

(2000) 08 KAR CK 0077

In the Karnataka High Court

Case No : Civil Revision Petition No. 2793 of 2000

Gnanamandira Trust High School

APPELLANT

Vs

R. Lakshmipathi and Another

RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2 (4), 24
Karnataka Education Act, 1983 — Section 96 (1), 96 (2), 96 (5)
Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 10, 10, 10 (2), 10 (4), 10 (5)

Citation : (2001) 1 KCCR 70

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M.R. Shailendra, for the Appellant; D.S. Ramachandra Reddy, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—This revision petition arises from the judgment and order dated 14.7.2000 delivered by the I Ind Additional District and Sessions Judge (Shri B. Yoginath), Kolar, in E.A.T. Appeal No. 7 of 1993, whereby the I Ind Additional District and Sessions Judge, Kolar as such allowed the appeal filed by the Appellant (Respondent-1 herein) and directed the revision Petitioner to take the Appellant on duty within one month and to pay the salary alongwith costs.

2. Without going into the merits of the case, here I find that the I Ind Additional District and Sessions Judge, Kolar, has passed the order as "Civil Court" as nomenclature has been given as I Ind Additional District and Sessions Judge, Kolar and at the end of the operative portion of the order also where the signature is there it is mentioned as "B. Yoginath, I Ind Additional District and Sessions Judge, Kolar".

3. The learned Counsel for the revision Petitioner contended that under the provisions of the Karnataka Private Educational Institutions Act, 1975 the appeal

could be decided by the Educational Appellate Tribunal and the jurisdiction of the Civil Court as Civil Court is barred in view of the provisions of Sections 8, 10, 10(2), 10(4), 10(5) and 11 of the Karnataka Private Educational Institutions Act, 1975. The learned Counsel has also made reference to the provisions of Section 96(5) of the Education Act, 1984 i.e., Karnataka Act No. 1 of 1995 as well as contended that the impugned order is without jurisdiction.

4. The learned Counsel appearing for the Respondents contended that the impugned order may be said to be within the jurisdiction as u/s 10 of the Karnataka Private Educational Institutions Act, 1975, it has been provided that pending constitution of the Educational Appellate Tribunal u/s 96(1) and (2) of the Act, the District Judge of each District shall function as the Educational Appellate Tribunal of the District. He submitted that there is only description of the nomenclature.

5. I have applied my mind to the above contentions advanced by the learned Counsels appearing for the parties.

6. Section 10 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 reads as under:

Section 10-Tribunal: The State Government shall by notification constitute one or more Educational Appellate Tribunal for the adjudication of appeals preferred u/s 8 and where more than one Tribunal is constituted the State Government shall specify in the notification the limit to which the territorial jurisdiction of each Tribunal extends.

(2) The Educational Appellate Tribunal shall consist of one person who is or has been a Judicial Officer not below the rank of a District Judge: Provided that pending constitution of the Educational Appellate Tribunal under Sub-section (1) the District Judge of each district shall function as the Educational Appellate Tribunal of the District.

7. Section 11 of the said Act reads as follows:

Section 11: Jurisdiction of Civil Court barred: No Civil Court shall have jurisdiction in respect of any matter in relation to which the Educational Appellate Tribunal is empowered by this Act to exercise any powers.

Section 96(1), (2) and (5) of the Karnataka Education Act, 1983 i.e., Karnataka Act I of 1995 reads as under:

96. Tribunal-(1) The State Government shall, by notification in the official gazette constitute one or more Educational Appellate Tribunals for the adjudication of appeals preferred under this Act and where more than one Tribunal is constituted, the State Government shall specify the territorial jurisdiction of each such Tribunal.

(2) The Educational Appellate Tribunal shall consist of one person who is or has been a judicial officer not below the rank of a District Judge:

Provided that pending constitution of the Educational Appellate Tribunal under Sub-section (1), the District Judge of each District shall function as the Educational Appellate Tribunal of the District.

(5) No Civil Court shall have jurisdiction in respect of matters over which the Tribunal exercises any power under this Act.

8. A reading of these Sections clearly reveals that the jurisdiction of Civil Court is completely barred and the Civil Court cannot entertain the cases in respect of the matters over which the Tribunal exercises power. There cannot be any dispute so far as this proposition of law is concerned. It further comes out that there can be one or more Educational Appellate Tribunals as the State Government may constitute by notification issued by it and in that case State is to notify the territorial jurisdiction of each of Education Appellate Tribunal so constitute by notification in writing. Who can be appointed to be a member of the Educational Appellate Tribunal is very clearly provided by Sub-section (2) of Section 10 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and Section 96(2) of Act 1983 popularly known as the Karnataka Education Act, 1983 which is described as Karnataka Act No. 1 of 1995. As quoted above, the Educational Appellate Tribunal shall consist of "one person" who is or has been a judicial officer not below the rank of a District Judge. That as per proviso to Section 10(2) of 1975 or Section 96(2) of Karnataka Education Act (Act I of 1995) it has been provided that pending constitution of the Educational Appellate Tribunal under Sub-section (1), the District Judge of each district shall function as the Educational Appellate Tribunal of the District. It provides that during the interregnum period the District Judge shall and is to act as Educational Appellate Tribunal of the District. What the expression "District Judge" indicates, we have to be very clear. Section 2(4) of the CPC reads as under:

"district" means the local limits of the jurisdiction of a principal Civil Court of Original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

9. Section 4 of the Karnataka Civil Courts Act, 1964 provides and reads as under:

4. Establishment of a District Court for a District-(1) There shall be a District Court for each district:

Provided that the State Government may, in consultation with the High Court, establish a District Court for more than one district.

(2) Each District Court shall be presided over by a District Judge. By Section 5 of the Karnataka Civil Courts Act, 1964 a provision is made for the appointment of Additional District Judges and Section 6 provides for establishment of Courts of Civil Judges.

10. A reading of Section 4 of the Karnataka Civil Courts Act, 1964 very clearly indicates as to what District Court means. As the expression District Court has not been defined in Karnataka Act No. 10 of 1975, nor has been defined in

Karnataka Act No. 1 of 1995. Therefore, the meaning assigned u/s 4 of the Karnataka Civil Courts Act, 1964 that the District Judge is to be a Presiding Officer of each District Court. As referred to above in Section 4(1) and (2) for the purpose of the Act i.e., Section 10(2) of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and Section 96(2) of the Karnataka Education Act, 1983 that additional District Judge cannot be construed to be a District Judge. The position of an Additional District Judge is distinct from that of District Judge. The two Acts do not provide the District Judge expression includes Additional District Judge. No doubt, if the Government by notification notifies and appoints the Civil Judge or even the Additional District Judge to be the member of the Educational Appellate Tribunal u/s 10(2) of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, or Section 96(2) of the Karnataka Education Act, 1983 he may then be construed as Educational Appellate Tribunal. Otherwise, under the proviso to Sub-section (2) during the interregnum period the District Judge alone has been authorised and has been directed to act as Educational Appellate Tribunal and to discharge the functions of Educational Appellate Tribunal.

11. It is well settled principles of law that when the Act creating certain institution has specified the instrumentality through which the power has to be exercised, then it has to be exercised by that authority and that person and by none else. In this regard, reference may be made to the decision of the Privy Council in the case of AIR 1936 253 (Privy Council) wherein it been laid down that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Similar in the case of State of Uttar Pradesh Vs. Singhara Singh and Others, wherein it has been laid down that when a statute confers a power on certain judicial officers that power can obviously be exercised only by those officers. No other officer can exercise that power for it has not been given to him. Reference in this regard may be made to the following observation of their Lordships of Supreme Court in the case of Krishan Gopal Vs. Sri Prakashchandra and Others, at page 213 (para 12):

12. An election petition calling in question any election has u/s 81 of the Act to be presented to the High Court. Sub-section (1) of Section 80A of the Act makes it clear that the Court which has jurisdiction to try an election petition shall be the High Court. "High Court" has been defined in Clause (e) of Section 79 of the Act to mean a High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held. Sub-section (2) of Section 80A of the Act provides that the jurisdiction which the High Court has to try an election petition shall be exercised ordinarily by a single judge of the High Court and the Chief Justice shall from time to time assign one or more judges for the purpose. It is plain that Sub-section (2) does not confer jurisdiction to try an election petition. Such jurisdiction is conferred by Sub-section (1) of Section 80A upon the High Court. Sub-section (2) merely specified the instrumentality through which the jurisdiction which is vested in the High Court shall be

exercised. The Sub-section thus relates to the procedure for the exercise of the jurisdiction and provides that the jurisdiction shall be exercised ordinarily by a single judge of the High Court who has been assigned for the purpose by the Chief Justice. Perusal of Sub-section (2) of Section 80A makes it manifest that it is only a judge of the High Court assigned for the purpose by the Chief Justice who can exercise the jurisdiction which is vested in the High Court to try an election petition by Sub-section (1) of that section. The provisions of Sub-section (2) are mandatory and a person who is not a judge of the High Court concerned and who has not been assigned for the purpose by the Chief Justice cannot exercise the jurisdiction which is vested in the High Court by Sub-section (1) of Section 80A of the Act. The word "ordinarily" does not indicate that the provisions of Sub-section (2) of Section 80A are not mandatory and that relaxation in compliance with those provisions is permissible. The word "ordinarily" only qualifies the number of Judges who can exercise the jurisdiction which is vested in the High Court to try an election petition. The said word indicates that normally it would be a single judge of the High Court who can exercise the jurisdiction which is vested in the High Court, but in appropriate cases, such jurisdiction can also be exercised by two or more judges.

13. Under the proviso to both sections whether it be Section 10 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, or it be under the proviso to Section 96(2) of the Karnataka Education Act, 1983 the power has been given and the mandate has been issued in favour of the District Judge to exercise the powers of Educational Appellate Tribunal and the mandate is for him to act as Educational Appellate Tribunal. So, in view of the law laid in the above case no other officer, can, nor shall exercise the power under proviso to Section 95(2) of Act No. 1 of 1995 unless specifically notified and authorised to act as member of the Educational Appellate Tribunal either u/s 10(2) of Karnataka Act No. 10 of 1975, or u/s 96(2) of the Karnataka Act No. 1 of 1995. Even then he has to act, not as Civil Court, but as a member of the Educational Appellate Tribunal and the order allowing the appeal must show that he has acted as member of the Educational Appellate Tribunal.

14. On behalf of the Respondents, the learned Counsel has invited my attention to the decision of this Court in the case of M.S. Ganesh Rao v. Sarphina D'Souza Bai and Anr. ILR 1975 Karn 2006 and contended that the Additional District Judge when he has disposed of the appeal on appeal being transferred, the order was not be held to be without jurisdiction or illegal or null and void. The case relied on by the learned Counsel is distinguishable. Sub-section (1) of Section 48 of the Karnataka Rent Control Act as it then was reads as under:

48. Appeals-(1) Notwithstanding anything contained in any law for the time being in force, every person aggrieved by an order u/s 14, Section 16, Section 17 or Section 21, passed by the Controller or the Court, may within thirty days from the date of the order, prefer an appeal in writing to the District Judge having jurisdiction over the area in which the premises are situate.

15. The above Sub-section is in pari materia with Section 15(1)(a) of the Mysore House Rent and Accommodation Control Act, 1951, which read:

15(1)(a)...any person aggrieved by an order.....passed by the Court or the Controller may, within fifteen days from the date of the order, prefer an appeal in writing to the District Judge having jurisdiction over the area in which the house is situate.

16. u/s 48 of the Karnataka Rent Control Act the appeal would lie to the District Judge from the order of the Controller or Court. The District Judge being described here as District Judge he had to act as Civil Court and u/s 5(2) of the Karnataka Civil Courts Act, 1964 he could transfer the appeal to the Additional District Judge either u/s 5(2) of the Karnataka Civil Courts Act, 1964, or u/s 24 of the Code of Civil Procedure. But, in the present case here the District Judge before whom the appeal had to be filed is required to act as Educational Appellate Tribunal. In other words, the law specifies as pending interregnum period i.e., constitution of Educational Appellate Tribunal and the appointment of its members from among the persons qualified, the District Judge during this interregnum period is required to act as member of Educational Appellate Tribunal and when he has been specified and specially directed to act as member of the Educational Appellate Tribunal the intention of the legislature is very clear that during the period the Educational Appellate Tribunals are duly constituted under Sub-section (2) of Section 10 of Karnataka Act 10 of 1975, or under Sub-section (2) of Section 96 of Karnataka Act No. 1 of 1995, the District Judge shall act as member of the Educational Appellate Tribunal and as such he could not transfer the case to any Additional District Judge or to a Civil Judge, unless the same i.e., the Additional District Judge or Civil Judge has been notified to be a member of the Educational Appellate Tribunal u/s 10(2) of Karnataka Act No. 10 of 1975, or u/s 96(1)(2) of Karnataka Act No. 1 of 1995. In this view of the matter, in my opinion once when the specific judicial officer for the time being viz., the District Judge has been specified to act as member of the Educational Appellate Tribunal no other officer could act as member of the Educational Appellate Tribunal unless and until the State Government has exercised its power either u/s 10(2) of Karnataka Act No. 10 of 1975 or u/s 96(1)(2) of Karnataka Act No. 1 of 1995. The principles of law laid down in the case of State of Uttar Pradesh Vs. Singhara Singh and Others, to the effect that when a statute confers a power on certain judicial officers that power can obviously be exercised only by those officers alone and none else. Here, the order does not show that the Additional District Judge has been so appointed and notified to be the member of Educational Appellate Tribunal. Further, from the order impugned in this revision, it does not appear to have been passed by the I Ind Additional District and Sessions Judge, Kolar, as member of the Educational Appellate Tribunal nor it has been so shown and as such it cannot be presumed that he was acting as member of the Educational Appellate Tribunal. The order herein shows that the impugned order has been passed by the I Ind Additional District and Sessions Judge, Kolar as such i.e., as Civil Court I Ind Additional District and Sessions Judge, means as

a Civil Court and Section 11 of Karnataka Act No. 10 of 1975 and Section 96(5) of Karnataka Act No. 1 of 1995 prohibit the jurisdiction of Civil Court and provides that jurisdiction shall not be exercised by the Civil Court in respect of the matters over which the Educational Appellate Tribunal has been conferred power to exercise it. The impugned prima facie appears to be without jurisdiction.

17. The Civil Revision Petition, as such, is hereby allowed and the order dated 14.7.2000 passed by the I Ind Additional District and Sessions Judge, Kolar, is set aside. Costs made easy.

18. The Respondents may approach the Educational Appellate Tribunal for decision of the case afresh. If no other member has been specified, then the District Judge will act as member Educational Appellate Tribunal and will decide the matter.

19. The Tribunal is directed to dispose of the appeal within a period of six months from the date of the receipt of the communication of this order.