
(2010) 11 MAD CK 0032

In the Madras High Court

Case No : Writ Petition (MD) No's. 359 and 1194 of 2009

Dr. C. Gopalakrishnan and S. Santhanakrishnan

APPELLANT

Vs

T. Gopi @ Gopalakrishnan and Others
K.
Santhanakaruppasamy Vs Dr. C. Gopalakrishnan
Dr. C.
Gopalakrishnan, S. Santhanakrishnan and K.
Santhanakaruppasamy Vs The Director of Collegiate
Education, The Joint Director of Collegiate Education and
Yadavar Educational Fund and K.P. Navaneetha Krishnan

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Citation : (2010) 11 MAD CK 0032

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Veeranasamy, in W.P. MD. No. 359 of 2009 and D. Malaichamy in W.P. MD. No. 1194 of 2009, for the Appellant; R. Janakiramala, Spl. Govt. Pleader for Respondents 1 and 2, K. Srinivasan, for Respondent 3, T.C.S. Thillainayagam, for Respondent 4, P. Jessi Jeeva Priya, for Respondent 5 and Isaac Mohan Lal, for Respondents 16 and 17 In W.P. MD. No. 359 of 2009 and R. Janakiramala, Spl. Govt. Pleader for Respondents 1 and 2, M. Mariappan, for Respondent 4 and T. Kokilavane, for Respondent 5, for the Respondent

Judgement

R.S. Ramanathan, J.—In both the writ petitions, the Petitioners have challenged the proceedings of the first Respondent dated 09.01.2009,

cancelling the approval granted to Dr. C. Gopalakrishnan, as Secretary of the Yadava College and approving the appointment of Mr. K.P.

Navaneetha Krishnan, as College Secretary. As the issue involved in both the writ petitions are identical and the parties are also same and in both

the Writ Petitions, the same order is challenged, with consent of the parties, both the writ petitions were heard together and common order is

passed.

2. The petition in W.P.(MD) No. 359 of 2009, is filed by one Dr. C. Gopalakrishnan, whose approval as College Secretary was cancelled by the impugned order dated 09.01.2009, passed by the first Respondent and the petition in W.P.(MD) No. 1194 of 2009, is filed by Mr. S.

Santhanakrisnan, and another, challenging the same order.

3. The case of the Petitioner in W.P.MD. No. 359 of 2009, is that the Yadava College is run by the Yadava Educational Fund, established in the

year 1962. The Yadava Educational Fund is recognized as the Educational Agency of Yadava College, at Madurai, and one Mr. A.R. Chandran,

was the College Secretary, pursuant to the resolution of the Executive Committee of the Educational Agency, approved by the first Respondent by

order dated 25.04.2007 and the said A.R. Chandran, expired on 24.12.2008, the Executive Committee of the Yadava Educational Agency,

appointed the Petitioner -Dr. C. Gopalakrishnan, in W.P.MD. No. 359 of 2009 as Secretary of the College in the meeting held on 28.12.2008,

by passing a resolution and the same was communicated to the first Respondent, along with Form-VI, and the first Respondent also accepted the

resolution of the Executive Committee and Form-VI and recognized the said Dr. C. Gopalakrishnan, as Secretary of the Yadava College, by

order dated 31.12.2008. The Petitioner-Dr. C. Gopalakrishnan, also took charge on 02.01.2009. Thereafter, at the instance of the fourth

Respondent viz., K.P. Navaneethakrishnan, who claimed to have been elected as the Secretary of the College in the General Body Meeting,

alleged to have been convened on 28.12.2008, applied to the first Respondent to recognize him as Secretary of the College and that was accepted

by the first Respondent and the approval granted to the Petitioner-Mr. Gopalakrishnan, was cancelled . Therefore, the impugned order of the first

Respondent dated 09.01.2009, is liable to be quashed.

4. The Petitioner in W.P.MD. No. 1194 of 2009, stated that one A.R. Chandran, was appointed as Secretary of the College and he convened a

General Body Meeting on 21.12.2008, and in that meeting, it was resolved that in addition to A.R. Chandran, the Petitioners also shall act as the

Governing Body, along with A.R. Chandran. That was challenged by the said A.R. Chandran, in the suit in O.S. No. 381 of 2008, on the file of

the District Munsif, Melur and in that suit, a compromise was entered into

between them and as per the said compromise decree, A.R. Chandran, should not delegate or hand over the administrative powers and charges of Yadava College to any other third party, except the Petitioners herein and allowed the Petitioners to participate in the functions and administrations of Yadava College, as per the resolutions passed on 21.12.2008, in the General Body Meeting of the Yadava College. Therefore, the Petitioners in that writ petitions applied to the first Respondent to appoint them as Secretaries of the Yadava College and their request was also refused by the first Respondent by the impugned order dated 09.01.2009 and hence, the Petitioners in W.P. No. 1194 of 2009, also challenged the same impugned order dated 09.01.2009, passed by the first Respondent.

5. The Respondents 1 and 2, filed counter stating that after the death of A.R. Chandran, the Petitioner-Dr. C. Gopalakrishnan, in W.P.(MD). No. 359 of 2009, made a request along with Form-VI, to approve him as Secretary of the College, stating that he was appointed as Secretary in the Executive Committee Meeting held on 28.12.2008, and that was approved by a proceedings dated 31.12.2008. Thereafter, the Petitioners in W.P.(MD) No. 1194 of 2009 and Mr. K.P. Navaneethakrishnan, submitted Form-VI, to appoint them as Secretary of the College and the first Respondent, considering the merits of each claim, found that Mr. K.P. Navaneetha Krishnan, was elected unanimously in the Special General Body Meeting held on 28.12.2008, and therefore, approved Mr. K.P. Navaneetha Krishnan, as Secretary of the College and cancelled the earlier approval granted to Dr. C. Gopalakrishnan, the Petitioner in W.P.(MD). No. 359 of 2009, which goes to show that the first Respondent has acted on the basis of the materials available and therefore, the order is legal and cannot be questioned. The Yadava Educational Fund, represented by Mr. N. Kannan, the third Respondent in both the Writ Petitions filed a counter stating that Mr. K.P. Navaneethakrishnan, is not a member and therefore, he cannot act as Secretary. The third Respondent also disputed the appointment of Mr. K.P. Navaneethakrishnan, as Secretary of the College in the meeting, alleged to have been convened on 28.12.2008 and the first Respondent, ought not to have recognized him, as Secretary of the College.

6. Mr. K.P. Navaneethakrishnan, the fourth Respondent in W.P.MD. No. 359 of

2009, who has been recognized as Secretary of the College by the first Respondent filed a detailed counter, stating that after the death of Mr. A.R. Chandran, without following the procedures laid down in the additional by-laws of the Yadava Educational Fund, the Petitioner Dr. C. Gopalakrishnan, was appointed as Secretary of the College, which was also approved by the first Respondent. Therefore, the appointment of the Petitioner-Dr. C. Gopalakrishnan, is illegal and it is against the by-laws. He further submitted that on 26.12.2008, permission was sought for from the Member, for convening General Body Meeting on 28.12.2008 and in that meeting, he was selected as the Secretary and he also took charge on 10.01.2009 and having come to know that the fourth Respondent has sought for permission to convene General Body Meeting, one Mr. N. Kannan, who claims to be the Secretary of the Societies, convened a meeting amongst other Members, without informing the General Body and appointed Dr. C. Gopalakrishnan, as Secretary of the College. It is further submitted that the General Body of the College consists of 4, 976 Members. After the enforcement of the additional by-laws, the Executive Committee elected by the General Body alone can elect the Officer Bearers, including the Secretary and Correspondent and the said Dr. C. Gopalakrishnan, was not elected by the members of the General Body and the election of Dr. C. Gopalakrishnan, is also not in consonance with the by-laws. In the General Body Meeting held on 28.12.2006, 256 members attended the meeting and unanimously elected Mr. K.P. Navaneethakrishnan, as Secretary and Correspondent and after considering all these aspects, the first Respondent approved the appointment of Mr. K.P. Navaneethakrishnan, as Secretary of the College and cancelled the earlier approval granted to Dr. C. Gopalakrishnan, viz., the Petitioner in W.P.MD. No. 359 of 2009. Therefore, the order is valid and the same cannot be questioned by the Petitioners in both the Writ Petitions.

7. The contesting parties in both the Writ Petitions are the Petitioners in both the Writ Petitions and Mr. K.P. Navaneethakrishnan, who has been approved as Secretary of the College and the Yadava College Educational Fund.

8. Before going into the merits of the Writ Petitions, certain facts, as culled out from the pleadings have to be stated. The Yadava Educational Fund, a registered Society, having registered in the year 1962, with Registration

No. 85/1962, is administering the Yadava College and in the year

1968, the By-laws were amended and as per the amended by-laws, which has been approved by the Registrar of Societies, the College is

administered by the Executive Council, elected by the Yadava Educational Fund. It is seen from the approved by-laws that the Executive Council

consists of 41 Members and it comprises of the following persons as given below:

i) three representatives from Yadava Educational Fund

ii) three persons, from persons, who have donated Rs. 2,00,000/- and created endowment iii) one representative from Thiruppallai Village,

Yadava Community.

iv) 10 persons from persons, who have donated Rs. 5,000/-cash or property.

v) 24 persons from persons, who have donated Rs. 2,50/-more than and less than Rs. 5,000/-.

9. The Executive Council shall elect President, Vice-President, Secretary and Treasurer and they should also elect two persons for the Governing

Council. If any vacancy arises in the Executive Committee Council, the Council can appoint any person for that post and they will hold the post for

the remaining period. The Governing Council consists of President of the Executive Council, Vice-President, Secretary and Treasurer and the

representations from persons, who have donated Rs. 2,00,000/-and have created an endowment and two persons have to be elected by the

Executive Council and one Member from Madurai Kamarajar University Syndicate. It is further seen from the amended by-laws that the

Secretary, shall act as a Co. Respondent of the College and he shall take care of the College administration in respect of Educational matters and

the Secretary of the Executive Council, shall be the Secretary of the Managing Council/ Governing Council. It is further admitted that the

Petitioners in W.P. No. 1194 of 2009, also filed the suit in O.S. No. 587 of 2008, for framing scheme for the Educational Fund as well as the

Yadava College and the suit is also pending.

10. Mr. Marriappan, the learned Counsel appearing for the Petitioner -Dr.C. Gopalakrishnan, submitted that the Petitioner in W.P.(MD). No. 359

of 2009, was validly elected by the Educational Fund in the place of said A.R. Chandran, and his appointment was also recognized by the first

Respondent. But, without giving any opportunity to the Petitioner, the first Respondent cancelled the earlier approval and approved the fourth

Respondent viz., Mr. K.P. Navaneethakrishnan, in W.P.MD. No. 359 of 2009, as Secretary, which is against the Principles of Natural Justice.

Mr. Mariappan, the learned Counsel further submitted that the Yadava Kalvi Nidhi and the Yadava College by-laws were amended in the Special

General Body Meeting held on 06.05.2007, and as per the amended by laws, the Yadava Kalvi Nidhi, is run by the Educational Agency and the

Executive committee of the Yadava Kalvi Nidhi, shall decide the management of the College. The Executive Committee of the Yadava Kalvi

Nidhi, consists of 21 persons, will be elected and those Committee shall appoint one person as Secretary of the College, as per the Tamil Nadu

Private Colleges (Regulations) Act, 1976 and in that place, the Petitioner-Dr. C. Gopalakrishnan, was appointed. Therefore, the appointment of

the Petitioner-Dr. C. Gopalakrishnan, is in accordance with the amended by-laws, amended in the year 2007. Therefore, the appointment has

been validly made and the appointment of Mr. K.P. Navaneethakrishnan, on the basis of the alleged General Body Meeting held on 28.12.2008,

has no legal sanction and the General Body of the Yadava College, cannot elect the Secretary for the Yadava Educational Fund, which is the

Educational Agency and without appreciating the same, the first Respondent cancelled the appointment of the Petitioner, without following the

Principles of Natural Justice and therefore, the same has to be set aside.

11. Mr. Isaac Mohan Lal, the learned Counsel for the Respondents 16 and 17 in W.P.(MD). No. 359 of 2009, and also for fifth Respondent viz.,

Mr. K.P. Navaneetha Krishnan, in W.P. No. 1194 of 2009, representing Mrs.T. Kokilavani, has submitted that Mr. K.P. Navaneethakrishnan,

has been validly elected as Secretary of the College in the General Body Meeting held on 28.12.2008, and the election of the Petitioner in

W.P.MD. No. 359 of 2009, was conducted in a meeting wherein eight members participated and in any event, the General Body is the Supreme

Body. Therefore, the appointment of Mr. K.P. Navaneethakrishnan, as Secretary of the College by the General Body has to be given preference

and considering that aspect, the first Respondents has rightly approved the appointment of Mr. K.P. Navaneethakrishnan, as Secretary and

cancelled the earlier appointment of the Petitioner-Dr.C. Gopalakrishnan, in W.P.MD. No. 359 of 2009.

12. Mr. Isaac Mohan Lal, the learned Counsel further submitted that after the assumption of charges by Mr. K.P. Navaneethakrishnan, the

General Body Meeting was convened on 04.02.2009 and in that meeting, Mr. K.P. Navaneethakrishnan, was once again elected as Secretary of

the Society and the Form-VI to that effect was also filed before the Registrar of Societies. As on date, the Yadava Kalvi Nidhi is run by a newly

elected Office Bearers in the meeting held on 04.02.2009, and that was also approved by the Registrar of Societies. Therefore, the Court has to

take into consideration the subsequent events and in that case, the order of the first Respondent recognizing the appointment of Mr. K.P.

Navaneethakrishnan, as Secretary of the College, need not be interfered with, as he has been appointed as Secretary in the General Body

Meeting, subsequently held on 04.02.2009. He also relied upon the judgments reported in Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji

Devi (Dead) by LR's. and Another, Pasupuleti Venkateswarlu Vs. The Motor and General Traders, and S.L. Kapoor Vs. Jagmohan and Others, ,

in support of his contention. He also further submitted that there is no question of violation of Principles of Natural Justice and the first Respondent

by the impugned order has only rectified the mistake committed by him in granting approval to Dr. C. Gopalakrishnan, as Secretary of the College

and having realised that Mr. K.P. Navaneethakrishnan, has been properly elected by the General Body, cancelled the earlier order and approved

the appointment of Mr. K.P. Navaneethakrishnan, as the Secretary. Therefore, when the order has been passed, rectifying the mistake committed

earlier, there is no question of violation of Principles of Natural Justice and in support of his contentions, he also relied upon the judgments reported

in (2006) 8 192 in the matter of Union of India and Ors. v. Bikash Kuanar and State of M.P. and others Vs. Mahesh Kumar and others, . It was

his further submission that the adherence to the Principles of Natural Justice cannot be invoked, when admitted facts lead to only one conclusion

and no prejudice is caused to the other side and relied upon the judgments reported in M.C. Mehta Vs. Union of India (UOI) and Others, . and

Aligarh Muslim University and Others Vs. Mansoor Ali Khan, .

13. Mr. Mariappan, the learned Counsel appearing for the Petitioner viz., Dr. C. Gopalakrishnan, in W.P.MD. No. 359 of 2009, and the fourth

Respondent in W.P. No. 1194 of 2009, relied upon the judgments reported in Shri Shekhar Ghosh Vs. Union of India (UOI) and Another, and

(2010) 6 S.C.C. 614, in the matter of (Chairman, All India Railway Recruitment Board and Anr. v. K. Shyamkumar and Ors. to substantiate his

contention that the Principles of Natural Justice have to be followed, when civil right is affected and in the present case on hand, the Petitioner in

W.P.MD. No. 359 of 2009, has been deprived of the post by the cancellation of the earlier recognition granted by the first Respondent.

Therefore, the first Respondent ought to have given an opportunity to the Petitioner before passing the impugned order.

14. Mr. K. Srinivasen, representing the Yadava Educational Fund, supported the case of the Petitioner in W.P.MD. No. 359 of 2009 and Mr.

T.C.S. Thillainayagam, appearing for the fourth Respondent in W.P.MD. No. 359 of 2009, supported arguments of Mr. Issaac Mohanlal.

15. Heard the learned Counsel appearing for all the parties.

16. As sated supra, originally, the Yadava Educational Fund or known as Yadava Kalvi Nidhi, a registered Society was managing the affairs of the

College and in the year 1968, by-laws were amended and the Executive Council is managing the affairs of the College. It is seen from the typed-

set of papers filed in support of W.P. No. 1194 of 2009, that the memorandum of association of Yadava Kalvi Nidhi and the by-laws approved in

the General Body on 27.10.1968 for the Yadava College, was also approved by the Registrar of Societies that the College is managed by the

Executive Council and the Secretary shall be in-charge of the Educational matters of the College and he shall also be the Co Respondent. These

by-laws, as per the amendment of the year 1968, is found in page 4 of the typed-set of papers filed in support of W.P.(MD) No. 1194 of 2009.

In the same typed-set of papers, another by-laws, is found in page 32 onwards and two by-laws are not similar. Further, the Petitioner in W.P.

(MD). No. 359 of 2009, filed a by-laws in page No. 1 of their typed-set of papers and also filed another by-laws and the amended by-laws for a

College, as amended on 06.05.2007 in page No. 21 and as per the amended by-laws of the year 2007, the Council of the Yadava Kalvi Nidhi,

shall decide about the College Administration and Yadava Kalvi Nidhi shall be the Educational Agency. It is not known whether this amended by-

laws of the year 2007, has been approved by the Registrar of Societies. Therefore, there are three sets of by-laws, now filed by both the parties

and according to them, the College is managed by them under the by-laws, as per their stand.

17. It is also admitted by all the parties that the Petitioners in W.P. No. 1194 of 2009, filed the suit in O.S. No. 587 of 2008, on the file of the

Sub-Court, Madurai, against the Yadava Kalvi Nidhi represented by its General Secretary Mr. N. Kannan, and Mr. K.P.S. Navaneethakrishnan,

and also against the Petitioner in W.P.MD. No. 359 of 2009, for framing a scheme for the Yadava Kalvi Nidhi and the Yadava College. It is also

admitted that in W.P.M.P No. 2181 of 2009, filed by Yadava Kalvi Nidhi, represented by its General Secretary Mr. N. Kannan, for the issuance

of Writ of Mandamus, directing the Registrar of Societies from in any way taking on file the alleged Resolutions, Minutes and other documents

submitted by Mr. K.P.S. Navaneethakrishnan, and two others and this Court vide order dated 15.10.2009, held that the parties have to agitate

their rights in the suit in O.S. No. 587 of 2008 and the factual matters cannot be gone into in the Writ Petition and dismissed the Writ Petition.

Further, it has been held by the Hon'ble High Court of Madras, that by accepting the Form-VI, by the Registrar of Societies, no person can claim

any right and the rights of the parties have to be decided only in a validly instituted Civil suit and in this case, admittedly, O.S. No. 587 of 2008 has

been filed for framing scheme and in that suit, all the parties are made as parties and therefore, it is in the interest of all the parties to agitate their

rights only in that suit.

18. However, having regard to the impugned order in these Writ Petitions, admittedly, the dispute arises after the death of one Mr. A.R.

Chandran, who was elected as Secretary. It is also not in dispute that the said A.R. Chandran, was elected as Secretary by the Executive

Committee and his selection was approved and nobody challenged the same. It is seen from the by-laws as amended in the year 1968, that the

Executive Council is an authority to appoint a Secretary for the administration of the College and in accordance with that the said A.R. Chandran,

was selected. As per the same by-laws, if any vacancy arises for any post, the Executive Council has to fill-up the same and in this case, as per the

contention of the Petitioner in W.P.MD. No. 359 of 2009, the Petitioner-Dr. C. Gopalakrishnan, was elected as Secretary in the Executive

Committee meeting and that was also initially approved by the first Respondent. Mr. K.P. Navaneethakrishnan, claims to have been elected as

Secretary by the General Body and it has not been made clear whether sufficient notice was given for convening the General Body Meeting as per

the provisions of Tamil Nadu Societies Registration Act. As stated supra, as per the by-laws, as admitted by the fourth Respondent in W.P.MD.

No. 359 of 2009 viz., Mr. K.P. Navaneethakrishnan, only the Executive Council has got powers to elect the Secretary and the General Body has

no role to play. Therefore, in my view, the first Respondent committed an error in approving the appointment of Mr. K.P. Navaneethakrishnan, on

the basis that his appointment was approved in the General Body Meeting and the conclusion arrived at by the first Respondent is not correct.

Further, the first Respondent, before cancelling the recognition already granted to Dr. C. Gopalakrishnan, the Petitioner in W.P.MD. No. 359 of

2009, ought to have given him an opportunity, since he also claims to have been validly elected as per the by-laws. Even though, subsequent

events can be taken into consideration to mould the relief, the same cannot be taken into consideration to perpetuate the wrong. I have already

held that the election of Mr. K.P. Navaneethakrishnan, in the General Body Meeting, as Secretary has no legal sanction, as per the by-laws and

therefore, the subsequent convening of General Body Meeting on 04.02.2009, by him and the subsequent election of Officer Bearers cannot be

considered as valid at this stage. Further, the first Respondent having come to know that the suit in O.S. No. 587 of 2008, is pending, ought not to

have cancelled the recognition of Dr. C. Gopalakrishnan, without giving him opportunity and ought not to have approved the appointment of Mr.

K.P. Navaneethakrishnan, as Secretary. But, the claim of the Petitioners in W.P. No. 1194 of 2009, was validly rejected by the first Respondent,

as the by-laws of the Yadava Educational Nidhi, does not permit the running of the College by three persons. Further, in the present case on hand,

as stated supra, there is a confusion about the Constitution of Yadava Educational Fund as well as the by-laws of the Yadava College, as two

other by-laws are filed and even as per the amended by-laws of the year 1968, which was filed before the Registrar of Societies, the Executive

Council has got the power to appoint the Secretary and in this case, the Executive Council has appointed Dr. C. Gopalakrishnan, and therefore,

that was correctly recognized by the first Respondent and while cancelling his recognition, the first Respondent ought to have given him an

opportunity and in the absence of giving such opportunity, the cancellation of his recognition is void in law. Therefore, the impugned order of the

first Respondent is liable to be set aside and it is set aside accordingly.

19. In the result, the petition in W.P.MD. No. 359 of 2009 is allowed and the petition in W.P. No. 1194 of 2009, is also allowed, but the

Petitioners in W.P. No. 1194 of 2009, cannot claim to be the members of the Governing Council/ Executive Counsel though as the impugned

order is set aside. Therefore, the order of the first Respondent in rejecting the claim of the Petitioners in W.P. No. 1194 of 2009, is confirmed.

20. However, it is made clear that the rights of the parties can be decided only in the suit in O.S. No. 587 of 2008 and till such time, the Petitioner-

Dr. C. Gopalakrishnan, in W.P.MD. No. 359 of 2009, shall continue to be the Secretary of the Yadava Educational Agency. Consequently,

connected Miscellaneous Petitions are closed. No costs.