
(2006) 11 MAD CK 0072

In the Madras High Court

Case No : Writ Appeal (MD) No. 313 of 2006 and M.P. No. 1 of 2006

Director of Elementary Education, District Elementary
Educational Officer and Assistant Elementary Educational
Officer

APPELLANT

Vs

Smt. S. Vigila and Manager, Meerania Middle School

RESPONDENT

Date of Decision : 04-11-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 21A
Tamil Nadu Education Rules, 1892 — Rule 17, 18

Citation : (2007) 1 LW 402 : (2007) 2 SLJ 380

Hon'ble Judges : P.K. Misra, J;N. Paul Vasanthakumar, J;G. Rajasuria, J

Bench : Full Bench

Advocate : R. Viduthalai, General Assisted by R. Janakiramulu, Special Govt.
Pleader, for the Appellant; K. Chellapandian, for V. Panneerselvam and Issac
Mohanlal, Amicus Curiae, for the Respondent

Judgement

P.K. Misra, J.—The question relates to Teacher- Pupil ratio to be fixed in respect of Elementary school.

2. The norm relating to teacher-pupil ratio has been laid down in G.O.Ms. No. 525 (School Education) dated 29.12.1997, which has been made effective from 1.6.1998. The norms relating to Elementary School as per the said G.O., are extracted hereunder:

I. ELEMENTARY SCHOOLS (Standards I to V):

(a) The teacher-pupil ratio of 1:40 will be followed. Minimum of 2 Secondary Grade teachers up to a strength of 80 will be sanctioned. In respect of new Schools, first post will be created in the first year and second post in the second year. One of the two posts will be in the grade of Headmaster.

(b) For every additional strength of 40, one post of Secondary Grade teacher will be sanctioned i.e., the third post at 100, the fourth post at 140, the fifth post at

180 and so on.

(c) Regarding the bifurcation of a standard, additional sections will be created when the strength exceeds 60 and so on in slabs of 40.

3. The validity of such G.O., and the difficulty in enforcing such G.O., were the subject matter of litigation and ultimately the Division Bench- in W.A. No. 1768 of 1998 dated 9.11.2000, while approving the stand of the Government as reflected in the counter, had upheld the validity of the G.O.

4. Subsequently, however, a clarification was sought for by the Government by filing W.A.M.P. No. 5667 of 2003 and at that stage, the Division Bench observed:

11. On a fair consideration of the entire matter, we come to the conclusion that as per G.O.Ms. No. 525, School Education (D1) Department dated 29.12.1997, the teacher-pupil ratio is 1:40 and only when the pupils' strength is at 80, second teacher's post will be sanctioned and likewise when the strength is at 100, third teacher's post will be sanctioned and the 4th teacher's post at 140 and fifth teacher's post at 180 and so on.

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13. In the result, paragraph 30 of the judgment is clarified as referred in para 11 above. If the appellants have got any difficulty in teaching their pupils without having proper teachers strength, as contended by them, it is for them to approach the Government and on such approach, the Government is directed to consider the requests that would be made by the appellants in order to provide quality education.

5. Following the aforesaid clarificatory observation, it has been generally understood by the respondents that teacher-pupil ratio is fixed by taking into account the strength of the entire school.

6. Subsequently, a Division Bench of the Madurai Bench of Madras High Court in the decision reported in 2006 (4) CTC 34 (The Correspondent, Sacred Heart Primary School and Anr. v. The District Elementary Educational Officer, Kanyakumari and Ors.), observed:

15. In other words, if there are five standards namely standards I to V in an elementary school with the economic strength of not less than 20 in each standard, and each standard reaching 40 or 80 or 100 or 140 or 180 as the case may be, the fixation of the teacher public ratio as prescribed in the said Government Order will have to be made that would provide necessary teaching faculty to man each standard/class. To put it differently or to sight an analogy if in an elementary there exists standard I to V and in each standard the students strength is not less than 60, the bifurcation of standards as prescribed under Clause I(c) will have to be made and the required teacher-pupil ratio at the rate of 1:40 with a minimum of two secondary grade teachers upto a strength of 80 for each standard will have to be maintained. If the ratio as prescribed in the

G.O.Ms. No. 525 dated 29.12.1997 is not applied in the above said manner, that would result in total lack of required number of teachers to man the minimum number of pupils in each standard, which would ultimately result in great fall in the standard of education and such a position can never be acknowledged or accepted as claimed by the respondents.

7. The ratio of the subsequent Division Bench decision is to the effect that the question of teacher-pupil ratio would depend upon the number of Standards and Sections in the school.

8. Since such observation made by the Division Bench apparently runs counter to some of the observations made in W.A. No. 1768 of 1998, etc., disposed of on 9.11.2000, the matter has been referred to Full Bench to resolve the dispute.

9. To say the least, the G.O.Ms. No. 525 dated 29.12.1997, particularly relating to the Elementary School, is not happily worded. It is not very clear from the aforesaid instruction as to whether teacher-pupil ratio of 1:40 should be fixed on the basis of students' strength in a particular standard or students' strength of the entire school in question irrespective of the number of Standards in a school. If such Government Order is to be understood in the manner in which it has been projected hitherto based on some observations here and there in W.A. No. 1768 of 1998, certain startling consequences will follow. As is well known, elementary school consists of 5 standards i.e., from Standard I to V. If the minimum average strength of each standard is taken to be 20 (which was assumed to be the economic strength as apparent from the case made out before the Division Bench in W.A. No. 1768 of 1998), total strength of the school would be 100 and as per the arithmetic formula projected, the school will have 3 teachers. If the average strength of each standard is less than 20 and the total students' strength is between 80 and 99, the school would have two teachers. Therefore, we have to imagine a situation where tender children studying in different standards, i.e., from standards I to V, will, have to be managed by two teachers if the strength is between 80 and 99 and with three teachers if the strength is between 100 and 139. It is indeed very difficult to imagine as to how 2 or even 3 teachers would "manage" as well as "educate" students of standards I to V simultaneously. It cannot be contemplated that any one teacher would be simultaneously teaching students of two separate standards or may be even 3 standards. It also cannot be imagined that some periods will be off for some of the Standards, in which event such children won't be under the control of any teacher, resulting in total chaos and the students becoming inevitable victims of unforeseen incidents. It is very difficult for us to visualise that while issuing such Government Order, the Government had contemplated in the aforesaid manner.

10. G.O.Ms. No. 525 dated 29.12.1997 was issued superceding the earlier norms fixing Teacher-Pupil ratio issued in G.O.Ms. No. 250 Education Department dated 29.2.1964 and Rule 17 and 18 of Madras Education Rules. G.O.Ms. No. 525 is held applicable to both the Government and Aided Recognised Private Schools as per the judgment reported in (1999) 1 MLJ 625.

11. Insofar as the Madras Education Rules, Rule 17 was applicable to the Government Schools prior to the introduction of the present Government Order, which states that there should be one teacher for every standard and for every Section 321 of standards, in addition to the Headmaster, excluding Pandits and special teachers. Under Rule 18, no section of a class should have more than 40 pupils upon the roll. Even though the said Madras Education Rules are in the nature of administrative instructions (as held by the Apex Court in the decision reported in *State of Tamil Nadu and Others, etc. Vs. S.K. Krishnamurthi, etc. etc.*, , the said instructions were holding the field till 1.6.1998, when G.O.Ms. No.525 dated 29.12.1997 was ordered to be implemented.

12. Similarly, so far as the private schools are concerned, G.O.Ms. No. 250 states that minimum strength of any primary school shall be 20. The second teacher will be allowed where the overall average attendance is 30 and above; two teachers if the average attendance of the combined standards is 30 and above; three teachers if it exceeds 55; 4 teachers if it exceeds 75 and 5 teachers if it exceeds 95. One Section 321 in a standard, if the student strength is upto 35; two sections, if the strength is between 35 and 70; three sections if the strength is between 71 and 105; four sections if the strength is between 106 and 140; 5 sections if it is between 141 and 175 and so on with the staff slab of 35. It is further stated in Clause (5) that grant shall not be calculated for more teachers than there are standards or sections in the school or than actually employed in the school. whichever is less. (Emphasis added). Thus it is manifest that prior to the issue of G.O.Ms. No. 525 , each standard was sanctioned with a post and division of standards are made in private schools if it is more than 35 and Government Schools, if it was more than 40. The strength in one Section 321 is now increased upto 60 from 35 or 40 as the case may be. Even in the earlier Division Bench decision in paragraph 32, same conclusion was reached.

13. A complete primary/elementary school must have standards 1 to 5. Each standard has got different syllabus to be taught. Each standard has separate time table during the school hours and therefore for all the five standards, there must be minimum of one teacher for each standard, particularly when right to education upto the age of 14 years has been declared as fundamental right under Article 21 of the Constitution of India, by the Supreme Court in the decisions reported in (1992) 1 SCC 666 (Mohini Jain case); *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, ; and *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, and more particularly after introduction of Article 21-A of the Constitution.

14. It was submitted by the learned Advocate General that validity of the G.O., having been upheld, the procedure, which is being followed on the basis of the observations made by the earlier Division Bench, need not be disturbed, particularly keeping in view the huge financial implications involved. The question as to whether the Government is bound to grant aid to any particular school is not before us. Even assuming that the Government would sanction grant to all

such schools, we do not think the question of financial involvement can at all be an issue in such matters relating to primary education, particularly when right to such education is now recognised as a part of the fundamental right in the shape of Article 21-A of the Constitution. The obvious intention is to impart quality education wherever possible and not merely to pay lip service to such sentiments expressed.

15. The learned Advocate General argued that because of the limited resources available to the Government, the Teacher-Pupil ratio is modified from the original ratio and the Teacher posts are sanctioned based on the ratio 1:40 after the strength exceeds 60. The contention that the limited resources or want of finance cannot be a ground to sanction less number of teaching post to the schools both in Government and aided schools.

16. The submission that want of finance is the reason for revising the Teacher-Pupil ratio cannot be countenanced in view of the settled position of law.

In *The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others*, , in paragraph 6, the Supreme Court held as follows:

6. ... imparting primary and secondary education to the students is the bounden duty of the state administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the Society depends. In line with this principle, the State has enacted Statute and framed Rules and Regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in number of cases has intervened for setting right any discriminatory - treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions.

In paragraph 10, the Supreme Court considered the contention of want of fund in the following manner:

10. Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of the respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected....

17. It has been submitted by the learned Advocate General that while interpreting the Government Order, the subsequent Division Bench should not have imported the principles relating to interpretation of statutes and particularly the ratio of the Heydons case (1584) 3 Co. Rep. 7 :76 ER 637) need not have been applied. In the present case, G.O.Ms. No. 525 dated 29.12.1997 cannot be construed purely or merely as an administrative order, but such order purports to lay down general principle affecting the system of primary education. The question raised before the Division Bench was relating to proper interpretation of the Government Order. Since the meaning ascribed to such Government Order is likely to raise ambiguity and uncertainty, obviously the court is required to step in to find out the real intention of the Government Order so that the general principle can be made effective and applicable consistent with the provisions in the Constitution.

18. The further contention of the learned Advocate General is to the effect that if the real meaning of the Government Order was not ascertainable, such Order could have been quashed on the ground of indefiniteness or uncertainty and there was no scope for interpreting and applying the Government Order in a particular manner. We do not think such a contention can be countenanced at the behest of the State. When the State Government issues certain G.O. intending to lay down a policy in certain matter and when there is ambiguity in the said Government Order, the same should be interpreted in a reasonable manner to effectuate the intention and there is no embargo on the Court to apply the known principles of law applicable to interpretation of statutes.

19. Learned Advocate General has further submitted that when a Division Bench decision was holding the field, the subsequent Division Bench should not have taken a view contrary to the earlier Division Bench without referring the matter to a larger Bench.

20. In the present case, on a careful scrutiny, it is found that as a matter of fact the learned single Judge, who had initially decided the matter in the decision reported in North Arcot Ambedkhar and Sambuvarayar District recognised Private aided Primary and Middle Schools Managers and Teacher Managers Association Vs. The State of Tamil Nadu and Others, , had not decided anywhere that while considering the question of student-teacher ratio, the strength of the students in the school as such is to be taken into account and the number of standards and strength of the students in any individual standard was immaterial.

21. The main question raised before the learned single Judge was regarding validity of the Government Order and the learned single Judge upheld the validity of the said G.O. In the appeal against such decision, the Division Bench had affirmed the decision of the learned single Judge. As a matter of fact, a careful perusal of the earlier Division Bench decision makes it clear that the submissions had been made even by the Government that the ratio prescribed was in relation to a particular standard and not of the entire school as a whole and at some places submissions have been made as if the students strength referred to in the

Government Order related to the strength of the entire school. However, the Division Bench had nowhere categorically laid down that while considering the applicability of the Government Order, the students' strength of the entire school de hors the number of standards and students strength of the individual standard was to be considered. Even the subsequent clarificatory order had not categorically laid down as to whether the ratio has to be fixed only on the basis of the students strength of the school as a whole without reference to the students of each individual standard. It may be that such decision has been understood in many cases, as if the ratio is to be fixed on the students strength of the entire school, but, it cannot be concluded that the Division Bench had categorically laid down as a matter of law that the ratio is to be fixed on the basis of the students strength of the entire school completely ignoring the students strength of each individual standard. As a matter of fact, the subsequent Division Bench decision has only purported to interpret the G.O. In such a sense it cannot be said that the latter Division Bench has differed from the earlier Division Bench decision. At any rate, since the matter is now before a larger Bench, the real issue is relating to proper interpretation to be given to G.O.Ms. No. 525 dated 29.12.1997.

22. As rightly observed by the latter Division Bench, the G.O.Ms. No. 525 has to be interpreted in a meaningful manner keeping in view the background in which such G.O. came to be issued. As per the existing instructions applicable, the ratio of teacher was dependant upon students' strength in each individual standard, but it had been laid down that maximum strength in a particular Section 321 or a class should be 35 or 40. In other words, either no admission was required to be made in excess of 35 or 40 or if such admission was made taking relevant permission, an additional Section 321 was required to be created. In the context of the aforesaid background, the present G.O.Ms. No. 525 indicates that an additional Section 321 is required to be created only when the students' strength in a standard becomes 60 or more. It is evident that G.O.Ms. No. 525 has intended to change this aspect and that is the reason^ why it has been indicated that when the students strength becomes 100, a third teacher can be appointed. If it has to be understood that the ratio of 1:40 is to be maintained in respect of the entire school, it is not understood as to why it would be laid down in the G.O. that a third teacher would be available when the students strength reaches 100. In normal course, the third teacher would be provided only when the students strength reaches 120 and not 100. This is rather indicative of the fact that the G.O. was concerned about the creation of additional section. If the students' strength in a particular standard remains 60 and below, there is no necessity to create an additional Section 321 and the necessity to create additional Section 321 arises only when the student strength in a particular standard exceeds 60 and that is why it has been stated that if students' strength is further increased by 40 more, another teacher would be sanctioned or would be required. The G.O. cannot be interpreted to do away with requirement of having at least one teacher for each standard or Section 321 (wherever creation of additional section is

justified).

23. Keeping in view the various relevant aspects, we feel that G.O.Ms. No. 525 dated 29.12.1997 should, be interpreted in the following manner:

(1) The ratio of students-teacher strength as indicated in the G.O. should be primarily considered by taking each individual standard/section as a unit.

(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional Section 321 is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities, of the school should create additional section in respect of any particular Standard according to the need and convenience. keeping in view the standard of education. This requirement is not only in respect of aided schools or Government schools, but also in respect of any private recognised school. In other words, this ratio is to be maintained for any school which requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the constitution.

24. We place on record our appreciation for the fair manner in which submissions were made by all the counsel.

25. the writ appeal shall be listed before the Division Bench for disposal.