

(2005) 01 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 1809 of 2005 and W.P.M.P. No's. 2015 and 2016 of 2005

Prof. M. Gopal

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 01 MAD CK 0069

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : S. Vaidyanathan, for the Appellant; Suresh Viswanath, Government Advocate for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—Mr. Suresh Viswanath, learned Government Advocate takes notice for respondents 1 to 3.

2. Petitioner seeks to challenge the proceedings of the 4th respondent dated 28.10.2004 and 29.11.2004 along with the consequential suspension

order dated 01.12.2004. The earlier two other proceedings viz., 28.10.2004 and 29.11.2004 are charge sheets issued to the petitioner while the

last one is the suspension order pending disciplinary action. Admittedly, no relief has been claimed as against respondents 1 to 3 herein. As the

challenge is solely as against the proceedings of the 4th respondent which is a private minority institution, I am of the view that the Writ Petition

itself is not maintainable.

3. Mr. S. Vaidyanathan, learned counsel appearing for the petitioner vehemently contended that the question of maintainability has already been

dealt with in the judgment reported in P. Pon Kailasam, Saraswathi Narayanan College Vs. The Secretary, Saraswathi Narayanan College and

Others, wherein a learned single Judge of this Court took the view that only the College Committee was competent to initiate disciplinary action,

that the initiation of such proceedings by any other authority would strike at the very root of the matter and in such circumstances, the Writ Petition

as against the private educational institution can be maintained. Relying upon the same, the learned counsel contended that at best, if the said

judgment is not to be followed, this Court should refer the issue to a larger Bench as has been held by the Hon''ble Supreme Court in the judgment

reported in General Manager, Telecom Vs. A. Srinivasa Rao and Others, .

4. The learned counsel also contended that the Full Bench decision reported in PITCHUMANI. P. v. THE MANAGEMENT OF SRI CHAKRA

TYRES LIMITED 2004 (3) CTC 1, not having considered, the larger Bench decision of Five Judges reported in THANIKACHALAM M. v.

M.A.P.C.M. SOCIETY 2001(1) LLJ 285 wherein the Judgment of the Hon''ble Supreme Court in ANADI MUKTA having been followed, the

larger Bench decision should be applied and the Writ Petition can be maintained.

5. Having considered the contentions of the learned counsel for the petitioner, I am unable to accept the same. In my respectful opinion, the

decision of the Full Bench reported in 2004 (3) CTC 1, directly applies to the case on hand and since the 4th respondent being a Private minority

educational institution, the relief as claimed by the petitioner cannot be entertained in the Writ Petition filed under Article 226 of the Constitution of

India. Infact, the very question posed for consideration in the above referred to Full Bench decision was as to the maintainability of the Writ

Petition as against a private body. The specific questions dealt with therein have been stated in para 6 which are as under:

1) Whether there is no remedy under common law or before the Forums under Industrial Disputes Act, 1947 to the appellants/employees;

2) Whether Article 226 of the Constitution of India is the proper remedy to redress their grievances.

6. In the light of the discussions held, after referring to various Supreme Court judgments, the Full Bench took the view that the Writ Petition

cannot be maintained and the remedy will have to be worked out either under

the provisions of I.D. Act or before the Common Law Court.

Applying the ratio of the above Full Bench decision, it will have to be held that even assuming that the petitioner wants to state that the 4th

respondent was not competent to issue the charge sheet and that it is only the College Committee which is competent, the remedy of the petitioner

is either under the provisions of Private Colleges (Regulation) Act or before some other legal forum and certainly not by way of Writ Petition under

Article 226 of the Constitution. Even on the ground of alternate remedy available to the petitioner which is not in dispute, the Writ Petition is not

maintainable. Inasmuch as the question relates to the validity of the charge sheet issued, which is purely based on the contractual relationship

between the petitioner and the 4th respondent institution, I do not find any violation of public duty in order to hold that the Writ Petition can be

maintained. Therefore, I do not find any scope even to apply the larger Bench decision relied upon by the learned counsel for the petitioner. In any

event, a perusal of the decision of the larger Bench would go to show that the sole question involved in the Writ Petition before the larger Bench

was as to whether the Writ Petitions challenging the orders passed under the provisions of Cooperative Societies Act are maintainable as against a

Cooperative Society.

7. The larger Bench while dealing with the said question, considered various decisions and ultimately held in para 59 that no Writ Petition is

maintainable as against a Cooperative Society as a matter of course. The larger Bench also in that context took the view that exercise of power

under Article 226 of the Constitution, is discretionary in nature and when alternative remedy is available under a particular statute and the Act and

the Rules therein provide so many safety measures, the remedy under Article 226 of the Constitution cannot be availed. It was thus ultimately held

by the larger Bench in para 61 that the Writ Petition was not maintainable against the Cooperative Society. In view of the fact that I have applied

the ratio of the recent Full Bench decision reported in 2004(3) CTC 1, I do not find any scope to apply the decision of the Hon"ble Supreme

Court relied upon by the learned counsel for the petitioner in order to follow the earlier view of the Single Judge reported in 1992(2) MLJ 55, by

applying the ratio of the decision of the Supreme Court reported in General

Manager, Telecom Vs. A. Srinivasa Rao and Others, . The learned counsel also submitted that earlier the very same petitioner moved this Court seeking relief against the 4th respondent institution which was entertained by this Court in W.P.No. 36713/2004. The learned counsel further pointed that in W.P.M.P.No. 44072/2004 in W.P.No. 36713/2004 certain relief was also granted to the petitioner. Inasmuch as the question as regards maintainability was never posed for consideration and answered in the said Writ Petition, I am of the view that reliance placed upon by the learned counsel for the petitioner is not also helpful to the petitioner. Inasmuch as I have held that the Writ Petition as against the 4th respondent Institution is not maintainable, this Writ Petition fails and the same is dismissed. No costs. Consequently, W.P.M.P. Nos. 2015 and 2016/2005 are also dismissed.