

Muddappa Vs. Panchaksharaiah

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Court : Karnataka

Decided On : Sep-18-1984

Reported in : ILR1985KAR1230

Judge : Kudoor, J.

Acts : Karnataka Society Registration Act, 1960 - Sections 11 and 15

Appeal No. : R.F.A. No. 298 of 1982

Appellant : Muddappa

Respondent : Panchaksharaiah

Advocate for Def. : S.K. Venkataranga Iyengar, Senior Counsel

Advocate for Pet/Ap. : C.K. Narayana Rao, Adv.

Disposition : Appeal allowed

Judgement :

Kudoor J.

1. This Regular First Appeal is by the defendant in O. S. No. 2107/1980 on the file of the III Additional City Civil Judge, Bangalore, directed against the decree dated 30-6-1982 decreeing the suit brought by the plaintiff as prayed for.

2. The plaintiff-society called the Jayanagar Parents Association (hereinafter called the 'Society') is a society registered under the Karnataka Societies Registration Act, 1960 (for short the 'Act'). The suit is filed by the society through its President S. M. Panchaksharaiah against the defendant for a declaration that the defendant cannot call a meeting of the general body of the Society as stated in the notice dated 8-4-1977 and any such action taken pursuant thereto is null and void and for permanent injunction restraining the defendant from conducting a meeting of the general body, electing an Executive Committee, collecting any funds in any manner on behalf of the society from the parents, students and the members of the society and spending any amount for the proposed expenses of the society.

3. The facts relevant for the disposal of this appeal may be stated as follows :

The plaintiff-society was registered under the provisions of the Act on 19-6-1974. Under the Memorandum of Association and the Rules and Regulations of the society, provision is made for constituting an Executive Committee consisting in all 17 members including the office-bearers such as a President, two Vice-Presidents, a Secretary, a Joint Secretary, a Treasurer and a Committee Auditor. The power of the office-bearers are defined in the Rules and Regulations. The source of income for the society is from the membership fee, donations, aids, grants and subscription from the members of the public, Government and the local bodies. The society is running a nursery and Primary school in Jayanagar IV 'T' Block and IX Block. The fees collected from the students the various heads also form under the finance of the society. The present Executive Committee comprises of five founder-members and the other members were later co-opted. One S. R. Swamy was the first Secretary of the Society. He was removed from the office of the Secretary by the Executive Committee at its meeting dated 2-1-1977 on the ground of misconduct. In his place, the defendant was appointed as the Secretary. It was hoped that the defendant who had been appointed as the new Secretary would improve the affairs of the society. It was however noticed that he had joined hands with the previous Secretary. The defendant was required to take accounts from the previous Secretary and place the same before the one Man Committee as per a -Resolution passed by the Executive Committee. Further he was also

required to make a report to the Executive Committee about the Irregularities in the appointment of teachers made by the previous Secretary. The defendant did not carry out any of these directions of the committee. In these circumstances and also in view of the defendant having indulged in acts of criminal intimidation against the President on the midnight of 11-4-1977 and again at 4 p. m. on 12-4-1977 which was after the President issued a notice proposing to convene the Meeting of the Executive Committee on 12-4-1977, the defendant was removed from the office of the Secretary as per the resolution passed by the Executive Committee at its meeting held on 12-4-1977. One Chandrasekharaiah a former President of the Society and S. R. Swamy, a former Secretary and one of the then Vice-Presidents were also removed from the Executive Committee as they were acting in concert with the defendant. The defendant was informed of his removal from the office of the Secretary by a registered notice and also by a letter sent by Certificate of Posting. Besides, a press statement was also issued in that regard. The defendant having realised that he was in trouble, issued a notice purporting to be one to convene the first Annual General Body Meeting of the Society on 8-5-1977 antedating the notice as 8-4-1977 to make it appear that it was issued prior to the Executive Committee Meeting held on 12-4-1977 at which he was removed from the post of the Secretary. One of the business to be transacted at the general body meeting as per the notice was the election of 17 members of the Executive Committee. It was learnt that the defendant, in the meanwhile, had managed to enrol some persons as members of the society in order to get himself elected as the Secretary and also to get the other members of the Executive Committee elected of men of his choice. The defendant has no power to convene a general body meeting as the powers of the Secretary are very much circumscribed by the rules and regulations of the society. He should work as per the directions of the President. He did not do so. On the other hand, ignoring the President, the defendant had been at pains to summon the general body meeting. Only the Executive Committee could convene the general body meeting. However, the defendant keeping the executive committee wholly in dark about convening of the proposed general body meeting, took action by himself to convene the general body meeting. Besides, the notice issued by him purported to convene the first general body meeting of the society. The first general body meeting of the society,

according to Section 11(2) of the Act should have been convened within 18 months of the registration of the society. The accounts of the society having not been placed before the Executive Committee, there was no point in calling the first general body meeting on 8-5-1977 long after 18 months of the registration of the society. The present Secretary A. S. Nagabhushana Rao has given a written representation to the Registrar of Societies to appoint an enquiry officer to go into the affairs of the society. The attempt on the part of the defendant to summon a meeting is to create further confusion. If the meeting is allowed to be held and the defendant is permitted to have his own way in having the new Executive Committee elected and getting himself appointed as Secretary, the activities of the society will be seriously affected and brought to an abrupt stand-still. There was mismanagement and misappropriation of the funds of the society and which would be further depleted. In these circumstances, the plaintiff brought the suit

4. The suit was resisted by the defendant by filing a written statement raising various grounds. I shall refer to only such of those grounds which are material for our purpose.

5. The defendant has contended that Panchaksharaiah is not the President of the society as he has not been duly elected. He was nominated as the President by a person styling himself as the Chief Patron of the society. There is no provision for nomination of the President under the Constitution of the Society. The suit is one in substance brought by Panchaksharaiah and as such he has no locus standi to represent the society. The suit is not filed by the society and is therefore, liable to be dismissed in limine. It is wrong to say that the society is the plaintiff since the suit is brought by Panchaksharaiah in his individual capacity. The society was registered under the Act and its activities are governed by the constitution of the society. The defendant does not know if S.R. Swamy was removed from the office of the Secretary as alleged in the plaint but the defendant was appointed as the Secretary of the Society. Panchaksharaiah and some of his intimate friends viz., Nagabhashuna Rao, Ratnam Setty and few others were understood to be interested in taking over the entire administration of the society and the schools run by it evidently with selfish motive. They were also very keen to remove the teachers working at present in the schools for many years and appoint in their

place persons of their choice. With this end in view, they started ill treating the office-bearers of society and also the members of the staff working in the schools many of whom are ladies. The defendant refused to co-operate with the plaintiff and his associates in their unlawful designs and selfish activities. According to the defendant's information, Swamy was not removed from the office of the Secretary but Panchaksharaiah and his friends made it impossible for Swamy to continue as Secretary because Swamy did not oblige Panchaksharaiah and his associates and so he resigned. He denied all the allegations made against him which were said to be the reason for calling the Executive Committee Meeting on 12-4-1977. He denied having received any notice of the committee meeting to be held on 12-4-1977. He has also denied of any such meeting in fact having been held on 12-4-1977 and at such meeting, he was removed from the office of the Secretary of the society. The alleged charges against the defendant which were said to be the ground for his removal have not been set out either in the plaint or in the proceedings of the meeting alleged to have been held on 12-4-1977 or in any other document. The defendant was not served with any notice of the alleged charges levelled against him. On the other hand, Panchaksharaiah and his associates have indulged in illegal activities and attempted to bring pressure upon the members of the staff of the society and the schools run by it. They tried similar acts against the defendant but the defendant did not yield. Being frustrated, they filed the suit to harass the defendant. Before the alleged removal of the defendant from the office of the Secretary, no charge was either framed or communicated to him. The defendant was not given any opportunity to meet the charges. No enquiry was held nor any witnesses examined. The defendant was deprived of the right to test the veracity of the witnesses, if any, who would speak against him and in support of the alleged charges. If any show of proceedings had been gone through and as alleged, if the defendant had been removed from the office of the Secretary, the entire proceedings are null and void and the alleged removal is wholly illegal and without any legal effect or validity. The proceedings, if any, are violative of the principles of natural justice. To the knowledge of the defendant, no enquiry was conducted at any time against the defendant. The defendant denied all the allegations made in the plaint relating to the notice dated 3-4-1977 issued by the defendant calling for the general body meeting to be held on 8-5-1977. The

notice was issued by him to members of the association because Panchaksharaiah refused to call any general body meeting as President of the Executive Committee. The General Body meeting in fact, was proposed to be convened by the members of the society and for the sake of convenience, the defendant was authorised to issue the notice in that behalf. Panchaksharaiah has filed another suit against the defendant in O-S.No. 1255/1977 on the file of the III Additional I Munsiff, Bangalore, for reliefs similar to ones claimed in this suit. The sole object of Panchaksharaiah and his associates is to harass the defendant and force him to quit knowing fully well that the defendant has no interest adverse to the interest of the society. Since the suit is not one filed by the society but by Panchaksharaiah and his associates, they are not entitled to the equitable and discretionary relief of injunction - permanent or temporary. On these grounds, the defendant sought for the dismissal of the suit.

6. On the pleadings of the parties, the Trial Court raised the following issues :

1. Whether S.M. Panchaksharaiah proves that he is the President of Plaintiff-Association?
2. Whether the Plaintiff proves that defendant was removed from Secretaryship on 12-4-1977. If so whether that removal is legal one?
3. Does Plaintiff prove that the suit is maintainable by the President as representing the body of Association?
4. Whether Plaintiff is entitled for perpetual injunction?
5. What order or decree?
7. The Trial Court on appreciating the evidence both oral and documentary, decreed the suit granting the reliefs sought by the plaintiff as stated earlier. Hence this appeal by the defendant.
8. The defendant filed an application I.A. No, 3 under Order 41 Rule 27 read with Section 151 C.P.C. seeking leave of the Court to produce a Government Order dated 28-6-1978 by way of additional evidence. The plaintiff filed counter to the

application,

9. During the course of the arguments, an application I.A. No. 4 under Order 41 Rule 27 C.P.C was presented by the advocate for the plaintiff to permit the plaintiff to produce two documents annexed to the application as additional evidence in the appeal. The application was opposed by the defendant who filed his objections by way of counter-affidavit praying that the application be dismissed.

10. Sri C.K. Narayana Rao, learned Advocate for the defendant urged two contentions for consideration in this appeal. They were:

1) Panchaksharaiah not being the duly elected President of the Society, is not competent to represent, the society and the suit brought by the society through him as the President of the Society is not maintainable.

2) The removal of the defendant from the office of the Secretary of the Society by the Executive Committee headed by' panchaksharaiah is not legal and valid.

11. I shall proceed to consider these two points in the order in which they were formulated.

POINT NO. 1

12. Sri C.K. Narayana Rao, learned Counsel for the defendant, placing reliance on the relevant provisions of the rules and regulations of the society and also on the evidence adduced in the case vehemently argued that Panchaksharaiah could not represent the society as he was not the duly elected but nominated President of the society and the suit brought by the society through him is not maintainable. He further contended that in view of the fact that the suit was brought by the plaintiff-society through Panchaksharaiah who was not the duly elected President of the society, it cannot be said that the suit was one duly filed by the society but it was indeed a suit brought by Panchaksharaiah in his personal capacity and on this ground also, the suit is not maintainable. In support of submission Sri Narayana Rao cited two rulings viz., P.A Club v. Labour Court, Ludhiana and Krishna Kumar v. Kayastha Pathshala.

13. Per contra, it was contended by Sri S.K. Venkataranga Iyengar, Learned Senior Counsel appearing for the plaintiff, that it is not open to the defendant to contend that the suit is not maintainable as the defendant is trying to non-suit the plaintiff on the material produced by the plaintiff without letting in any positive evidence on his side. His argument was that the defendant should point out the finding of the Trial Court that the suit is maintainable is wrong or 1 erroneous. He further contended that as could be seen from the frame of the suit, the suit was one filed by the society through its President and whether Panchaksharaiah was the duly elected or the nominated President of the plaintiff-society is immaterial. On this basis, he proceeded to argue that the suit brought by the plaintiff would not fail even if it were to be held that Panchaksharaiah was not the duly elected President of the plaintiff-society. He has also maintained that the defendant is estopped from contending that Panchaksharaiah was not the duly elected President of the society as both Panchaksharaiah and the defendant were appointed as President and Secretary of the plaintiff-society by the Executive Committee in one and the same Executive Committee meeting and the defendant had recognised Panchaksharaiah as the President of the plaintiff-society while he (the defendant) was discharging the duties as the Secretary. In support of his submission that the suit is maintainable, Sri Venkataranga Iyengar, placed reliance on *Satyavart Sidhantalankar v. Arya Samaj, Bombay*, *Khiri Ram v. Nanalal and Shanthi Sarup -v.- R. S. Subba*. He has also referred to two other decisions in *Panchayat Panda Padu -v.- State of Andhra* and *Mula -v.- Babu Ram* in support of the plea of estoppel urged by him.

14. For proper understanding and better appreciation of the respective contentions, it seems to me relevant to advert to some of the provisions of the Act and the rules made thereunder.

15. Section 3 of the Act enumerates different classes of societies that may be registered under the Act. Section 5 provides for the mode of forming societies. It stipulates that 7 or more persons above the age of 18 years associated for any purpose specified in Section 3 may, by subscribing³. AIR 1946 Bombay 5164. : AIR1964 Pat114 5. : AIR1969 All248 6. AIR 1957 A.P. 3557. : AIR1960 All573 their names to a Memorandum of Association and otherwise complying with

requirements of the Act and the Rules made thereunder in respect of registration, form themselves into a society under the Act. Section 6 lays down the requirements of the memorandum of association. Sub-section (1) of Section 6 stipulates that the memorandum of Association of every society shall state the name of the society, the object of the society, the names, addresses and occupation of the members of the Governing Body to whom by the rules of the society, the management of its affairs is entrusted and the place at which the registered office of the society is to be situated. Sub-section (2) postulates that the rules and regulations of the society shall be registered with the memorandum of Association and the rules and regulations shall contain the provisions relating to admission of members, general meetings, proceedings at such meetings including voting by members, the governing body and the proceedings of meetings of governing body. Sub-section (3) contemplates that the memorandum and rules and regulations of the society shall be printed or type-written and to be divided into paragraphs numbered consecutively and be signed by each subscriber to the memorandum of Association who shall add his address, description, age and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation. Section 8 provides for registration of societies. Sub-section (1) stipulates the presentation of the memorandum of Association and the rules and regulations of the society for registration to the Registrar along with the required fee of Rs. 50/-. Sub-section (2) provides that if the Registrar is satisfied that all the requirements of the Act and the Rules made thereunder have been complied with, he shall retain and register the memorandum of association and the rules and regulations and shall certify under his hand that the society is registered and issue a certificate of registration.

16. Rule 3 of the Karnataka Societies Registration Rules, 1961 (for short the 'Rules') lays down the procedure for registration. It reads :

3. Procedure for Registration. (1) The form of application for the registration of a society shall be as in Schedule-A. The memorandum of association and the rules and regulations of the society shall contain the particulars specified in sub-sections (1) and (2) of Section 6, and also comply with the requirements of sub-section (3) of Section 6. The memorandum shall also mention the name and address of one

of the subscribers to the memorandum authorised by the society to whom any communication may be sent by the Registrar.

2) The registrar may, for the purpose of satisfying himself of the matters specified in Section 4 and 6, call for such further particulars or make such enquiry as he deems necessary. He may permit the subscribers, if so desire by them in writing, to make such alterations or additions to the proposed memorandum, rules and regulations submitted in order to make them conform to the provisions of the Act and rules thereunder.

3) A copy of the relevant extracts from the record of the proceedings of the general meeting at which the registration was resolved should also accompany the memorandum.

4) If the Registrar refuses to register a society, he shall communicate the order of refusal by registered post to the subscriber mentioned in the memorandum under sub rule (1).

5) The Registrar after satisfying himself of the conditions and provisions of the Act, shall issue a certificate as prescribed in Schedule-B as appended to these rules, for having registered the society,'

17. What emerges from these provisions is that when 7 or more persons present an application in a form as prescribed in Schedule-A to the Rules, to the Registrar, the Registrar, after following the procedure prescribed under Rule 3, if satisfied that all the requirements of the Act and the Rules made thereunder have been complied with, shall retain and register the memorandum of Association and the rules and regulations and shall certify under his hand that the society is registered and issue a certificate of Registration as prescribed in Schedule-3 appended to the Rules.

18. It is the admitted case of both the parties that the plaintiff-society is a registered society under the Act. Ex.P.1 is admittedly a copy of the registered memorandum of Association and rules and regulations of the society. One of the requirements of the memorandum of association is that it shall state the names,

addresses and occupations of the members of the Governing body to whom the management of the affairs of the society is entrusted by the rules of the society. The Governing Body which is stated in the registered memorandum of association will be the governing body entrusted with the management of the affairs of the society till a new governing body is constituted as per the rules and regulations of the society. The importance of stating the governing body with all the required particulars stipulated in clause (c) of sub-section (1) to Section 6 of the Act in the memorandum of association while presenting the memorandum of association to the Registrar for registration along with the rules and regulations of the society cannot be minimised or underestimated as it would be the governing body of the society registered under the Act until a new governing body is constituted under the rules and regulations of the society and subject to the provisions of the Act. In this connection it is relevant to advert to the important provisions made in the rules and regulations of the society.

19. Rule 1 provides for the name of the association. Rule 4 prescribes the official year of the association as the calendar year i.e., from 1st January to 31st December. Rule 5 gives the different classes of members of the association. Rule 6 deals with general body and its functions. It states that the general body shall consist of all the members of the association and one of its functions as provided under Clause (a) is to elect the members of the Executive Committee annually. Rule 7 prescribes the constitution of the Executive Committee. It stipulates that the Executive Committee shall consist in all 17 members including the office bearers who shall be elected by the members of the Executive Committee. The office bearers are: one President, two Vice Presidents, one Hon. Secretary, one Hon. Joint Secretary, one Hon. Treasurer and one Committee Auditor. Rule 8 deals with the powers of the office-bearers. Rule 11 deals with meetings. It stipulates that the general body shall meet once a year; the special general body meeting shall be convened as per the provisions of Section 11(3) of the Act and the Executive Committee shall meet at least once a month or as many times as the business demands.

20. A combined reading of Section 6(l)(c) and the relevant rules and regulations of the society show that the governing body stated in the Memorandum of

Association would be in-charge of the management of the society till the regularly constituted Governing body is formed under the rules and regulations of the society.

21. The mode of constitution of the Executive committee which will be the governing body of the society as provided under the rules and regulations is that the members of the Executive Committee shall be elected annually by the general body as provided under Rule 6. The general body consists of all the members of the association as laid down under Rule 5. There shall be 17 members in the Executive Committee including the office-bearers, described in Rule 7. It is also provided that the office-bearers shall be elected by the members of the Executive Committee. Further, as provided under Rule 11, the Executive Committee shall meet atleast once a month or as many times as the business demands and the general body shall meet once a year. Provision is also made under Rule 11 for convening a special general body meeting in the manner provided under Section 11(3) of the Act. As regards the convening of the first annual general meeting, no provision is made in the rules and regulations because the time within which the first Annual general meeting shall be held by the society is statutorily fixed under the Act.

22. Section 11 of the Act deals with the general meeting of the society. It provides that the society shall hold every year an annual general meeting at which the report of the management of the society for the previous year together with an audit copy of the balance-sheet, income and expenditure account and the auditors report shall be submitted for approval. It is also provided that the first annual general meeting shall be held within 18 months of the registration of the society and the next annual general meeting of the society shall be held within 9 months after the expiry of the year in which the first annual general meeting was held and thereafter an annual general meeting shall be held within 9 months after the expiry of each year. However, power is given to the Registrar under the first proviso to Section 11 to extend the time within which an annual general meeting shall be held for special reasons. The second proviso lays down that except in the case referred to in the first proviso, not more than 18 months shall elapse between the date of one general meeting and that of the next.

23. A bare reading of the provisions of Section 11 shows that in the ease of convening the first annual general meeting, which shall be within 18 months from the registration of the society, no discretion is given to the society to hold the first annual general meeting beyond the period of 18 months from the date of registration of the society nor any power is given to the registrar to extend the time to hold the first annual general meeting although he is empowered to extend the time to hold the other annual general meetings for special reasons as provided the under first proviso to Section 11. Thus it is abundantly clear that it is the mandate to the law that the first annual general meeting of a society registered under the Act shall be held within 18 months of the registration of the society and it further follows that at that meeting, the governing body of the society formed under the registered memorandum of association and entrusted with the management of the society shall place its report of the management of the society since the society was registered together with an audit copy of the balance sheet, income and expenditure account and the auditors report for the approval of the general body. Further it is at that meeting, the new governing body of the society shall be constituted in accordance with the provisions of the rules and regulations of the society to manage the affairs of the society. Thus it is obvious that the governing body constituted at the inception of the registration of the society under the memorandum of association shall hold the reins of the management of the society till a regularly constituted governing body is established in accordance with the provisions of the rules and regulations of the society at the first annual general meeting.

24. Ex. P. 1 is the true copy of the memorandum of association and the rules and regulations of the society. The true copy of the memorandum of association does not disclose the particulars of the members of the governing body to which the management of the society's affairs was entrusted as stipulated under clause (c) of sub-section (1) of Section 6 of the Act. In order to ascertain the correct state of affairs, the parties were called upon to produce the certified copy of the registered memorandum of association and the rules and regulations of the society. The defendant's advocate made available to the Court the certified copy of the memorandum of association and the rules and regulations of the society. On a perusal of the registered memorandum of association, it is seen that the details of

the members of the governing body as required under clause (c) of sub-section (1) of Section 6 have been furnished. As per the memorandum of association, there were 9 members of the Executive Committee of whom Dr. H.R. Chandrasekharaiah was the President, A. R. Krishnamurthy and A. Venkataratnam Setty were the Vice Presidents, S. R. Swamy was the Secretary, D.S. Nagabhushana Rao, Joint Secretary, A.A. Seshagiri Rao, Treasurer and B. Krishnamurthy, Dastagir Peer and D.A. Narayan were the members. It is thus seen that the management of the society was entrusted to this Committee till a regularly constituted governing body of the society was constituted as per the provisions of the Act and the rules and regulations of the society. In other words, this Committee would conduct the affairs and management of society till a new governing body to be constituted as per the rules and regulations of the society at its first annual general meeting to be held within 18 months of the registration of the society.

25. It is not the case of either party that any annual general meeting, either the first or any other, was ever held by the society after it was registered on 19-6-1974. Hence the constitution of any Executive Committee of the society by election as provided under the rules and regulations by the general body did not arise. The governing body constituted at the time of registration of the society under the memorandum of association could not be said to be a legally-constituted governing body entrusted with the management of the society after 18 months of the registration of the society. The governing body constituted under the registered memorandum of association continued to be in management of the affairs of the society even after 18 months of the registration of the society without convening the first annual general meeting as required by law. It is not the case of the plaintiff that the Executive Committee which was constituted under the memorandum of association still continues to be in existence nor it is that Committee which is carrying on the management of the plaintiff society. On the other hand, the present Executive Committee was formed on 2-1-1977.

26. In this background let me now proceed to consider the Executive Committee of the society of which Panchaksharaiah claims to be the President.

27. It is the case of the plaintiff that Panchaksharaiah became the President of the Executive Committee of the society at the meeting held on 2-1-1977. Admittedly he was neither a member of the Executive Committee nor any of the office-bearer of the Executive Committee constituted under the registered memorandum of the association. Ex.P. 2 is the note book containing the minutes of the Executive committee meetings of the society. It is seen from Ex.P. 2 that the Executive Committee of the society held two meetings on 2-1-1977, one at 9 a.m. and another at 11 a.m.

28. The proceedings of the meeting held at 9 a.m. show that the Committee unanimously resolved to removed H.R. Chandrasekharaiah and S.R. Swamy, President and Secretary of the society from their respective posts. The proceedings of the meeting held at 11 a.m. which is marked as Ex.P. (b) show that the meeting was held under the Chairmanship of A.R. Krishnamurthy, the Chief Patron, at which meeting three members were co-opted to the Executive Committee of whom Muddappa (defendant) was one. The proceedings also disclose that all the office bearers of the then Executive Committee tendered their resignations to their respective posts. The proceedings further show that thereupon the Chief Patron has formed the new Committee consisting the office-bearers of whom Panchaksharaiah was the President and D. M. Muddappa was the Secretary. S.R. Swamy was nominated as one of the Vice-Presidents. Thus it is the case of the plaintiff that Panchaksharaiah became the President of the Executive Committee of the society formed by the Chief Patron at the Executive Committee meeting held on 2-1-1977. This undisputed fact would show that the Executive Committee formed on 2-1-1977 was neither elected by the general body of the society-nor the office bearers were elected by the elected members of the Executive Committee. Hence it is obvious that the executive Committee formed on 2-1-1977 of Which Panchaksharaiah claims to be the President could not, under any, stretch of imagination, be a legally constituted committee' nor Panchaksharaiah was the legally elected President of the Executive Committee. The procedure adopted for constituting the executive committee as well as the nomination of the office-bearers at the meeting held on 2-1-1977 was wholly illegal, opposed to the provisions of the Act and the rules and regulations of the society. Besides, it is also clear from the proceedings of the meeting held on 2-1-

1977, the executive committee constituted under the memorandum of association came to be dissolved by the mass-resignation of the office-bearers of the Executive Committee. These facts would establish that at the moment, there is no legally constituted executive committee of the society nor the office-bearers of the committee to manage the affairs of the society- At any rate, Panchaksharaiah who claims to be the President of the Executive Committee of the society cannot acquire that position by virtue of his nomination as President by the Chief Patron.

29. The next point for consideration is whether the suit brought by the plaintiff-society through its President Panchaksharaiah is maintainable.

30. Section 15 of the Act provides for institution of suits by and against the society. It lays down that every society registered under the Act may sue or be sued in the name of the President, Chairman or Principal Secretary or the Trustees as shall be determined by the rules and regulations of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body of the association. Section 16 stipulates that no suit or proceeding in any civil court shall abate or discontinue by reason of the person by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person. Rule 14 of the rules and regulations provides that all suits and legal proceedings for or against the society shall be in the name of the President.

31. It would be seen from the above provisions that the society could sue or be sued in the name of the President, Chairman or Principal Secretary or the Trustees as determined by the Rules and Regulations of the society and in the absence of any such determination in the name of such person as shall be appointed by the Governing body for the occasion and the suit or the proceeding in any civil Court shall not abate or discontinue by reason of the person by or against whom such suit or proceeding shall have been brought or continued dying or ceasing to fill the character in the name whereof, he shall have sued or been sued but the same suit or proceeding shall be continued in the name of or against the successor of such person. This would go to show that the society being a legal

entity could sue or be sued in its own name through one of the persons as determined under Section 15 read with the relevant provisions of the rules and regulations governing the society. However, it is obligatory for the society either to file or defend a suit by or against the society through one of the authorised persons under Section 15 of the Act read with the relevant provisions of the rules and regulations of the society and none else. If a society sues or be sued through a person not empowered under Section 15 read with the relevant provisions of the rules and regulations of the society, such an action will not be competent.

32. In P.A. Club's case the true scope of Section 6 of the Societies Registration Act, 1860 came up for consideration. It was a Letters Patent Appeal directed against decision of the learned Single Judge of the same Court rejecting the Petition filed by the appellant under Articles 226 and 227 of the Constitution of India for the issuance of a writ of certiorari against the order of the Presiding Officer, Labour Court, Ludhiana. The appellant, through its Manager filed the Writ Petition which was heard and dismissed by the learned Single Judge. The appeal was directed against the order of the learned Single Judge before the Letters Patent Bench. A preliminary objection was raised on behalf of the 4th respondent that the appeal which had been preferred without proper authority was not competent. On the facts of the case, the Court came to the conclusion that the Manager who brought the appeal was not authorised to file the appeal. Interpreting the true scope of Section 6 of the Registration Act, 1960s it was held :

'Section 6 empowers a registered society to sue or be sued in the name of its President, Chairman or Principal Secretary etc., as shall be determined by its rules and regulations. Where there is no such provisions in the rules and regulations, a resolution empowering or authorising someone in this regard will have to be passed by the governing body of the society. In the absence of any rules and regulations or a resolution of the governing body authorising the Manager to file the appeal, the appeal filed by the Manager was incompetent.'

(as paraphrased under Head Note (A)).

On the above ground, the appeal was rejected.

In Krishna Kumar's case one of the questions that came up for consideration before the Allahabad High Court was whether a society registered under the provisions of the Societies Registration Act, 1960, which has adopted shorter and more convenient and also commonly known name for the institution of the suit by and against it could bring a suit in that name while its registered name was a different one. Dealing with this question; the High Court observed :

'While, therefore, it is true that the society which has been registered is the governing council of the Kayasta Pathasala, Prayag, Allahabad. The society has adopted a shorter and more convenient at and also the commonly known name for the institution of the suit by and against it. It is indisputable that a legal entity may choose to have itself described by a particular name for a particular purpose and it only follows that if a legal entity has by proper method come to itself assume a name for the purpose of suing or being sued, a suit brought in that name must be regarded as a suit by that legal entity provided of course that it has been instituted by a person empowered to do so.

33. Thus it is obvious from the aforesaid authorities that a society registered under the Societies Registration Act, 1860 which is a legal entity could bring a suit or being sued in its own name provided the suit is brought or defended by a person empowered to do so. Section 6 of the Societies Registration Act, 1860 is in parimateria with Section 15 of the Act. In the present case, the society brought the suit through its President S.M. Panchaksharaiah. In the earlier portion of this Judgment, I have come to the conclusion that Panchaksharaiah was neither a member of the Executive Committee nor the President of the Society. Hence he could not represent the society as its President. There is none else legally empowered under the provisions of the Act or the Rules and Regulations of the Society through whom the society could continue the suit in place of Panchaksharaiah. Although in the written statement, the defendant has taken up a contention that the suit was not brought by the society but by Panchaksharaiah, arguments were addressed on behalf of the defendant by his learned advocate in this appeal that the suit brought by the society through Panchaksharaiah is not maintainable as he is not competent to represent the society, being not the duly elected President of the society. That being so, I am of the considered opinion

that suit brought by the plaintiff society through its President Panchaksharaiah is not maintainable.

34. The argument of Sri S.K. Venkataranga Iyengar that since the suit was one filed, by the society through its President whether Panchaksharaiah was the duly elected or the nominated President of the society is immaterial and the suit brought by the society would not fail even if it were to be held that Panchaksharaiah was not the duly elected president of the society, seems to me without much force. Although, the society being a legal entity is entitled (to sue or be sued in its own name, still it could do so only through one of the persons empowered to represent it as per law. The argument whether the person through whom the plaintiff-society filed the suit is empowered to represent the society or not is an irrelevant and immaterial consideration and that the suit filed by the society in its name even though the person through whom the society has filed the suit is not empowered to represent the society is still valid has no legal foundation. The rulings in Satyavart Sidhantalankar's case Khiri Ram's case and Shanthi Sarup's case relied on by Sri Venkataranga Iyengar, in my opinion, do not support his contention.

35. The contention of Sri Venkataranga Iyengar that the defendant is estopped from contending that Panchaksharaiah was not duly elected President of the Society is both Panchaksharaiah and the defendant were appointed as President and Secretary of the plaintiff-society by the Executive Committee at one and the same meeting and that the defendant and recognised Panchaksharaiah as the President of the plaintiff-society while he was discharging the duties as Secretary of the society appears to me without any force. In the first place, there is neither pleading nor an issue in the case in respect of the plea of estoppel. Such a plea was not taken even during the course of the trial. The plea of estoppel appeared to have been taken only during the course of the argument before the Trial Court. The trial Court accepting the plea of estoppel urged on behalf of the plaintiff held that the defendant was estopped from contending that Panchaksharaiah was not the duly elected President. The reasoning of the Trial Court to hold that the defendant was estopped from contending that Panchaksharaiah was not the duly elected President of the society was, that both Panchaksharaiah as well as the defendant were appointed as the President and Secretary of the society at the

Executive Committee Meeting held on 2-1-1977 under the Chairmanship of the Chief Patron A.R. Krishnamurthy, that the defendant has acted as per the proceedings held on 2-1-1977 and accepted Panhaksharaiah as the President and himself as the Secretary of the society and that even subsequent thereto, the defendant has accepted Panhaksharaiah as the President of the society as could be seen from Ex. P.6 the invitation card and Ex.P.7 the notice issued by the defendant in his capacity as Secretary calling for a meeting of the Executive Committee to be held on 20-2-1977 and as such the defendant was estopped from contending that Panhaksharaiah was not the duly elected President of the society. The view taken by the Trial Court appears to me erroneous as it failed to notice that the appointment of Panhaksharaiah and the defendant as President and Secretary respectively of the society at the meeting held on 2-1-1977 was wholly illegal. That being the position, the defendant accepting the proceedings held on 2-1-1977 and acting as Secretary and recognising Panhaksharaiah as President in his capacity as the Secretary of the society which appointment itself is under the shade of illegality, the conduct of the defendant accepting Panhaksharaiah as the President would not estop the defendant from contending in a suit brought by the society against the defendant that the plaintiff could not bring the suit through Panhaksharaiah as President as he was not duly-elected President of the society and as such incompetent to represent the society. The provisions of Section 115 of the Evidence Act, in my opinion, would not be attracted to the facts of the case. The decisions relied upon by Sri Venkatarangalyengar in Panchayat Pandra Padu's case and Mula's case do not support the plea of estoppel urged by him on the facts of the case.

36. On a fair assessment of the material on record, I am inclined to hold that Panhaksharaiah not being the duly elected President of the society is not competent, to represent the society and the suit brought by the society through him as the President of the society is not maintainable. The findings of the Trial Court that Panhaksharaiah was the President of the plaintiff-society and the suit filed by the society through him is maintainable are erroneous and unsustainable.

POINT NO. 2:

37. It seems to me that no detailed discussion is necessary to answer this point. It is seen from the evidence produced by the plaintiff both oral and documentary that an emergency meeting of the Executive Committee of the plaintiff-society was called on 12-4-1977 at which S. R. Swamy, one of the Vice Presidents, H. R. Chandrasekharaiah, ex-President and the Member of the Managing Committee and the defendant were removed from their respective posts. The Executive Committee meeting on that day appeared to have been presided over by the Chief Patron Rahamathulla Khan. The question for consideration is whether the removal of the defendant by the Executive Committee at its meeting held on 12-4-1977 was legal and valid. I have already come to the conclusion on the assessment of the material on record that the Executive Committee headed by Panchaksharaiah as the President had no legal existence and as such it could not represent the plaintiff-society in any of its affairs. That being the position certainly such a committee shall have no power to remove the defendant from the office of the Secretary of the plaintiff-society. In that view, I must hold that the removal of the defendant from the office of the Secretary of the society is not legal and valid. However, this conclusion reached by me should not be understood as having held by me that the defendant's appointment as Secretary of the society is legal and valid. The defendant could not stand on a better position as the Secretary of the society than that of Panchaksharaiah as its President.

38. One other contention urged by Sri Venkataranga Iyengar was that since the defendant having not produced any evidence on his behalf and now trying to non-suit the plaintiff on the material produced by the plaintiff, he should not be permitted to contend in this appeal that the suit is not maintainable on the ground that Panchaksharaiah was not the duly elected President of the plaintiff-society. No ruling was cited in support of this proposition. The decision in Maddanappa -v.- Chandramma cited by him does not support this contention. Thus, I find no force in this submission.

39. Before parting with the appeal, I am constrained to notice as to how the plaintiff society has been allowed so long to carry on its functions under the provisions of the Act without constituting an Executive Committee and without holding any general body meeting in accordance with the rules and regulations of

the society by the Registrar under the Act.

40. Admittedly the society was registered on 19-6-1984. On the registration of the society, the Management of the Society was entrusted to the Executive Committee mentioned in the registered Memorandum of Association as required under Section 6(1)(c) of the Act. Under Section 11(2), the first Annual General Meeting of the society should have been held by the society within 18 months of its registration. Sub-section (1) of Section 11 provides that at the annual general meeting of the society, the report of the management of the society for the previous year together with an audit copy of the balance-sheet, income and expenditure account and the auditor's report shall be submitted for approval.

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41. Admittedly no first annual general meeting nor any other annual general meeting was held by the society till the date of the suit. As per the rules and regulations of the society, it is provided that the general body shall meet once a year, that the general body shall elect the members of the Executive Committee annually consisting of 17 members and the Executive Committee shall elect the office-bearers of the society as stated in rule 7 of the rules and regulations of the society. Since the plaintiff-Society has not held either the first annual general meeting or any other annual general meeting till the date of filing the suit, certainly the plaintiff-society could not have filed with the Registrar a list of the names' addresses and occupations of the members of the governing body entrusted with the management of the affairs of the society etc., as provided under Section 13 within four-teen days succeeding the day on which the annual general meeting of the society is to be held on all these ten long years. That would mean that the Registrar was kept in dark about the conduct and management of the affairs of the society of which he ought to have been kept informed by the society. Section 13, appears to me, has been placed on the statute with the sole object of keeping the activities of the societies under constant vigilance and check and control of the Registrar for its proper functioning as per the provisions of the Act and the Rules and Regulations of the society. I fail to understand as to how the Registrar has

allowed the plaintiff-society to flout the mandatory provisions of the Act and the rules and regulations of the society and to carry on the management of the affairs of the society by a committee unlawfully and illegally come into being. I hope now at least the Registrar will take appropriate steps to set right the affairs of the society by exercising his powers under Section 25 and other provisions of the Act.

42. In the result, for the reasons stated above, the appeal is allowed. The judgment and decree of the Trial Court in O.S. No. 2107/1980 dated 30-6-1982 are set aside and the suit is dismissed with costs of the defendant throughout. Consequently I.As.3 and 4 are also dismissed.

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