

(1998) 08 MAD CK 0007
In the Madras High Court

Management of M.G.R. Higher Secondary School	APPELLANT
Vs	
Nag Balaji Singh and Others	RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 15

Citation : (1998) 3 MLJ 470

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—Aggrieved by the order of the Appellate Tribunal constituted under the Tamil Nadu Recognised Private Schools

(Regulation) Act, 1973, the Management has filed W.P. No. 4450 of 1989 and teacher/1st respondent herein has filed W.P. No. 5634 of 1990;

hence the same may be disposed of by the following common order.

2. The case of the Management-School Authority is as follows : According to the petitioner-school Management, the first respondent teacher while

working as P.G. Assistant (Maths), acted in violation of the Rules and Regulations by engaging himself in a remunerative work like giving private

tutions to some students of the School without obtaining specific written sanction of the competent authority. It is stated that the attention of the

petitioner school was brought to the fact that the first respondent/teacher in violation of Rule 3 in Annexure II gave private tuitions during the year

1984-85 to 8 students. Therefore, on 19.12.1985, a charge memo was issued to the teacher. He sent a written explanation on 25.12.1985 stating

that he gave tuition only to two boys that too on the recommendation of the Headmaster and he denied the charges framed against him. An enquiry

was conducted by affording reasonable opportunity to the teacher. The Enquiry Officer submitted his report on 21.3.1986 finding that the teacher is guilty of violation of Rule 3 of the Code of Conduct under the Rules. The School Committee accepted the report and proposed to remove the teacher from service. It is stated that before the order was passed, prior approval of the Chief Educational Officer, Madras as contemplated under Rule 17 of the Tamil Nadu Recognised Private Schools (Regulation) Rules was obtained. Against the order of removal, the teacher preferred an appeal to the Joint Director of School Education, who is the Appellate Authority under the Act. The said authority after hearing both sides passed an order dismissing the appeal. The teacher preferred further appeal to the Appellate Tribunal/2nd respondent in W.P.4450 of 1989. The Appellate Tribunal after finding that the findings of the school committee are correct, however, came to the conclusion that the removal is not commensurate with the gravity of the lapse committed by the first respondent/teacher; accordingly remitted the matter to the school committee with a direction to award lesser punishment. Aggrieved by the order of the Appellate Tribunal in so far as remitting the matter to the school committee for imposing lesser punishment, the school management has filed W.P. No. 4450 of 1989.

3. The case of the teacher is as follows : According to him, he has been working in the said school from 4.12.1978 as B.T. Assistant and with effect from 2.7.1980 he was promoted as P.G. Teacher. It is stated that because of the animosity by the Headmaster towards him and at his instance action was taken against him on the alleged violation of Code of Conduct. The enquiry conducted against him was also contrary to the principles of natural justice. The proposal to terminate his services was not considered by a properly convened school committee. The appellate as well as the Second Appellate Authority have also committed error in not considering his claim. It is further stated that even from the records the petitioner was not given any warning by the management school before the impugned proceedings were initiated against him. The entire action was taken with a view to victimising and also because of the animosity of the Headmaster, who was acting under personal prejudice.

4. For the convenience, I shall refer the management of the school as petitioner and the teacher as first respondent.

5. I have heard the learned Counsel for the petitioner-management, first respondent-teacher as well as learned Government Advocate for other respondents.

6. Mr. N.C. Ramesh, learned Counsel for the petitioner-school management even though has contended that the action of the management

terminating the teacher from service is in accordance with the statutory provisions, however, submitted that in view of the approval by the

competent educational authority and subsequent appointment in his place any direction is issued by this Court for induction of the teacher,

Government alone may be directed to pay salary and other allowances to the petitioner. To this limited extent, he has relied on a decision of this

Court reported in *The Secretary Ulagappar Higher Secondary School, Ramachandrapuram v. Joint Director of School Education and Anr.*

(1997)3 L. W. 359. On the other hand, Mr. K. Chandru, learned senior counsel for the teacher has raised the following contentions :

(i) The teacher was not given proper opportunity before the Enquiry Officer; (ii) As per the statutory provisions, only school committee is

competent to take action and the same cannot be authorised to Secretary to perform its function; and

(iii) The enquiry conducted by the management is opposed to principles of natural justice.

(iv) In the light of the various provisions in the Act and Rules which are intended to protect the interests of the teacher and other persons working

in the school, the order of termination passed by the management cannot be sustained.

(v) The appellate authority as well as the Tribunal failed to consider the claim of the teacher in accordance with law.

7. I have carefully considered the rival submissions.

8. It is the case of the petitioner-management that inasmuch as the teacher gave private tuitions during the year 1984-85 to 8 students of their

school without the specific written consent of the competent authority, the same is in violation of Rule 3 under Annexure 11. On the other hand, it is

contended by the teacher that only on the request of the Headmaster, he had taken private tuition for 2 students and that too without any

remuneration. Now I shall consider whether the teacher had violated the Code of

Conduct as specified in Annexure II and the enquiry was in accordance with the statutory provisions. As per Section 15 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as "the Act") every private school shall have a school committee. Section 16 of the Act enables the Secretary of the school committee to exercise the powers and functions as prescribed under the Act. Sections 17 and 18 deal with meetings and functions of the school committee.

Among all the sections, Section 18(1)(c) is relevant which runs as follows :

18. Functions of the school committee and responsibility of educational agency under the Act : (1) Subject to the provisions of this Act and the rules made thereunder, the school committee shall have the following functions, namely :

(a) ***

(b) ***

(c) to take disciplinary action against teachers and other-employees of the private school.

Rule 12 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as "the Rules") deals with constitution of

the school committee and Rule 13 refers to the nomination of Secretary of the school committee. As per Rule 13 (4) of the Rules, the Secretary

has to act on the basis of the resolution passed at the meeting of the school committee. Section 19 speaks about qualifications, conditions of

service of teachers and other persons employed in private school. The corresponding rule is Rule 15. As per Rule 15 (2), the School Committee of

every private school has to enter into an agreement with the teacher or other persons in Form VII (A) or VII (B) if the appointment is for a period

exceeding 3 months. As per Clause 7 in Form VII-A, it is for the school committee to take action against the teacher. The procedure has been

enumerated in Sub-clauses (a) to (d) of Clause 7 in Form VII-A. Clause 10 enables the school committee to impose major punishments such as

dismissal, removal or reduction in rank or termination of services or any of the minor punishment as detailed in the said clause on the teacher for

any irregularity or breach of the code of conduct on the part of the said teacher. Section 21 speaks about code of conduct. Rule 16 says that the

teachers and other persons employed in a private school are governed by a code

of conduct as specified in Annexure II.

9. It is true that on the allegation that the teacher had violated the code of conduct particularly Clause 3 a charge was framed and enquiry was

conducted. It is clear from the above referred provisions that it is only the school committee to initiate action against the teacher and impose

appropriate punishment. In this case, the show cause notice dated 20.1.1986 was issued only by the Secretary of the school and not by the school

committee. The said show cause notice finds place at page 1 of the typed-set of papers. It is clear that the school committee cannot authorise the

Secretary to perform its functions. As per the Rules, the Secretary has to act on the basis of the resolution passed at the meeting of the school

committee. He cannot take the role of the school committee. In this regard. Mr. K. Chandru has very much relied on a Division Bench decision of

this Court rendered in P.S. Venkataramanujam v. National High School, Tambaram and Anr., Writ Appeal No. 170 of 1978, dated 13.11.1979).

After referring various clauses in Form VII-A, Their Lordships have made the following conclusion :

...Thus a perusal of paragraph 7 of Form VII-A makes it clear that a personal hearing or enquiry has to be conducted by the School Committee,

and there is no provision in Form VII-A for the School Committee delegating its power to conduct an enquiry to any other person or body.

Again Their Lordships have observed thus :

The attention of the learned Judge has not been invited to the other clauses of paragraph 7. We have extracted paragraph 7 of Form VII-A in full

in order to show that that paragraph expressly authorises only the school committee to give a personal hearing or conduct an enquiry. This is

apparent from paragraph 7 (b) as well as paragraph 7 (c).... In this cast paragraph 7 of Form VII-A prescribed by the rules made under the Act

clearly contemplates (the school committee alone conducting the enquiry or giving a personal hearing.

Regarding the effect of ""form of agreement"", they have concluded as follows :

..Form VII-A has been prescribed by the rules made by the Government in exercise of their rulemaking power. Consequently, the form of

agreement has as much force as any rule contained in the rules....

The said procedure as pointed out by the Division Bench has not been followed in

the case on hand. Hence I sustain the first objection made by the learned senior counsel for the first respondent.

10. Regarding the conduct of enquiry, it is stated that the Enquiry Officer asked the teacher/delinquent to lead evidence at first instance. According

to Mr. K. Chandru, learned senior counsel for the first respondent, the teacher and his witnesses alone were examined on 9.1.1986 and

11.1.1986. Inasmuch as it is for the petitioner-management to prove the charge at first, the contrary procedure adopted by the Enquiry Officer

cannot be sustained. In this regard, the following observation of the Apex Court reported in *Meenglas Tea Estate Vs. Its Workmen*, is very

relevant :

(4) The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that

this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn.

No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required

to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance

to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given

a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be

substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the

person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any

statements made by any witness tendered in evidence. The enquiry, such as it was, made by Mr. Marshall or Mr. Nichols who were not only in the

position of Judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they

drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of

natural justice that the tribunal was justified in rejecting the findings and asking the company to prove the allegation against each workman de novo

before it.

In a similar situation, Lakshmanan, J., following the decision of the Supreme Court referred to above, came to the conclusion that the termination

order passed is in patent violation of principles of natural justice, since, according to him, the procedure contemplated was not followed. The

decision of Lakshmanan, J., is reported in Casmir, A. and Ors. v. Joint Director of School (Education-Higher Secondary), etc., and 2 others,

1996 Writ L.R. 470.

11. In our case, I have already observed that only the Secretary had issued show-cause notice. Apart from this, it is only the Secretary who

framed charges, conducted enquiry and he also acted one of the school committee members. In this regard, the learned senior counsel for the first

respondent has contended that the action of the Secretary in acting as Enquiry Officer and also deciding the case of the teacher as one of the

competent authority is opposed to principles of natural justice. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education)

Higher Secondary School and others, with regard to Bias, Their Lordships have concluded, thus :

One of the cardinal principles of natural justice is *nemo debet esse judex in propria causa*, (no man shall be a judge in his own cause). The deciding

authority must be impartial and without bias. It has been held by this Court in Secretary to Government, Transport Deptt., Madras Vs.

Munuswamy Mudaliar and Another, , that a predisposition to decide for or against one party without proper regard to the true merits of the

dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of

personal bias was revealed in the decision of this Court in, The State of Uttar Pradesh Vs. Mohammad Nooh, . In the said case, a departmental

inquiry was held against an employee. One of the witnesses against the employee turned hostile. The Officer holding the inquiry then left the inquiry,

gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. This Court quashed the

order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

In U.P. Jal Nigam and Another Vs. Nareshwar Sahai Mathur and Another, . Their

Lordships have concluded, thus :

There is a distinction between a defect in the enquiry and a lapse which almost destroys the enquiry. Where the lapse is of the enquiry being

conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void,

the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry Committee has a strong hatred or

bias against the delinquent of which the other members know not or the said member is in a position to influence the decision-making, the entire

record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage

done. Besides where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would

be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room, Justice must not only

be done but must also appear to be done. It would not so appear to the delinquent if one of the members of the Enquiry Committee has a strong

bias against him. However, the bias must be strong and hostile and not a mere allegation of bias of a superior having rebuked him in the past or the

like.

It is clear that the participation of the Secretary in all aspects from the stage of sending show-cause notice ending with taking a decision would

certainly violate the principle of natural justice.

12. It is also settled that in the light of the object of the Act, every action by the concerned authority must be in consonance with the procedure

prescribed in the Act. The object of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 is to provide for the regulation of the

conditions of service of teachers employed in private schools. While construing similar object in The Tamil Nadu Recognised Private Colleges

(Regulation) Act, 1976, Their Lordships of the Supreme Court in a decision reported in P. Kasilingam Vs. P.S.G. College of Technology, , have

observed thus :

The Tamil Nadu Private Colleges (Regulation) Act, 1976 is enacted, inter alia, for the regulation of the conditions of service of teachers employed

in private colleges. The avowed purpose and object of the Act is to confer

protection to the teachers of private educational institutions against arbitrary action of or victimisation by the management of such education institutions...

In *Bharat Sevashram Sangh and Others Vs. State of Gujarat and Others*, , their Lordships after referring to the various provisions of Gujarat

Secondary Education Act, 1972 which are similar to our Act have concluded thus :

...It protects the tenure of the teachers and of the non-teaching staff of a registered private secondary school and acts as a shield against arbitrary

actions of the management resulting in wrongful termination of their services....

13. Even though the management failed to follow the mandatory provisions as referred to above, even the appellate authority as well as the

Tribunal which are competent to decide the case of parties failed to take note of all the above aspects. As a matter of fact, Section 43 speaks

about how the appellate authority has to dispose of the appeal and likewise Section 42 speaks about tribunal. Even though the management is

entitled to impose penalty, it is settled law that the right to impose penalty implies duty to act justly. In *Shankar Dass Vs. Union of India (UOI)* and

Another, , it was reiterated by Their Lordships in the following terms :

...But the right to impose a penalty carries with it the duty to act justly....

Likewise, regarding imposing punishment, Their Lordships in a decision reported in *Ranjit Thakur v. Union of India and Ors. (1998) 1 L.L.J. 256*,

have observed, thus :

...But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the

offence as to shock the conscience and amount in itself to conclusive evidence of bias..." Same thing has once again been reiterated in a decision

reported in *B.C. Chaturvedi Vs. Union of India and others*, .

14. Finally with regard to the contention of Mr. N.C. Ramesh, namely, in any event, State alone may be mulcted with payment of salary and other

benefits to the teacher, Mr. K. Chandru, learned Senior counsel for first respondent has very much relied on the following observation of the

Supreme Court reported in *A.M.S.S.M.V.S.S.J.M.S. Trust v. V.R. Rudani and Ors. (1998) II L.L.J. 324*.

...We are only concerned with the liability of the management of the college

towards the employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and until the State compensates it will not make full payment to the staff. We cannot accept such a contention.

15. In the light of what is stated above, I am in agreement with the contentions raised by the learned senior counsel for the first respondent/teacher.

The factual position coupled with the statutory provisions as well as various judicial decisions referred to above would clearly show that the enquiry

conducted by the petitioner-management is not in accordance with law and accordingly the order removing the teacher from service is liable to be

quashed. Even otherwise, as pointed out earlier, the punishment of removal from service is harsh. Since I have concluded that the procedure

adopted by the management is contrary to the statutory provisions, there is no need to consider the quantum of punishment. The approving

authority as well as the statutory appellate and second appellate authorities have also failed to take note of the salient features of the Act and Rules

and failed to apply with those provisions and interfere with the order passed by the School Management.

16. Net result, the writ petition filed by the management, namely, W.P. No. 4450 of 1989 is dismissed, while W.P. No. 5634 of 1990 filed by the

teacher is allowed as prayed for. No costs in both cases.