
(2010) 11 MAD CK 0166
In the Madras High Court
Case No : W.A. (M.D) No. 615 of 2008

M. Balasubramanian

APPELLANT

Vs

The Secretary Education Department and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 15, 18, 2(3), 53, 53A

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 12(1)

Citation : (2010) 11 MAD CK 0166

Hon'ble Judges : T. Raja, J;R. Banumathi, J

Bench : Division Bench

Advocate : S. Natarajan, for the Appellant; V. Rajasekaran, Spl. Govt. Pleader for Respondents 1 to 4 and P. Subramanian, for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—These Writ Appeals arise out of the order of the single Judge dated 24.9.2007 made in W.P. (MD) Nos. 10270 of 2005 and 4844 of 2006 respectively on the file of this Court, whereby the learned single Judge declined to quash the order passed by the 4th Respondent, approving School Committee list.

2. Melaseethai Sethumanickam High School is one of the partly aided management High schools in Ramanathapuram District. The 5th Respondent -M. Sethumanickam is the Secretary of the School. The Management has established the Trust in the name and style of "Sri Muniyandia Pillai Memorial Educational Trust" for the purpose of establishing a Teacher Training Institute. The petition mentioned middle school was upgraded as High school in the year 1995. As per Rule 12(1) of the Tamil Nadu Recognized Private Schools (Regulation) Rules 1974, the educational agency of every private school shall constitute a School Committee and the same has to be sent for approval/renewal to the District

Educational Officer in that District. The School Management has sent the School Committee list on 10.10.2004 and after verification, the 4th Respondent/District Educational Officer approved the same by the proceedings dated 20.8.2005.

3. The Appellant has filed W.P. (MD) No. 10270 of 2005 for a direction to the Respondents to take appropriate action on his representation, which relates to intense dispute between the family members. In Writ Petition (MD) No. 4844 of 2006, the Appellant challenged the above proceedings of the 4th Respondent dated 20.8.2005, whereby the 4th Respondent has approved the School Committee list as per Rule 12 of the Tamil Nadu Private Schools (Regulation) Rules, 1974.

4. The learned single Judge held that based on mere allegation of the Appellant, no direction can be issued to the authorities to suspend the School Management. The learned single Judge further held that since the dispute is between the educational agencies, in terms of Section 53A, the learned single Judge directed the parties to approach the Civil Court. The learned single Judge also referred the decision of the Hon'ble Supreme Court reported in Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others, . Challenging the order of learned single judge, writ Petitioner/Appellant has filed these appeals.

5. The learned Counsel appearing for the Appellant would submit that it is not a dispute between the educational agencies and while so, the learned single Judge was not right in saying that the parties should approach the Civil Court and Section 53A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 has no application. It was further argued that the fifth Respondent was not able to establish as to under what authority or power he alone can appoint the members of the School Committee and while so, the fourth Respondent cannot blindly approve the School Committee list sent by the fifth Respondent.

6. We have also heard the learned Special Government Pleader, Mr. V. Rajasekaran, appearing for Respondents 1 to 4 and the learned Counsel appearing for the fifth Respondent, Mr. P. Subramanian.

7. It is the case of the Appellant that he was one of the founder trustees and a member of the Board of Trustees of the School Management. Admittedly, the Appellant was functioning as the President of the School Committee from 9.12.1994 and reelected from 2.10.2001. At that time, the fifth Respondent, the managing trustee, was also functioning as the Secretary of School Committee of High School. The grievance of the Appellant is that after 2001, the fifth Respondent has not convened any board meetings nor obtained approval from the Board of Trustees and he has not allowed the School Committee to function as provided u/s 18 of the Tamil Nadu Private School (Regulation) Act. After the expiry of the term of the School Committee and Secretary, as contemplated u/s 15 r/w Rule 12 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, another School Committee has to be formed by educational agency. The grievance of the Appellant is that the fifth Respondent himself formed the School

Committee as if he is the sole authority empowered to form and he has formed the said committee with his own family members and the formation of the School Committee is not in accordance with the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules, 1974.

8. By perusal of the various representations, it is seen that the Appellant has sent repeated representations expressing his grievance against the fifth Respondent. The main grievance of the Appellant is that without any authority, the fifth Respondent himself has formed the School Committee on his own as if he is the authority.

9. Challenging the appointment of the School Committee, the learned Counsel appearing for the Appellant has contended that the School committee formed by the fifth Respondent with his own relatives is not a validly constituted School Committee and hence the approval given by the fourth Respondent/DEO is invalid and liable to be quashed.

10. Of course, u/s 15 r/w Rule 12 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, after the expiry of the term of the previous School Committee, the School Committee has to be formed. In the counter affidavit filed by the fourth Respondent, it is averred that the recognition of the School expired on 27.4.2004 and thereafter, the recognition could not be renewed by the C.E.O. because of non-approval of the School Committee and therefore, 10th Standard Students could not sit for their examination. In that context, there arose the situation unless the School committee was approved, 10th Standard students could not write the examination. According to the fourth Respondent, keeping in view the welfare of the students, the School Committee was approved by the District Educational Officer. As such, we do not find any arbitrariness or illegality in the act of the fourth Respondent in approving the School Committee.

11. As pointed out earlier, the Appellant has sent notice to the fifth Respondent inter-alia expressing his grievance as to the mismanagement and calling upon him to convene a meeting. A perusal of the various representations clearly indicates that dispute is as to the educational agency. In one of his representation dated 9.12.2004, the Appellant inter-alia raised the dispute as to the constitution of the School Committee. Main grievance of the Appellant appears to be that he has been edged out of the School.

12. u/s 2(3) (a) of the Act, educational agency is defined as under:

2. Definitions - in this Act, unless the context otherwise requires.

(1)

(2)....

(3) "educational agency" in relation to (a) any minority school, means any person who, or body of persons which has established and is administering or proposes to establish and administer such minority school; and (b)....

13. As per Section 53A of the Tamil Nadu Recognized Private Schools (Regulation) Rules 1973, notwithstanding anything contained in Section 53, whenever any dispute as to the constitution of any educational agency, or as to the constitution of a school committee, or as to the appointment of the Secretary of the school committee arises, such dispute may be referred by the persons interested or by the competent authority to the Civil Court having jurisdiction, for its decision. Such a dispute will not attract the bar u/s 53 of the Act which applies only to a question which is required to be dealt with or decision by any authority or officer mentioned in the Act. Section 53A of the Act reads as follows :

53A. Settlement of dispute as to educational agency, etc.- (1) Notwithstanding anything contained in Section 53, whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a school committee, or as to the appointment of the secretary of the school committee arises, such dispute may be referred by the persons interested or by the competent authority to the Civil Court having jurisdiction, for its decision.

(2) Pending the decision of the Civil Court on a dispute referred to it under Sub-section (1), or the making of an interim arrangement by the Civil Court for the running of the private school, the Government may nominate an officer to discharge the functions of the educational agency, the school committee or the secretary, as the case may be, in relation to the private school concerned."

In terms of Section 53A of the Act, dispute as to the educational agency is concededly required to be decided by a Civil Court.

14. Having regard to the nature of dispute between the Appellant and the fifth Respondent and referring to the judgment reported in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, , the learned single Judge rightly held that any dispute as to the educational institution/educational agency is to be determined by a Civil Court having jurisdiction. The judgment of the Hon'ble Apex Court in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, holds that Section 53A of the Act carves out an exception to Section 53 thereof. In terms of Section 53A, any dispute as to the educational institution is to be determined by a Civil Court having jurisdiction for its decision. A person having a grievance as against another must have a remedy. The maxim "ubi jus, ibi remedium" is not an empty formality. The jurisdiction of the Civil Court exemplifies the said doctrine. Therefore, the jurisdiction of the Civil Court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute. In terms of Section 53A of the Act, a dispute as to educational agency is concededly required to be decided by a Civil Court. Therefore, the contention of the learned Counsel appearing for the Appellant that he has no other remedy before the Civil Court except to file the present writ petitions under Article 226 is not worthy of acceptance in view of Section 53A. Therefore, we do not find any infirmity in the order passed by the learned Single Judge directing the Appellant to approach the

Civil Court.

15. In the result, the Writ Appeals are dismissed. No costs.