
(1993) 03 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No's. 9611 and 5582 of 1992

Quaid-E-Millath Teachers Training Institute

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 23-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Tamil Nadu Arrack (Manufacture) Rules, 1981 — Rule 7

Citation : AIR 1993 Mad 253 : (1993) 1 LW 392

Hon'ble Judges : Thangamani, J;Srinivasan, J

Bench : Division Bench

Advocate : S. Selvarathinam, for the Appellant; P. Shanmugham, Addl. Govt. Pleader, for the Respondent

Judgement

Srinivasan, J.—In W.P. No. 9611 of 1992, the petitioner has prayed for the issue of a mandamus directing the respondents to permit 80

students of the petitioner-Institute who completed their First Year course in Teachers Education in April, 1992 to write the Government

Examination for Diploma in Teacher Training Education to be held on 27-7-1992, publish the results and to issue the diplomas and certificates to

the students of the petitioner-Institute through the petitioner-Institute.

2. The petitioner applied on 28-5-1986 for recognition. The application was not considered by the authorities and the petitioner filed a writ petition

in this Court in W.P. No. 4277 of 1989 seeking a mandamus directing the authorities to permit 160 students of the petitioner-Institute to appear

for and write the Government Examinations. A single Judge of this Court gave a direction during the pendency of the writ petition by order dated

4-4-1990 in W.M.P. No. 5340 of 1990 permitting 40 students who had completed

the course in the year 1987-89 and 80 students who had completed the course in 1988-90 to write the examinations to be held on 9-4-1990 subject to certain conditions. Ultimately the writ petition was disposed of on 15-4-1991 directing the Director of School Education to pass orders on the application of the petitioner in accordance with law on or before 30-6-1991. The petitioner was also permitted to make representations to the Government to publish the results of the examinations already taken by the students. The petitioner filed another writ petition in W.P. No. 14747 of 1991 with the allegation that the application for recognition was not considered by the authorities even then. The prayer was for directing the respondents to publish the results of the students who had written the examinations earlier. An order was passed in that writ petition directing the respondents to publish the results of the students who had written the examinations in April, 1990 within a period of eight weeks. Against that order, a writ appeal was filed by the Government and the authorities in W.A. No. 1367 of 1991. The First Bench of this Court dismissed the writ appeal on 2-12-1991 directing the publication of results. The Bench however postponed the issue of diplomas and certificates until orders were passed on the application for recognition. The Bench directed the petitioner to give a copy of the application for recognition made on 28-5-1986 within a week therefrom to the respondents and directed the third respondent to dispose of the same within a period of six weeks from the date of receipt of the copy of the petition for recognition.

3. Accordingly, the petitioner sent a copy of the petition to the authorities on 6-12-1991 under registered post-acknowledgment due. The authorities did not think it fit to comply with the directions issued by this Court to dispose of the application within Six therefrom. Though the application was on their file, they did not do anything pursuant to the said directions. The authorities are clearly guilty of contempt of Court for not having complied with the directions given by this Court. Unfortunately, the petitioner did not bring it to the notice of this Court earlier. If the petitioner had done this, suitable directions would have been given to punish the persons concerned. At this distance of time, it may not be proper for us to pass orders of punishment. However, we express our anguish and

indignation at the insolent attitude of the officials who have deliberately disobeyed the directions issued by this Court, in the writ appeal as aforesaid. They ought to have taken steps to consider the application and pass orders within the period of six weeks granted to them and there was no excuse for not doing so.

4. Learned Additional Government Pleader makes a representation that there was inspection of the petitioner's premises four months later in April, 1992 and before any orders could be passed thereafter, the petitioner filed another writ petition and got directions from this Court. It is hardly an explanation for the authorities for not passing any order in the application for recognition within the time specified by this Court. It is for the Government to take appropriate steps to punish the concerned officials in this matter. We direct the Additional Government Pleader to communicate a copy of this order to the Chief Secretary to the Government and convey our feelings to him with a request to take suitable action against the concerned officials.

5. The petitioner filed W.P. No. 5582 of 1992 with a prayer for the issue of a mandamus directing the concerned authorities to pass an order on the application for recognition dated 28-5-1986. Pending that writ petition, the petitioner filed W.M.P. No. 7983 of 1992 for a direction to the respondent to grant temporary recognition to the petitioner-Institute. By order dated 30-4-1992, a single Judge of this Court directed the respondents to grant provisional recognition for a period of three years from the date of grant subject to the fulfilment of the rules that were in vogue prior to G.O.Ms. No. 536, Education, dated 17-5-1989 within the said period of three years subject to the validity of G.O.Ms. No. 536 dated 17-5-1989. We are unable to appreciate the order passed by the learned single Judge. The prayer made in the writ petition was only for a limited purpose of directing the authorities to consider the petitioner's application and pass appropriate orders. But, the prayer in the writ miscellaneous petition travelled beyond the scope of the main writ petition and such a direction for the grant of temporary recognition should not have been granted. Without taking the main writ petition for consideration, the learned single Judge has straightway granted an order directing the authorities to grant temporary recognition for a period of three years and that

too, on condition that the requirements should be fulfilled within a period of three years from the date of the grant. That itself is on the footing that the petitioner had not complied with the requirements on the date of the order of this Court and yet, the Government is directed to grant recognition immediately without waiting for such compliance. It is brought to our notice that similar orders have been passed in several cases by learned, single Judges of this Court. It is high time that such practice is stopped. The Supreme Court has said in unmistakable terms in *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, that a court cannot act in violation of law and issue directions to the Government to transgress the provisions of law. In fact in *Chingleput Bottlers Vs. Majestic Bottling Company*, the apex Court set aside an order of this Court issuing mandamus directing the authorities to issue a licence under the Tamil Nadu Arrack (Manufacture) Rules, 1981 and pointed out that the Court could, only direct the authorities to re-determine the issue in accordance with the Rules. The following relevant observations can be extracted with advantage :

In our judgment, the High Court exceeded its jurisdiction in issuing a writ of mandamus directing the Commissioner to grant a licence to Messrs Majestic Bottling Company without the prior approval of the State Government as enjoined by Rule 7 of the Rules. The High Court was unduly technical in applying the rules of pleadings. Absence of a specific plea in the nature of demurer would not invest the High Court with jurisdiction to issue a writ of mandamus ordaining the Commissioner to grant a licence to Messrs, Majestic Bottling Company under Rule 7 of the Rules without the prior approval of the State Government which was a condition prerequisite for the grant of such privilege. It is regrettable that the High Court should have short circuited the whole procedure upon a wrongful assumption of its own powers. The view taken by the High Court is manifestly erroneous. Otherwise, the statutory requirement of such prior approval of the State Government under Rule 7 would be rendered wholly otiose".

6. However, there is a redeeming feature in the order of the learned single Judge that it is subject to the validity of G.O.Ms. No. 536 dated 17-5-1989. We deprecate strongly the practice of granting interim orders exceeding the scope of the prayer in the writ petition. Such Orders should

never be passed by this Court in interlocutory applications. It has been repeatedly held that reliefs which cannot be granted in the main case should

not be granted in interlocutory proceedings. (Vide Aboobucker v. Kunhamoo, ILR (1958) Mad 720 : AIR 1958 Mad. 287 and Madras Motors

Finance & Guarantee Co. Ltd. v. R. Dhanam 1978 TLNJ 206.

7. In Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, the law was stated thus (at p. 1277 of AIR):

.....If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In The State of

Orissa Vs. Madan Gopal Rungta, a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The

Court said that an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final

determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is

inconceivable that where the final relief cannot be granted in terms sought for because the statute bars granting such a relief ipso facto the

temporary relief of the same nature cannot be granted, (vide para 10)

8. Though the said writ petition in W.P. No. 5582 of 1992 is not included in the list, we have called for the records and we are disposing of the

said writ petition also by this order. Admittedly, the application for recognition filed by the petitioner on 28-5-1986 has not yet been disposed of

by the respondents. Hence, we direct the espondents to dispose of the said application by passing appropriate orders thereon within a period of

four (4) weeks from this date. Tf there is any failure on the part of the respondents to do so, serious notice will be taken and the concerned officials

will be held liable for contempt of court. The writ petition is disposed of accordingly.

9. The other writ petition, namely, W.P. No. 9611 of 1992 is for permission to 80 students of the petitioner to write the examination, undoubtedly

based on the temporary recognition granted by the Government pursuant to the order of this court. The contention of the petitioner is that once

recognition is granted by the Government, whether it is pursuant to the order of Court or not, it is valid for the period for which it is granted and the

students who have undergone the course during that period have validly done

so. According to learned counsel, the students of the petitioner are entitled to consequential benefits and as they have undergone the course, they should be permitted to write the examinations. Pending writ petition, the petitioner filed W.M.P. No. 13898 of 1992 and an order was passed on 24-7-1992 directing the students of the petitioner-Institute to write the examinations. Thus the relief having already been granted, the remaining two prayers in the main writ petition, which are really consequential to the first prayer are to be considered.

10. It is the contention of the petitioner that the students having been permitted to write the examinations, the respondents should be directed to publish the results which would only automatically follow. It is also argued that the students of the petitioner are entitled to get certificates or diplomas as a consequence of the publication of the results. It is contended that the orders of this Court were passed only after hearing the Government and no appeal has been filed against the same and the orders having become final, it is not possible for any Court to nullify the said order by refusing to direct the publication of the results and grant consequential reliefs. It is also stated that as the application for recognition is still pending, the grant of temporary recognition pursuant to the direction of the Court is valid as such a situation is contemplated in law. It is further argued that if at all, the petitioner should be granted time to comply with the requirements of G.O.Ms. No. 536 dated 17-5-1989, as now only this Court upheld the validity of the said Government Order and the petitioner is prepared to file an affidavit that within a specified time, it will comply with the rules prescribed by G.O.Ms. No. 536.

11. We are unable to accept any of these contentions. As pointed out earlier, the interlocutory order directing the respondents to grant recognition to the petitioner-Institute is itself invalid as it travels beyond the scope of the main writ petition and such a relief should not have been granted by this Court. We can even say that the order is per incuriam. Based on that order, it is not open to the petitioner to seek further consequential reliefs.

We have also pointed out that the order itself is made subject to the final result in the writ petition with reference to the validity of G.O.Ms. No.

536. Now that we have held the said Government Order to be valid, it follows automatically that the temporary recognition granted to the

petitioner is invalid as admittedly the petitioner has not fulfilled the requirements of the rules framed in the said Government Order.

12. If we grant the directions sought for by the petitioner, it will amount to putting premium on illegality and it will be subversive of rule of law.

Learned Additional Government Pleader has rightly relied on the judgment of the Supreme Court in *State of Tamil Nadu and Others Vs. St.*

Joseph Teachers Training Institute and Another, , wherein the law is stated thus:

The practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the

examination has been looked with disfavour by this Court in *N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another*, this

Court observed that if permission was granted to the students of an unrecognised institution to appear at the examination, it would amount to

encouraging and condoning the establishment of unauthorised institutions. The Court declared that the jurisdiction of this Court under Art. 32 of

the High Court under Art. 226 of the Constitution should not be frittered away for such a purpose. In *A.P. Christians Medical Educational Society*

Vs. Government of Andhra Pradesh and Another, a similar request made on behalf of the institution and the students for permitting them to appear

at the examination even though affiliation had not been granted was rejected by this Court. The Court observed that any direction of the nature

sought for permitting the students to appear at the examination without the institution being affiliated or recognised would be in clear transgression

of the provision of the Act and the regulations. The Court cannot be a party to direct the students to disobey the statute as that would be

destructive of the rule of the law. The Full Bench noted these decisions and observations and yet it granted relief to the students on humanitarian

grounds. Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally

not entitled to appear at the examination held by the Educational Department of the Government, the High Court acted in violation of law in

granting permission to such students for appearing, at the public examination. The directions issued by the Full Bench are destructive of the rule of

law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in

law.

13. In *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, , the Supreme Court observed (para 11)":

For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof

have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard

and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions

to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High

Court, therefore, committed manifest error In law, in exercising its prerogative power conferred under Art. 226 of the Constitution, directing the

appellants to permit the students to appear for the examination, etc.

14. Following the judgment of the Supreme Court in the earlier case, a Division Bench of this Court has held in *W.P. No. 598 of 1988* (Ti.

Vinayagaselvi v. The Director of School Education, Madras -- Order dated 12-8-1992) that such permissions cannot be granted. The judgment of

Ramalingam, J. in W.P. No. 13466 of 1991 (St. Antony's Teacher Training Institute v. State of Tamil Nadu) is to the same effect.

15. It is then contended that the observations of the Supreme Court referred to above will apply only to cases of unrecognised institutions and in

the present case the institution was recognised at the time when the students wrote the examination. We have already pointed out that the

recognition was granted by the Government only pursuant to the direction issued by the Court and such direction was expressly made subject to

the result of the main writ petition. Hence, there is no merit in this contention.

16. Reliance is placed on the judgment of the Supreme Court in *Suresh Pal and Others Vs. State of Haryana and Others*, . In that case, the

Government had recognised an institute which conducted certificate Course for Physical Education. Based on the recognition, students joinekd the

Course and were undergoing the same. Subsequently, the Government derecognised the Course. It was held by the apex Court that the

subsequent derecognition would not affect the students who had already joined the Course when there was a valid recognition. The Court pointed

out that the students who had joined the course after derecognition were not entitled to take benefit of the order, but those who had joined the course when the recognition was in force were entitled to consequential benefits. That ruling will have no application in the present case, as the recognition relied on by the petitioner is granted pursuant to an interlocutory order made by the Court, which is admittedly subject to the final order in the writ petition.

17. Reliance is placed by the petitioners on the judgment of Bakthavatsalam, J. in W.P. No. 2269 of 1993 (M. Abirami v. The Director of School

Education). In that case, the learned Judge found as a fact that the institution in question was a recognised one and distinguished the judgments of

Rama-lingam, J. in W.P. No. 13466 of 1991 and the Supreme Court in State of Tamil Nadu and Others Vs. St. Joseph Teachers Training

Institute and Another, as also that of the Division Bench in W. A. No. 598 of 1988 referred to supra. There is nothing in the judgment to show

whether the recognition referred to by the learned Judge was based on any interlocutory order of Court or otherwise. We are therefore not in a

position to say anything about the correctness of that judgment.

18. We are unable to accept the contention that the petitioner should be granted time to fulfil the requirements of G.O. Ms. No. 536. Once the

rules are framed, they should be obeyed. There can be no exception. The petitioner can apply for recognition if it had fulfilled the requirements of

the rules. It is not proper for the Government or any other authority to grant recognition at the first instance and then direct the concerned institution

to fulfil the requirements later within a particular period. If the Government had granted such recognitions, they should be invalidated.

19. In the present case, there are two consequential prayers one of them for a direction to publish the results. As the students of the petitioner had

already written the examinations there is no harm in directing publication of the results. However, the publication of the results will be without any

effect in so far as the rights of the students of the petitioner-Institute are concerned. It will not entitle the students of the petitioner to any further

consequential reliefs such as issue of certificates or diplomas. Hence, we grant the second prayer. But we reject the third prayer for issue of

certificates. The writ petition is dismissed in so far as the third prayer is

concerned. The first prayer has already been granted in an interlocutory order. The second prayer is now granted in this order. There will be no order as to costs.

20. Order accordingly.