

**In the National Company Law Tribunal
Single Bench, Chennai**

**TCP NO. 222/2016
In
CP/3/2014**

**Unser Sections 397, 398 and 402 of the Companies Act, 1956
R/w sections 56, 57, 58 & 59 of the Companies Act, 2013**

In the mater of

M/s. S. Ramesh Applicant/Petitioner
Vs
M/s. The South Travancore Hindu College Association Respondents

Parties Present:

(1) Ms. R. Ovia, PCS	For Applicant/Petitioner
(2) Mr. S. Senthil, Mr. M. Vijayamehanath Mr. T. Wins	For Counsel for Respondent 1 & 3

Order Delivered on: 21.12.2017

Per: K. Anantha Padmanabha Swamy, Member (Judicial)

ORDER


Under consideration is a petition filed by Shri. S. Ramesh, (the Petitioner) under section 59 of the Companies Act, 2013 (the Act, 2013) seeking an order directing M/s. The South Travancore Hindu College Association, (the Company)

to rectify the Register of Members by deleting the name of the R3 and in the place of his name to restore the name of the petitioner.

2. The brief averments made in the petition are:

- The father of the petitioner had purchased 1 (One) share of A Class of the Company from one Mrs. Thanammal and it was transferred to his name and a share certificate bearing No. 70D dated 03.03.1983 was issued to him.
- On the demise of the father of petitioner, the said share was transferred to his mother on 04.09.1989 and due to a family partition the said share was transferred to the petitioner on 29.11.1989. Thus the petitioner became the shareholder of the company.
- Since the share certificate was mutilated, the petitioner had applied for a duplicate share certificate and a duplicate share certificate dated 07.12.1991 was issued to him by the Company. During the year 2001, the petitioner had lost the duplicate share certificate and on his application a fresh duplicate share certificate was issued to him on 26.07.2001.
- The company is used to issue notice for the Annual General Meeting (AGM) and the petitioner used to attend such meetings. On 17.09.2003, an AGM was held, but, no notice was issued by the Company to the petitioner. When the same was enquired by the petitioner, the Company had informed him that the A class share has been transferred to R3. Since, the petitioner has

not transferred his share, immediately he has filed police complaint against R3, however, the police did not take any action saying that the case is of a civil nature.

- Subsequently, the petitioner filed a suit in OS No. 585/2003 on 26.09.2003 before the Court of the Principal District Munsiff, Nagercoil and the said court has passed an interim order on 26.09.2003, however, the same was vacated on the application filed by the Respondents. The said court has finally dismissed the said suit on the ground of jurisdiction. Aggrieved by the order made by the District Munsiff Court, the petitioner filed an appeal before the Principal Subordinate Judge, Nagercoil and the said appeal was partly allowed and partly dismissed and a direction was given to the petitioner to approach the Company Law Board (CLB). Hence this petition was filed before the erstwhile CLB.
 - The petitioner never transferred his shares to the R3 and the name of the petitioner was omitted from the Register of Members of the Company without showing sufficient cause and the acts of the deletion of the name of the petitioner was made on forged documents with active collusion of R3. Since the transfer of shares was effected on the basis of forged documents, the same is null and void.
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The learned PCS while reiterating the above averments, prayed that the Company be directed to rectify its Register of Members by deleting the name of the R3 and in the place of his name to restore the name of the petitioner.

3. The R1 and R2 have filed counter wherein inter-alia raised preliminary objections and the averments are:

- The petitioner is aware that the R3 has transferred his shares to one Mrs. S. M. Vijila in the year 2006 itself and it is evident from the report of cross examination by the petitioner Counsel in OS No. 585 of 2003. The petitioner has suppressed this fact from the Tribunal and he has also not made the said Mrs. S. M. Vijila as a party to the present proceedings. Therefore, the petition is to be dismissed for non-joinder of parties.
- The Company was registered in the year 1951 and it is an educational institution functioning at Nagercoil. It is a non-profitable organization and the shareholders are not entitled for any dividend or interest for the shares they hold.
- The father of the petitioner had purchased A class share of Rs.5000/- (distinctive No. 108) from one Thanammal and it was transferred to his name on 03.03.1983 vide Folio No. 50 (Share Certificate No. 70 D/20.01.1983). Subsequently the same was transferred to his wife on his

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demise and again it was transferred to the petitioner on 29.11.1989. (Folio No. 67).

- The petitioner has applied for a duplicate share certificate and the same was issued on 07.12.1991 (Duplicate share Certificate No. 80) and again he has applied for another duplicate share certificate and the same was issued to him on 26.07.2001 (duplicate share certificate No. 95). Thus the petitioner came to be in possession with two duplicate certificates for the same set of shares.
- The petitioner transferred his shares to the R3 on the basis of the 1st Duplicate Share Certificate (Certificate No. 80) for valuable consideration. Since there were two duplicate certificates, the Company insisted for a written request from the Petitioner and the petitioner addressed a letter dated 06.09.2003 to the Company wherein he stated that he had sold the shares to R3 and he has no objection to transfer the same to R3. The petitioner signed the transfer deed on 06.09.2003 in which his signature is attested by a Notary Public. Based on the said document the R1 and R2 transferred the A class share to the R3 in the board meeting held on 17.09.2003.
- Subsequently petitioner filed a complaint before Police Authorities against R3 and the Notary Public and also filed a suit in OS No. 585 of 2003 before District Munsiff Court, Nagercoil and the said suit was dismissed for default

on 03.08.2006. In these circumstances, the R3 sold the said A class share to one Mrs. S. M. Vijila and submitted a letter dated 20.09.2006 informing the no objection for the transfer to Mrs. S.M. Vijila. The R3 also submitted the share transfer form duly attested by a notary public. Therefore, the Company transferred the shares to Mrs. S. M. Vijila on 26.09.2006 and she owns the shares presently.

- After the subsequent transfer to Mrs. S. M. Vijila, the OS No. 585 of 2003 was restored and finally the said suit was dismissed on 10.12.2011 on merits. The petitioner preferred an appeal before the First Class Additional Subordinate Judge, Nagercoil and vide order dated 11.09.2013, the said appeal was partly allowed and partly dismissed.
- The petitioner applied for the second duplicate share certificate and sold the shares on the basis of the earlier duplicate share certificate issued on 07.12.1991 without disclosing the existence of the second duplicate share certificate to R3. The petitioner played fraud against the Respondents with ulterior motive and violated the principles of law and justice and has not approached this Tribunal with clean hands.

The learned Counsel for the R1 and R2 while reiterating the above averments prayed for the dismissal of the petition.

4. The petitioner has filed a rejoinder and inter-alia made the following averment and that are:

- The Company at the request of the petitioner issued the first duplicate share certificate on 07.12.1991 (Certificate No. 80) and again another duplicate share certificate on 26.07.2001 (Certificate No. 95). The second share certificate was issued on 26.07.2001, the erstwhile duplicate share certificate issued on 07.12.1991 has no value or not on record of the Company. The Notary Public who has attested the signature of the petitioner was banned from doing attestations as Notary and it is well known fact. These shares are only issued on a privilege basis and never upon paying any consideration. The Company had also transferred the shares to Smt. S. M. Vijila, who is a close relative of the R3 on the basis of a letter dated 20.09.2006 in collusion with the R3 to cover up the whole issue and there is no iota of honesty in the entire transaction. Since no outsider would take a risk of being a party to a fraudulent transaction, S. M. Vijila who is close relative of the R3 has been purposefully made a party to the transaction. The learned Counsel for the petitioner relied on the following judgment in support of his submissions:
- **Shoes Specialities Limited and another Vs Tracstar Investment and others – (1197 88 Comp Cas 471 Mad)** – to show that it is the discretion of the Court to refer the matter to the Civil Court or not.

5. The R1 and R2 filed sur-rejoinder and inter-alia made the following averments;

- The petitioner has made contrary statement with regard to obtaining duplicate share certificate in the Police Complaint and in the plaint in OS No. 585 of 2003. There was no stay in the Suit no. OS 585 of 2003 and it was dismissed for default on 03.08.2006. Thereafter the R3 has sold the said shares to one Mrs. S. M. Vijila and in the cross examination in the Civil Suit the petitioner admitted that he came to know that the shares were transferred to Mrs. S. M. Vijila.

The learned Counsel for the R1 and R2 while making the above submissions prayed for the dismissal of the petition.

6. The R3 has filed a memo dated 25th October, 2017 adopting the written arguments of the R1 and R2.

7. Heard both sides and perused the pleading and documents.

8. After considering the above, the question arises before me is whether the petitioner has made out any case for ordering rectification of the Register of Members of the Company.

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9. The contention of the petitioner is that he never transferred the shares to the R3 whereas the contention of the R1 and R2 is that the petitioner has transferred his shares vide the transfer deed signed on 06.09.2003. The R1 and R2 has also contended that the R3 issued a letter dated 06.09.2003 requesting the Company to transfer the said share in his name and the petitioner has also issued a NOC vide his letter dated 06.09.2003. It is on record that the Company has stated that it has insisted for such NOC from the petitioner as there were two duplicate share certificates and the petitioner has issued the said letter dated 06.09.2003 on such insistence. It is pertinent to note that the submission of letter for transfer by R3 and NOC issued by the petitioner both are dated 06.09.2013. Generally it is a practice that for transfer of any shares to others one has to submit transfer deed to the Company, in turn the Company will transfer the shares after due verification and satisfaction of the claim. In the present case, the Company has stated that it has insisted for a NOC from the petitioner and on 06.09.2003, the petitioner has submitted such letter to the Company. The Company has not produced any such letter seeking a NOC from the petitioner and it does not show any bonafide act on the part of the Company. Further, the Company has issued the first duplicate share certificate on 07.12.1991 (certificate No. 80) and it is recorded on the face of the certificate that "Duplicate Share Certificate of Certificate No. 70 D/20.01.1983" (Page 1 of the typeset of documents of R1 and R2) and the second duplicate share

certificate was issued on 26.07.2001 (Certificate No. 95) and it is recorded on the face of the certificate that "Duplicate Share Certificate of Certificate No. 70, 20.01.1983" (Page 4 of the type set of documents of R1 and R2). It is well within the knowledge of the Company that it has issued a duplicate share certificate in lieu of the duplicate share certificate issued to the petitioner on 07.12.1991. It is well settled procedure being adopted in every company that once a duplicate share certificate is issued for a earlier share certificate, it is deemed that the earlier certificate is cancelled, even if the certificate is presented to the Company for transfer, the transfer will not be entertained. This being the situation, the Company ought to have rejected outright the share transfer deed submitted along with the duplicate share certificate issued on 07.12.1991, but insisted for the NOC from the petitioner which lacks bonafide. It is also on record that the R1 and R2 have stated that the OS No. 585 of 2003 was dismissed for default on 03.08.2006 and in these circumstances the R3 has transferred the impugned shares to one Mrs. S. M. Vijila. The Company knowing fully well that the original transfer of shares made to R3 itself is under dispute, ought to have played a neutral roll, whereas it has further transferred the shares to the said S. M. Vijila on 20.09.2006 in a shorter period, immediately in the next month. The Company also failed to file the share transfer deed signed by R3 transferring the shares in favour of Mrs. S. M. Vijila. It is also the contention of the R1 and R2 that the Company is a non-profitable organization

and the shareholders are not entitled to any dividend or interest on the shares. According to the petitioner, it is privilege of the shareholders to hold the shares in the Company. The R1 and R2 has stated that the R3 purchased the said share for Rs. 75000/- and the R3 has stated that it has been paid in cash. The R3 being a contractor by profession must be known that according to Income Tax Act, no cash payment should be made more than Rs. 20,000/- whereas he has stated that he has paid Rs. 75,000/- by cash. Atleast the R3 ought to have produced a stamped receipt duly signed by the petitioner for having received such a huge amount, whereas he has failed to do so which also lacks bonafide. All the above actions of the R1 and R2 would prove that the share of the petitioner has been transferred without his concurrence and the name of the petitioner has been deleted from the Register of Members without sufficient cause. Since, the transfer to R3 has been made by the Company knowing fully well that one more duplicate certificate is in existence and the transfer was made on the basis of the earlier duplicate share certificate, this Bench has no hesitation to declare that the petitioner has made out a case for ordering the rectification of Register of Members and that the transfer was made on forged documents and it is null and void. Since the first transfer to R3 is made on the forged documents, the question of non-joinder of party will not arise, therefore the preliminary objections of the R1 and R2 in this connection should fail. Further, the R3 ought to have contested the matter independently by filing the

proof of payment made to the petitioner, but he has adopted the written statement of the R1 and R2 which shows the collusion between the R1, R2 and R3. If the transfer from R3 to Smt. S.M. Vijila is genuine, she should have approached this Tribunal suo-moto in order to protect her interest in the shares, but she also failed to do so. In view of my above observations, I am inclined to allow the petition and therefore, direct the Company to rectify the Register of Members by deleting the name of Mrs. S. M. Vijila and restore the name of the petitioner in that place within 30 days from the date of the receipt of this order. No orders as to costs.


K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

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