e) *To pay the cost of the suit.*

The interim prayers were also made on the similar lines, besides seeking to appoint an Ad-hoc Committee to administer the Association and to conduct free and fair election to the Executive Committee. But this Court did not grant any relief, that were sought for by the plaintiff in the first instance.

3.1. In the meanwhile, acting on a complaint dated 06.06.2019 from 61 members, the Registrar of Societies-cum-District Registrar (Administration), Chennai South, called for clarification from the Association on the said complaint vide the letter dated 13.06.2019, which was immediately acted upon by way of reply dated 17.06.2019. However, according to the Association, without appreciating the same,



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

the order dated 19.06.2019 came to be issued directing the Association to withhold the election process.

3.2. The Association questioned the same in W.P.No.17583 of 2019 and this Court stayed the said order on 21.06.2019 thereby allowed the election process to go on till the polling is completed with a further direction to keep the ballot boxes in safe custody under the supervision of the Election Officer and deferred the decision qua permitting the counting of votes.

3.3. The Association also filed W.P.No.16949 of 2019 seeking police protection for the election and during the course of hearing of the said writ petition, the venue was sought to be shifted, which was recorded by this Court in the order dated 22.06.2019. Consequently, polling was conducted on 23.06.2019, in which, 80% of the members exercised their franchise.

3.4. Subsequent to the order of this Court, an enquiry was scheduled on 29.07.2019 by the registration authorities and the same was communicated to the Association via the letter 19.07.2019. The Association also submitted a written reply on 29.07.2019.

3.5. While so, the District Registrar submitted a report in No.11118/E2/2019, dated 26.09.2019, based on which, the Inspector General of Registration submitted a report in letter No.21907/I1/2019, dated 27.09.2019 to the Government recommending to appoint a



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

WEB COPY

Special Officer in terms of Section 34-A of the Tamil Nadu Societies Registration Act 1975 ("the Act", for the sake of brevity) to manage the affairs of the society. Acting on the said report, the Government issued the Show Cause Notice dated 05.10.2019 in Letter No.11049/m1/2019-1 calling upon the Association to send their reply within 30 days as to why superseding the Committee, a Special Officer shall not be appointed. The Association sought for certain documents on 09.10.2019, which were furnished on 25.10.2019. Based on the same, a detailed reply to the Show Cause Notice was submitted on 01.11.2019 to the Government. Pursuant to the same, the Government issued G.O.(Ms)No.177, Commercial Taxes and Registration (M1) Department, dated 06.11.2019 appointing Tmt.P.V.Geetha, Assistant Inspector General of Registration, as Special Officer till the conclusion of the election disputes pending before this Court or for a period of one year, whichever is earlier.

3.6. In the interregnum, C.S.No.419 of 2019 was filed seeking to declare the election held on 23.06.2019 as bad in law and ultra vires to the bye-laws of the Association and to grant permanent injunction restraining the defendants from declaring the results of the election. An interim application was filed seeking to pass a restraint order from declaring the election results.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

3.7. Another suit in C.S.No.441 of 2019 was filed seeking similar reliefs. The interim prayer made therein was to restrain the implementation of the election results.

3.8. The so-called President of the Association filed W.P.No.31752 of 2019 laying challenge to G.O.(Ms)No.177, dated 06.11.2019.

3.9. Similarly, W.P.No.31755 of 2019 was filed by the petitioner terming him as the Treasurer, questioning the very same Government Order.

3.10. Based on the order of the learned Single Judge dated 20.08.2019, an office order of the Hon'ble Chief Justice was obtained to club the writ petitions and original side applications together and all those petitions were posted before the learned Single Judge for hearing.

3.11. After hearing all the parties to the proceedings, a learned Single Judge of this Court passed the common order dated 24.01.2020. In the said order, the learned Single Judge held that the decisions taken by the Executive Committee of the petitioner Association in the meetings held after the expiry of their tenure i.e., on 18.10.2018 and the actions taken pursuant to the same are invalid in law and not binding on the members of the Association and thus also held that the appointment of the Election Officer and the election conducted on 23.06.2019 are null and void, and consequently, appointed a retired Judge as this Court as the new Election Officer to conduct fresh election.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

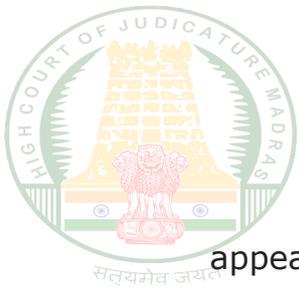
The learned Single Judge also, *inter alia*, directed that a fresh voters' list shall be prepared, after verification and the same shall be notified, and the fresh election notification shall be issued as per the Bye-law and observed that the entire election process shall be completed within a period of three months. The parties are directed to extend their fullest co-operation. Accordingly, the learned Single Judge disposed of the interim applications filed in the suits.

3.12. Having passed the above order in the interim applications directing fresh election to be conducted for the Executive Committee of the petitioner Association for the ensuing years and considering the fact that scope of appointment of the Special Officer and the power and authority of the Special Officer over the affairs of the petitioner Association are very limited, the learned Single Judge dismissed W.P.Nos.31752 and 31755 of 2019 and also closed W.P.No.17583 of 2019.

3.13. These appeals question the said common order dated 24.01.2020.

4. The learned Senior Counsels appearing on behalf of the appellants made the following submissions :

(i) The learned Single Judge, after hearing the arguments advanced in interim applications filed in the suits along with the writ



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

appeals, wherein, only the counter-affidavits were filed and no written statements were filed in the suit, under the guise of passing the common order in the interim applications, granted the main relief sought for in the suits itself and thus, decided the very suits themselves without conducting the trial, which is impermissible in the eye of law and the impugned common order is liable to be set aside on this sole ground.

(ii) The plaintiffs had participated in the Annual General Meeting, which is very much evident from the attendance register and they accepted the unanimous resolution passed in the AGM, as they did not raise any objection. Therefore, they are estopped from questioning the resolution in the suits.

(iii) The Annual General Meeting, which, certainly, a supreme authority, held on 19.08.2018, which was well within the period of office, approved the postponement of the election by six months. Thus, in continuation of the same, the Executive Committee, in the meeting held on 28.04.2019, authorized the Management Committee to decide on the appointment of the Election Officer and the electoral process and thereafter only, the Hon'ble Election Officer was appointed on 14.05.2019. Therefore, there is no illegality in the said action of electoral process.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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(iv) The election notification was questioned by none and hence, the prayers of the plaintiff has to go.

(v) The change of categorization of certain members was made following due process of law and in regard to the same, Form No.VIII was submitted to the Registrar of Societies as early as on 15.11.2017. After the Annual General Meeting held on 19.08.2018, Form No.VI was filed on 04.10.2018, which was followed by filing of Form No.VI on 17.05.2019. Hence, no motive could be attributed in change of category of members raising doubts in the election process.

(vi) The election was conducted pursuant to the interim orders of this Court and huge sums of money were expended for the same. The change of election venue, as has been approved by this Court, was also given vide publicity. The Hon'ble Election Officer was the Court appointed Election Officer for the previous election to the very same Society and hence, the election process need not be interfered with at this stage.

(vii) When the elections were postponed in terms of the resolution of the Annual General Body Meeting, the status of the Executive Committee is in the nature of Care Taker Committee to handover the management to the newly elected office-bearers, as there could not be vacuum in the management of the affairs of the Society and the charitable trust. The decision taken by such interim committee



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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could very well be ratified subsequently by the elected body. Hence, the suits instituted by two individuals could not be allowed to ruin the affairs of the Society and cause severe loss and damage to the Association, its activities and ultimately to its members. The entire activities including the construction of the building had come to a grinding halt, which would be detrimental to the entire project, affecting the benefits to be accrued to the members of the Association.

(viii) It is submitted that the plaintiffs approached this Court with unclean hands, as they suppressed some material facts and for the said guilty, they are liable for punishment and they do not deserve any order from this Court.

(viii) The communication and the Government Order impugned in the writ petitions were passed without considering the detailed reply and explanation submitted by the appellant and accordingly, they are liable to set aside. The impugned order passed by the learned Single Judge without considering all these aspects is also liable to be set aside.

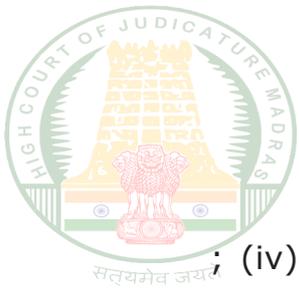
5. The learned Advocate General assisted by the learned Government Pleader appearing on behalf of the State contended that the writ petition was claimed to have been filed by the General Secretary of the Association and in terms of bye-law 71 of the Association, only General Secretary is competent to sue or to be sued on behalf of the



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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Association, but that General Secretary ceased to be the General Secretary and has no authority to file the writ petition. In terms of Section 20 of the Act and Rule 6(h) of the Tamil Nadu Societies Registration Rules, 1978, erstwhile office bearers has no authority to approach the Court in official capacity. Thus, he sought to dismiss these appeals *in limine*. It is submitted that Section 15(4) of the Act clearly specifies the term of office of the members of the Committee, which should not in excess to three years from the date of appointment and hence, the Annual General Meeting cannot expand the term beyond the term specified in the Act and the bye-laws. Thus, there was no office-bearers in the eye of law, which situation lead to the passing of the order dated 19.06.2019 and the consequent G.O.Ms.No.177, dated 06.11.2019. The complaints of certain individuals only ignited the spark, and the same is not the sole reason for the impugned action. The Registration authorities and the Government after perusing all the relevant materials issued the said order and the G.O., in view of the violations of the bye-laws and the provisions of the Act by the office-bearers. In fact, the impugned communication was sent by the Registrar of Societies pending decision on the following issues and reasons : (i) the different members of the petitioner association ; (ii) the genuineness of the complaints given by the members of the petitioner association ; (iii) finalising the voters list that consists all eligible voters



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

; (iv) the decision making power of the Executive Committee pursuant to the expiry of its tenure. Section 34-A of the Act is a specific provision dealing with the authority of the State to appoint a Special Officer and the same was rightly exercised by the Government. It is the submission of the learned Advocate General that since all is not well in the Association, interference of the regulating body and the Government was necessary and the same need not be interfered with by this Court and on the other hand, till the regular elected body is put in place, the Special Officer appointed by the Government may be permitted to oversee the affairs of the Association for the benefit of all the members.

6. On the other hand, the learned counsel appearing on behalf of the plaintiffs made the following submissions :

(i) The tenure of the Executive Committee expired on 18.10.2018, and the alleged extension granted on 19.08.2018, which is not in tune with the bye-laws of the Association, especially bye-law 37 and Section 15(4) of the Act, also expired on 18.04.2019, and hence, the meeting held on 28.04.2019 is without any authority and the resolution passed therein cannot be acted upon. Nevertheless the said resolution is in direct contravention with the bye-laws of the Association, which is the reason, the suit in C.S.No.353 of 2019 was instituted.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

(ii) It is also claimed that the signatures of the participants of the AGM was obtained for attendance purpose only and it is not with respect to the passing of any resolution and hence, there is no question of estoppel coming into play.

(iii) The writ petition and the appeal ought not to have been filed by the individuals terming them as President, Treasurer and Secretary as they were only erstwhile office-bearers of the Association on the date of filing the lis.

(iv) The voters' list was finalised by the Registrar of Societies for the election conducted in September, 2015, pursuant to the orders of this Court in O.S.A.Nos.132 and 133 of 2015. But the same was unilaterally modified adding and removing members, including to change in the categorization of members, and such interpolations and manipulations would have wider ramifications in the result of the election. The alleged submission of Form Nos.VI and VII is without authority, after the expiry of the term of office and hence, the same cannot be accepted. The complaint given to the Registrar of Societies in this regard lead to the issuance of the order dated 19.06.2019 and passing of G.O.Ms.No.177, dated 06.11.2019. Without resolving the disputes with regard to the voters list, conducting the election is not proper.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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(v) The plaintiffs also claimed that dispatch of postal ballot papers were not proper and that there was a change in venue without sufficient notice, etc.,.

7. We have heard the submissions made on either side and perused the materials placed on record.

8. From the above pleadings and arguments, the questions that arise for determination are : (i) whether the Executive Committee whose term expired on 18.10.2018, which was extended till 18.04.2019 has got any powers to take any action? and (ii) Whether elections held on 23.06.2019 is valid ?

9. Chapter III of the Act deals with the management and administration and Section 15 of the Act provides that every registered Society shall have a committee of not less than three members to manage its affairs. As per Sub-section 4 of Section 15, the term of office of the members of the Committee shall not exceed three years from the date of the appointment. Similarly, Clause 37 of the bye-laws of the appellant association also mandates election to the office-bearers once in three years, which is in consonance with the statutory provision. Therefore, it was submitted that on the expiry of the three years term,



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

on 18.10.2018, whether the committee can continue has to be decided ?

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. Since the term of the Committee expires on 18.10.2018, the AGM of the appellant was convened on 19.08.2018, in which, around 1510 members attended, including the plaintiffs. In the said AGM, it was unanimously resolved to postpone the election to the appellant association, by a period of six months from November, 2018 enabling the on-going construction activities of the association building to get completed. On 04.10.2018, Form VI was submitted to the Registrar of Societies. On 28.04.2019, the Executive Committee unanimously resolved to conduct the election of the appellant's association by appointing an Election Officer, naming Hon'ble Mr.Justice E.Padmanaban, Judge (Retd.). The Members List in Form VI was submitted to the Registrar, which was also acknowledged by the Registrar of Societies and the election notification was also issued by the Election Officer on 29.05.2019 fixing the date of election on 23.06.2019.

10. In the meanwhile, there were complaints from the members of the appellant's association to the Registrar of Societies qua change in category of members. Later, a letter was issued by the Registrar to clarify the complaints, which also responded to by the appellant on 17.06.2019. However, an order was passed by the Registrar of Societies on 19.06.2019 not to conduct the election. The said order was assailed



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

in W.P.No.17583 of 2019, wherein, on 21.06.2019, an interim order was passed by this Court permitting the election to go on, but withholding only the counting process. Later, in W.P.No.16949 of 2019, police protection was also ordered for the conduct of the elections by this Court. The election was also conducted with the polling of 80% and the ballot boxes were sealed and kept in a bank locker as per the directions of this Court.

11. It is to be stated that Section 15(5) of the Act specifically mentions that the members of the Executive Committee shall be eligible for reappointment and the said provision reads as follows :

"15. Committee -

..... (5) The members of the committee shall be eligible for re-appointment."

The main objection raised by the plaintiffs is that the term of the Committee members was extended only for six months, i.e., till 18.04.2019, which itself is not inconsonance with the bye-laws. Even assuming without admitting, it is valid, the notification of election issued by convening the AGM on 28.04.2019 is without authority and it is *non est* in law. If the bye-laws of the association specifically provides for any mechanism in the event there is no election conducted within the prescribed period of three years, that has to be adhered to. However, the clause 86 of the bye-laws specifically mentions that wherever, there



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

is no clause provided for any particular Act, the Tamil Nadu Societies Registration Act, 1975, can be referred to. The said provision in vernacular is produced below :

"86. இச்சங்கத்தில் எழுதப்படாத அல்லது விட்டுப்போன உரத்துக்கள் யாவும். தமிழ்நாடு சங்கப் பதிவுச் சட்டம் 1975 விதிகள் 1978-ன் கீழ் சார்ந்து செயல்படும்."

When the AGM has specifically allowed the existing the committee members to continue, it would amount to reappointment in terms of Section 15(5) of the Act, as there was no fresh elections on the date of convening of the AGM.

12. As stated above, Clause 15(5) of the Act provides for reappointment. The term "appointment" is an executive act, whereby, a person is named as the incumbent of an office and invested therewith, by one or more individuals, who have the sole power and right to select and constitute the officer, whereas, the election means the person is chosen by a principle of selection in the nature of a vote, participated in by the public generally or by the entire class of persons qualified to exercise their right.

13. When the AGM attended by more than 1500 of the members of the association and consented for extension of the term, though may be for a specified period, it would come under the definition of



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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reappointment, as has been contemplated under Section 15(5) of the Act. Therefore, the submission of the appellant that the Executive Committee did not have powers after the period of three years is unsustainable. It was categorically and unanimously agreed that the election to the association has to be postponed for a specific period and accordingly, the term of office-bearers was extended by six more months. Even otherwise, it can be presumed that they can be termed as 'Care-taker Committee' in the absence of the election being conducted.

14. It is a settled principle that once election process is commenced, it is not permissible to stop the same mid way. In the instant case, the elections were held on 23.06.2019 and already 2.8 years have gone (and only four months is remaining from the date of election for the completion of three years). Therefore, we have to consider whether the counting of the ballots has to be completed so that the Society can be run by the elected members rather by the statutory authorities, whose powers are subject to limitation and restrictions, which may also affect the interest of the members adversely.

15. Considering the current scenario, where there is frequent lockdown sometime for more than couple of months, whenever there is



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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a deadline that could not have been adhered to and either the Act or the bye-laws do not provide any rule for such kind of exigencies, the incumbent shall be allowed to continue in the office. Presuming for a moment that after the expiry of the period of the Executive Committee, if there was a lockdown, upon which, no further action could have been taken for the conduct of the election, the existing members would be deemed to have been continued the office, that is, the reason why Section 15(5) of the Act provides for reappointment of the members without election. Therefore, any action done by the Executive Committee beyond the period of three years cannot be held to be a nullity in toto, given the circumstances narrated above.

16. It is to be stated that the plaintiffs are estopped from contending that the election ought to have been conducted before the end of tenure. It appears that the association itself had treated the elected committee members as 'Care-taker Committee', as a vacuum would be created, in view of the decision to postpone the elections. The respondents also had taken part in the AGM and they are signatories to the resolutions made, without any objection or resistance. To be noted is that there is no challenge to the validity of the resolutions on the same day or the next couple of days. Therefore, the action taken by the



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

'Care-Taker Committee' or 'Re-Appointed Committee' cannot be deemed to be a nullity.

17. It is apposite to refer to the following decisions :

17.1. The Hon'ble Supreme Court in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra, (2001) 8 SCC 509***, has held as follows :

"12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

(Emphasis supplied)

17.2. A Full Bench of this Court in ***C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal, through its Secretary, Sri S. David Stephen S/o Samuel, Karisal, Ambasamudram Taluk Tirunelveli District and others Vs. The***



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

District Registrar Cheranmahadevi, Tirunelveli Dist. and others,

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(2005) 2 CTC 161, made the following observations :

"20. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims."

17.3. The Hon'ble Supreme Court in **I.Nelson and another V.**

Kallayam Pastrate and Others, (2006) 11 SCC 624, held as follows:

"17. The society might not be, in fact, registered as such under the 1975 Act, but, as it was registered under the 1860 Act, we have no other option but to hold that it was deemed to be registered also under the 1975 Act. Having regard to the provisions contained in Section 53 thereof, once the society became a society registered under the 1975 Act, all the consequences arising thereunder shall ensue. It was, therefore, for the statutory authorities to take recourse to such actions as are provided for in the 1975 Act or the Rules framed thereunder. In the event, the society became defunct or other statutory requirements were not complied with by the members of the society, penal measures could have been taken but in no situation the election of the office-bearers could have been set aside. Right to contest an election of an office-bearer of the society is a statutory right of the member thereof. Such a right also exists under the bye-laws of the society. It is not the case of the respondents that the bye-laws of the society are invalid in law. Once a valid election was held, the High Court, in our opinion, could not have directed setting aside of an



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

election only on the purported ground that it became defunct. An almost similar question came up before this Court in **Board of Control for Cricket in India v. Netaji Cricket Club, [(2005) 4 SCC 741]** wherein this Court, despite its jurisdiction under Article 142 of the Constitution of India, did not venture to consider the validity or otherwise of the election of the office-bearers of BCCI as they had not been impleaded as parties therein, stating:

“84. On 11-10-2004, we had, after hearing the counsel for the parties observed that if a situation arises this Court would go into the validity of the election of the office-bearers of the Board held in the meeting dated 29-9-2004, but, as indicated hereinbefore, we did so under a mistaken belief that the Board would be represented by the new office-bearers and, thus, all parties would be before us. However, it now stands admitted that the office-bearers either in their personal capacity or official capacity are not before us. They may have notice of the pendency of this proceeding. They may be sitting on the fence and watching the proceedings of this Court. But, unless they are made parties in these proceedings, we would not be in a position to entertain the dispute as regards validity of the meeting of 29-9-2004 resulting in the election of the office-bearers. Giving an opportunity of hearing to the elected members in a dispute of this nature is imperative and not a matter of mere procedure, formality or technicality. The election dispute, therefore, must be adjudicated upon by a proper forum.”

18. There is, therefore, no reason as to why the elected members should not be allowed to carry on the activities of the society wherefor they were duly elected. We may, however, hasten to add that when we say so, we do not intend to pronounce on the validity or otherwise of the elections held. If any application has



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

been filed by a person aggrieved for setting aside an election, the same undoubtedly will have to be disposed of in accordance with law."

17.4. In the light of the above decisions, there is no reason as to why the ballot papers should not be counted and the election results should not be declared and the elected members shall not be allowed to carry on the activities of the Society, for which, they were elected. Considering the length of time that has been taken in prosecuting these cases, the interest of the association has to be protected by permitting the newly elected to be office-bearers to take over the affairs of the Association. Considering that the three years period prescribed in the Act as well as in the bye-laws would be over, even assuming that the tenure of the managing committee has expired, the Act of the previously elected Committee including the issuance of the notification calling for elections cannot be questioned, without any challenge to the said notification. The Executive Committee resolved to nominate an Election Officer, which though was challenged, no interim order could be obtained by the plaintiffs. In such scenario, the members of the society is bound by that decision.

18. In this regard, reliance was also placed on the judgment of the Hon'ble Supreme Court in ***Siddheshwar Sahakari Sakhar***



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

Karkhana Ltd. v. CIT, 2004 (12) SCC 1, wherein, it has been held as

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"48. A person by becoming the member of a cooperative society, volunteers to abide by the bye-laws of the Society, the real object of which is to provide for internal management of the Society including rendering assistance to the members. There is an authority for the proposition that the bye-laws of the cooperative society constitute a contract between the Society represented by its managing body and its constituents. This legal position has been recognised in *Hyderabad Karnataka Education Society v. Registrar of Societies*, (2000) 1 SCC 566] (vide paragraph 28). In *Coop. Central Bank Ltd. v. Addl. Industrial Tribunal*, (1969) 2 SCC 43, this Court held that the bye-laws of the Society framed by virtue of the authority conferred by the Cooperative Societies Act were on a par with articles of association of a company, which, it is well settled, establish a contract between the company and its members and between the members inter se (vide paragraph 14 in *Naresh Chandra Sanyal v. Calcutta Stock Exchange Assn. Ltd.*, (1971) 1 SCC 50]). That apart, the mere fact that the contract has to be entered into in conformity with and subject to restrictions imposed by law does not *per se* impinge on the consensual element in the contract. "Compulsion of law is not coercion" and despite such compulsion, "in the eye of law, the agreement is freely made", as pointed out in *Andhra Sugars Ltd. v. State of A.P.*, AIR 1968 SC 599."

19. In ***Claude-Lila Parulekar v. Sakal Papers (P) Ltd.***, (2005) 11 SCC 73, the Hon'ble Supreme Court has held as follows :

"25. Section 36 of the Companies Act, 1956 makes the memorandum and articles of the company, when registered, binding not only on the company but also the members inter se to



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

the same extent as if they had been signed by the company and by each member and covenanted to by the company and each shareholder to observe all the provisions of the memorandum and of the articles. The articles of association constitute a contract not merely between the shareholders and the company but between the individual shareholders also. The articles are a source of power of the Directors who can as a result exercise only those powers conferred by the articles in accordance therewith. Any action referable to the articles and contrary thereto would be *ultra vires*."

20. The above judgments make it clear that the bye-laws of the Co-operative Society constitutes a contract between the Society represented by its managing body and its constituents. If the bye-laws are in the nature of contract, the resolution by the Committee may have the same character. If the plaintiffs had participated in the AGM held on 19.08.2018 and not resisted, opposed or objected to the resolution including the postponement of election by six months, they will be estopped from challenging the same now. As mentioned earlier, the election and the resolution calling for elections were also not challenged. The learned counsel for the plaintiffs had admitted that the attendance sheet on the date of AGM had been signed by the plaintiffs, that alone would go to show that the resolutions were actually approved by the members by voting or otherwise. Thus, the argument that no specific signature had been taken from any member in confirmation of the resolution passed during the AGM is also liable to be rejected, as there is



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

no objection raised either on the same date or even subsequently by the plaintiffs.

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21. Mr.Rajesh, learned counsel for the plaintiffs submitted that the voters' list is not correct and Forms VI and VII should be reconciled and the other documents filed by the respondents has got discrepancies. It is to be seen that the acceptance of Form VII is a ministerial act and this view has been reiterated in **Theni Melapettai Hindu Nadarkal Uravinmurai (Regn. No. 37/1975), No. 1100, Periyakulam Road, Theni & District-625 531, rep. by its General Secretary, I.C. Murugesan Vs. The District Registrar (Societies), Periyakulam, Theni District and others, 2007 (5) CTC 421**, relying upon the judgment of the Full Bench of this Court in **C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee's case**.

22. In **R.Muralidaran and Others V. The District Registrar and others, (2008) 2 Law Weekly 75**, a Division Bench of this Court has held that the ministerial act performed by the Registrar is not amenable to the writ jurisdiction. It is apposite to refer to the following portion from the said judgment :

"36. In fact, the Full Bench has gone to the extent of holding that the Registrar has no power to direct a Society to hold fresh election, even while invoking the jurisdiction under Section 36 of



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

the Act. It is made clear by the Full Bench that an election can be set at naught only by the Civil Court in a suit and not even in an inquiry under Section 36. The necessary corollary of such a conclusion by the Full Bench is that what is not possible even in an inquiry under Section 36, cannot be made possible while receiving Form No. VII and looking into it under Section 34. Therefore the acceptance or rejection of Form No. VII and the action of the Registrar in calling for additional information or explanation under Section 34 is a mere ministerial act, not amenable to the writ jurisdiction of this Court. Therefore, the writ petition, out of which, the present appeal arises, is itself not maintainable.

.....

39. Therefore, we hold that a writ would not lie against any ministerial act performed by the Registrar of Societies under the Provisions of the Tamil Nadu Societies Registration Act, including the acceptance or rejection of Form No.VII. Whenever Form No. VII is filed, the District Registrar can only call for further information/explanation and file the same along with the Form under Section 34 and he is not entitled to adjudicate any dispute. Therefore, the direction issued by the District Registrar in his order dated 30.05.2007 holding the elections held on 28.01.2007 to be invalid and directing the parties to go in for fresh election, cannot be sustained, on account of the fact that he exercised a jurisdiction not vested in him by law while accepting Form VII."

23. The next contention is that though the postal ballots are provided for those who are not available on the date of election, they have not been taken care of and hence, the election conducted has to be set aside. We are of the view that this is a matter for trial and the said issue cannot be looked into at this stage.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

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24. The other challenge is to the appointment of the Special Officer under G.O.Ms.No.177, Commercial Taxes and Registration (M1) Department, dated 06.11.2019. To be noted is that the appointment is subsequent to the election. When the term of the Committee members was extended by the AGM, the action of the Committee cannot be stated to be illegal or void. However, given the facts and circumstances of the case, we do not propose to go into the said issue.

25. In view of the above discussion and the election process is held to be valid, the order of the learned Single Judge appointing a new Election Officer for conducting fresh election is not necessary. The fact that the term of the Special Officer also expired, without there being any extension, the impugned order of the learned Single Judge requires interference and accordingly, the original side appeals are allowed setting aside the directions issued by the learned Single Judge, while disposing of the applications filed in the suit. Consequently,

(a) the sealed boxes containing the ballot papers, which are kept in the safe custody in the locker of the Bank, shall be handed over to the Election Officer Hon'ble Mr.Justice E.Padmanabhan ;

(b) the Election Officer shall fix the date and time for the counting process and declare the results.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

(c) the Election Officer shall complete the said exercise within a period of four weeks from the date of receipt of a copy of the judgment.

(d) the Election Officer may fix his remuneration, which shall be payable by the appellant association within two weeks thereafter.

26. In view of the said order and also the nature of the order passed by the learned Single Judge in the writ petitions, no separate order is necessary in the writ appeals and they are closed.

27. The parties shall bear their own costs.

(P.S.N., J.) (M.S.Q., J.)
.02.2022

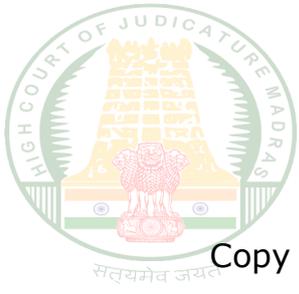
Index : Yes / No

Internet: Yes

gg

To

1. The Principal Secretary to Government,
Commercial Taxes and Registration
(M1) Department, Secretariat,
Chennai-600 009.
2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.
3. The Registrar of Societies,
South Chennai, District Registrar (Admin),
Guindy Industrial Estate,
Guindy, Chennai-600 032.



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

Copy to :

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Hon'ble Mr.Justice E.Padmanabhan,
Judge (Retd.)/Election Officer,
South Indian Artistes Association,
G1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai-600 017.



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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

PUSHPA SATHYANARAYANA, J.
AND
MOHAMMED SHAFFIQ, J.

gg

W.A.Nos.251, 253 and 254 of 2020
and O.S.A.Nos.79 to 83 of 2020

.02.2022



WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

W.A.Nos.251, 253 and 254 of 2020
and O.S.A.Nos.79 to 83 of 2020

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PUSHPA SATHYANARAYANA, J.
AND
MOHAMMED SHAFFIQ, J.

After the judgment is pronounced, learned counsel for the plaintiffs submitted that even if the counting is done immediately, the results may not be declared immediately and it may be deferred for a period of three weeks as he desires to prefer an appeal before the Hon'ble Supreme Court. The said request is acceded to.

2. Accordingly, the learned Election Officer shall not declare the results before three weeks from the date of receipt of a copy of this judgment.

(P.S.N., J.) (M.S.Q., J.)
23.02.2022

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Internet: Yes
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WA Nos.251, 253 & 254/2020
& OSA Nos.79 to 83/2020

PUSHPA SATHYANARAYANA, J.
AND
MOHAMMED SHAFFIQ, J.

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W.A.Nos.251, 253 and 254 of 2020
and O.S.A.Nos.79 to 83 of 2020

23.02.2022