
(2007) 08 MAD CK 0140

In the Madras High Court

Case No : O.S.A. No. 49 of 2006 and C.M.P. No's. 10677 to 10679, 10727 to 10729 of 2006 and C.M.P. No's. 2564, 2664 and 3390 of 2007

R. Venugopal and K. Balakrishnan

APPELLANT

Vs

A. Manimaran and Others

RESPONDENT

Date of Decision : 18-08-2007

Acts Referred:

Citation : (2007) 08 MAD CK 0140

Hon'ble Judges : R. Banumathi, J;P.K. Misra, J

Bench : Division Bench

Advocate : Kaithamalai Kumaran, for the Appellant; S.V. Jayaraman for S. Narasimhan, for Respondent No. 1, M.S. Krishnan, for Sarvabhauman Associates for Respondent No. 2, B. Ravi, for Respondent No. 3, R. Subramanian, for Respondent No. 4, N.R. Chandran for S.M. Loganathan, for Respondent No. 7, R. Subramanian, for Respondent No. 8, A. Jenasenar, for Respondent No. 9, P. Premkumar, for Respondent No. 10 and R. Subramanian, for Interim Administrator, for the Respondent

Judgement

R. Banumathi, J.—The appeal O.S.A. No. 49/2006 is preferred against the order dismissing the Application No. 3398/2005 in C.S. No.

117/1973, which was filed by two Professors of Theagaraya College seeking for appointment of Receiver from among the Academicians for the

interim management of the institution.

2. Sir Theagaraya College was founded by a Philanthropist Pitty Theagaraya Chetty (Sr.) and Pitty Theagaraya Chetty (Jr.). Under Partition Deed

dated 19.05.1917, properties were set apart for starting educational institutions. Theagaraya Chetty Educational Institutions consisting of Sir

Theagaraya College, Sir Theagaraya College School and Sir Theagaraya Chetty Elementary School were administered by Board of Trustees. As

there were several internal disputes among the Trustees, it culminated into a scheme being framed by the Supreme Court of India, in SLP No. 811

and 812 of 1975. As per the scheme, the Constitution of the Trust is as follows:

1. Two trustees to be appointed by the adult male members of the family of the Donors, i.e. the family of Pitty Theagaraya Chetty (Senior) and Sir

Theagaraya Chetty (Junior).

2. One to be elected by the Theagaraya Chetty College Teaching Staff and one by the Teaching Staff, Teaching staff of Sir Theagaraya Chetty

School (High School).

3. Three to be elected by the graduates of Sir Theagaraya College of not less than 10 years standing.

4. Two to be nominated by the Senate of the University of Madras.

5. Two to be co-opted by the Board of Trustees.

6. The Ex-officio members viz., Principal of the College and the Head Master of the School.

3. For quite a long time, Managing Committee has been functioning well. But there had been internecine disputes between the parties, which led to

filing of number of applications in the scheme suit C.S. No. 117/1973. One Manimaran has filed number of applications and in O.A. No.

307/2004, the said Manimaran had obtained an interim injunction restraining the committee from convening meeting of the Managing Committee.

The institutions are being subjected to various legal proceedings, which is said to have hampered the functioning of the educational institutions and

growth of the Trust.

4. Appellants have filed A. No. 3398/2005 for appointment of Advocate Commissioner from the Academicians for the interim management of the

Institution. It was alleged that due to internecine dispute between the Trustees, the Management Committee is unable to function and administer the

educational institutions. Finding that no ground is made out for appointment of a Receiver for interrugnum period, A. No. 3398/2005 was

dismissed. However, the learned Single Judge has appointed Mr. P. Balasubramani as Advocate Commissioner for conducting elections [which is

the subject matter in C.M.P.N. Nos. 10677 to 10679/2006 in OSA No. 49/2006].

5. When Appeal was filed to bring a consensus and also to ensure smooth

functioning of the Trust, an interim arrangement was made and by order dated 06.07.2006, First Bench has appointed Justice K.P. Sivasubramaniam (Retd.) as interim administrator and the First Bench has passed the following order:

1. His Lordship Mr. Justice K.P. Sivasubramaniam is appointed as the Interim Administrator of the Theagaraya Chetty Educational Institutions

Managing Committee (Trust).

2. The Interim Administrator shall convene the meeting of the Managing Committee forthwith.

3. The Vice Chancellor, Madras University shall nominate two educationalist to be the Trustees (which is to be nominated by the senate as per the scheme) who will function till the scheme is amended or the Senate nominates two trustees in their place.

4. The Interim Administrator along with the trustees shall decide all issues pertaining to the administration of the trust and all the three educational institutions including nomination of office bearers and members to the College Committee, Higher Secondary School committee and Elementary School Committee as required under statutes ensuring equal opportunities to all Trustees. Till such time the Interim Administrators and one Trustee nominated by him will be the signatories.

5. The Interim Administrator will conduct the election for filling up the vacancies of trustees and he will be assisted by the Advocate Commissioner.

6. The Interim Administrator along with the trustees will work out suggestions for the amendment of the scheme for the better administration and the same shall be placed before this Hon"ble Court for consideration.

7. O.A. No. 307/2004 shall stand dismissed.

8. It will be open to the Hon"ble Administrator to move this Hon"ble Court for suitable orders in respect of any issue that may arise.

6. C.M.P. No. 2564/2007 Petitioner Dr. R. Ramanujam and Dr. Arumugham, Professor and Head, Department of Zoology, University of Madras

have been nominated by the Senate to the Trust. Insofar as it relates to nominations to be made by the Madras University, it is contained in the original scheme framed by the Supreme Court under Clause 4, which reads, "Two trustees to be nominated by the Senate of the University of

Madras". First Bench while passing order referred to it in O.S.A. No. 49 of 2006 and also incorporated in Col. 3 which runs as follows:

The Vice Chancellor of Madras University shall nominate two educationalists to be the trustees (which is to be nominated by the Senate as per the

scheme who are functioning till the scheme is amended or the senate nominates two trustees in that place). A cursory perusal of the aforesaid

provision would clearly show that the nominations is to be effected by the Vice Chancellor in order to make the Coram full temporarily subject to

two clauses - till the scheme is amended or the Senate nominates two trustees in that place.

7. Appearing for the petitioner - Dr. Ramanujam, Mr. N.R. Chandran, learned Senior Counsel has submitted that in view of order of First Bench

[dated 6.7.2006], University of Madras had called for nominations from various members interested in participating in the election process and in

due compliance with the procedure and by democratic process, petitioner Dr. Ramanujam and Dr. Arumugam have been elected as the Trustees.

8. It is submitted that when the nominated member was about to take charge, First Bench has passed the following order dated 12.04.2007:

The Administrator appointed by this Court has submitted a draft amended scheme as per our order dated 06.07.2006. Under the proposed

scheme, the clause in the old scheme authorizing the Nomination by the Senate has been deleted. Learned Counsel appearing for the parties state

that they will file their responses to the draft scheme within one week. Adj. to 20.04.2007 to be placed in the admission board. In the meanwhile,

the process of nomination by the Senate members may go on, but the nominee, elected by the Senate shall not take charge until further orders.

It is stated that as against the above order, SLP No. 4845/2007 was filed before the Supreme Court and the Supreme Court has directed

the parties to approach the Supreme Court as the matter is pending before the High Court.

9. Now Application 2564/2007 has been filed to vacate the order dated 12.04.2007 made in O.S.A. No. 49/2006, and to permit the petitioner to

take charge as the Trustee of Theagaraya Chetty Educational Institution and Managing Committee. We have heard the counsels appearing for the

parties at length.

10. The learned Senior Counsel Mr. N.R. Chandran has submitted that the nomination of petitioner and the said Arumugam has been made by the University by democratic process and the interim order passed by the Court restraining the petitioner from taking charge as the Trustee has caused serious prejudice to the functioning of the Managing Committee. It was further submitted that even if modalities of the draft scheme has to be worked out, any such draft scheme cannot take away the vested and accrued right of the petitioner from taking charge and functioning as the Trustee.

11. Mr. Krishnan, the learned Counsel for the second respondent has submitted that Clause 3 of Draft Scheme envisages amendment of the scheme and the time is ripe for the Bench to consider draft scheme of the Administrator, after calling for objections from all persons interested in the Trust. It was further submitted that the interim administrator along with the Trustees will work out the suggestions for the amendment of the scheme which is to be considered by the Division Bench and in the meantime, there is no necessity to permit the petitioner to take charge as the Trustee.

12. Clause 3 of First Bench order dated 06.01.2006 contemplates that "'Vice Chancellor, Madras University shall nominate two educationalist to be the Trustees (which is to be nominated by the senate as per the scheme) who will function till the scheme is amended or the Senate nominates two trustees in their place'". Since now Senate has nominated the petitioner Dr. R. Ramanujam, and Dr. Arumugam, who are also Educationalists, they have to be permitted to take charge as Trustees.

13. The draft amendment scheme filed by the interim administrator runs to several pages. Contesting parties have also filed their response to the draft scheme. The draft scheme will have to be published and objections are to be received from the parties and the objections from other third parties may also have to be considered. After observing the procedure, formulating the modification of the scheme would take quite sometime. During that time, administration of the management cannot be halted. Though the learned Administrator has taken efforts for smooth running of the Institutions, co-option of other Trustees would be more beneficial.

14. For the foregoing reasons, the order dated 12.04.2007 is vacated. The

petitioner and Dr. Arumugam, who have been appointed by the Senate of the University, are permitted to take charge as the Trustees. The learned Administrator shall recognize the petitioner Dr. R. Ramanujam and Dr. Arumugam as the Trustees.

15. C.M.P. Nos. 2664/2007 and 2561/2007:

C.M.P. No. 2664/2007 is filed by Dr. Isari K. Ganesh, who has been appointed as a Trustee by the Family of Sir Pitty Theagaraya Chetty (Jr.),

by letter dated 20.07.2007, for a period of five years. Dr. Isari K. Ganesh has been appointed as a Trustee by Chandrasekar, who is the adopted

son of Late Pitty Indirasenan and Pitty Leelavathy. One C.Sivasankar was nominated as a Trustee by the family of Sir Pitty Theagaraya Chetty

(Jr.) for a period of five years from 27.07.2002. The said period of five years expired on 26.07.2007 and in that vacancy, petitioner has been

appointed.

16. Nominee Isari K. Ganesh had submitted letter dated 26.07.2007 to the Interim Administrator to recognize him as Trustee. By letter dated

27.07.2007, Interim Administrator has directed the petitioner Isari K. Ganesh to obtain appropriate directions from the High Court in this regard.

Accordingly, nominee Isari K. Ganesh has filed A. No. 2664/2007 to direct the Administrator to accept the Petitioner's nomination and allow the

petitioner to function as a Trustee of Management Committee.

17. Chandrasekar, who claims as the Adopted son of Pitty Theagaraya Chetty (Jr.), has filed A. No. 2561/2007 to implead him as the

respondent. Claim of Chandrasekar that he is the adopted son of Pitty Theagaraya Chetty (Jr.) is very much opposed. The contesting respondents,

particularly the learned Counsel for the outgoing nominee Sivasankaran, has raised objection as to the validity of the adoption. It was contended

that the factum of adoption of Chandrasekar was denied by natural parents of Chandrasekar and they have addressed a letter to the Trustee and

M. Bhoopal, who was appointed by Leelavathi in 1992, and the said letter was also signed by Chandrasekar and a reading of the letter would

indicate that adoption is not legally valid and thus Chandrasekar has not become a adopted son of the family of Sir Pitty Theagaraya Chetty (Jr.).

The learned Counsel appearing for Chandrasekar has drawn our attention to the earlier suit filed by Chandrasekar in O.S. No. 7302/2006 on the

file of City Civil Court, Chennai. The said suit was filed against the natural mother Lakshmi and adopted mother Leelavathi, wife of Pitty

Indirasenan, for a declaration that the adoption is a valid adoption and for Permanent Injunction. In the said suit, the Defendants viz., natural

mother and adoptive mother have submitted to the Decree and the suit was decreed. As per the Decree, the said Chandrasekar has been declared

as the adopted son of Pitty Indirasenan and Pitty Leelavathy. Situated thus, the disputed questions of fact whether there was valid adoption or not

cannot be gone into in this OSA, where this Court is concerned as to the appointment of Trustees and the administration of educational institutions

of Theagaraya Chetty Trust. In our view, in this OSA and applications, scope of enquiry is very limited as to who are the Trustees to be appointed

and how best the institution could be managed to ensure smooth functioning of the educational institutions under the Trust, till the scheme is

amended/modified.

18. Suffice it to note that the original scheme contemplates that ""two trustees to be appointed by the adult male members of the family of the

donors i.e. the family of Pitty Theagaraya Chetty (Sr.) and Sir Pitty Theagaraya Chetty (Jr.)"". Chandrasekar has shown a prima facie case that he is

the adopted son of Sir Pitty Theagaraya Chetty (Jr.). There is no dispute that male members of Sir Pitty Theagaraya Chetty (Jr.) have a right to

nominate a Trustee. In such view of the matter, C.M.P. No. 2561 /2007 is to be allowed and petitioner Chandrasekar is ordered to be impleaded

as the eighth respondent.

19. The line of Sir Pitty Theagaraya Chetty (Jr.) has nominated petitioner Isari K. Ganesh as the Trustee. Hence the petitioner Isari K. Ganesh is to

be permitted to take charge as Trustee. This of course, is till such time the scheme is modified. However, it is open to the parties to approach

appropriate forum challenging the alleged adoption.

20. Much contention was raised that Chandrasekar cannot nominate a Trustee and that as per the scheme, only family members could be

appointed as Trustee and on that score, nomination of Isari K. Ganesh is objected to. Nextly it was contended that the Trustee cannot be permitted

to take charge till modification of the scheme is made. As observed by us in the order in CMP No. 2949/2005, modification of the scheme would

take quite some time and we are of the view that acceptance of nomination of Isari K. Ganesh as Trustee cannot be deferred till passing of the order in C.M.P. No. 2949/2005.

21. As per the existing scheme, family of Sir Pitty Theagaraya Chetty (Jr.) is entitled to nominate one person. We find no justification for deferring the nomination of the petitioner till modified scheme is framed. This application CMP No. 2577/2007 is allowed and the petitioner Isari K. Ganesh is permitted to take charge as a Trustee of Board of Management Committee of Theagaraya Chetty Educational Institutions.

22. Petitioner in C.M.P. No. 2605/2007 is said to be a Trustee of the Managing Committee elected from Sir Thiyagaraya Chetty, Higher Secondary School Teachers Constituency. This application filed to implead the petitioner as party respondent in the appeal was already allowed.

The petitioner is permitted to take charge as Trustee and the Board of Management Committee of Theagaraya Chetty Educational Institutions.

23. In respect of request of learned Interim Administrator:

As per the order of First Bench, Vice Chancellor has nominated two educationalists Dr. Durairaj and Dr. D. Raja Ganesan, who had joined the

Trust Board along with the Interim Administrator. On behalf of the Interim Administrator, memo has been filed mentioning about the valuable role

played by the above said nominees Dr. Durairaj and Dr. D. Raja Ganesan. The Interim Administrator has stated that the aforesaid educationalists

have taken the burden of day-to-day activities and the Interim Administrator depends on them for all the administrative and functions of the

management. The learned Administrator has suggested that they be continued at least till the scheme is finalized and that they be accommodated in

two vacancies open for co-option.

24. As per the Bye-law 1.5 "Two trustees to be co-opted by the Board of Trustees". Clause 6 of Bye-laws sets out the procedure for the

vacancies to be filled up by co-option. The learned Counsel Mr. R. Subramaniam has raised strong objection to permit the nominees by Vice

Chancellor to be co-opted in the vacancies of "two to be co-opted". The learned Counsel has submitted that when specific procedure is

contemplated under Clause 6 of the Bye-laws, the same cannot be ignored, permitting two nominees of Vice Chancellor to continue in the vacancy

to be filled up by "co-option".

25. Of course, as per Clause 6, in the case of vacancies to be filled up by co-option, the persons have to file nomination papers and they are to be elected as per the procedure laid down in Clause 6. But the Trust and the persons concerned with the Trust are riven with number of litigations, faced with difficulties and as against odds, Managing Committee is to be administered to ensure smooth functioning of the educational Institutions, atleast till Draft Scheme is framed. As such, since the learned Interim Administrator is in charge of administration, suitable help must be available to him for running the administration. Having regard to the peculiar facts and circumstances of the case, and keeping in mind the interest of the institutions and the students and smooth running of the institution and having regard to the memo filed by the Administrator, we deem it fit to permit the aforesaid nominees of Vice Chancellor viz., Dr. Durairaj and Dr. D. Raja Ganesan be allowed to continue as Trustees in the vacancy to be filled up by co-option till the scheme is modified/amended.

26. C.M.P. Nos. 10678 and 10679/2006:

In the order dated 25.01.2006 in A. No. 637/2005, the learned Single Judge has appointed Mr. P. Subramani, Advocate, as Commissioner for the conduct of the election of Old Students Constituency and one from the Higher Secondary School Teacher. Aggrieved against the order dismissing the application for appointment of interim Receiver, O.S.A. No. 49/2006 has been filed. In the said appeal, by the order dated 02.07.2006, Justice K.P. Sivasubramaniam was appointed as interim administrator.

27. As per the existing scheme, Clause 4 deals with the preliminaries to election, which reads as under:

4. Preliminaries to Election:

(a) Electoral College : The expression "'Graduate of Sir Theagaraya College'" shall mean all persons who shall have graduated from Sir Theagaraya College and of 10 years standing and taken their Degree of Bachelor of Arts, Science or Commerce or any other equivalent or higher degree of the University of Madras, and who shall have paid into the office of the Board of Trustees, a Registration fee of Rs. 5/- (Rupees Five only) and registered their names in a list to be maintained for the purpose in the said office

at least six months before the date of election.

(b) Prescribed registration forms can be obtained from the College Office on payment of twenty five paise per application. The registration fee for each application is Rs. 5/- (Rupees five only).

...

(f) All elections shall be conducted and the votes polled and the result of the election declared, by a Committee consisting of three trust board

members to be appointed by the Board, one of whom shall be the Returning Officer. The said Committee shall have the power:

(i) to decide the validity or invalidity of each ballot paper or each vote recorded.

(ii) to declare the results of election.

28. In the memo filed on behalf of the Administrator, the Administrator has expressed the view for completely abolishing the Trustees being elected

through Graduate Constituency. To this effect, certain amendments are also suggested in the scheme. Such view of the Administrator to abolish

Trustees being elected through electoral college could be given effect to only after the draft scheme is finalized and notified.

29. Even as per the order of the First Bench dated 02.07.2006, "the Interim Administrator will conduct the election for filling up the vacancies of

trustees and he will be assisted by the Advocate Commissioner". Hence holding of election to elect trustees cannot be stopped and has to be

completed. It is stated that there are now three vacancies of Trustees to be elected through Graduate Constituency. We feel that for all three

vacancies, election could be conducted by the Advocate Commissioner.

30. The Advocate Commissioner has filed two interim reports. It is further stated that while the election process was in progress, because of

certain directions of the Court, further work could not be continued. These applications are filed by the erstwhile Trustee Manimaran to fix a date

for election and to permit the existing registered Members to vote in the election and also to extend the time for re-registration of membership of

Graduate Constituency.

31. The learned Advocate Commissioner has stated that he has collected Rs. 5 per each application issued and has also collected Rs. 5/- for

registering them as voters in Graduates Constituency of Sir Theagaraya Chetty

College. Pursuant to the direction, the learned Advocate

Commissioner has produced the receipt books. Voters shall be enrolled as per Rules of eligibility and as per payment of Registration Fee.

32. The Commissioner shall prepare the Voters list i.e. by issuing Identity Cards. Once the Identity Cards are furnished to the voters, fresh renewal

may not be insisted upon. Identity cards is to be issued only to the persons who have already submitted their applications along with Registration

Fee. No other graduate shall be allowed to be included in the Voter's list. The Voter's list shall be finalized by the learned Administrator along

with the other trustees of the Board both already on record and who have been permitted to take charge as per this order.

33. The learned Advocate Commissioner is directed to issue Voters card to the Voters by First Week of September, 2007 i.e. from 03.09.2007

to 08.09.2007. Election for three elected representatives shall be conducted on 18.10.2007. Venue of election can be selected by the

Administrator in consultation with the Advocate Commissioner. The Advocate Commissioner is directed to issue Public Notice in Tamil Daily

[Dina Malar] about the election date, Time and Venue Apart from Public Notice, the learned Advocate Commissioner is also directed to send

individual communication to the voters in the third week of September, 2007, i.e. from 17.09.2007 to 22.09.2007. The entire election process is

to be under the supervision of the learned Administrator.

34. Advocate Commissioner shall assist the Administrator in counting the votes. Result of the election shall be declared on the same day i.e. on

18.10.2007 and the elected representatives shall take charge of the Trust.

35. To sum up,

(i) C.M.P. No. 3390/2006:

Stay Petition closed.

(ii) C.M.P. No. 2564/2007:

This application is allowed. Order dated 12.04.2007 made in O.S.A. No. 49/2006 is vacated. Petitioner Dr.R.Ramanujam and Dr. Arumugam

are permitted to take charge as the Trustees for Theagaraya Chetty Educational Institutions. The learned Interim Administrator shall recognize the

petitioner and Dr. Arumugam as the Trustees of the Managing Committee.

(iii) C.M.P. No. 2664/2007:

This application is allowed. Petitioner Dr. Isari K. Ganesh is permitted to take charge as the Trustee and the learned Interim Administrator shall

recognize the petitioner as the Trustee of the Managing Committee.

(iv) It is further ordered that nominees of the Vice Chancellor viz., Dr. Durairaj and Dr. D. Raja Ganesan shall continue as the Trustees in the

vacancies open for co-option, until further orders.

(v) C.M.P. Nos. 10727 to 10729 of 2006:

These applications filed by the Secretary - Dilli Baskar to declare the meeting of the College Committee held on 05.12.2006 as illegal, invalid and

to cancel all the decisions taken thereon, shall be determined by the learned Single Judge after hearing the parties.

(vi) C.M.P. Nos. 10677 to 10679/2006:

The applications are ordered as aforesaid in paras 25 to 37.

(vii) All the trustees, existing and new Trustees shall continue to hold Office in accordance with the Scheme till the Scheme is amended and if the

Scheme is amended, such amended Scheme shall be given effect to.

36. With the above observations and directions and also directions in A. No. 2949/2005, the OSA is disposed of. We would request the learned

Single Judge to deal with the matter as per the directions.