

# Thyagaraja vs The Church Of South India Trust ... on 16 February, 2023

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI

(APPELLATE JURISDICTION)

TA No.15/2021 (Company Appeal (AT) No.235 of 2020/TR)

(Under Section 421 of the Companies Act, 2013)

(Arising out of the 'Impugned Order' dated 20.01.2020 in

CA/171/2019 in CP/02/2016

passed by the National Company Law Tribunal, Division Bench,  
Chennai Bench)

In the matter of:

Thyagaraja

144, Shanmugam Street

Mylapore

Chennai - 600 004

Presently at:

Shimoga,

Karnataka State

v.

..... Appellant

1. The Church of South India Trust Association

No. 5, Whited Road,

Royapettah

Chennai - 600 014.

..... Respondent No. 1

2. Vimal Sukumar

H.No.10-3-66-1,

Teachers Colony East

Marredpally,

Secunderabad - 500026

Andhra Pradesh

..... Respondent No. 2

3. Abraham Bennet

Pallivilla Veedu,

Gandhipuram Road,

Seekariyam PO,

Trivandrum - 695017

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..... Respondent No. 3

4. Mohanraj Arumainayagam

Polepettai West

Kurinchi Nagar 5th Street,

Tuticorin - 628001

Tamil Nadu

..... Respondent No. 4

5. Dyvasirvadam Govada  
Bishops House Street  
Andrews Church,  
Machilipatnam - 521002  
Andhra Pradesh

..... Respondent No. 5

6. Udayaraj Kaunds  
No.1101, Serenity Apartments,  
Opp. Bejai Church Hall,  
Bejai Church Road,  
Mangalore - 575004,  
Karnataka

..... Respondent No. 6

7. Robert Bruce Challappan  
5-129, STA Cottage, Saralvilai  
Kaviyaloor, Valvachagostom  
Kattathura P0  
Kanyakumari - 629153  
Tamil Nadu

..... Respondent No. 7

8. Thomas Oommen Kanjirappally  
Kanjirappally House,  
Kunthirickal P0  
Thalavady,  
Alappuzha - 689572  
Kerala

..... Respondent No. 8

9. Daniel Rathnakara Sadananda  
16-12-688,  
Kaces Campus Balmatta,  
Mangalore - 575 001,  
Karnataka

..... Respondent No. 9

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10. Samuel Sudhir Govada  
Door No. 40-5-19/4, Flat No. SF-2,  
Geethanjali Apartments,  
Moghalrajpuram,  
Krishna District - 520010  
Andhra Pradesh

..... Respondent No. 10

11. Arthur Sadhanandham  
C-Quarters, SLRTC Campus  
Karigiri Hospital,  
Katpadi Taluk  
Vellore District - 632106  
Tamil Nadu

..... Respondent No. 11

12. John S. Dorai

144, Shanmugam Street  
Mylapore  
Chennai - 600004

..... Respondent No. 12

Present:

For Appellant

: Dr. S.R. Kalyani, Advocate.  
For Mr. Sriram Parakat,  
Mr. Mukund P,  
Mr. Unny Sreentath S,  
Mr. Vishnu Sankar and  
Ms. T. Hemantha Alva, Advocates.

For Respondent Nos. 1 to 5  
and 7 to 11

: Mr. V. Prakash, Senior Advocate  
For Mr. Adrian D. Rozario, Advocate.

#### JUDGMENT

(Virtual Mode) [Per; Ms. Shreesha Merla, Member (Technical)]:

1. Aggrieved by 'Impugned Order' dated 20.01.2020 passed by the National Company Law Tribunal (NCLT, Division Bench, Chennai) in CA171/2019 in C.P.02/2016, the Appellant/Mr. Thyagaraja preferred this TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) Appeal, challenging the dismissal of the 'Company Petition' made by the NCLT.

2. C.P.02/2016 was filed under Section 241 of the Companies Act, 2013 against Church of South India Trust Association ('CSITA') on ground of 'Oppression and Mismanagement' of the affairs of CSITA. It is averred that CSITA was incorporated on 20.06.1947 as a 'Charitable Trust' for the purpose of managing the 'Assets' vested with the Church exclusively for the benefit of the 'Members' of CSI, which is a non-

registered body covering 'Andhra Pradesh', 'Karnataka', 'Kerala' 'Tamil Nadu' & 'Telangana'.

3. CA12/2016 was preferred by the Respondent/CSITA in C.P.02/2016 seeking to decide the 'Preliminary Legal Issue' with respect to maintainability of the 'Company Petition' on the ground that the 'Petitioner' is neither a 'Member' of the first Respondent Company nor did the 24 persons who had given consent to file the 'Company Petition' are 'Members' of the CSITA.

4. It was averred by the 'Petitioner' that the Hon'ble Madras High Court in Writ Petition No.21343/2011 has directed the Registrar of Companies ('RoC'), 'Tamil Nadu' to carry out a detailed inspection of the 'Company' under Section 209-A of the Companies Act, 1956 and RoC has recommended action against the 'Company' and his office TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) bearers through SFIO. It was submitted that the last 'Synod' of the Church conducted the 'Biennial' was in January, 2014 and the same lapsed on 13.01.2016. Subsequently, the 'Synod' was not conducted and no election to the 'Company Membership' was held. In this backdrop, I.A.12/2016 was preferred by CSITA on the ground that the 'Petitioner' did not fulfill the requirements laid down under Section 244 to file the 'Company Petition' under Section 241 of the

Companies Act, 2013.

5. It is submitted that NCLT vide 'Order' dated 18.11.2016 has held the 'Company Petition' to be maintainable and also observed that there was an urgent need to regulate the affairs of CSITA and proceeded to remove the Directors and Managing Committee including office bearers by appointing Hon'ble Justice Sh. K. Sampath (Retd.) as Chairman who is authorized to nominate four suitable persons to be chosen from the sub- units 'Dioceses' of three office bearers challenging this 'Order', the Respondent filed CRP No.3739/2016 before the Hon'ble High Court of Madras and an 'Interim Order' was passed on 28.11.2016 staying the 'Operation' of para 18 in CA No.12/2016. CRP No.3739/2016 was finally dismissed on 22.11.2018 by a Division Bench of Hon'ble High Court of Madras, giving liberty to move before NCLAT.

6. Learned Counsel Mr. Kalyani drew our attention to paragraphs 22, 35 & 36 of the 'Impugned Order' dated 20.01.2020 and sought for TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) expunging of the observations made by the NCLT. It is the case of the Appellant that only to protect the interest of large number of persons, who have common interest in the first Respondent Company, the Appellant in a representative capacity, within the purview of 'Order 1' 'Rule 8', filed this 'Appeal'. It is submitted that the NCLT in their earlier 'Order' had waived the procedures laid down under Section 244(1)(b) of the Companies Act, 2013, and therefore now a contradictory Order cannot be passed. It is also argued by Mr. Kalyani Counsel for the Appellant that the 'Petitioner' is a 'Member' of the Church and is therefore entitled to file a Petition under Sections 241 & 242 of the Companies Act, 2013, on the ground of 'Oppression and Mismanagement'. It is further contended that 'Synod' has not held its election and therefore the 'Petitioner' could not have been elected.

7. At this juncture, we find it relevant to reproduce the findings of NCLT regarding the maintainability of the 'Petition' filed a non-Member of the Company with regard to the affairs of 'Section 8 Company':

"61. If jurisdictional point as well as cause of action points are complied with, then question will arise as to whether prima facie view could be taken or not. In the present case, this complainant failed to pass Rule-1 test itself, therefore the question of entertaining this Petition to Rule-2 as well as Rule-3 compliances will not arise. In one way, it could be said, the Petition could be dismissed at threshold itself, because, Tribunal TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) has to always to put a test to itself as to whether it has jurisdiction to exercise its powers under the sections specified. Ordinarily Tribunals, for that matter even Courts are also not expected to extrapolate the jurisdiction so as to get the jurisdiction to deal with the case. Normally, determination of jurisdiction is not to be construed as discretion available to a Judge. Exercise of jurisdiction will arise only when Court is fit in within the jurisdiction given by the Statute. In the given case, the Applicant is admittedly not a member of the company. Who is a member of R1 Company is decided by the Articles of Association, if membership is on a rotation basis, which alone has to be considered as criteria to decide who the member is and who the member is not. Merely because membership is on rotation it cannot be said that anybody could be treated as member

of the company. Section 241 petition itself is representative in character, it cannot be further be made open to make a non member to canvass the assumed cause as a cause of action of a member of the company.

62. In this perspective, for this Bench in the earlier order dated 18.11.2016 having categorically mentioned that the discussion in that order will not have any bearing on the merit of the case and having left it open to decide it at the final hearing, we are of the considered opinion that the assumed prima facie view will not have any bearing over this order for two reasons; one - an interim order always merges with the final order and two - as to maintainability, since order dated 18.11.2016 has left it open to be decided at the time of final hearing, it cannot be called as resjudicata against this order.

63. Prima facie view of consideration will come into operation when the petition under consideration is indicative of likelihood of getting TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) a decree in favor of it unless and until that seemingly insurmountable materials are available on record is rebutted by the answering Respondent, at times courts grant an exparte ad interim relief looking at the material shown as sufficient to pass decree, but when other side later present and show the material shown by the plaintiff/petitioner could not make out a case, may be on the ground itself, the interim order shall be vacated.

64. We must also feel it is relevant to refer a case in between Mohanram Shastri & Others Vs. Swadharma Swarajya Sangha & Others (1995) 83 Comp CAS 272, it has been held that the right of the Petitioners u/s. 25 of the Act (1956) is only to ensure that the charitable objects of the company are carried out and certainly the personal benefits of the Petitioner do not at all come in to the picture, the scope of Sec. 397 of the Act 1956 is rather curtailed in the case of Sec. 25 Company.

65. In view of the aforesaid elucidation, to some extent it could be said that the profit concept not being present, at least to the extent of academic interest of member is concerned actions with regard to the affairs of Section 8 Company; it cannot be called as prejudicial at least to the members. As to prejudice against the company, if such allegation is made, there must be a material specifying each action and the effect thereof. In this case, except general and omni bus allegations, no specific allegations are made indicating x, y and z persons have indulged in specific actions with particulars, and therefore the management of a company elected through a multi layer arrangement with approval of 4.5 million church members or perhaps communicant members cannot be simply reversed.

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66. The Petitioner is one of the communicant members, even if 24 Consenters are taken into consideration; they are part of 4.5 Million of the church members. The

church members at the parish level elect and send delegates to Dioceses, and Synod members. Synod members will elect members of CSITA. This being the arrangement, there is no scope to assume that this Petitioner or 24 Consentors to this Petitioner or 200 members alleged to have attended the alleged General Meeting on 16.01.2016 can be equated with members of CSITA who have reached to CSITA passing through two layers of election. Therefore this Company Petition is not at all maintainable."

8. Learned Senior Counsel, Mr. V. Prakash contended that the 'Petitioner' had no 'locus standi' in filing the 'Petition' as he is not a 'Member' of the 'Section 8 Company' but is only a 'Member' of the unregistered Church of South India. In this 'Appeal' also, it is submitted that the 'Appellant' cannot be a 'Member' unless he is elected by the 'Synods'. He also drew our attention to paras 41, 49 & 56 of the 'Impugned Order', which reads as follow:

"41. Since this issue is limited to examining as to whether a non-member can file Petition u/s 241 of the Act, unless it is self evident that petitioner is "a member" of the company, this petition shall not be extrapolated to say that since complexities are involved in this case, the prerequisite of being a member can be done away.

49. Qualification given one to ten cannot be read as qualification zero to ten. Here this person is a non-member; "a member" u/s. 241 cannot be read as non-member just because an application could TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) be allowed even a short fall is there to the qualification u/s. 244 of the Companies Act, 2013. However, this Bench ordered that the CP is maintainable owing to some complexities, therefore, it has been left open to decide this issue at the time of final hearing.

56. One subtle difference to be taken cognizance while considering waiver under section 244 is, one to ten threshold discretion is left to the Tribunal but not from zero number or non member, of course precedents are there to entertain petition when a composite petition of section 241 r/w section 58/59 comes, such as when factum of shareholding itself is in dispute, this factum of dispute shall be such that either the petitioner shall prove share certificates ought to be issued which has not been issued or transmission ought to have taken place but has not taken place. Beyond this, when the petitioner himself has not proclaimed himself as member, such person cannot initiate proceeding under Section 241 of the Companies Act 2013."

9. Learned Senior Counsel, Mr. V Prakash further submitted that it is only because the Church of South India, being a 'Charitable Trust', and unregistered body, cannot held 'Property' that the 'Company' was formed.

10. At the outset, we address to the main issue arising in this Appeal as to whether the 'Appellant' is a 'Member' of the 'Section 8 Company' and has the 'locus standi' to file this 'Appeal' and also whether the 'Petitioner' in C.P.2/2016 could have file the 'Petition' under Sections 241 & 242 of the Companies Act, 2013. It is seen from the array of TA No. 15/2021 (Comp. App. (AT) No.

235/2020/TR) 'parties' in the 'Order' impugned that the Petitioner is one Mr. John S Dorai and the 'Appellant' herein in this 'Appeal' is not a 'party' to the main 'Petition'. Having noted so, this 'Tribunal' finds it relevant to reproduce Section 2(55) of the Companies Act, 2013, which defines a Member as follows:

"2. In this Act, unless the context otherwise requires,--

.....

(55) "member", in relation to a company, means--

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;"

11. From this definition, it can be interpreted that a 'Member' in relation to a 'Company', means:

(i) The subscriber to the memorandum of the 'Company' who shall be deemed to have agreed to become 'Member of the Company', and on its registration shall be entered as 'Member' in its Register of Members;

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(ii) Every other person who agrees in writing to become a 'Member of the Company' and whose name is entered in the Register of Members of the Company;

(iii) Every person holding 'shares' of the 'Company' and whose name is entered as a beneficial owner in the records of a depository;

As per the definition, a 'person' cannot be treated as 'Member of the Company' unless his name is entered in the Register of Members of the Company.

The term 'Member' is different from that of 'Shareholder'. A Shareholder can be Shareholder by acquiring 'shares' but will not be 'Member' till his name is entered in the Register of Members of the Company. This definition is relaxed in case of Section 244 of the Companies Act, 2013, where even a Shareholder is treated as a 'Member'.

In case of a 'Company' limited by guarantee and not having 'Share Capital' the 'person' who provides the guarantee will become its 'Member' as soon as his name is entered in the Register of Members.

12. In the instant case, apart from not being a 'party' to the main 'Petition', the 'Appellant' herein is, admittedly, only a 'Member' of the Church and he has not filed any documentary evidence to substantiate that TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) any of the requirements under Section 2(55) of the Companies Act, 2013, is met. Admittedly, there is a four layered 'Election Process' to become a 'Member' of the 'Company'. The persons acting as 'Member' of CSITA are in fact first elected by various Parishes falling under more than 20 'Dioceses' and these Parishes 'Member' elect people to the 'Diocesan Council' and also to the 'Synod Council' who in turn elect the process of the 'Company'. In this four layered process, it is not in dispute that the 'Appellant' herein has not passed through the layers to become the 'Member'. This 'Tribunal' is of the earnest view that merely because a person is a 'Member' of Church, he does not have the 'locus standi' to file a 'Petition' under Sections 241 & 242 of the Companies Act, 2013, against a 'Section 8 Company' of which, he is admittedly, not a 'Member'. Section 244 of the Companies Act, 2013, reads as follows;

"244. (1) The following members of a company shall have the right to apply under section 241, namely:--

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

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(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.--For the purposes of this sub- section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them."

13. At the cost of repetition, as the 'Petitioner' in CA/171/2019 and in CP/02/2016, does not satisfy any of the requirements stipulated under Section 2(55) of the Companies Act, 2013, he cannot seek



any 'exemption' under Section 244 of the Companies Act, 2013. This 'Tribunal', does not find any 'illegality', in the 'Order' of 'NCLT', in holding that the 'Company Petition' is not 'maintainable', which even otherwise was preferred by one John S Dorai.

14. To reiterate, the 'Appellant' before us is not even a 'party' to the main 'Company Petition', and is seeking expunge of some observations TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR) made by the 'NCLT'. A brief perusal of the paragraphs in the 'Impugned Order', shows that the said paragraphs are by and large the submissions of the 'parties' and there were no 'strictures' or 'conclusion', arrived at by the 'Tribunal' ('NCLT'), which require 'Expunging'.

15. For all the aforementioned reasons, this 'Tribunal', does not find any 'illegality' or 'infirmity', in the 'Well Considered and Reasoned Order' of the 'Tribunal' ('NCLT') in CA/171/2019 in CP/02/2016 and hence, TA No.15/2021 (Comp. App. (AT) No.235/2020/TR) is accordingly 'dismissed'. No costs.

[Justice M. Venugopal] Member (Judicial) [Ms. Shreesha Merla] Member (Technical) 16/02/2023  
HIMANSHU / TM TA No. 15/2021 (Comp. App. (AT) No. 235/2020/TR)