

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-12-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA  
AND  
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

WRIT PETITION Nos.21416 to 21420 OF 2007

R. Parthasarathy,  
Old No.14, New No.68,  
Madley Road, T. Nagar,  
(Opp. Veta), Chennai 600 017. ... Petitioner in all WPs

Vs.

1. The State of Tamil Nadu,  
rep. by the Secretary to the Govt.,  
Commercial Taxes and Registration  
(M1) Department,  
Fort St. George, Chennai 600 009.
2. Inspector General of Registration,  
O/o. Inspector General of Registration,  
120, Santhome High Road,  
Santhome, Chennai 600 004.
3. District Registrar of Societies,  
Chennai Central, O/o. District Registrar,  
Old No.72, New No.100, Chamiers Road,  
Nandanam, Chennai 600 018.
4. Music Academy, represented by  
its Trustees, having its office at  
168/306, T.T.K. Road,  
Chennai 600 018. ... Respondents in all WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records leading to G.O.No.362 dated 5.4.2006, G.O.No.329 dated 31.3.2006, G.O.Rt.No.227 dated 27.2.2006, G.O.Rt.No.494 dated 16.5.2006, G.O.Rt.No.327 dated 31.3.2006, Commercial Taxes and Registration (M1) Department respectively and quash the same.

For Petitioner : Mr.T.V. Ramanujan  
in all WPs Senior Counsel for  
Mr.T.V. Krishnamachari

For Respondents 1to3: Mr. Hazan Fizal,  
in all WPs Govt. Advocate

Respondent-4 : Mr. Sriram Panchu  
in all WPs Senior Counsel for  
M/s.T. Mohan &  
S. Devika

COMMON JUDGMENT

P.K. MISRA, J

These five writ petitions have been filed by the same petitioner against the same respondents for quashing five different Government Orders. All the writ petitions were heard together and raise some common factual and legal disputes and, therefore, all these writ petitions are disposed of by this common judgment.

2. The dispute relates to affairs of the "Music Academy", which was registered as a Society under the Societies Registration Act, 1860 (hereinafter referred to as "the old Act") on 21.8.1929. The seemingly never ending controversy had come to the High Court in an earlier round of litigations wherein several writ petitions had been filed including W.P.No.17341 of 2003 filed by the present writ petitioner. All such writ petitions and the connected writ appeal were disposed of by a common judgment dated 23.9.2005. (Judgment is reported in 2005-4-L.W.67). Some of the conclusions in the aforesaid judgment, relevant for the present matters, are extracted hereunder :-

"45. In the light of the aforesaid discussions and in the interest of justice and more particularly in the larger interest of the Music Academy, our conclusions and directions are as follows :-

(i) As per the provisions contained in the Act, management of a Society has to vest in a Governing body or a Managing Committee consisting of elected members and the term of such elected members cannot exceed three years. Therefore, there is no question of any bye-law providing term of six years for any Trustee.

(ii) As per the provisions of the Act, the Governing Body/Committee can consist of only elected members. Therefore, the question of having any nominated Trustee in the Governing Body/Committee cannot arise, as any such provision would be contrary to the provisions of the Act. The Trustees are also required to be elected.

(iii) Show cause notice has been issued primarily for the purpose of superseding the Committee. As submitted by most of the Counsels, including the learned Additional Advocate General, most of the troubles afflicting the Music Academy can be set right by holding a election for the Committee.

...

(xi) The restriction imposed in 1989 bye-law to the effect that a member in order to be eligible to contest must be a member for three years would not be applicable.

(xii) The election shall be for the following Office bearers :-

(1) one President (2) Four Vice-Presidents (3) Two Trustees (4) Four Joint Secretaries (5) one Treasurer, and (5) Twelve other members. No subordinate court shall entertain any pre-election dispute."

3. It is not in dispute that pursuant to the observations and directions contained in the said decision, an election was successfully held under the guidance and control of Justice K.P. Sivasubramaniam, retired Judge, who had been nominated as Observer, and the elected Office-bearers have subsequently taken charge. So far so good. Some controversies, mostly avoidable, still persist.

4. W.P.No.21416 of 2007 is filed for quashing G.O.Rt.No.362, Commercial Taxes and Registration (M1) Department, dated 15.4.2006. The English translation of said G.O., (as furnished by the counsel for the Music Academy) is to the following effect :-

"Orders are issued amending the G.O. in the 2<sup>nd</sup> reference cited above, on the basis of the report of the IG Registration in the 3<sup>rd</sup> reference cited hereunder, as hereunder:

2. In pursuance of the judgment of the High Court, Madras in WA.1078/03 dated 23.9.2005, elections were held to the Executive Committee of the Music Academy, Madras.

Office bearers of the Society were duly elected. It was further observed in the judgment that though amendments to the Society's bye-laws had been effected in 1979, they had not been registered under Section 12(3). On that basis, the IG (Registration) had communicated his views by his letter in the 1<sup>st</sup> reference cited above. On examining his views and on that basis, since it was informed that there was delay in filing he resolutions amending its bye-laws, in view of the delay, orders were issued in the 2<sup>nd</sup> reference cited above, granting exemption from Rule 26 of the Tamil Nadu Societies Registration Rules, 1978.

3. The IG Registration in his letter in the 3<sup>rd</sup> reference cited above, has stated that the resolution said to have been passed by the Music Academy amending the bye-laws had been given effect to under Section 12(3) of the Tamil Nadu Societies Registration Act, 1975 that it appeared from the original records of the Academy that the special resolution / amendment to bye-law had been filed for registration with the District Registrar on 2.2.1979 that according to the Society there was no delay in filing the above records and it could be considered that there was no necessity to issue an order granting exemption from the Rules as in the G.O. in the 2<sup>nd</sup> reference cited above. Moreover, he has informed that there are no records maintained in order with the District Registrar.

4. In the above stated circumstances, the District Registrar, Chennai (Central) has personally verified the original records of the Music Academy, Chennai and accepting that the attested copies of the Special resolution bye-law amendments had been registered on 2.2.1979, the IG (Registration) has recommended that the entries can be taken on record.

5. Accepting the recommendation of the I.G. (Registration) and the light of the fact that the special resolution dated 21.1.1979 had been registered by the Registrar taken on file by registering the same on 2.2.1979, the IG (Registration) is hereby informed that the District Registrar may be permitted to take on record the entries in this regard."



5. W.P.No.21417 of 2007 is filed for quashing G.O.Rt.No.329, Commercial Taxes and Registration (M1) Department, dated 31.3.2006. The English translation of said G.O., (as furnished by the counsel for the Music Academy) is extracted hereunder :-

"In pursuance of the judgment of the High Court, Madras in the first reference cited above, election was conducted to the Executive Committee of the Music Academy. The officers of the Society were thus elected. Moreover, in the said judgment, you will observe that though the 1979 bye-laws were amended, they had not been registered with the Registrar of Societies under Section 12(3). Therefore, Music Academy have now requested that the above bye-law amendments be registered.

2. Since the bye-law amendments have not been filed with the Registrar of Societies within 3 months of the passing of the Resolution to amend the bye-laws as required under the Tamil Nadu Societies Registration Rules and as required under Rule 26 of Tamil Nadu Societies Rules 1978 enacted under the Tamil Nadu Societies Registration Act, 1975, in view of the delay, the I.G. (Registration) has requested the Government to issue orders exempting from the scope of Rule 26 of the Tamil Nadu Societies Registration Rules 1978 by condoning the delay and accepting the bye-law amendments made on 2.2.1979.

3. The Government has decided to accept the request of the I.G. (Registration) and exempt from Rule 26 of the Tamil Nadu Societies Registration Rules 1978 to enable the resolution amending the bye-laws adopted in the year 1979 which have not been filed for the delay till the date of issuance of this Government order. Therefore, orders are issued in exercise of the powers under section 54(1) of the Tamil Nadu Societies Registration Act 1975 by the Government of Tamil Nadu to exempt Music Academy, Madras (Registration No.7/1929-30) from Rule 26 of the Tamil Nadu Societies Registration Rules 1978."

6. G.O.Rt.No.227, Commercial Taxes and Registration (M1) Department, dated 27.2.2006 is the subject matter of W.P.No.21418 of 2007. Under the said G.O., the State Government in exercise of the

powers conferred by sub-section (1) of Section 54 of Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27 of 1975), hereinafter referred to as "the Act", has exempted the "Music Academy",

" . . . from the provisions of Rules 17(2), 22 and 26 of the Tamil Nadu Societies Registration Rules, 1978 so as to enable the said society for having filed the documents specified in sub-section (3) of Section 16 of the said Act for the years 1987-88 to 2001-2002 along with Form VII and amendment to bye laws with the District Registrar on 10.2.2006."

7. W.P.No.21419 of 2007 is for quashing G.O.Rt.No.494 dated 16.5.2006. Under the said G.O., the State Government in exercise of the powers conferred by sub-section (1) of Section 54 of the Act has exempted The Music Academy,

" . . . from the provisions of Rules 17(2) and 22 of the Tamil Nadu Societies Registration Rules, 1978 for having filed belatedly the documents specified in sub-section (3) of Section 16 of the said Act for the years 2002-03 to 2004-2005 along with Form VII with the District Registrar on 5.5.2006 and also for having convened the Annual General Body meeting belatedly on 30.4.2006."

8. W.P.No.21420 of 2007 is for quashing G.O.Rt.No.327, Commercial Taxes and Registration (M1) Department, dated 31.3.2006. Under the said G.O., the State Government in exercise of the Act has exempted the Music Academy,

" . . . from the provisions of Rule 26 of the Tamil Nadu Societies Registration Rules, 1978 for having filed belatedly the amendment to bye laws with the District Registrar on 16.6.1989."

9. All the writ petitions contain same averments. The main contentions raised are to the following effect :-

(1) All the G.Os have been mechanically passed and are contrary to the findings of the High Court in the decision reported in 2005-4-L.W.67.

(2) Fresh Memorandum of Association and bye-law of the year 1979 could not have been accepted as those were contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975 and such Memorandum of Association and bye-law of the year 1979 being null and void, could not have been taken on file.

(3) The Memorandum of Association purportedly adopted in 1979 has the effect of replacing the first Memorandum of Association of the year 1929, which is not contemplated.

(4) In earlier round of litigations the Division Bench has held that the purported amendment of bye-laws in 1979 had not been registered and the present G.Os have been passed in clear contravention of the conclusions of the Division Bench on the earlier occasion.

(5) Amendment of the bye-laws proposed by the Executive Committee seek to amend "the bye-laws as amended in 1979" and since in the eye of law there was no amendment of bye-laws in 1979, such proposal for amendment cannot be countenanced.

(6) The person who had signed as the Registrar of the Society in the year 1979 was not the concerned Registrar of Society having jurisdiction over the matter.

10. In the common counter affidavit filed on behalf of the Respondents 1, 2 and 3, sworn to by 3<sup>rd</sup> respondent, it is submitted that the amendment to the Memorandum of Association and the bye-laws of the Music Academy was carried out as per Section 12 of the Societies Registration Act on 21.1.1979 and the same was filed before the Registrar of Society on 2.2.1979 and amended Memorandum of Association and bye-laws were taken in view of G.O.No.362 dated 15.4.2006 and a direction was issued by the Inspector General of Registration vide letter dated 6.4.2006 to the Registrar of Societies to take the amendments to bye-laws on record. It has been indicated that the amendment to the Memorandum of Association and bye-laws of the Society had been duly filed before the Registrar of Societies having jurisdiction on 2.2.1979 as evident from the original records maintained by the Music Academy and also from Form III maintained by the registered Society. It is therefore submitted that in such view of the matter there is no necessity to pass an order relating to condonation of delay in the above matter. It has been therefore stated that the statement which had been made in the additional counter affidavit filed in earlier writ petitions, which were disposed of as per the judgment reported in 2005-4-L.W.67, were the personal opinion of the then Registrar of Society, but the records indicate that the amendment had been filed.

11. The Music Academy in its counter has stated that certain anomalies having been noticed in the earlier round of litigations the proposal for amendments had been made to bring the bye-laws in consonance with the provisions of the statute and only to remove such anomalies, amendments have been proposed. It has been further stated in the counter affidavit that the petitioner cannot



seek to challenge the matters which were adopted even before the petitioner became a member of the Music Academy. It is further submitted that all the contentions are only technical contentions raised by a disgruntled member having no real substance.

12. Even though five Government Orders, which have been noticed earlier, have been challenged by filing five separate writ petitions, the main thrust of the attack by the petitioner is on the validity of G.O.Ms.No.362 dated 5.4.2006 and G.O.Ms.No.327 dated 31.3.2006. Validity of other three G.Os has also been challenged on general ground contending that there was no justification for the State Government to invoke power under Section 54 of the Act.

13. Before considering the main issues raised by the petitioner, it is necessary to take note of the relevant provisions of such Act as well as the Tamil Nadu Societies Registration Rules, 1978 (hereinafter referred to as "the Rules"). As already indicated, the Society in question was registered under the Societies Registration Act, 1860, which was a Central Act.

Under Section 2(h), "registered society" means a society registered or deemed to be registered under the Act. Under Section 2(a), "committee" means the governing body of a registered society to whom the management of its affairs is entrusted. Under Section 2(f) "memorandum" means the memorandum of association of a registered society as originally framed and as amended, from time to time, in pursuance of the provisions of this Act. As per Section 2(g), "officer" includes any trustee, director, manager, treasurer, secretary, assistant secretary or member of the committee, or any person authorised by the bye-laws of the registered society to bring or defend any action or other legal proceedings touching or concerning any property, right or claim of the registered society.

As per Section 2(j) "special resolution" means a resolution passed by a majority of not less than three-fourths of such members of a registered society entitled to vote.

Section 12 is extracted hereunder :-

"12. Amendment of memorandum and bye-laws.- (1) A Registered society may, by special resolution, amend the provision of its memorandum relating to the objects of the registered society so far as may be required to enable it -

(a) to carry on the administration of the registered society more economically or more efficiently; or'

(b) to attain its main purpose by new or improved means; or



(c) to amalgamate with any other registered society;  
or

(d) to divide itself into two or more societies.

(2) A registered society may, by special resolution, amend its bye-laws.

(3) An amendment of the memorandum or the bye-laws shall be registered and on such registration shall take effect from the date of the passing of such special resolution.

(4) If the Registrar is satisfied that any amendment of the memorandum or the bye-laws is not contrary to the provisions of this Act, or the rules made thereunder, he may register the amendment. When the Registrar registers an amendment of the memorandum or the bye-laws, he shall issue to the registered society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered."

14. As per Section 15, every registered society shall have a committee of not less than three members to manage its affairs. As per Section 15(3), the members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote and as per Section 15(4) the term of office of the members of the committee shall not exceed three years from the date of their appointment. However, as per Section 15(5), the members of the committee shall be eligible for re-appointment.

15. As per Section 27, a copy of every special resolution shall be filed with the Registrar within such time as may be prescribed. As per Rule 14, every application made to the Registrar for registration of an amendment of memorandum of bye-laws shall be accompanied by a copy of the special resolution relating to the amendment with the date of passing of such resolution.

Section 34 defines the power of the Registrar to call for information or explanation and Section 34-A empowers the Government to supersede the committee and appoint a person as a Special Officer to manage the affairs of the society for a specified period not exceeding one year. Such period can be extended from time to time but not for a period more than three years in the aggregate.

Under Section 36 the Registrar has the power to inquire into the affairs of the registered society. Sections 37 and 38 empowers the Registrar to cancel the registration of a society. Under Section 40 steps for winding up can be taken. Sections 46, 47 and 48 contain penal provisions for certain infractions. Section 49 empowers the

Registrar to condone the delay. As per Rule 48 such further time to be extended shall not exceed three months.

16. Rules 49 and 50 are extracted hereunder :-

"49. Acknowledgment of registration and documents.-

(1) Upon the registration of a society or on the filing of any document required to be filed under the Act or these rules, the Registrar shall grant to the society an acknowledgment.

(2) On every document filed under the Act or these rules, the Registrar shall endorse the following particulars, namely:-

- (a) the number borne by the society on the register;
- (b) the name of the society;
- (c) the description of the document;
- (d) the serial number of the document; and
- (e) the date of filing.

The Registrar shall also affix his signature and the seal of his office to such document.

50. Filing of documents.- (1) The Registrar shall examine every list, statement, intimation, notice or other document received by him which is required by the Act of these rules to be registered, recorded, or filed and if he finds any such list, statement, intimation, notice or other document to be defective or incomplete in any of the particulars required by the Act or these rules, he shall return it to the party or society tendering it, for due rectification or completion and until, such list, statement, intimation, notice or other document is so rectified or completed he shall not register, record or file the same.

(2) A separate file shall be maintained in respect of each registered society, in which all documents relating thereto received from time to time, by the Registrar shall be filed in chronological order, that is, in the order of the dates on which they are received by the Registrar."

17. Section 54 is extracted hereunder :-

"54. Exemption.- The Government may, by general or special order whether prospectively or retrospectively, -

(1) exempt from all or any of the provisions of this Act or from any rule made under this Act, or

(2) direct that any such provision or any such rule shall apply with such modifications as may be specified in the order, to any society or registered society or class of societies or of registered societies."

Section 56 contains the power of the Government to frame Rules.

18. All the Government Orders, which have been attacked by the petitioner, have been passed by the Government in purported exercise of power under Section 54(1) of the Act. Under G.O.227 dated 27.2.2006, reference has been made to the fact that audited accounts of the society for the years between 1987-88 to 2001-2002 had been filed belatedly. Similarly it has been noticed that amendments to the bye-laws had been filed with the District Registrar on 10.2.2006 instead of on 11.7.1982 and 14.11.1992. On the basis of the recommendation made by the Inspector General of Registration, the Government in exercise of power under Section 54(1) has exempted the society from the provisions of Rule 17(2), 22 and 26 of the Rules "so as to enable the said society for having filed the documents specified in sub-section (3) of Section 16 of the said Act for the years 1987-88 to 2001-2002 along with Form VII and amendment to bye laws with the District Registrar on 10.2.2006."

Rule 17 relates to filing of copy of the register of members and notice of change of members or the committee. Rule 22 relates to filing of documents specified in Section 16(3)(a) i.e., relating to filing of the accounts and balance-sheet. Rule 26 relates to copy of filing of special resolution within three months from the date of passing of such resolution.

19. As a matter of fact, a notice had earlier been issued, which was the subject matter of discussion in the earlier round of litigation as apparent from the judgment reported in 2005-4-L.W. 67. In fact the notice issued had been challenged earlier and it was observed by the Division Bench that it may not be necessary for the Government to pursue with such notice. Be that as it may, under the impugned G.O., the Government in purported exercise of Section 54(1) has exempted the Society from application of these rules. In other words, such belated filing has been condoned. There is no dispute that such power is vested with the Government. There is nothing to show that such power has been exercised arbitrarily or in a capricious manner. As a matter of fact the observations made by the Division Bench on the earlier occasion clearly indicate the sentiments of the court that all those past violations of the Rules, which were more or less technical in nature, need not be raked up.

20. G.O.No.327 dated 31.3.2006 relates to similar exercise of power relating to belated filing of amendment of bye-laws which



had been effected in 1989. Similar exemption has been granted in respect of the provisions of Rule 26 of the Rules.

21. No substantial assertion has been raised to assail these G.Os., save and except by contending that those Government Orders were mechanically passed in contravention of the order passed earlier by the Division Bench. The petitioner himself become a member of the Society in the year 1999. Most of the events referred to in these G.Os had occurred even before the petitioner had become a member of the Society. We do not find any justification for the petitioner to rake-up those issues. Moreover, the petitioner has not at all pointed out as to how his interest as a member of the Society is adversely affected by such exemption granted by the Government. Whether there was any infraction of the Rules and whether any action has been taken or not is a matter between the Government and the Society and if the Government in its wisdom thought it fit to pass an exemption order, there is hardly any scope for interference by the High Court in such matters, particularly at the instance of a person who was not even a member of the Society at the time when most of the alleged infractions took place. We therefore find no merit in W.P.Ns.21418 and 21420 of 2007 which are liable to be dismissed.

22. To be fair enough to the learned Senior Counsel for the petitioner, learned counsel has concentrated his attack on G.O.No.327 dated 31.3.2006, G.O.No.329 dated 31.3.2006, G.O.Rt.No.227 dated 27.2.2006, G.O.Rt.No.494 dated 16.5.2006 and more vigorously on G.O.Rt.No.362 dated 5.4.2006. The main plank of his submission is to the effect that under the first G.O., namely G.O.Rt.No.329 dated 31.3.2006, the Government purported to exempt late filing of the amendment of the bye-laws which had been effected on 21.1.1979 and purportedly filed on 2.2.1979. It is contended by him that in the earlier round of litigation it had been categorically held that there had been no such amendment of the bye-law and, therefore, under the impugned G.Os., the Society is trying to resuscitate the bye-law which had never been accepted in accordance with law.

23. The other plank of his attack is to the effect that under the amendment of bye-laws in 1979, the Society had purported to amend the memorandum of association by substituting new names as founding members of the Society. He has submitted that when the Society was registered in 1929, names of the founding members had been indicated in the memorandum of association and while amending, the Society has purported to even change the names of the founding members. It is submitted by him that no such amendment to the memorandum of association can ever be contemplated in law as the founding members continue as founding members for ever and if at all



such names are replaced it must be taken there has been a new society.

24. Learned Senior Counsel has invited our attention to various observations made by the Division Bench in the decision reported in 2005-4-L.W. 67 to which one of us was a party (P.K. Misra, J). Relevant portions of the earlier judgment are to the following effect :-

"4. It is claimed on behalf of the Music Academy that the new Memorandum of Association and bye-laws were adopted at the Extra-ordinary General Body Meeting of the Society held on 21.1.1979. The applicability/validity of such amended bye-laws are being called in question by some members and/or the office bearers or even the statutory authorities.

5. ... The bye-laws as amended on 21.1.1979 have been filed with the Registrar on 7.2.1979. However, amended bye-laws have not been registered. It is, however, not in dispute that in spite of non-registration of such amended bye-laws, the affairs of the Music Academy were being managed in accordance with such provisions and the elections to various office bearers and nomination of trustees were taking place accordingly.

6. .... At that stage, R. Parthasarathy, a life Member, the petitioner in W.P.No.17341 of 2003, had written two letters dated 28.8.2001 to the District Registrar seeking for certified copies of the bye-laws and the certified copy of Form-VII (list of office bearers), particularly, he wanted Memorandum of Bye-laws adopted by the Extra-ordinary General Body Meeting held on 21.1.1979, amendment to bye-law dated 28.5.1989 and amendment to bye-law dated 31.5.1992. Apparently at that stage it was discovered that amendments to the bye-laws had not been registered and pursuant to the query from the District Registrar, the Music Academy through its Secretary gave reply dated 5.11.2001, enclosing several documents, including Members List in Form VI and Form VII and upto date list of members as on 31.5.2001. In such letter, it was also prayed for condoning the delay in filing the documents and the Secretary further assured that the Academy would be prompt in filing the returns in future. Subsequently, the Music Academy on 11.1.2002 wrote a letter to the Inspector General of Registration requesting for condonation of delay in filing the annual returns for the years 1989 to 2001."

On the basis of various contentions raised, the Bench at that stage raised the following questions :-

"20. In the above maze of numerous litigations and counter litigations, the basic questions which are required to be considered are as follows :-

(1) Whether the bye-laws purported to have been amended in 1979, 1989 and 1992 can be considered to be valid and effective and, whether the Executive Committee elected in 2001 on the basis of election based on such Bye-Laws can be said to be a properly constituted Executive Committee.

(2) Whether the observation made by the District Registrar that only Memorandum of Association of 1929 is valid, is correct or such observation is required to be modified in any manner? and

(3) Whether any interference is called for in the matter relating to issuance of show cause notice under Section 34-A of the Act ?

(4) Whether the order impugned in W.A.No.1078 of 2003 is sustainable ?

Regarding amendment of bye-law in 1979, it was observed:-

"27. Lot of controversies have been raised regarding the manner of selection of the Trustees. Some of the office bearers are designated as Ex-Officio trustees. Apart from the above, as per 1979 bye-laws certain Trustees are also nominated. A reading of Sections 14 and 15 of the Act would leave no room for doubt that the management of the Society has to be vested in a Committee to be elected by all the members of the society. Therefore, there is no scope for having any nominated trustee far less there is any scope for providing that such nominated trustees would become members of the Managing Committee. Apart from the above contradiction between 1979 bye-laws and the provisions contained in the Act, the fact remains that such 1979 bye-laws had not been registered. Therefore, there is no scope for holding that any person could be nominated as Trustee nor it can be held that the nominated trustee can hold office for six years, because the Act is very categorical that the members of the Managing Committee should hold office for three years.

28. In view of the above analysis, it is apparent that all the office bearers must be elected and not by any other method and no member of the Committee can hold office for more than three years, though there is no embargo for re-election any number of times.

33. Lot of controversies had been generated regarding the powers given to the Trustees as per 1979 bye-laws.

Since bye-laws of 1979 had not been registered, there is no question of following any such bye-laws in the matter relating to power of the Trustees and such Trustees had to act obviously under the control of the Executive Committee as contemplated in 1929 Memorandum of Association and the Rules and Regulations.

38. The election which we are now directing is on the basis of 1929 Memorandum of Association and the Rules and Regulations as well as 1953 bye-laws. Section 12 contemplates the Memorandum as well as bye-laws can be amended provided such memorandum and bye-laws are not contrary to the provisions of the Act or the Rules made thereunder. Therefore, it goes without saying that it would be always open to the General Body to take appropriate decision regarding any amendment and the fact that the present direction is for holding election based primarily on 1929 Memorandum and the Rules and Regulations and 1953 bye-laws, obviously would not stand in the way of any amendment being effected in accordance with the provisions contemplated in Section 12 of the Act.

39. Certain controversies were raised by Mr.T.V. Ramanujam regarding enhancement of membership fees as per 1992 bye-laws. Since 1992 amendment had not been registered, it is obvious that such amendment was not effective. However, since on the basis of such amendment members have been enrolled on the basis of application of such persons, there is no justification to claim change of status or refund of any excess amount. Such observation is being made keeping in view the larger interest of the Society. Even though the amendment was yet to form part of the bye-laws, the applicant seeking for membership on the basis of such amendment having willingly paid the fees, cannot now turn around and say that either the excess amount paid should be refunded or he should be considered as a member of different class. In order to avoid any further controversy in the matter, it is advisable for the Society to incorporate a fresh amendment or take steps for registration of the existing amendment, if otherwise permissible in law."

Ultimately the Bench had directed for holding of election.



25. In the counter affidavits filed on behalf of Respondents 1 to 3 and the counter affidavit filed on behalf of Respondent No.4, it is now projected as if amendment to the bye-laws effected in the year 1979 had been registered and had become operational. In the counter affidavit filed on behalf of Respondents 1 to 3 it is stated :-

"4. Regarding the contentions made in Paragraph 4, I submit that the amendment to the Memorandum of Association and the bye laws of the 4<sup>th</sup> respondent society was carried out as per Section 12 of the Tamil Nadu Societies Registration Act, 1975 on 21/1/1979 and the same had been filed before the Registrar of Societies on 2/2/1979 and as such the amended Memorandum of Association and Bye laws had been taken on record, vide G.O.No.362, dated 5/4/2006, issued by the Commercial Taxes (M1) Department. I also submit that following the G.O.Ms.No.362 dated 5/4/2006, a direction was issued by the 2<sup>nd</sup> respondent in his letter dated 6/4/2006, bearing M.A.No.17380/I4/2006 to the Registrar of Societies, Chennai Central to take the amendments to the bye laws made in the year 1979 on record, following which the Registrar of Societies made necessary endorsement on 18/4/2006 and the amendments to the bye laws were taken on record. I submit that the orders of the Registrar of Societies, Chennai Central, following the 2<sup>nd</sup> respondent's letter is as per law and there is no violation of any provision of law, as alleged by the Petitioner, herein.

5) Regarding the allegations and contentions contained in paragraph 5, I submit that the amendment to the Memorandum of Association and the Bye laws of the 4<sup>th</sup> respondent society, dated 21/1/1979 had been duly filed before the erstwhile jurisdiction Chennai South Registrar of Societies on 2/2/1979, itself as it is evident from the original records maintained by the 4<sup>th</sup> respondent society and also from the Form III maintained by the Registrar of Societies, Chennai South. Consequent on the formation of the Central Registration District proposals were submitted inadvertently to condone the delay for the already registered 1979 memorandum and byelaws also and accordingly G.O.Ms.No.362 dated 5/4/2006 was issued. But later on this defect was noticed and the fact was intimated to the Govt. and the Govt. issued G.O.Rt.No.362 dated 05.04.2006 with a direction to treat the 1979 amendment as taken on record....

6. ... In this context I submit that the Honourable



Court was pleased to issue this direction in order to settle all the controversy existed at that time but the amendment of Memorandum and byelaws of the year 1979 has already been duly registered by the then jurisdictional Registrar of Societies Chennai South and subsequent byelaw amendments filed by the Music Academy have also been registered by the present jurisdictional Registrar of Societies, Central Chennai and those amendments are registered and came into effect from the date of passing of such special resolution as per section 12(3) of the Tamil Nadu Societies Registration Act, 1975."

26. While referring to the counter affidavit and additional counter affidavit in the earlier batch of writ petitions, wherein the Registrar seem to have taken a stand that amendment of the bye-laws had not been registered, it has been stated in para 8 of the present counter affidavit that such opinion was merely the personal opinion of the then District Registrar of Societies. In the counter affidavit of 4<sup>th</sup> respondent it has been stated that the G.Os.329 and 362 'explain the position', which clearly indicate that the amended bye-laws have been filed and taken on record. In the rejoinder filed by the petitioner he had harped on the contents of the counter affidavit and more particularly in the additional counter affidavit in the earlier round of litigation to contend that the amendments of 1979 had not been registered as contemplated in the Act and the Rules.

27. In our considered opinion, the contentions raised by the petitioner can be equated with raising of a storm in a tea cup. It is quite evident and it is nowhere controverted either in the earlier round of litigation or in the present writ petitions that a special resolution regarding amendment of the bye-laws had been passed on 21.1.1979. It also appears to be beyond controversy that the Society had forwarded such amendments to the Registrar which was received in the office of the Registrar either on 2.2.1979 or 7.2.1979 or may be even on 17.2.1979 (There are certain confusions regarding various dates - But we do not feel it necessary to go into that aspect because the fact remains that resolutions relating to amendments of the bye-laws had been filed in the Office of the Registrar of Societies).

28. The main finding in the earlier judgment appears to be that the provisions contained in such amended bye-laws, which envisaged a tenure of six years for the Trustees and also envisaged nomination of Trustees, to be violative of the provisions contained in the Act. It also appears that even though such resolution containing the amendments, etc., had been placed, no formal order had

been passed by the Registrar of Societies at that stage taking the bye-laws on record. Even though some controversy is being raised by the counsel for respondents that it is not necessary for the Registrar to pass any formal order, it is unnecessary for us to go into that aspect because it has been clearly and categorically observed in the earlier judgment that notwithstanding the fact that the amended bye-laws had not been registered, actions which were taken on the basis of such amended bye-laws either of 1979, 1989 or 1992 could not be assailed. As a matter of fact, even the earlier judgment expressed the opinion that for the violations relating to such matters no action be taken after such a long lapse of time. All the G.Os presently issued by the Government have been passed obviously keeping in view the sentiments expressed by the High Court in the earlier round of litigations. We do not find that the petitioner has been prejudiced in any manner to rake up all such issues in another firm. This is more so when the petitioner has become a member only in 1999 and we do not find any justification or even locus standi on the part of the petitioner to rake-up the matters which had apparently happened even before he had become a member. Moreover, in view of the conclusion that the amendments had been filed, if the officials had not passed any order, for that Society cannot be blamed. Even otherwise the State Government has power to pass order under Section 54 granting exemption. The question as to whether exemption should be granted or not is also essentially a matter between the Government and the Society and not a matter to be raked up by any individual member of a society unless such member's legal right has been prejudicially affected in any manner. If the amendments had not been filed within the stipulated period, exemption granted by the Government by invoking power under Section 54 has the effect of removing a legal lacuna. On the other hand, if the amendments had been filed, as is now observed in G.O.No.362 dated 5.4.2006, the question is as to whether such amendment can be considered to be valid and part of the bye-laws. To the extent the provisions contained in the amendment bye-laws are contrary to the statute obviously such bye-laws, even though registered, can be considered to be inoperative. In fact mainly in the above context, in the previous judgment it has been emphasised that the conditions indicated in such bye-laws regarding election may not be adhered to in the election directed to be held under the supervision of the Observer (retired Judge of the High Court). There is also no dispute that election thereafter had been conducted in a smooth manner and the office bearers have assumed their responsibilities. In such a scenario, we hardly find any justification to rake-up any of the old controversies which appear to have been given a decent burial in the earlier judgment.

29. The immediate provocation for the petitioner to file the writ petitions seems to be the proposal made by the Society regarding amendment of the bye-laws. As has been clearly explained by Respondent No.4 such proposals regarding amendments have been put forth before the General Body only with a view to delete the provisions contained in the bye-laws of 1979, 1989 or 1992, as the case may be, which were either observed to be against the provisions contained in the Act or the Rules. Even after such proposed amendments are accepted, if any of the provision of the amended bye-law is against the provisions of the statute, it can be declared as illegal in an appropriate proceedings. However, the petitioner has rushed to the court even before such matter was taken up for consideration and has initially obtained an order of stay. Subsequently, such stay order has been modified with the observation that meeting can take place, but the effect of the resolution will not be given effect to. If any such resolution is passed by the required majority of members in accordance with the bye-laws, such resolutions containing the amended bye-laws would be obviously placed before the Registrar of Societies who can at that stage examine whether any of the bye-law is contrary to the provisions of the statute, otherwise the Registrar is required to register such amended bye-laws. In fact in such a sense the writ petitions appear to be pre-mature.

30. Learned Senior Counsel has seriously contended that while amending the bye-laws in 1979, the Society had purported to change the Memorandum of Association. He has submitted that the first Memorandum of Association containing the names of the founder members cannot be altered in any manner, as otherwise it will bring on record a new society. Learned Senior Counsel has cited several decisions of different Courts including the Supreme Court in support of his contention that in law the founder members have got a special status, which cannot be altered. Even though we can appreciate the sentiments behind such submission, we do not think the bye-laws of 1979 and the Memorandum of Association can at all affect the fact that there were certain founder members when the society was registered in 1929. The documents which had been produced merely indicate that at the time of effecting amendment of such bye-laws who were the various office bearers. We do not think it can be said that such documents had the effect of supplanting the first Memorandum of Association.

In view of the above conclusion, the W.P.Nos.21416 and 21419 of 2007 challenging the G.O.Nos.329 and 362 are also liable to be dismissed.



31. Next the writ petition relates to challenging of G.O.No.494 dated 16.5.2006. This Government Order appears to be a consequential order relating to taking on record the earlier bye-laws. In view of the observations already made, we hardly see any merit in such writ petition, which is also liable to be dismissed.

32. In the result, all the writ petitions fail and the same are dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

dpk

Sd/  
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Secretary to Government,  
State of Tamil Nadu,  
Commercial Taxes and Registration  
(M1) Department,  
Fort St. George,  
Chennai 600 009.
  2. The Inspector General of Registration,  
O/o. Inspector General of Registration,  
120, Santhome High Road,  
Santhome, Chennai 600 004.
  3. The District Registrar of Societies,  
Chennai Central, O/o. District Registrar,  
Old No.72, New No.100, Chamiers Road,  
Nandanam, Chennai 600 018.
- 5 Ccs to M/s T.V. Krishnamachari, Advocate SR 2  
One cc to Mt. T. Mohan, & Devika Advocate SR 75972
  - One cc to Govt Pleader High Court SR 76003  
KS (co)  
sg 0701/08

COMMON ORDER IN W.P.Nos.  
21416 to 21420 OF 2007  
20.12.2007