A H.A. MARTIN & OTHERS

v.

MOSES THAMBI PILLAI & OTHERS

(Civil Appeal No. 8458 of 2014)

B SEPTEMBER 04, 2014

[J. CHELAMESWAR AND A.K. SIKRI, JJ.]

Tamil Nadu Societies Registration Act, 1975 – s. 53 – Tamil Evangelical Lutheran Church (TELC) – Whether a C *Society registered under the Act in view of s. 53 – Held: TELC is not a Society governed by the provisions of the Act – Act is not applicable to TELC at all – Thus, the issue of exemption from the provisions of the Act did not arise – Section 53 declares that every Society registered under the 1860 Act shall* D *be deemed to be registered under the 1975 Act – Such construction is not called for in view of the scheme of the Act and more particularly scheme of s. 4 – s. 4(3) expressly excludes the operation of s. 4(1) and 4(2) thereby relieving both the classes of Societies-the Societies formed after* E *coming into the existence of the 1975 Act and the Societies which were in existence but not registered under any law prior to the commencement of the 1975 Act covered by Section 4(1) and 4(2) which have for their object the promotion of religion – Such an interpretation which would be in violation* F *of Art. 14 is required to be avoided – There can neither be any reasonable basis for such classification nor any purpose to be achieved by such classification – Neither of the parties nor the administration or the judiciary (Bar & Bench) had the time nor inclination to examine the scheme of the 1975 Act,* G *which resulted in wastage of time of the judiciary as well as the administration – Societies Requistration Act, 1860.*

The question which arose for consideration before this Court was whether a Society such as Tamil

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Evangelical Lutheran Church is required to be treated as Society registered under the Tamil Nadu Societies Registration Act, 1975 in view of the operation of Section 53 of the Act. A

Allowing the appeal, the Court B

HELD: 1.1. Various provisions of the Tamil Nadu Societies Registration Act, 1975 seek to regulate the activities of the Societies registered under the Act. The expression "registered society" by definition under Section 2(h) means a Society either registered or deemed C to be registered under the Act. Section 3 of the Act specifies various classes of Societies which could be registered under the Act i.e. Societies which have for their object the promotion of education, literature, science, religion, charity, social reform, art, crafts etc. Section 4(1) D mandates that Societies which came into existence after the commencement of the Act to be compulsorily registered. Section 4(2) mandates the registration of some Societies which were in existence as on the date of existence of the Act. It can be seen from the language of E Section 4(2) that only those existing Societies which were not registered either under the 1860 Act or under any other law which was in force in the State of Tamil Nadu prior to the 1975 Act to be compulsorily registered. Such obligation to compulsorily register (Societies) F arising either under Section 4(1) or Section 4(2) does not extend to Societies whose object is the promotion of religion. Because under Section 4(3), Societies established with the object of promoting either religion or athletics or sports, are expressly excluded from the G obligations even if they answer the description of a Society referred to, either under Section 4(1) or 4(2). [Para 21] [542-C-G]

1.2. No doubt, Section 53 declares that every Society registered under the 1860 Act shall be deemed to be H

A registered under the 1975 Act. Such a construction is not called for in view of the scheme of the Act and more particularly scheme of Section 4 of the Act. Section 4(3) expressly excludes the operation of Section 4(1) and 4(2) thereby relieving both the classes of Societies-the B Societies formed after coming into the existence of the 1975 Act and the Societies which were in existence but not registered under any law prior to the commencement of the 1975 Act - covered by Section 4(1) and 4(2) which have for their object the promotion of religion. The C expression "Societies" (registered under the 1860 Act) occurring in Section 53 must be understood to mean only those Societies which do not fall under the exemption granted under Section 4(3) of the Act. Otherwise the operation of the Act would result in such an absurd situation where Societies coming into existence after the D commencement of the Act or unregistered Societies existing on the date of the commencement of the Act are not obliged to register and comply with the discipline of the Act but the existing registered Societies on the date of commencement of the Act are obliged to comply with E the regulatory conditions of the Act, notwithstanding the fact that the activity of all the abovementioned three classes of the Societies is to promote religion. Unless the expression "Societies" occurring under Section 53 of the Act is understood to mean Societies other than those F whose object is promotion of religion, athletics or sports, the Act would result in creation of two classes of Societies having the same object, but one class is subjected to the discipline of the Act and the other class exempted from it - all other things being equal except the G accident of an existing Society on the date of the Act also happens to be a Society registered under the 1860 Act. Such an interpretation which would be in violation of Article 14 is certainly required to be avoided. There can neither be any reasonable basis for such classification

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nor any purpose to be achieved by such classification. Therefore, the Act is not applicable to TELC at all. [Paras 22, 23] [542-H; 543-B-H; 544-A]

1.3. The entire litigation between the parties is without any basis in law. It resulted in wastage of time of the judiciary as well as the administration. Apparently neither of the parties nor the administration had the time to examine or inclination to examine the scheme of the 1975 Act. Even the judiciary (Bar & Bench) did not do any better. It is really not necessary to examine various submissions made in this appeal by both the parties as all the submissions proceeded on the assumption that TELC is a Society governed by the provisions of the Act. The judgment under appeal is set aside. The second respondent, if he still has any legally tenable grievance de hors the 1975 Act, is free to pursue such remedy available to him under the law. [Paras 24, 25, 26] [544-B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8458 of 2014.

From the Judgment and Order 28.02.2011 of the High Court of Madras in Writ Appeal No. 481/2007.

V. Giri, R. Anand Padmanabhan, Romil Pathak, C. Lawrence, Shashi Bhushan Kumar for the Appellants.

T. Archana, Abhishek Krishna, S.N. Bhat for the Respondents.

The Judgment of the Court was delivered by

CHELAMESWAR, J. 1. Leave granted.

2. Aggrieved by the judgment dated 28.2.2011 of the Division Bench of the High Court in Writ Appeal No.481 of 2011 the unsuccessful appellants therein preferred the instant appeal.

A 3. The appellants are three in number. The first appellant Rt. Rev. Dr. H.A. Martin is the present Bishop of the Tamil Evangelical Lutheran Church (for short "TELC"). The second appellant is shown to be the Treasure. The details of the person holding such an office are not mentioned anywhere. The third B appellant is the TELC, a body registered under the Societies Registration Act, 1860 which is not capable either of suing or being sued[1]. The 'appellants' cannot be blamed. The first respondent herein was the petitioner in the writ petition. **He chose his respondents who became the appellants** C **herein.** In an era of public interest litigation, rules of procedure are the first casualty.

4. The facts giving rise to this litigation are as follows:

A Society came to be registered in the year 1919 called D Tamil Evangelical Lutheran Church (TELC). The objects of the Society are diffusion of Christian truth among the Tamil speaking people, various kinds of "moral and social activities, such as, teaching and healing through pastoral evangelistic, educational works, medical work for the amelioration of the E religious moral and social conditions of all classes of people."

5. In the year 1975, the State of Tamil Nadu enacted the Tamil Nadu Societies Registration Act, 1975 (27 of 1975) (for short "the Act"). Under Section 53 of the Act, every Society registered under the 1860 Act is deemed to be registered F under the Act. Section 53 reads as under:

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1. Section 6. Suits by and against societies.- Every society registered under this Act may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and G regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim, or demand against the society, to sue the President or Chairman, or Principal Secretary or the trustees thereof, if on application the governing body some H other officer or person be not nominated to be the defendant.

"53. Application of Act to existing registered societies.— Every society registered under the Societies Registration Act, 1860 (Central Act XXI of 1860), or under any law corresponding to this Act in force in the transferred territory immediately before the date of the commencement of this Act including the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Travancore-Cochin Act XII of 1955), **shall be deemed to be registered under this Act**, and the bye-laws of such society, shall, in so far as they are not inconsistent with any provision of this Act, continue in force until altered or rescinded."

(emphasis supplied)

6. It appears that an application was made by the earlier Bishop and the President of the TELC to the Government to exempt the TELC from all the provisions of the Act retrospectively from 22.4.1978. (Unfortunately, a copy of the representation is not made available nor any details of the same are available on record). The Government declined to grant such blanket exemption and advised the Society to be more specific about the provisions from the operation of which the Society seeks exemption.

7. Pursuant to the said advice, the Secretary of the Society made further representation dated 25.7.1981 seeking exemption from the provisions of Sections 14, 15(3)(4)(5), 25(3), 26(1)(4), 28(1)(2), 29(3) and 36 of the Act.

8. By G.O. Ms. No.1708 dated 18.12.1981, the Government of Tamil Nadu exempted the Society retrospectively from 22.4.1978 from the operation of Sections 15(4), 25(3) and 29(3) of the Act, the relevant portion of which is extracted hereunder:

"In exercise of powers conferred by Section 54 of the Tamilnadu Societies Registration Act, 1975 (Tamil Nadu

A Act 27 of 1975) the Governor of Tamil Nadu hereby exempts with retrospective effect from 22.4.1978:

1. The President or Bishop of the Tamil Evangelical Lutheran Church alone from the provision of sub-section (4) of Section 15 of the Tamilnadu Societies Registration Act 1975 regarding the period of his term that it should not exceed more than three years; this exemption will not apply to the other members of the church council.

2. Also exempts the Church from the provision of sub-section (3) of section 25 of the Tamilnadu Societies Registration Act 1975 so as **to ratify the action of the church in having paid the salary from out of its fund to the President or full time workers of the Church** who come under the classification of "Officers" within the meaning of clause (g) of section 2 of the said Act.

3. And also exempts the church from the provision of sub-section (3) of section 29 of the Tamilnadu Societies Registration Act 1975 subject to the condition that necessary provisions are embodied in the bye-laws of the society for the supply of copies of minutes of the society's meeting and Financial statements to the members at specified intervals, free of charge."

(emphasis supplied)

9. Not satisfied with the said order, the Secretary of the TELC filed the Writ Petition No.523 of 1982 seeking declaration that the Act is void and inapplicable to the TELC and its constituent bodies. The said writ petition was dismissed by an order dated 20.2.1990, the operative portion of which reads as under:

H "When the writ petition came up for final disposal, learned

Government Pleader would submit that though a counter affidavit had been filed contending that the aforesaid provision of the Act are valid and are not violative of constitutional provisions yet the Government would consider any representation made by the petitioner for grant of exemption in the light of the decided cases. Having regard to this submission of the learned Government Pleader while dismissing the writ petition as premature and not on merits, the petitioner is given a liberty to file a report before the Government on or before 31.12.1990, pleading for grant of exemption from such provisions of the Societies Registration Act as the petitioner may desire and on such representation being made, orders thereon would be passed by the first respondent on or before 30th April, 1991.

It is of course necessary to state that the Government itself had granted exemption in favour of the minority institutions from the operation of certain provisions of the Act like sections 15, 20 and 29. The petitioner seeks relief in respect of the remaining provisions of the Act which are mentioned supra."

10. In the meanwhile the predecessor-in-interest of the first appellant herein, one Rt. Rev. Aruldoss, was elected as Bishop in terms of the rules of the Society and by virtue of the rules of the Society he also became the President of the Society (TELC). However, certain differences of opinion arose between Rt. Rev. Aruldoss and some of the members of the Society including the first respondent herein. The first respondent herein and others filed complaints dated 3.8.2001 and 28.6.2002 with the Inspector General of Registration praying for cancellation of the G.O. Ms. No.1708 dated 18.12.1981 etc. The substance of the complaint was that the President and other office bearers of the Society were continuously drawing salaries from the Society's funds. Such payments are prohibited under the Act and the G.O. Ms. No.1708 dated 18.12.1981 only ratified the

A action of the Society in having paid some amounts till the date of the order but there was no exemption enabling the Society to make such payments subsequent to the date of the said Government order. The Inspector General of Registration passed an order dated 23.7.2002.

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11. It is difficult to state with precision as to what are the contents of the said order. But, it appears that the Inspector General of Registration agreed with the complaint.

12. The first respondent filed Writ Petition No.32494 of C 2002 seeking a direction to the Government to take appropriate decision on his representation dated 3.8.2001 seeking cancellation of the abovementioned G.O. The said writ petition was disposed of by an order dated 7.8.2002 directing the Government to consider the petitioner's representation and D pass an appropriate order on merits in accordance with law.

13. Pursuant to the said direction, the Government issued proceedings by Letter No.(Ms) No.128 dated 8.11.2002, the relevant portion of which reads as follows:

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"(iii) Exemption from Section 25(3) of the Act was granted for ratifying the action of the Church in having paid the salary from out of its funds to the President or full time worker of the Church. The Government only ratified the action of the Society in having paid salary from 29.4.1978 F to the date on which Government order was issued and no payment has to be made thereafter since the society was not exempted from the above provision for the future."

14. Thereafter, another application came to be made by G the Bishop on 25.11.2002 seeking complete exemption from the operation of Section 25(3) of the Act praying as follows:

"(1) to ratify the salary paid to its workers from the date on which the Government order was passed to this date; and

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(2) to modify the exemption so granted by removing the words:

"... or full time workers of the Church who come under the classification of Officers within the meaning of clauses (g) of Section 2 of the Act" and substituting with the following words:

"... or any other officer of the Church Society by way of honorarium for any service rendered by him to the Church Society in future also as per the main provisions of the Tamilnadu Registration Act of 1975, Section 25(3)"."

15. The first respondent filed another Writ Petition No.45886 of 2002 praying that (i) the proceedings of the government dated 8.11.2002 referred to above be implemented, (ii) for a direction to forbear the Bishop from functioning as the President of the Society (TELC), (iii) a direction for the recovery of all the amounts that have been paid to the President and the officers of the Society (TELC) from out of the funds of the Society from 19.12.1981. The writ petition was allowed by order dated 11.12.2006. Aggrieved by the same, the Writ Appeal No.481 of 2007 was filed by the appellants herein unsuccessfully.

16. Before we proceed to examine the correctness of the impugned judgment, we deem appropriate to examine the scheme of the Act insofar as it is relevant for the present purpose.

17. Chapter II of the Act deals with the constitution and registration of the Societies. Section 3[2] stipulates that any

2. Section 3 - Societies which may be registered - (1) Subject to the provisions of sub-section (2), any society which has for its object the promotion of education, literature, science, religion, charity, social reform, art, crafts, cottage industries, athletics, sports (including indoor games), recreation, public health, social service, cultural activities, the diffusion of useful knowledge or such other useful object with respect to which the State Legislature has power to make laws for the State, which may be prescribed, may be registered under this Act.

A Society which has for its object the promotion of education, literature, science, religion, charity, social reform, art, crafts etc. may be registered under the Act.

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(2) Notwithstanding anything contained in sub-section (1) no association which has for its object the improvement of the economic condition of
B workmen, no club where games of chance providing prizes for winners are played and no society which does not consist of at least seven persons shall be registered under this Act.

3. Section 4 - Compulsory registration of certain societies - (1) Subject to the provisions of sub-sections (3) and (4), every society formed on or after the date of the commencement of this Act, which has for its object any
C object mentioned in, or prescribed under section 3, and

(a) which consists of not less than twenty members, or

(b) whose annual gross income or expenditure in any financial year after the date of the commencement of this Act, is not less than ten thousand rupees,

shall be registered under this Act within such period as may be prescribed.
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(2) Every society in existence on the date of commencement of this Act, which has for its object any object mentioned in, or prescribed under section 3 and which has not been registered under the Societies Registration Act, 1860 (Central Act XXI of 1860), or under any law corresponding to this Act in force in the transferred territory immediately before the date of the commencement of this Act including the Travancore-
E Cochin Literary, Scientific and Charitable Socieities Registration Act, 1955 (Travancore-Cochin Act XII of 1955) and

(i) which consists of not less than twenty members; or

(ii) whose annual gross income or expenditure in any financial year after the date of the commencement of this Act, is not less than ten thousand rupees; or

F (iii) whose gross income or expenditure in any such period preceding the date of the commencement of this Act, was not less than such amount, as may be prescribed, the period so prescribed, bearing to twelve months the same proportion as the amount so prescribed bears to ten thousand rupees;

shall be registered under this Act within such period as may be prescribed.
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(3) Nothing in this section shall apply to any society which has for its object the promotion of religion, atheletics or sports (including indoor games).

Nothing contained in this Act shall be deemed to require the registration under this Act of any society formed, established, registered or incorporated under any other law.

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18. Section 4[3] declares that every Society formed on or after the date of the commencement of the Act, consisting not less than twenty members; or whose annual gross income or expenditure in any financial year after the date of the commencement of the Act is not less than ten thousand rupees, shall be registered under the Act. Section 4(2) stipulates that every existing Society, NOT registered under the 1860 Act with any one of the objects specified in Section 3, and which consists of not less than twenty members or whose annual income or expenditure in any financial year is not less than ten thousand rupees etc. shall be registered under the Act. However, sub-section (3) of Section 4 declares that "nothing in this section shall apply to any Society which has for its object the promotion of religion, athletics or sports including indoor games".

19. Chapter III of the Act deals with the management and administration of the registered Society. Section 15(1)[4] mandates that every registered Society shall have a committee of not less than three members to manage its affairs. Section 15(4)[5] limits the tenure of such members of the Committee for a period of three years from the date of their appointment.

20. Section 25(1)[6] of the Act recognizes the power of the Society to spend such amount out of its funds as it thinks fit for the purposes authorised by the Act or the bye-laws of the Society. Section 25(2) prescribes some restrictions on the expenditure by the Society, the details of which are not

4. Section 15. Committee - (1) Every registered society shall have a committee of not less than three members to manage its affairs. Every registered society shall file with the Registrar a copy of the register maintained by it under sub-section (1) of Section 14 and from time to time, file with the Registrar notice of any change among the members of the committee.
5. Section 15(4) - The term of office of the members of the committee shall not exceed three years from the date of their appointment.
6. Section 25 - Application of funds of a registered society.-(1) A registered society shall have power to spend out of its funds such sums as it thinks fit on purposes authorised by this Act or its bye-laws.

A necessary for our purpose. Sub-section (3) which is the relevant provision for the decision in this case reads as follows:

> "Save as provided in sub-section (2), no payment shall be made out of the funds of a registered society to the president or any other officer of the society by way of honorarium for any service rendered by him to the society."

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21. Various provisions of the Act seek to regulate the activities of the Societies registered under the Act. The expression "registered society" by definition under Section 2(h) C means a Society either registered or deemed to be registered under the Act. Section 3 of the Act specifies various classes of Societies which could be registered under the Act i.e. Societies which have for their object the promotion of education, literature, science, religion, charity, social reform, art, D crafts etc. Section 4(1) mandates that Societies which came into existence after the commencement of the Act to be compulsorily registered. Section 4(2) mandates the registration of some Societies which were in existence as on the date of existence of the Act. It can be seen from the language of E Section 4(2) that only those existing Societies which **were not registered** either under the 1860 Act or under any other law which was in force in the State of Tamil Nadu prior to the 1975 Act to be compulsorily registered. Such obligation to compulsorily register (Societies) arising either under Section F 4(1) or Section 4(2) does not extend to Societies whose object is the promotion of religion. Because under Section 4(3), Societies established with the object of promoting either religion or atheletics or sports, are expressly excluded from the obligations even if they answer the description of a Society referred to, either under Section 4(1) or 4(2).

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22. At this stage, we are required to examine the effect of Section 53. No doubt, Section 53 declares that every Society registered under the 1860 Act shall be deemed to be registered under the 1975 Act. Question is – whether a Society such as

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TELC is required to be treated as Society registered under the Act (1975 Act) in view of the operation of Section 53? A

23. We are of the opinion that such a construction is not called for in view of the scheme of the Act and more particularly scheme of Section 4 of the Act. We have already noticed that Section 4(3) expressly excludes the operation of Section 4(1) and 4(2) thereby relieving both the classes of Societies - the Societies formed after coming into the existence of the 1975 Act and the Societies which were in existence but not registered under any law prior to the commencement of the 1975 Act - covered by Section 4(1) and 4(2) which have for their object the promotion of religion. In our opinion, the expression "Societies" (registered under the 1860 Act) occurring in Section 53 must be understood to mean only those Societies which do not fall under the exemption granted under Section 4(3) of the Act. Otherwise the operation of the Act would result in such an absurd situation where Societies coming into existence after the commencement of the Act or unregistered Societies existing on the date of the commencement of the Act are not obliged to register and comply with the discipline of the Act but the existing registered Societies on the date of commencement of the Act are obliged to comply with the regulatory conditions of the Act, notwithstanding the fact that the activity of all the abovementioned three classes of the Societies is to promote religion. Unless the expression "Societies" occurring under Section 53 of the Act is understood to mean Societies other than those whose object is promotion of religion, atheletics or sports, the Act would result in creation of two classes of Societies having the same object, but one class is subjected to the discipline of the Act and the other class exempted from it - all other things being equal except the accident of an existing Society on the date of the Act also happens to be a Society registered under the 1860 Act. Such an interpretation which would be in violation of Article 14 is certainly required to be avoided. There can neither be any reasonable basis for such B C D E F G H

A classification nor any purpose to be achieved by such classification. Therefore, the Act is not applicable to TELC at all.

24. Looked at in the abovementioned background of the B statutory scheme, we are of the opinion that the entire litigation between the parties herein is without any basis in law. It resulted in wastage of time of the judiciary as well as the administration. Apparently neither of the parties nor the administration had the time to examine or inclination to examine the scheme of the C 1975 Act. We are sorry to say, even the judiciary (Bar & Bench) did not do any better.

25. In view of our above conclusion, it is really not necessary for us to examine various submissions made in this appeal by both the parties as all the submissions proceeded D on the assumption that TELC is a Society governed by the provisions of the Act.

26. For the above reasons, the appeal is allowed. The judgment under appeal is set- aside. The second respondent, E if he still has any legally tenable grievance *de hors* the 1975 Act, is free to pursue such remedy available to him under the law.

27. In the facts and circumstances of the case, there will be no order as to costs.

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Nidhi Jain Appeal allowed.