
(2017) 01 MAD CK 0260
In the Madras High Court
Case No : 1 of 2017

M.Mahendran

APPELLANT

Vs

The Principal

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

[Constitution of India](#), [Article 21](#) -
Amendment of the Schedule

Citation : (2017) 01 MAD CK 0260

Hon'ble Judges : Nooty. Ramamohana Rao, S.S.Sundar

Bench : DIVISION BENCH

Advocate : Nooty. Ramamohana Rao, S.S.Sundar

Judgement

1. This Review Petition is filed, pursuant to an order passed by the Supreme Court in S.L.P.(C) No.25630 of 2016 on 09.09.2016, which runs as under : "Learned counsel for the petitioner seeks permission to withdraw the petition with liberty to approach the High Court.

It is stated by the learned counsel that the High Court has proceeded on the basis that the petitioner's son desires admission in Class XI in the Central Board of Secondary Education (CBSE). He says that he does not desire admission in CBSE but in the State Board. Leave and liberty granted.

The special leave petition is dismissed as withdrawn with aforesaid liberty."

2. We have heard Shri.G.R.Swaminathan, learned Counsel for the review petitioner for a considerable length of time. Shri.G.R.Swaminathan has formulated the following grounds, which warrant review of our order: (i) The State Government has announced its policy decision through their G.O.Ms.No.126, School Education (V) Department, dated 11th June, 2007, regulating the process of admission to standard 11 in the schools in the State. The State Government, through the aforementioned order has set out that admission of a student from class 10 to class 11 within the same school should

not be treated as a fresh admission but only as continuation of the original admission done in that school. It also further sets out that all the students of the same school who have qualified in class 10th Board Examination should be offered admission in class 11 as far as possible subject to the availability of seats.

(ii) Second ground urged by Shri.G.R.Swaminathan is that Article 41 of our Constitution has to be read as a facet of Article 21 of our Constitution and when Article 41 sets out that the State shall make effective provision for securing the right to education, any impediment to any person pursuing such a constitutional right should be viewed with disfavour.

(iii) The third ground urged by Shri.G.R.Swaminathan was that an earlier Division Bench judgment, between A.Kathiresan and another vs. Government of Tamil Nadu, reported in (2015) 7 MLJ 329 has not been noticed or applied by this Court.

3. Shri.G.R.Swaminathan at the very outset has pointed out that the case of the petitioner has not been properly projected before the Supreme Court and therefore, he is not pursuing that particular line of reasoning.

4. We have recorded this submission of Shri.G.R.Swaminathan only for the purpose of insulating against any possible criticism that we have not adverted to that particular line of reasoning found mentioned in the order of the Supreme Court, dated 09.09.2016.

5. Even otherwise, it is only proper to notice the prayer in the Writ Petition (MD) No.10516 of 2016 instituted by this petitioner, which is to the following effect: "May be pleased to issue a writ of Mandamus or any other appropriate Writ or Order or Direction in the nature of the Writ directing the 4th respondent to permit the Petitioner's son namely M.Madhan Kumar to continue his education in the 4th respondent in XI standard and pass such further or other orders as this Hon"ble Court deems fit and proper."

6. Dealing with the first ground urged by Shri.G.R.Swaminathan, learned counsel for the review petitioner, in paragraph 4 of our judgment rendered on 22nd July, 2016, we have categorically recorded a finding that promotion of a student from one class to next higher class within the same school does not involve any fresh admission process at all. Though we have not specifically referred to the order of the State Government contained in G.O.Ms.No.126, dated 11th June, 2007, wherein, it is set out that all the students of the same school who have qualified in class 10th Board Examination should be offered admission in class 11 "as far as possible subject to the availability of seats." In our judgment, we have also adverted to this very feature. When we have pointed out that in the State Board of 10+2 course, which is a different pattern of education from that of Central Board of Secondary Education (CBSE) pattern followed by the school from standard 1 to 10, there are two separate stream of courses offered with : (i) Mathematics, Physics and Chemistry, as main subjects of study, (ii) Botany, Zoology, Physics and Chemistry, as main subjects of study. It is hence a matter

of choice for the individual student to seek admission either in Mathematics stream or Biology stream. Therefore, there is no way automatic process of admission of students who passed out 10th Standard can be undertaken. This apart, in our judgment, we have pointed out that from standard 1 upto standard 10, the school was pursuing the curriculum in CBSE pattern, which is distinct and different one from that of the State Board or State syllabus courses, leading up to X Standard. When once the school management has not opted for 11th standard and 12th standard to be offered in CBSE pattern, but, instead opted to adopt 10+2 pattern of the State Board with two separate streams of study, as noticed supra, with a maximum intake capacity up to 30 students, fresh admission process to 10+2 State Board pattern and the course concerned, has to be undertaken. In that view of the matter, we have arrived at a finding that march of a student from 10th standard to 11th standard is not the same as that of changing from CBSE pattern to State Board of education pattern. Hence, we held in the instant case that admission in 10+2 State Board pattern has got to be taken up afresh. We have, therefore, no hesitation to hold that the first ground urged before us is without any substance and, in fact, we have adverted to the same principles as are enunciated in G.O.Ms.No.126 and subscribed to the same reasoning generally in our judgment.

7. The learned Counsel has placed reliance on the Division Bench judgment in A.Kathiresan case which dealt with the scheme of the policy enunciated by the State Government contained in their G.O.Ms.No.126.

8. The Matriculation schools in Tamil Nadu, at one time formed into a separate category of their own with a separate identity catering to the special educational needs of people. All such schools were affiliated to the Madras University initially and upon formation of Madurai University, some of those schools falling within the area of Madurai, such schools were affiliated to Madurai University. Subsequently, the Syndicate of Madras University has suggested that it is no longer required for the University to focus its attention or regulate or exercise any control over matriculation schools and the corresponding responsibilities may be taken off from their shoulders. The State Government after due consideration has accepted the suggestion of the Madras University and divested complete control in all respects over matriculation school stream of education from the universities and instead transferred its entire control to the Director of School Education, Government of Tamil Nadu, through their G.O.Ms.No.2816, Education Department, dated 29th November, 1976. It is thereafter, a separate Board known as Board of Matriculation Schools came to be constituted through G.O.Ms.No.1720, Education Department, dated 25th July, 1977 with defined terms, conditions and functions assigned to it. One of them being to hold the annual examinations leading to the grant of pass certificate in Matriculation. It is, thus, clear that after 29th November, 1976, education leading up to matriculation in various schools is brought under the State Government's control but not under the control of any university. When we keep this factor in mind, the ratio laid down in the Division Bench judgment, reliance on which

Shri.G.R.Swaminathan places clearly becomes distinguishable from the fact situation prevailing in the case on hand. In the instant case, the respondent school in question followed CBSE pattern from standard 1 to 10. The content and curriculum of the said course stand out completely from that of the State Board or the Matriculation Board type of systems. Whereas, standard 11 and 12 offered in CBSE pattern are vastly different from +2 courses offered by the respective State Boards. In Standard 11 and Standard 12, under the CBSE pattern, all students will have to study Mathematics, Biology and Social Studies compulsorily apart from the subjects of languages and other co-curricular activities. Whereas in State Board 10+2 pattern, the choice is left to the students to study either Mathematics stream or Biology stream or Social Studies stream, as the case may be. There is no stream, where they study Mathematics, Biology and Social Studies, simultaneously. Therefore, the judgment in A.Kathiresan case does not have any applicable principle for the case on hand.

9. That takes us to last ground urged by Shri.G.R.Swaminathan that Article 41 being part and a facet of Article 21 of our Constitution, the action of the respondent school amounts to negation of a constitutional right. Much debate is not needed on this point except to remind ourselves of the dicta laid down in Unni Krishnan, J.P. and others v. State of Andhra Pradesh and others reported in (1993) 1 SCC 645. A close look at Article 41 itself very clearly discloses that it requires every State, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. The State is, therefore, required to formulate its policy decisions while governing and administering the State to ensure that effective provision is made for securing the citizens the right to work, to education, etc. In other words, Article 41 requires the State to make provision for achieving these social objectives, which can be achieved by establishing adequate number of educational institutions including universities to cater to the requirements of the citizens. Article 41, in our humble opinion, will not aid the case or cause of the present petitioner in any manner. Far from guaranteeing a right to education, Article 41 urges the State to endeavour to make adequate provision for effectively securing the right to education.

10. The present application is a Review Application. As is too well known, a review application is not a disguised instrument of a re-hearing or a reconsideration of the entire matter in question. It is only for the purpose of correcting any error apparent on record. It is equally too well known that error apparent on record is not the same as that of a perceived erroneous conclusion drawn by a Court in a given set of circumstances. We, therefore, do not see any ground made out for reviewing the order and judgment rendered by us in W.A. (MD) No.1098 of 2016, dated 22nd July, 2016 and accordingly, we dismiss this review application but, however, without costs.