
(2006) 09 MAD CK 0086

In the Madras High Court

Case No : Writ Petition (MD) No. 1622 of 2006 and W.P.M.P. No. 1800 of 2006

M. Andiappan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 30(1)

Tamil Nadu Minority Schools (Recognition and Payment of Grants) Rules, 1977 — Rule 10, 11, 12, 13, 14

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 11(1), 12(1), 14, 15, 16

Citation : (2007) WritLR 351

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : A. Sankarasubramanian, for the Appellant; Pala Ramasamy, Spl. Government Pleader for Respondents 1 to 6 and M. Joseph Thatheus Jerome, for 7th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Petitioner seeks a direction to the respondents 1 to 6 not to grant any permission to the 7th respondent for

shifting the school from the 9th ward to the first ward in Sivagiri Municipality, Tirunelveli District.

2. Petitioner is the Secretary and Correspondent of the Andiappa Middle School in the first ward of Puliangudi Municipality. The petitioner's

school is having classes 1 to 8. The 7th respondent school is having standards 1 to 10, which was originally started as a primary school. Classes 1

to 8 are aided by the Government and classes 9 and 10 are functioning under self-financing scheme. According to the petitioner, the 7th

respondent is trying to shift its school to the 1st ward of Puliangudi Municipality,

where the petitioner school is functioning and the 7th respondent is putting up new construction without the approval of the plan from the Municipality. The grievance of the petitioner is that if the 7th respondent school is shifted to the first ward, it will be in violation of the rules and regulations and the same will be very close to the petitioner's existing school.

3. The 7th respondent filed a counter affidavit and contended that it is a Christian Religious Minority Institution coming under Article 30(1) of the

Constitution of India, declared by the competent Civil Court in decree and Judgment dated 25.7.1981 in O.S. No. 80 of 1980. The school was

established in the year 1919 as an Elementary School and was upgraded as Middle School in 1965 and further upgraded as High School in the

year 1993. The high school sections are granted recognition, but without aid. It is stated that the 7th respondent school is securing 100% results in

the SSLC examinations from the inception of the High School sections. It is also stated that due to the increase in strength, the school has to be

bifurcated and therefore further buildings were constructed with the approved plan and also complying with the norms. The bifurcated school with

standards 6 to 10 is located at ward No. 1 at North Car Street, Puliangudi, which is just 700 metres away from the existing premises. The 7th

respondent also states that no objection certificate from 12 schools in and around Puliangudi including the non-minority high schools are obtained

and the writ petitioner alone is raising objection with mala fide intention against the minority institution. It is also stated that the 7th respondent

School being a minority school, is exempted from getting permission for its establishment u/s 9 of the Tamil Nadu Recognised Private Schools

Regulations Act and the school being a minority institution, no objection certificate from any authority or school is not required. The petitioner, who

is administering a rival school has no locus standi to file this writ petition.

4. The learned Counsel for the petitioner argued that the authorities are bound to look into the rules and regulations and they shall not grant

permission to the 7th respondent for shifting the school to the first ward of the Puliangudi Municipality.

5. The learned Counsel appearing for the 7th respondent, apart from arguing the matter on merits, raised a preliminary issue as to whether the

petitioner has got locus standi to maintain the writ petition. The learned Counsel

in support of his objection, cited a judgment of this Court reported in Hindu Harijan Elementary School Vs. The Secretary to Government, Education, Science and Technology Department and Others, .

6. I have considered the rival submissions of the learned Counsels appearing on both sides.

7 In the Judgment reported in (1999) 1 MLJ 468 (cited supra) a learned Judge of this Court held that the rival School owner has no locus standi to

object the grant of permission or otherwise to the nearby school and the said finding reads thus,

... 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.

In the said decision the learned Judge followed the decision of a Full Bench reported in M.L. Krishnamurthy and Others Vs. The District Revenue

Officer and Others, wherein the question raised 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 held that the existing rice mill owner has no locus standi to raise the said

objection. In paragraph 9 of the Judgment, the Full Bench held as follows,

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....

The learned single Judge also followed the decision reported in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, 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.

8. Similar issue with regard to locus standi was considered by a Division Bench of this Court in the decision reported in Nataraja Agencies Vs. The

Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others, , wherein the Division Bench followed the Supreme Court

decision reported in Mithilesh Garg, Vs. Union of India and others etc. etc., and held that the rival businessman cannot file writ petition on the

ground that establishing rival business venture in his place violates provisions of law as there is no vested right in the applicant which can be

enforced in law. In paragraph 4 the Division Bench held thus,

4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retail outlet within one kilometer

radius of the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain

against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business

interest, inasmuch as the damage, if any, suffered thereby was dumdam sine injuria - damage without infringement of legal right. In our opinion, this

will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch

over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is

competition, the businessmen are compelled to provide better quality products at reasonable rates.

9. In the decision reported in Rev. Fr. Jose Callian Vs. Director of Public Instruction, a Division Bench of the Kerala High Court considered the

question of establishment of another school in the same locality and held as

follows.

... Like the learned single judge we are completely at a loss to see how the establishment of another school in the same locality interferes with the

petitioner's right to run his school and if the result thereof is that the petitioner cannot get enough pupils to earn a grant surely it cannot be said that

the State is discriminating against him on the ground of his community. Even if, as alleged by the petitioner, the sanction granted to the 3rd

respondent is against the provisions of the Cochin Education Code, a body of rules which it has been repeatedly held by this Court have no

statutory force and are mere administrative directions, that sanction cannot amount to a discrimination against the petitioner on the ground of this

community.

10. Here in this case, the petitioner is running a rival school near the 7th respondent School and as per the above pronouncements, I hold that the

petitioner has no locus standi to file this writ petition.

11. On merits, the 7th respondent has obtained building approval plan from the Commissioner, Puliangudi Municipality on 19.4.2002 and also no

objection certificates from the nearby 11 schools. The 7th respondent has also obtained the stability certificate for the building from the competent

authority on 8.3.2006; the building licence from the Tahsildar on 20.3.2006; and Sanitation Certificate dated 21.4.2006 from the Sanitary Officer,

Puliangudi Municipality on 28.4.2006. The District Educational Officer, Tenkasi in his inspection reports dated 24.9.1998 and 19.10.2000

recorded that the new building should be constructed in the nearby vacant site of the school with proper amenities. The 7th respondent school also

received appreciation letters from the Education Minister for getting 100% results in SSLC examinations held in March 1995; from the Director of

School Education for the year 1997; from the Education Minister for 1998; and from the District Collector, Tirunelveli and Education Minister for

the years 1999 and 2000. Copies of all the above referred documents are filed in the typed set, filed by the 7th respondent.

12. As rightly argued by the learned Counsel appearing for the 7th respondent, the 7th respondent school being a minority school, no permission

need be obtained, which is made clear in Section 9 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Act 29 of 1974),

which reads thus,

9. Minority School to be established without permission.- Any minority whether based on religion or language may establish and administer any private school without permission u/s 6.

Further, the recognition of minority schools are governed by the Tamil Nadu Minority Schools (Recognition & Payment of Grant) Rules, 1977.

Particularly as per Rule 4(4), the department is bound to grant recognition as per the order of this Court dated 20.10.1981 made in W.P. No.

4284 of 1979 (The Roman Catholic Diocese of Palayamkottai v. The Director of School Education, Madras and Anr.), as confirmed by the Division Bench in W.A. No. 81 of 1982 by judgment dated 8.9.1988.

13. The Honourable Supreme Court in the decision reported in Rt. Rev. Msgr. Mark Netto Vs. State of Kerala and Others, held that getting prior permission from the Department for starting a minority school is not required and any order passed to that effect shall be bad and invalid and must be quashed.

14. The right of the minorities to establish and administer educational institutions of their choice is fully protected under Article 30(1) of the Constitution of India. The writ petitioner, who is running rival school cannot maintain this writ petition both on the ground of locus standi and that he has no legal right to pray for mandamus seeking directions to the respondents 1 to 6 not to grant permission to the 7th respondent for shifting his school.

15. The 7th respondent being a minority institution, need not get any permission u/s 31(1)(a) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 22 of the Rules. A Division Bench of this Court in W.P. No. 4474 of 1974, etc., batch, by order dated 17.12.1975 held that Sections 8(1)(a), 11(1)(b), 12(1), 14 to 18, 21(2) to 26, 31 to 33, 39(4), 41 to 45 and Rules 7, 9, except Clauses (e) and (k) of Sub-rule (2), Rules 10 to 14, 16 to 18 and 22 to 24, are not applicable to the minority institutions. Even though the said order was challenged before the Honourable Supreme Court in Civil Appeal Nos. 1521-56 & 0042-91 of 1979 by the State of Tamil Nadu, no stay was

granted and the said provisions are continuously not applied. The Honourable Supreme Court disposed of the appeals on March, 4, 2003 and the

said order reads thus,

The several questions raised in these matters are covered by the decision of a Constitution Bench of this Court in Writ Petition No. 317/1993 -

T.M.A. Pai Foundation and Ors. Etc. v. State of Karnataka and Ors. Etc. And connected batch decided on 31st October, 2002. Since larger

questions have been decided by this Court it becomes necessary for the High Courts to re-examine the matters which have been decided and

which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the

matters are remitted to the High Court for fresh consideration in accordance with law.

Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to it by any of the parties. The

parties are at liberty to file fresh pleadings, if any, within the period fixed by the High Courts. It is made clear that all statutory enactments, orders,

schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A. Pai Foundation's

case decided on 31.10.2002. As and when any problem arises the same can be dealt with by an appropriate Forum in an appropriate proceeding.

The Appeals are disposed of accordingly.

Hence, it is clear that even though the matter is remanded before this Court, status quo is directed to be maintained unless a modified order is

passed on an appropriate application made by any of the parties. I am told that till date no modified order is passed by this Court. Hence the

petitioner's contention that the respondents shall not permit the 7th respondent to shift its school is not maintainable as the respondents 1 to 6 have

no right to do so as no permission is to be obtained by the 7th respondent.

16. The objections raised by the petitioner before the District Educational Officer, Tenkasi on 27.7.2004 clearly focus the intention of the

petitioner. It is stated therein that if the 7th respondent School is permitted to have its buildings at Ward No. 1, the petitioner School will be

affected and the 19 teachers will face deployment. Hence it is clear that the objection of the petitioner is due to the fear of fall in the strength of the

students and Teachers posts will be declared as surplus. The same cannot be a reason for making objections as stated above.

17. If in case the 7th respondent School is not adhering to any of the rule applicable to the minority institutions, it is for the authorities to find out as to whether the 7th respondent is adhering to the rules or not.

18. In view of my above findings, I hold that there is no merit in the writ petition and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.