

(1991) 10 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 2048 of 1983

Kankubai Shrivikashram Trust and Others

APPELLANT

Vs

Kamal Khajurkar and Others

RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21

Citation : (1991) 93 BOMLR 642

Hon'ble Judges : H.D. Patel, J;G.D. Patil, J

Bench : Division Bench

Judgement

H.D. Patel, J.—The petitioner Kankubai Shrivikashram Trust, a public trust duly registered under the Bombay Public Trusts Act (hereinafter referred to as "the petitioner-institution") herein challenges the order passed by the respondent No. 2, the Presiding Officer of the School Tribunal in Appeal No. STN/67 of 1962 decided on 16.8.1983.

2. The facts in brief are that the first respondent was working as a Head Master in the Kankubai Girls High School at Karanja. In the year 1981 while routine inspection of the affairs of the school was made, the second petitioner noticed various irregularities and complaints against the first respondent. The Managing Committee in its meeting held on 3rd July, 1991 resolved to authorise the second petitioner to take further action in the matter. Accordingly a show cause notice dated 10.7.1981 came to be served on the first respondent. She was called upon to explain the allegations made against her. The first respondent submitted her reply vide letter dated 20.7.1981. When some more irregularities were noticed by the second petitioner, a further communication was sent to the first respondent on 23.11.1981 demanding her further explanation. However, there was no response from the first respondent. Subsequently on 20.1.1982 the Managing Committee of the petitioner-institution passed a resolution of holding enquiry against the first respondent in accordance with the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (Rules for

short). On the same day the President of the petitioner institution and Chairman of the School Committee were approached for nominating their respective members on the Enquiry Committee. The President of the petitioner institution nominated Shri Dongaokar, whereas the School Committee nominated the Chairman, the third petitioner, on the Enquiry Committee. This information was sent by the second petitioner in its capacity as a Secretary to the first respondent and further requested to appoint her nominee as well. The letter was returned back unserved. The first respondent failed to appoint her nominee and instead she alleged that the procedure laid down in Grant-in-Code was not followed by the management.

3. A detailed charge-sheet under cover letter dated 1.4.1982 was sent to the third respondent, who was the convener of the Enquiry Committee. The copy of this letter along with charge-sheet and other enclosure were served on the first respondent. Upon receipt of the letter, the first respondent demanded documents to submit her reply, which request was forthwith complied. Even inspection of the documents was offered. It appears that the first respondent did not file the reply to the charge-sheet. The Enquiry Committee recorded the evidence of the witnesses. Even the summary of proceedings of the Enquiry Committee was sent to the first respondent. Ultimately the Enquiry Committee recorded its findings on 7.6.1982. The managing committee considered the proceedings of the enquiry, the enquiry report and the recommendation of the Enquiry Committee in its meeting held on 7.6.1982 and accepted the same. It took the decision to terminate the services of the first respondent with effect from 10.6.1982 and also authorised the second petitioner to decision to execute the decision. In accordance with the resolution, the second petitioner terminated the services of the first respondent vide letter dated 9.6.1982.

4. Feeling aggrieved by the said decision, the first respondent filed an appeal before the second respondent, the Presiding Officer of the School Tribunal (hereinafter referred to as "the Tribunal"). By its judgment dated 16th August, 1983 the appeal was allowed and the order of termination dated was set aside. The first respondent was ordered to be reinstated in service. It is this judgment, which is impugned in this petition.

5. On behalf of the petitioner-institution the first ground of attack was the lack of jurisdiction of the Tribunal at Nagpur to hear the appeals coming from Akola District. In other words, it was urged that the Nagpur Tribunal had no jurisdiction over Akola District from where the present appeal arises. In this context reliance was heavily placed on the notification dated 13 April, 1983 which modified the earlier notification dated 13th July, 1981 issued under Sub-section (1) of Section 8 of the Maharashtra Employees of Private (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the Act"). The notification dated 13th April, 1983 reconstituted the Tribunal and it redefined the jurisdiction of the two Tribunals as mentioned in the Schedule annexed thereto. It indicates that the jurisdiction of the Tribunals at Nagpur included the Districts of Nagpur, Wardha,

Bhandara, Chandrapur and Gadchiroli. The Akola District which was earlier included in the jurisdiction of Nagpur Tribunal as per the notification dated 13th July, 1982 is now included within the jurisdiction of the Tribunal at Amravati/Aurangabad. The result was that though Nagpur Tribunal had jurisdiction to entertain the present appeal when it was filed, that Tribunal had lost the jurisdiction to hear and dispose of the very appeal after the notification dated 13th April, 1983 was published. It was hence contended that the Tribunal at Nagpur had no jurisdiction to hear and decide the appeal. The submission is no doubt attractive at the first sight, but upon careful examination it is difficult to agree with the submission.

6. It will be worthwhile to note the general powers of the Tribunal as stipulated in Sub-section (1) of Section 10 of the Act. It provides that for purposes of admission, hearing and disposal of appeal the Tribunal shall have the same powers as are vested in the Appellate Court under the CPC and shall also have the power to stay the operation of any order against which the appeal is made on such terms and conditions as it deems fit. Therefore, the power to be exercised is as if it was an appeal under the Code of Civil Procedure. Now Section 21 deals with the territorial jurisdiction of the Civil Court and Sub-section (1) thereof provides that no objection to the place of suing shall be allowed by any Appellate or Revisional Court unless was taken in the Court of first instance at the earliest possible opportunity and in all cases where the issues are settled at or before such settlement and unless, there had been a consequent failure of justice. Though the provision cannot strictly be applied in the absence of original and appellate jurisdiction, there can be no harm in applying the principles underlying the aforesaid provision. Those principles are as follows:

- (1) The objection must be taken in the Court of first instance;
- (2) It should be taken at the earliest possible opportunity; and
- (3) There has been a consequent failure of justice.

In the present case, none of the conditions are satisfied. No objection was raised by the petitioner-institution before the Tribunal. The objection about territorial jurisdiction is being raised for the first time in this petition. It is also not shown that because of lack of the territorial jurisdiction the petitioner-institution has suffered on account of failure of justice. It is held in Seth Hiralal Patni Vs. Sri Kali Nath, , that the objection to territorial jurisdiction is one which does not go to the competence of the Court and can, therefore, be waived. It is further observed in that case that it is now well settled that objection as to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of the Court to try a case. The competence of a Court to try a case goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection to the local jurisdiction of a Court can be waived and this principle has been given statutory recognition by

enactments like Section 21 of the Code of Civil Procedure. There is yet another later case of the Supreme Court in *Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others*, where the objection as to the territorial jurisdiction was set aside on the ground that the objector was unable to show that the trial in the wrong Court had led to failure of justice. Following these principles, we are of the opinion that the objection relating to the territorial jurisdiction must be rejected.

7. It was next urged on behalf of the petitioner-institution that the interpretation given to Rule 36 of the Rules by the Tribunal was incorrect, devoid of any reasoning and illegal. According to the Tribunal, the management be on safer side should have nominated the President of the Trust to be the convener and it was he who should have sought explanation from the first respondent. The Tribunal also treated the first respondent as equal to the Chief Executive Officer being the "Head" of the institution and, therefore, concluded that the President was a necessary member of the Enquiry Committee. All these findings were challenged by the petitioner institution by urging that they properly followed the rules applicable and no flaw can be found therein.

8. After hearing the parties on the interpretation of Rule 36 (unamended), the initial question which arises for determination is whether the "Head" of an institution stands on par or is equivalent to "Chief Executive Officer". The rest would depend upon the question answered. The relevant provision to be looked into is Sub-rule (1) of Rule 36 of the Rules and it reads as under:

36. Enquiry Committee.- (1) If an employee is allegedly found to be guilty of misconduct or misbehaviour of a serious nature, and the Management decides to hold an enquiry, it shall do so through a properly constituted Enquiry Committee. Such a Committee shall conduct an enquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an enquiry against the Head, who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by post acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

The sub-rule deals with the procedure, which the management must follow in the event it is found that the employee is guilty of misconduct or misbehaviour of a serious nature and the management decides to hold an enquiry. In such a case the management can take steps, but through a properly constituted committee with a further rider that they could do so only in cases where major penalty can be inflicted. To begin with, it is necessary to communicate the statement of allegations to the delinquent and demand a written explanation thereto within a stipulated time. For this purpose Sub-rule (1) of Rule 36 makes a distinction between an "employee" of the institution and the "Head" of that institution. The "employee" is defined under Clause (7) of Section 2 of the Act and it means a member of teaching and non-teaching staff of school. The "Head" as defined

under Clause (9) of Section 2 means the person by whatever name called in charge of academic and administrative functions of a school conducted by the management and recognised or deemed to be recognised under the Act and includes a Principal, Vice-Principal, Head Master, Headmistress, Assistant Head Master, Assistant Headmistress or Superintendent of the school. The two categories are separated only with a view that either of them are judged by persons appointed in Enquiry Committee, and each of the two members appointed by the management is superior to them. In so far as an "employee" is concerned, the Chief Executive Officer, duly authorised by the management, can communicate the statement of allegation and demand his or her explanation. But in case of a "Head" who is also a Chief Executive Officer, it will be the President of the institution who is competent to communicate the statement of allegations and demand the explanation. The only controversy is regarding the words "and in case of an enquiry against the "Head" who is also the Chief Executive Officer, the President of the management". According to the petitioner-institution the first respondent though was a Headmistress and, therefore, a "Head" was not a Chief Executive Officer and consequently it was not obligatory on the part of the President to communicate the statement of allegations and demand explanation. Now the Chief Executive Officer is defined under Clause (c) of Rule 2 of the Rules. It reads as under:

Chief Executive Officer" means the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered the decisions taken by the management....

9. The definition takes within its sweep all those who occupy a post of confidential capacity of executing the decisions of the management, if empowered to do so. There can be more than one person who can fit into the definition. That person may be a Secretary, Trustee, Correspondent or any other person, who is empowered to execute the decisions of the management besides the one who is a Chief Executive Officer. All these categories are brought on par for the purpose of Rule 36 only. This was required because no person inferior in rank should be appointed on behalf of the management on Enquiry Committee to judge the misconduct or misbehaviour of a delinquent. There are, however several other rules where the Head Master has to report to Chief Executive Officer as for Instance Sub-clause (h) of Clause 2 of Schedule I whereunder the Head Master is bound to report about the misconduct or breach of discipline against the assistants while supervising, controlling or coordinating their work. The fact still remains that for the purposes of Rule 36 a head who falls within rank of Chief Executive Officer and is duly empowered to execute the decisions taken by the management. The President of the institution alone will be competent to issue to the "Head" the statement of allegations and none else. It now remains to be seen whether the first respondent was such a person in whose case it was the President of the institution, who should have acted under Sub-rule (1) of Rule 36 of the Rules.

10. It was urged on behalf of the first respondent that she clearly fell within the ambit of the definition of "Chief Executive Officer" being a "Correspondent" duly empowered-by the rules. Now a "correspondent" is not defined either in the Act or the Rules. But in order to find out what the word "correspondent" connotes, we can safely refer to the Secondary Schools Code for the observance of which the responsibility is cast on the Head under Sub-rule (i) of Rule 4 of the. Rule 9.1 of the Secondary Schools Code provides that the Head of each recognised school shall act as a "correspondent" with the Department so far as academic and administrative matters are concerned, and it shall be duty of the Head to keep the managing body of the school informed about the correspondence. Under Rule 9.3 of the Secondary Schools Code there is a provision to appoint a person other than the "Head" of the school, but the procedure prescribed by it must be followed. Otherwise it is only the Head who acts as a "correspondent" and also acts as a bridge between the Department and the management. Having ascertained what the word "correspondent" denotes, we revert back to the Rules. Reading Rule 4 of the Rules which deals with the responsibilities of the Head, it provides that the Head as an administrative and academic head of the school shall be responsible for the correspondence relating to the administration of the school under Sub-clause (g). It may be worthwhile at this juncture to mention that apart from being a "correspondent" the Head is responsible to the management for smooth and efficient functioning of the school being one of the duties listed in Clause 2(a) of Schedule I. This cannot be achieved unless the Head is required to execute the decisions taken by the management. We are hence fully convinced that the Head of an institution, who is a Head Master or a Headmistress enjoys the privileged position and is covered within the definition of "Chief Executive Officer", In the present case the first respondent in her capacity as a Headmistress was not only a "Head" as defined under Clause (g) of Section 2 of the Act, but was also a "Chief Executive Officer" within the meaning of Clause (c) of Rule 2 of the Rules. In these circumstances, the petitioner-institution have violated not only Sub-rule (1) of Rule 36 of the Rules, but also Sub-rule (2) thereof. It is so because one of the three members of the Enquiry Committee, the President of the management was required to be one such member where an enquiry is supposed to be against a "Head" referred to in Sub-rule (1), that is, the "Head" who is also a "Chief Executive Officer". The constitution of the Enquiry Committee was also bad and contrary to the rules.

11. It was next urged on behalf of the petitioner-institution that the enquiry held was ex parte and the charges levelled were proved before the Enquiry Committee. It was hence not open for the Tribunal to hold that some of the charges have not been proved simply on the basis of some arguments advanced on behalf of the first respondent without there being any evidence on record. There is some force in the submission as canvassed before us, but to go into the details would be an exercise in futility because even if the petitioner-institution succeeds on the point, the result of the petition is inevitable. Moreover, the first respondent was reinstated in service and also stands superannuated on attaining

the age of retirement. We hence refrain from going into this aspect of the case in details.

12. For the reasons discussed above, the petition fails and is accordingly rejected. Rule issued stands discharged. The parties are directed to bear their respective costs.