

(1998) 10 MAD CK 0128
In the Madras High Court

North Arcot Ambedkhar and Sambuvarayar District
recognised Private aided Primary and Middle Schools
Managers and Teacher Managers Association

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 MLJ 635

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—In all these cases, common question arises for consideration i.e., regarding validity of G.O.Ms.No. 525, School Education (D-I) Department, dated 29.12.1997. All these petitioners seek to quash the said order for various reasons mentioned in the writ petitions.

2. All these writ petitions are filed by the management of various private aided, educational institutions. These institutes have been appointing teachers possessing the requisite qualifications as prescribed under the Rules and have been making payment to the said teachers in accordance with the scales of pay applicable to the respective category of teachers. None of these institutes collect any fee from the students and they have been depending upon the maintenance grant which is made up of a percentage of the teaching grant in order to maintain their schools. All schools are involved in advancement of education in the state and the schools are properly and thoroughly maintained and they show remarkable progress in educational Standards as well as in teaching discipline to the students.

3. Regarding appointment of teachers, the same is regulated by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Sanction of teaching staff is determined on the number of students studying in the school as on 1st August every year. As a matter of fact, the number of teachers are determined on the

basis of the strength of the students and in G.O.Ms.No. 250, dated 29.2.1965, the ratio was fixed as 1 : 35 i.e., for every 35 students a teacher. Even though the teacher student ratio is 1 : 35, if a class has not a strength of minimum 20, the grant would be available for one teacher.

4. While granting recognition, for the school, posts are also sanctioned by the Government. The same is in accordance with Rule 11 of the Tamil Nadu Private Schools (Regulation) Rules, 1974 read with Annexure III of the Act. This ratio has been fixed taking into account the relevant consideration because if the strength of the class is out of proportion and large it will not only affect the efficiency of the teachers but also the interests of students. Whenever a vacancy arises in the sanctioned strength it will be filled up by the school and the grant is claimed. The grant would also be sanctioned because the appointment is made only to the sanctioned post. Whenever there is an increase in the strength the management would request the Government to sanction additional post and additional post would be sanctioned.

5. While so, the Government issued G.O.Ms.No. 340 Education, dated 1.4.1992 revising the student teachers ratio and that was 1 : 50 and with very stringent conditions. The same was challenged in a batch of writ petitions in W.P.No. 6718 of 1995 and the orders were stayed. Thereafter, Government constituted a high power Committee as per G.O.4 (D) No. 1, Education, dated 16.8.1996 to formulate and suggest revised norms for sanction of teaching posts to aided school"s. It is said that no representation was given in the committee. The impugned G.O.No. 525 had been passed on the basis of the recommendation of the Committee fixing the ratio from 1 : 35 to 1 : 40.

6. According to the petitioners, the Said G.O. is invalid and the same is likely to effect the schools and is also liable to be struck down for the various grounds taken in the writ petition. It is the primary duty of the State to grant aid even in cases where the management gave an undertaking that they would not receive the aid. If that is the law, the Government cannot pass an order revising the sanctioned post and thus refuse to pay due grant; By seeking an amendment to the teacher student ratio from 1 : 35 to 1 : 40, the grant also substantially reduced, and the post already sanctioned on the old formula will be withdrawn.

7. It is also said that in the class rooms there cannot be infrastructural facility to provide for 40 students and that is likely to affect the education in general. It is also said that the existing rules have been withdrawn or superceded by issuing this G.O., at the same time, Rule 17 is retained which is inconsistent with the present G.O. It is also said that the impugned G.O. reduced the status of Headmaster to that of Class teacher. By reducing the staff strength, the strength of the school will be further reduced and thereby effecting the quality of education. It is also said that absolutely there is no nexus between the, impugned G.O. and the objects achieved. It is further stated that the impugned G.O. instead of being restricted to schools that have been recognised subsequent to 1990" has been made applicable to all aided schools.

8. It is also said that if a class or section does not have a minimum strength of 40" students no teachers post will be sanctioned and the students will be denied of the services of a teacher, thereby affecting their fundamental right to education. It is therefore, prayed that the impugned G.O. is to be banned and mala fide exercise of power and the same is liable to be struck down.

9. Counter-affidavit has been filed in W.P.No. 4010 of 1998 and the learned Additional Advocate General submitted that the same counter may be treated as counter for all the writ petitions. In the counter it is submitted that originally the staff strength is fixed as 1 : 35 and subsequently G.O.Ms.No. 340 was issued where the student teacher ratio was revised. Though the matter was stayed by this Court, a SLP was filed before the Supreme Court and orders of this Court was stayed. Thereafter, managements moved various representations to the Government to reconsider the norms issued in G.O.Ms.No. 340 and also put forward their hardships in implementation of the G.O. Taking into consideration all the request, the Government constituted a high power committee with Secretary to Government, Education, Science and Technology Department as Chairman and Secretary to Government, Finance Department or his nominee, Director of School Education and others. The Committee was asked to suggest revised norms for sanction of teaching posts, and the representation of the managements have been duly considered. The Director of School Education and Teachers Education Research Council also members along with Director of Elementary Education. The committee took note of the changes in teaching methodology,, improved availability of teaching and learning materials, reappraisal of, the teacher pupil ratio. The Committee also consulted various Educationalists to get clear picture, of the norms that would be productive for effective teaching. Taking into consideration all aspects in the light of discussions and deliberations recommendation was made by the committee and the same was accepted by the Government which finally issued G.O.Ms.No. 525 dated 29.12.1997.

10. As per the said G.O. the teacher pupil ratio is 1 : 40. The details of G.O. is also given in the counter-affidavit. It is further, submitted in the counter that apart from taking in to consideration the needs of the students, the limited resources of Government in issuing grant was also a major point to considered while sanctioning posts. In all these aided school grant was given by the Government. Though the same is not a matter of right for institution, the right was recognised by the statute which is subject to availability of funds. While granting recognition and also issuing grant, the Government is entitled to put forward certain conditions, taking into consideration the benefit of the institution, students, teachers and the Government.

11. It is also stated that it is the policy decision of the Government to fix the norms into 1 : 35 and the same is not liable to be interfered under Article 226 or Constitution.

12. In the year 1981-82 there were only 6,859 aided primary and Middle schools

and this has been increased to 7,041 schools in 1996-97. The Government therefore has to taking into, consideration the number of schools over the years. Since the sanction pf grant is subject to availability of funds, the ever increasing commitment on account of aid was also a matter which require consideration. The revised norms as per G.O.MS.NO. 525 will ensure equitable distribution of resources available for funding the needy institutions.

13. As per the new G.O., there is no question of retrenchment of any teacher and if it is found that if staff is excess he will be deployed in some other institution and if deployment is not possible, or it is difficult, the teacher Will be allowed to continue in the same school till retirement, so that none of the existing staff are going to be affected by the present GO. It is also said that the G.O. is also applicable to Government Institutions and there is no distinction between aided school and Government school with regard to teacher student ratio.

14. It is also said that an aided school cannot be compared with the school run by Central Board of Secondary Education, since it is not governed by Tamil Nadu Private Schools (Regulation) Act. The decision of the Government to revise the norms is purely a matter of policy depending upon the resources of the Government and the broader objective of the Government is to bring in an uniform funding policy for all the private institutions based on the resources. Since the policy of the Government is based on financial implications also, it is not liable to be interfered with Article 226 of Constitution of India.

15. The contention that the Rules 17 and 18 of Tamil Nadu Educational Rules have been superceded by the impugned order cannot be a ground for interference. Those rules, which were made three decades before has no relevance as on this day, where the techniques of education have changed considerably. It prayed for dismissal of all these writ petitions.

16. The relevant portion of impugned G.O.No. 525, School Education (DI) Department, dated 29.12.1997 read thus:

Taking note of the changes in teaching methodology, improved availability of teaching and learning materials, a reappraisal of the teacher pupils ratio has been made. Consultations with educationalists were also held to obtain a clear picture of the norms that would be conducive for defective teaching: 5. In the light of discussions and deliberations held the Higher Lower Officials Norms Committee has suggested the following recommendations for sanction of posts in Schools.

I. Elementary Schools (Standards I to IV):

A. Teaching-pupil ration of 1: 40 will be followed. Minimum of 2 secondary grade teachers upto a strength of 80 will be sanctioned. In respect of new schools, first post will be created in the first year and second post in the second year. One of the two posts will be in the grade of Headmaster.

B. For every additional strength of 40, one post of secondary grade teacher will

be sanctioned i.e., the third post at 100, the fourth post at 140, the fifth post at 180 and so on.

C. Regarding the bifurcation of a standard, additional sections will be created when the strength exceeds 60 and so on in slabs of 40.

II. Middle Schools (Standards VI to VIII):

A. The teacher-pupil ratio of 1: 40 will be followed. The same norms suggested for elementary schools will be followed. One of the post will be in the grade of middle school Headmaster.

B. When a Middle School is upgraded as High School, the post of Middle School Headmaster will be converted into High School Headmaster. In respect of Elementary School, one of Headmaster will be sanctioned as per existing orders.

III. High Schools (Standards IX & X):

A. The Teacher-Pupil ratio of 1: 40 will be followed. On this basis the following norms will be followed:

A third post will be given when the strength exceeds 60 and additional sections will be permitted in the slab of 40.

B. Eligibility for language teachers will be as follows:

C. When the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of physical education teacher will be sanctioned subject to a maximum of 3. IV. Higher secondary Schools : (11th & 12th Standards) : A. The norms will be a post Graduate Teachers for a Higher Secondary School with a minimum of two group as follows:

i. For 2 groups... 6 post Graduate Assistant

ii. For English ... 1 post Graduate Assistant

iii. For Tamil ... 1 post Graduate Assistant

B. Additional post of post Graduate Assistant will be sanctioned based on workload i.e. 24 hours of teaching per week.

C. Regarding bifurcation of a standard, additional section will be formed when the strength exceeds 60 and so on in the slab of 40 as in the case of High Schools.

D. For vocation stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses.

E. The post graduate Assistant for languages in the main stream will handle the language classes of vocational stream students also.

F. For schools with a strength of over 400, one post of physical Director will be

given by upgradation of existing post of physical Education Teacher.

(6) The Government have considered the recommendations of the High Power Official norms committee in details and have decided, to accept the revised norms mentioned in para 5 above into.

17. The reason for issuing this G.O. is stated in para 3 of the Government order. It is said that there are pressure from the Institutions for sanctioning of grants and it had to study the entire issue with availability of resources. It has also given the history of G.O.Ms.Nos. 250 and 340 issued earlier and it is also said that issuance of G.O.340 created some apprehension among the aided schools that there will be retrenchment of teachers who rendered service as per the new norms. The new norms was 1 : 50. Taking into consideration the representation to the Government, a High level committee was appointed and they have taken into consideration the changes in teaching methodology, improved availability of teaching and learning materials, reappraised the teacher pupil ratio and in consultation with the Educationalists, it was decided to have a new norms which according to the Government is conducive for effective teaching.

18. The learned Senior Counsel for the petitioners made three submissions attacking the said impugned Order. Firstly, Rule 71 of the Tamil Nadu Educational Rules have been retained and without amending the code, the present G.O. cannot be issued and therefore it is inconsistent and unworkable. The second submission is the impugned G.O. is discriminatory. It is made applicable only to aided schools and not to Government schools. With regard to Government schools even now the ratio is 1 : 35. If the quality of education is to be maintained, there cannot be any distinction between aided school and Government schools. The third submission is, there is no reason given for the issuance of G.O. and there is no nexus between the G.O. and the object to be achieved. It is further stated that primary education is fundamental right and therefore, the Government is bound to provide funds and lack of resources cannot be a reason. It is also said that there is possibility of retrenchment of excess teachers in various schools and that is going to affect the education of children.

19. As against the said contentions, the learned Additional Advocate General Submitted that the Tamil Nadu Educational Rules have no statutory force and these are only instructions and again Rule 71 on which reliance was placed also will have no application. It is also submitted that even the Educational Rules are only in the nature of guidelines and there is no prohibition for the Government in passing the Government Order. Rule 71 applies only to Public Institutions not receiving any aid.

20. With regard to the second submission, the learned Additional Advocate General submitted that even for Government schools, G.O.525 is made applicable and Government issued G.O.Ms.No. 109, dated 7.4.1998. So the argument discriminatory treatment between the aided schools and Government

schools is no longer available.

21. With regard to the third submission, it is stated that when the Government is paying grant, it has got the right to fix the number of post taking into consideration the necessity of the schools. It is also said that by virtue of present G.O., the limited resources of the Government could be equitably distributed for the needy schools. When there is excess post, the same also could be allotted to other schools, at the same time without further financial constraints on the treasury. The allegation that fundamental right of the petitioners is affected by virtue of the said G.O. is also denied. It is said that the right to have elementary education is nowhere interfered with and on the basis of the present G.O. student staff strength is fixed and there will be no hardship for any students.

22. All these schools are governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Section 4 of the Act says that no private schools could be established without the sanction of the Government. Section 3 empowers the Government to regulate the different stages of education and courses and instruction of private schools. u/s 5 of the Act, an application has to be filed for permission certain particulars will have to be given in that application. One requirement is the need for the private school in the locality and the course for which such private school proposes to prepare, train or guide its pupils for appearing at any examination conducted by, or under the authority, of the Government. It has also to provide amenities available to pupils and teachers. Section 14 provide for payment of grant. It is statutory right and it further declares that no private school only on the basis of recognition is entitled to grant or financial assistance from the Government. Clause (2) of Sub-section (1) of Section 14 further provides that the Government may subject to the availability of funds and the norms and conditions specified in the Grant-in-aid Code of Tamil Nadu Education Department may provide grant. It also provides that the Government may withhold the payment of grant permanently or withdraw for a specified period.

23. Section 56 empowers the Government to make Rules and the Government may make rules to carry out the purposes of this Act. Section 57 provide for publication of rules, commencement of rules and notification and placing them on the table of the Legislature. Pursuant to the power u/s 56, Rules have been framed.

24. Rule 11 provide for payment of grant. It says that the payment of grant is subject to Government orders and instructions issued from time to time. It also provide for the rate at which and purpose for which grant has been made are subject to Government Orders. Annexure I deals with payment of grant It provide for staff grant, maintenance grant. Staff grant is made to the educational agency to Cover the entire expenses to the teaching and non-teaching staff paid from the contingencies.

25. So from these provisions, it is clear that while recognising a school the

Government, subject to its financial position, give grant to an educational agency to the teaching and non-teaching staff. It is clear from the provisions of the Act, there is no fundamental right to grant, but it is only statutory right. It also makes it clear that merely because of recognition of a school, the school will not be entitled to grant. The learned Additional Advocate General brought to my notice that as per the policy of the Government after 1991 no grant has been given and if permission is granted it is only for self-financing institutions. G.O.525 is made applicable only to those institutions which has been recognised and established before that date.

26. I will first answer the argument made by the Senior Counsel that as per the impugned G.O. Rule 17 and 18 have been superceded and at the same time, that Rule 71 of the Educational Rules still remains in the book. Rule 71 says:

There shall ordinarily be at least one teacher for every 35 pupils in average attendance. While this number of pupil is to be in all cases the maximum permissible, it is very desirable that there shall be a teacher for every 30 pupils.

The counsel submitted when this rule is still available in the book, the present G.O. limiting the teacher student ratio as 1 : 40 is bad. According to me the said submission cannot be accepted. As rightly contended by the learned Additional Advocate General, Rule 71 appears in Chapter V-Special Regulations for Primary Schools under Public Management. In fact I do not find that the said distinction also have any relevance now in view of G.O.No. 109 issued by the Government. It has been declared in G.O.No. 109 that G.O.525 is made applicable to Elementary, Middle, Higher Secondary schools and all kinds of managements i.e., including schools under Public management. That apart, the Educational Rules have no statutory force and these rules are in the nature of guidelines. These are inter-department instructions. On the basis of instructions or guidelines in Educational Manual no argument could be put forward and the argument have also no force in view of G.O.Ms.No. 109.

27. The second submission of the Senior Counsel also has to fail for the very same reason. The argument is that as among aided schools and Government schools, there cannot be any discrimination in so far as teacher student ratio is concerned. When maintenance of standard is primary question, it cannot make a difference between aided school and Government school. According to me the said argument also has no legs to stand at present in view of G.O.No. 109, dated 7.4.1998, which reads thus:

Reiterating the clarification issued in the Government letter second read above, the Government direct that the norms prescribed in G.O.Ms.No. 525, School Education, dated 29.12.1997 for the teaching post be applicable to Elementary, Middle, High and Higher Secondary schools, under all kinds of management i.e., Government, Panchayat Union, Municipal Government Aided Private Schools etc. opened/upgraded upto the inclusive of the academic year 1990-91.

2. The Government further direct that the norms prescribed for II Middle Schools

under para 5 of the G.O. read above be applicable to Middle Schools standards 6,7 and 8 of the High and Higher secondary schools also.

28. The last submission of the learned Senior Counsel is that there is no nexus between the G.O. and the object to be achieved. The said submission also is not correct. Various reasons why the G.O. has been passed has made it clear. One of the main reason is lack of funds in the hands of Government and it has to incur heavy expenditure on the budgetary provisions. At the same time, there is pressure from the management to get grant and also to increase the posts in various schools. It is said when resources are limited, that will have to be equally distributed according to the requirements of the school and the present G.O. has achieved that purpose. At the same time, the Government also thought of not reducing the standard of educational institutions. It has also taken care to see that no staff is retrenched from any of the educational institutions. If any staff is found to be excess, the excess teacher will be deployed in another school and if that is also not possible, he is allowed to continue in the same school till retirement. It is true that, in course of time, the staff strength will be reduced in view of the present teachers student ratio. But that is a matter of policy only.

29. It is further argued that there is fundamental right for primary education and lack of funds cannot be a ground for denying the same. The said submission is not disputed by the Government. It is submitted by the Government that there is no prohibition for elementary education or any education. But while fixing the grant, the Government taking into consideration certain facts can put certain conditions regarding number of posts that is required for the school. What is the requirement of the institution can be considered by the Government when it pays grant. It is also submitted if staff student Strength is fixed on the basis of this G.O. grant will be paid in full and there cannot be any complaint that assured grant will not be paid. Therefore, there cannot be any question of interfering with the fundamental right of education. The said contention is only to be accepted.

30. Learned Additional Advocate General also brought to my notice that even at the time when Educational Rules were framed, Rule 18 provided for 40 pupils in a class. Rule 18 as stood and which is now superceded by the Impugned G.O. says.

No additional pupil shall, without the sanction of the District Education Officer, be admitted to a Class when there are already 40 pupils upon the rolls in the class unless class is thereupon divided into sections. No section of a class should have more than 40 pupils upon the rolls.

So, even decades back, the staff student strength was fixed 1 : 40. When better facilities for education are available, the present G.O. cannot be attacked. With modern methods of teaching, better library and equipments, the present staff student strength is Only reasonable. It is also submitted that they have consulted various Educationalists. This fact is not disputed Or challenged in the writ petition.

31. An argument was also taken by the counsel that in regard to the recognised schools after 1991, there are no such constraints. Counsel also compared the position of staff strength in the Central Board of Secondary Education Schools. I do not think that the submission has relevance in this case. All the educational Institutions in these writ petitions are governed by the Tamil Nadu Private Schools (Regulation) Act, 1973. The Central Board is not governed by this Act. Regulation regarding Staff Student ratio is necessary only because the Government is bound to pay from its Budget. After 1991, when the Government is not providing grant for any institution and they are only recognising Self-financing institutions they need only maintain standard and only for that purpose the Act is made applicable to them. Only for the purpose of distribution of limited resources of the Government, the Government also thought of fixing ratio. I do not think that the argument that fundamental right of the petitioner are affected or the elementary education guaranteed by the Constitution is affected by the present G.O. The service of none of the teachers are affected and none of the schools also can contend that without taking into consideration student strength, posts will have to be created. In fact, there is an assurance in the counter itself (in para. 23) that when the school is found eligible for additional post as per the revised norms, necessary steps will be taken to sanction additional posts.

32. Even though there is an allegation that Standard of education will be affected, the teachers cannot give individual attention to the students, etc., no materials have been placed before this Court. If 40 students could be provided in a class under the old Rules, after making advancement of educational facilities for teaching, I do not think, that any ground have been made out to quash the present fixation of staff strength is arbitrary or impracticable.

33. As rightly contended by the Additional Advocate General, it is policy decision of the Government and the Same issued only at the request of the management and so long as they have no case of mala fides, the order has only to be upheld.

34. I do not find any merits in any of the writ petitions and consequently, the same are dismissed. No costs. Consequently, the connected writ miscellaneous petition are closed.