

(1998) 10 MAD CK 0127
In the Madras High Court

Hindu Harijan Elementary School

APPELLANT

Vs

The Secretary to Government, Education, Science and
Technology Department and Others

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Citation : (1999) 1 MLJ 468

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of writ of mandamus forbearing the respondents from in any manner approving the proposal of granting sanction for starting a Panchayat Union Elementary School within the vicinity of Vandanaththampatti Village Sankarankoil Taluk, Tirunelveli District contrary to the Tamil Nadu Panchayats Act, 1994, G.Os. issued from time to time in respect of distance between two schools and pass such further orders.

2. In the affidavit in support of the petition, which is sworn to by the Secretary of the school, it is said that the petitioner school has classes from first standard to fifth standard and the elementary school is functioning under the control of the second respondent and it satisfies the requirements of Veerasingamani Village. It is said that the school is functioning with utmost satisfaction of the general public as well as the educational authorities and is producing very good results.

3. It is also said as per G.O.Ms.No. 1965, Education Department, dated 9.11.1965, Government had stipulated two conditions for opening new elementary schools by the Panchayat Union concerned. They are, the population of the area should not be less than 300 and there should not be any school within a radius of one mile. The G.O. further stipulated that the Panchayat Union councils are empowered to open new schools without consulting the Education Department, subject to fulfilment of the above said conditions. It is said that the above G.O. is in existence for the past 30 years and the conditions regarding the population and radius with regard to distance for establishment of new schools

have been, changed as per Government letter dated 6.9.1995, wherein the population of the area has been increased from 300 to 500 and with respect to distance, it was reduced from one mile to one kilometre.

4. It is also said that u/s 112 of the Tamil Nadu Panchayats Act, 1994, the resolution of the concerned Panchayat Union Council is necessary before starting a new elementary school in a locality. The reason for filing this writ petition is that a proposal has come for establishing a school in the village and the same was proposed by the petitioner and the members of the petitioner also filed representations. It is further stated that the Panchayat Union has not passed resolution and it is for the Panchayat Union to decide whether elementary school is required within that area. Without satisfying the statutory conditions, no school should be established within the village or at least within the prohibited distance, is the case of the petitioner.

5. Even at the time of admission, I heard the Government Pleader, who contended that the writ petition itself is not maintainable and the petitioner has no locus standi to file the writ petition.

6. As against that contention, the learned Counsel for the petitioner relied on the decision reported in Rajamani v. Panchayat Union Council (1967) 1 M.L.J. 63. where single Judge of this Court considered a similar question and held:

A person already running an existing elementary school in the locality has got every right to come to court as an aggrieved party and ask for the issue of writ of mandamus on the ground that there was breach of the rule, and notifications in opening another elementary school by the Panchayat Union in the instant case.

The learned Judge was relying on Section 65(e) of the Madras Panchayats Act 1958, which is correspondent to Section 112 of the present Act. In the present Act also there is a provision u/s 112, Clause (e), wherein it provides,

Section 112: Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of panchayat union council, within the limits of its funds, to make reasonable provision for carrying out the requirements of the panchayat union in respect of the following matters, namely,

* * *

(e) the opening and maintenance and expansion or improvement of elementary schools, including the payment of grants to private management in respect of elementary schools.

In 1958 Act also, the words are similar. In the above cited case, in the last paragraph of the judgment, the learned Judge held thus,

The learned Counsel for the respondent contended before me that the petitioner is not the aggrieved person and as such he is not entitled to file a writ against the respondent. Though there may be some force in the contention of the learned Counsel for the respondent, still it is clear that the petitioner is not

fighting personality. The question is whether an additional school is necessary and is permissible. When the aided elementary school of the petitioner is serving the school-going children of the locality, there is no necessity for another school in the same locality. Therefore the petitioner has got every right to come to court as an aggrieved party and to report that there was breach of the rule in opening another elementary school. I find that the petitioner is entitled to obtain a writ of mandamus directing the Panchayat Union Council, Kadayanallur, to forbear from running the School.

In the earlier portion of the same judgment, the learned Judge also held thus,

...It is for the local Panchayat to decide whether to have an additional elementary school or not. There is no material placed before me that another elementary school is absolutely necessary and that the present elementary school is not adequately serving the needs of the school-going children. In these circumstances, the petitioner is entitled to a writ of mandamus directing the Panchayat Union Council, Kadayanallur to forbear from running another elementary school.

7. On the basis of this decision, the learned Counsel for the petitioner submitted that it has got the locus standi to file the writ petition and its grievance is that the Statutory conditions have not been complied with in this case.

8. I do not think that the submission of the learned Counsel for the petitioner could be accepted and I have my own doubt whether the above decision still holds good.

9. In a Full Bench decision of this Court reported in *M.L. Krishnamurthy and Others Vs. The District Revenue Officer and Others, .*), a similar question came up for consideration of a Rice Mill Industry. Under the Act, certain conditions have to be complied with for establishing and running a Rice Mill Industry and permission and licence have to be obtained. The question that came up for consideration was whether the existing rice mill owner is entitled to challenge the establishment of another Rice Mill industry and whether he is an aggrieved person. The Full Bench, after extracting various decisions of Honourable Supreme Court, in para 6 of the Judgment held thus,

Adverting to the objection that want of previous sanction as per Section 8(3)(c) would vitiate the order, it was observed in paragraphs 9 and 10:

The Parliament has by the Rice Milling Industry (Regulation) Act, 1958, prescribed limitations that an existing rice mill shall carry on business only after obtaining a licence and if the rice mill is to be shifted from its existing location, previous permission of the Central Government shall be obtained. Permission for shifting their rice mill has obtained by the appellants from the Director of Food and Civil Supplies. The appellants had not started rice milling operations before the sanction of the Director of Food and Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities

before the machinery is moved from its existing site, we fail to appreciate that grievance the respondents may raise against the grant of permission by the authority permitting the installation of machinery on a new site. The rights to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i).

Section 8(3)(c) is merely regulatory: if it is not complied with, the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regarded as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the state by a law enacted in the interests of the general public under Article 19(c), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.

[Italics supplied]

And finally in paragraph 9 of the judgment, the Full Bench summarised their findings thus,

The principles deducible from the above pronouncement of the Supreme Court, may be summed up as follows: The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i). If Section 8(3)(c) of the Act, which is merely regulatory is not complied with, there could be imposition of penalty, but a competitor in the business cannot seek to prevent the other, in spite of the violation, from exercising his right to carry on business, because of the default. The lack of previous permission, as per Section 8(3)(c) will not give the existing rice-mill owner a locus standi for challenging the grant of the permission, because no right vested in him, could be stated to have been infringed....

10. The same principle was followed in the decision reported in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, wherein the Honourable Supreme Court held that a Competitor in business is not entitled to file writ petition challenging the grant of permission to another person.

11. Under the Constitution, it is the duty of the State to provide free elementary education and in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, the Honourable Supreme Court held that elementary education is the fundamental right. Under the directive principles of the State policy, the State is expected to provide as many schools as are necessary. One of the

reasons for backwardness of the people is lack of education. Persons who are seriously affected by lack of education is Scheduled Caste and Scheduled Tribes. It is to overcome this hardship to the backward people, the Government thought of establishing as many schools as possible. When the Government has decided on a policy of establishing as many schools the petitioner, who is running another educational institution cannot come before this Court and contend that no school shall be established in the village or within that area. If at all any person is affected, it is the panchayat. In fact, the proposal is to start panchayat union elementary school itself. Under the above circumstances, the petitioner has got no locus standi to challenge the establishment of another school. I feel the writ petition is filed only for the reason that the strength of the petitioner's school may be reduced or the staff employed by it is likely to be retrenched. But that cannot be a reason to prohibit establishment of another school, if that is constitutionally permissible.

12. In the result, I do not find any merit in the writ petition and the same is dismissed. No Costs. Consequently W.M.P.No. 11337 of 1998 is closed.