

(2012) 11 MAD CK 0248

In the Madras High Court

Case No : Writ Petition No's. 16242 and 24653 of 2002

D.K. Samy Matriculation Higher Secondary School

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Constitution of India, 1950 — Article 162

Citation : (2013) 3 LW 372 : (2013) 1 MLJ 403 : (2013) WritLR 537

Hon'ble Judges : R. Subbiah, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : K. Gunasekaran for La Law, for the Appellant; N. Srinivasan, A.G.P. and Ms. A. Sriyothi, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—In these writ petitions, the legal question that has been referred to us for decision is "whether, after the disaffiliation of the Matriculation Schools by the respective Universities, namely Madras and Madurai Kamarajar Universities, on and after the year 1976, would they fall within the definition of "Private Schools" as defined u/s 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act and thereby the provisions of the Act as well as the Rules and Regulations framed thereunder would automatically apply to the Matriculation Schools"? The petitioners in both the writ petitions are running Matriculation Schools and they are challenging the action of the Government in ordering constitution of Special Directorate for Matriculation Schools, under G.O. Ms. No. 188, dated 8.11.2001 and the consequential orders passed by the Government on 30.4.2002, imposing liability on the Matriculation schools by way of contributions, depending on the pupil's strength and also enhanced the fee payable for registration recognition and renewal of such recognition and also for according permanent recognition.

2. To understand the dispute, a brief history of the Matriculation Schools in the State of Tamil Nadu, need to be noted.

3. All the Matriculation schools in Tamil Nadu and in the Union Territory of Puducherry were once affiliated to the University of Madras. Later, when Madurai University was established, the Matriculation Schools in its area were automatically transferred to it for affiliation. The Syndicate of Madras University unanimously decided a few years ago that the Universities need no longer control over Matriculation Schools and suggested that this responsibility might as well be taken off their shoulders and the Government, in consideration of the entire facts and circumstances and on the basis of the suggestions of the Director of School Education, ordered constitution of the Board of Matriculation Schools, in G.O. Ms. No. 1720, Education, dated 25.7.1977 and also defined the terms, conditions and functions of the Board. Thereafter, an Inspectorate of Matriculation Schools was also formed in G.O. Ms. No. 2678, Education, dated 29.12.1977 with an Inspector in the rank of a District Educational Officer.

4. In this backdrop, the petitioners are challenging the action of the Government in issuing G.O. Ms. No. 188, dated 8.11.2001 and the consequential G.O. Ms. No. 54, dated 30.4.2002, whereby and whereunder the Government have imposed the liability on the Matriculation Schools by way of contributions, as stated above.

5. The petitioners attacked the action of the Government mainly on the ground that u/s 2(7)(c) of the Tamil Nadu Private Schools (Regulation) Act, 1973 (hereinafter referred to as the Act), the schools "maintained or approved by, affiliated to any University established by law", are excluded from the definition of "Private Schools". Therefore, when once the Matriculation Schools are de-affiliated from the Universities, they will also fall within the scope, meaning and ambit of "Private Schools" as defined u/s 2(7) of the Act and therefore, the Matriculation Schools, cannot be regulated by the Codes, having the character of executive orders under Article 162 of the Constitution of India. It is also their case that when the Matriculation Schools are also well within the definition of "private schools", there is no necessity to discriminate fees for such schools, which is abnormally high. It has also been their case that under the impugned G.O. Ms. No. 188, dated 8.11.2001, in para No. 6, the second respondent was enabled to send amendment to the Matriculation Code and since the second respondent is not the "Secretary to the Government", he has no authority to make any Regulations under Article 162 of the Constitution of India and therefore, the same is vitiated for being excessive delegation of power on the second respondent.

6. The challenge to both the impugned G.Os. was resisted by the respondents, by filing a common counter affidavit. It is their contention that the Government issued orders in G.O.Ms. No. 188, School Education Department, dated 8.11.2001 for creation of a separate Directorate of Matriculation Schools by abolishing the post of Joint Director of School Education (Matriculation), pursuant to the recommendation of the Committee constituted by the Government under the Chairmanship of Mr. J.A. Ryan, formerly Director of School Education; that there was a consistent demand that a separate Directorate for Matriculation

Schools should be formed, de-linking the Matriculation Schools from the Directorate of School Education with a view to have an exclusive Directorate for Matriculation Schools and therefore, under G.O. Ms. No. 188, dated 8.11.2001, a separate Directorate was formed to regulate the functioning of the Matriculation Schools and the service conditions of teachers working in Matriculation Schools; that the Government have further directed that a fixed amount has to be collected from each Matriculation School by way of Management contribution to meet the expenditure to be incurred in having a separate Directorate of Matriculation Schools, by indicating the amount of Management contribution to be collected from the schools based on students strength; that as directed by the Government, the fee structure indicated in G.O. Ms. No. 188, dated 8.11.2001 as placed before the Board of Matriculation Schools, in its meeting held on 2.1.2002, which has unanimously approved the proposed fee structure and the said decision of the Board of Matriculation Schools having been forwarded, the Government, considering the decision of the Board, issued the order in G.O. Ms. No. 54, School Education, dated 30.4.2002 for collecting the management contribution and the method of payment of such contribution, the collection of other approved fee etc.

7. Pooh-poohing the contention of the petitioners that once the Matriculation schools are de-affiliated by the Universities, they should fall within the ambit and scope of "private schools" as defined u/s 2(7) of the Act, it is the case of the respondents that even after discontinuance of affiliation, the Matriculation Schools are treated as a separate class and regulated by a separate Code of Regulations framed for Matriculation Schools. The respondents would further contend that considering the historical background of the origin of Matriculation Schools and the various provisions in the Code of Regulations for Matriculation Schools and the provisions contained in the Act, a learned single Judge of this Court in the judgment 2002 Writ Law Reporter 688, held that the Government is well within its powers to issue executive orders for regulating Matriculation Schools and the Code of Regulations for Matriculation Schools framed by the Government are valid and the Matriculation Schools are not coming within the purview of the Act and therefore, according to the respondents, the Matriculation Schools will not come within the purview of the Act.

8. With regard to the contention of the petitioner that the impugned orders are vitiated on the ground that excessive delegation has been made in favour of the second respondent, it has been submitted on the part of the respondents that the Government have directed the second respondent only to send a proposal in the light of the Government Order for making suitable amendments to the Code of Regulation for Matriculation Schools and such a direction of the Government should not be constructed as the second respondent was given the power to amend the Code of Regulations for Matriculation Schools. It has been asserted on the part of the respondents that in order to make appropriate amendment to the Code of Regulations, the Government have called for certain proposals from the second respondent and the Government would certainly consider the proposal

independently and issue appropriate amendment on its own. On such grounds, the respondents would pray to dismiss both the writ petitions.

9. At this juncture, it is to be mentioned that on an earlier occasion, the Tamil Nadu Matriculation and CBSE Schools Teachers' Association, represented by its General Secretary, filed W.P. No. 197 of 1993 before this Court, praying to issue a Writ of Declaration, to declare the Code of Regulations for Matriculation Schools framed by the Government of Tamil Nadu, Education Department, in consultation with the Director of School Education, as ultra vires of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. In the said case, a similar argument, as has been raised in the present cases, was advanced, that Matriculation Schools which were originally affiliated to the Madras University and Madurai Kamarajar University were excluded by Section 2(7)(c) of the Act and hence the said provisions were to made applicable to them and in July, 1976, when the Madras University decided to drop the affiliation of Matriculation Schools and also from conducting the Matriculation examinations, by way of a resolution, the State Government instead of applying the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act and the Rules framed thereunder, transferred the control of the Matriculation Schools to a Board under the control of the Director of School Education, which was invalid and was without authority of law. The said contention was resisted on behalf of the State as well as the Director of School Education by contending that by virtue of Article 162 of the Constitution, the State had the Executive power vested with it to frame the Code of Regulation for Matriculation Schools.

10. Dealing with the above aspects, His Lordship The Honourable Mr. Justice P. Sathasivam (as His Lordship then was), in the above judgment, 2002 WLR 688, has held as follows:

11. As rightly contended by the learned Additional Advocate General, a perusal of all the above Regulations shows that by framing the Code, none of the rights which have been available to the teachers were taken away and all the terms that existed prior to framing of the said Code continue to be in existence even after the framing of the Code except for the fact that the schools which were under the administrative control of the University are now under the administrative control of the Board of Matriculation Schools. It is also clear that Matriculation Schools are granted recognition under Regulation 10 of the Code of Regulations for Matriculation Schools by fulfilling certain conditions. The Code of Regulations for Matriculation Schools by and large provide protection and remedies to the teachers and other non-teaching staff members under Clauses 17 to 23 in chapter VI and VII of the said Code, In other words, the Code of Regulations for Matriculation Schools is a comprehensive and complete Code and in the light of the definition 2(7) of the Private Schools Act, exclusion of Matriculation Schools from the purview of the said Act, there is no need to follow the provisions of Private Schools Act. No doubt, there is no provision for

constitution of "school committee" in Matriculation Schools, however, as pointed out above, Chapter VI and VII deal with qualification of the staff, the method/ground for termination, procedure, major and minor punishments as well as provision for appeal to the Director in respect of the Principal/Head-master/Headmistress/B.T. Assistants and other teachers drawing B.T. scale of pay and for all other categories of staff including non-teaching staff the Inspector is the appellate authority. Further, an appeal shall lie with the Government against the orders passed by the Director and an appeal shall lie with the Director against the order passed by the Inspector. In such circumstances, I am unable to accept the contentions raised by the learned senior counsel for the petitioner.

11. Ultimately, His Lordship took the view that it was competent for the State Government to frame the Code of Regulations for Matriculation Schools by virtue of the power vested with the State Government under Article 162 of the Constitution, since the Matriculation Schools did not come within the definition of "Private Schools" as defined u/s 2(7) of the Act.

12. When W.P. No. 24653 of 2002 was posted before another learned single Judge (The Honourable Mr. Justice F.M. Ibrahim Kalifulla), His Lordship, has observed as follows:

9. In this writ petition, Mr. K.M. Vijayan, learned senior counsel appearing for the petitioner contended that having regard to the definition in regard to the Private School (Regulations) Act, when once disaffiliation of Matriculation Schools with the respective Universities took place in the year 1976, the Matriculation Schools would automatically come within the main part of the definition u/s 2(7) of the Act and consequently all the provisions that are applicable to any other Private School, aided or unaided would automatically apply to the Matriculation Schools as well. According to learned senior counsel, the contention of the respondents by placing reliance upon Article 162 of the Constitution can have no application in the light of the legal position as stated above. In fact, the legislative power of the State Government as available to it under Article 162 of the constitution of India has been succinctly stated by the Honourable Supreme Court in the judgment in Bishamber Dayal Chandra Mohan v. State of U.P. AIR 1982 SC 32. In fact, His Lordship Mr. Justice P. Sathasivam relied upon that very decision in the judgment 2002 WLR 688 cited supra. The decision as stated by the Hon"ble Supreme Court in paragraph 20 is to the following effect:

It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until

the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.

10. Therefore, so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. But the question that remains to be considered in this writ petition is that

Whether, in spite of the amplitude of the definition of a "Private School" u/s 2(7) of the Act, which in my opinion, would take within its fold even the Matriculation Schools after its disaffiliation by the respective Madras and Madurai Kamarajar Universities, in the year 1976, could it still be held that the State Government retained its power to frame any other regulation by way of a Code to control and administer the Matriculation Schools in the State of Tamil Nadu?

11. However, I find, with great respect to the learned Judge in the judgment in 2002 WLR 688 in having taken the view to the effect that the Code of Regulations for Matriculation Schools as a comprehensive and complete Code and that the Matriculation Schools stood excluded from the definition of "Private Schools" u/s 2(7) of the Act, and there is no need to follow the provisions of the Tamil Nadu Recognised Private Schools Regulations Act. I, therefore, feel that the said issue requires an authoritative pronouncement by the Division Bench of this Court which alone would bring a lasting solution to this vexed question.

13. With such observations, the above noted question was referred to the Division Bench. Thereafter, these matters are posted before us, as directed by The Honourable The Chief Justice.

14. Heard the learned counsel on either side, at length. During the arguments, they have reiterated their stands in accordance with the pleadings of the parties, as narrated above.

15. From the materials placed on record, it is seen that by the time the Act came into force in the year 1973, the Matriculation Schools were affiliated to the concerned Universities and it is during the year 1976 a decision has been taken by the Universities to disaffiliate the Matriculation Schools.. After considering the suggestion of the Syndicate of Madras University, the Board of Matriculation Schools was formed and Code of Regulations for Matriculation Schools came into operation on and from 1.6.1978. The Code is in existence all these years, for more than 34 years. Only because of the historical background and since the Matriculation Schools themselves form into a separate category, even after the de-affiliation, the Government has not brought the Matriculation Schools within the ambit of the Act and, instead, framed Code of Regulations, which were held to be intra vires by this Court in the judgment in 2002 WLR 688.

16. At this juncture, as could be seen from G.O. (ID) No. 239, dated 18.12.2001, while the Director of Matriculation Schools is the Chairman of the Board of Matriculation Schools, the Director of School Education; Director of Government

Examinations; Director of Collegiate Education; Director of Teacher Education, Research and Training; Inspectors of Matriculation Schools for three regions are the Ex-officio members. The Board also contains the University representatives; Representatives of the Government of Pondicherry; Nominated Members to represent Head of Matriculation Schools; Nominated Members to represent Matriculation School Teachers and nominated members to represent special interests. It has been ascertained by us from the learned counsel appearing on either side that there is no change in the pattern of Board from the time of its inception. As could be seen from the averments of the counter affidavit of the respondents, the issuance of the impugned Government Orders have the nod and approval of the Board. While the Board contains the representatives of everybody connected to the Matriculation Schools, like the school managements and teachers, also as the Members, besides the Government authorities and when the Board has approved passing of the said G.Os., we wonder as to how the present writ petitions filed by a School and even the Association after 34 years of disaffiliation could merit consideration, since the petitioners are very well represented in the Board through their representatives, with whose approval and consent alone the present impugned Orders came to fore and all these years, the affairs of the Matriculation Schools are being managed and controlled under the Code of Regulations for Matriculation Schools.

17. While referring the question to the Division Bench, the learned single Judge (The Honourable Mr. Justice F.M. Ibrahim Kalifulla, as His Lordship then was), seems to have felt that if the ratio arrived at by the Honourable Apex Court in *Bishamber Dayal Chandra Mohan v. State of U.P.* AIR 1982 SC 32, is applied, after dis-affiliation, the Matriculation Schools should have been brought into the meaning of "private school" u/s 2(7) of the Act, since as per the above judgment of the Honourable Apex Court" So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill".

18. It is to be mentioned that the Code of Regulations for Matriculation Schools, came into existence on and from 1.6.1978 with a nod from the Board of Matriculation Schools, wherein the Matriculation School administration was also represented including the teachers. Only because of the historical background and the distinct characters being maintained by the Matriculation Schools, they were not brought into the fold of the "private schools". While on one hand, the petitioners want to withhold the status of "Matriculation Schools", on the other hand, since a little financial burden is slapped on them by virtue of the impugned G.Os. (that too after the approval of the Board, wherein the Matriculation Schools" were also represented by their representatives), they came forward with these writ petitions. It is not the case of the petitioners that they are ready and willing to lose the status of Matriculation Schools so as to come into the fold

of "private schools" as defined under the Act. In view of the above, so long as the petitioners want to retain the status and dignity of "Matriculation Schools", they cannot claim parity with "private schools" since, in our considered view, both are distinct and separate. Therefore, we respectfully disagree with the view expressed by The Honourable Mr. Justice F.M. Ibrahim Kalifulla that after disaffiliation, the Matriculation Schools will fall within the ambit of the Act (Para No. 11 of the order of His Lordship The Honourable Mr. Justice F.M. Ibrahim Kalifulla, as extracted supra, though incomplete (since the first sentence of the para is incomplete), it carries the meaning that His Lordship is in respectful disagreement with the view expressed by His Lordship The Honourable Mr. Justice P. Sathasivam, and as such referred the question to the Division Bench).

19. With regard to the argument of the petitioners that excess power has been delegated on the second respondent, on a thorough perusal of the impugned G.O. 188, we have no hesitation to hold that the Government has directed the second respondent to send a proposal only, for making suitable amendment to the Code of Regulation for Matriculation Schools. It is also to be mentioned that in their counter, the respondents in para No. 9 have asserted that "in order to make appropriate amendment to the code of Regulations, the Government have called for certain proposals from the 2nd respondent and the Government would certainly consider the proposal independently and issue appropriate amendment on its own". Therefore, we are unable to accept the contention of the petitioners that there is excess delegation of power on the second respondent. For all the above reasons and further considering the historical background of the coming into being of the Matriculation Schools and the fact that a separate Code is in force for all the aspects covering the affairs of the Matriculation Schools, we are in complete agreement with the observations made and findings arrived at by His Lordship The Honourable Mr. Justice P. Sathasivam, in the above referred judgment, which attained finality. Accordingly, we hold that the Matriculation Schools will not fall within the ambit and definition of "private schools" as defined u/s 2(7) of the Act just for the reason that they are not affiliated to the Universities. Therefore, the question referred to us is answered against the petitioners.

In the result, both the above writ petitions are dismissed. No costs.