

(1991) 09 MAD CK 0082
In the Madras High Court
Case No : S.A. No. 1509 of 1990

Sankarammal

APPELLANT

Vs

P. Ganapathy Chettiar and others

RESPONDENT

Date of Decision : 03-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Limitation Act, 1963 — Article 137

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 53, 6, 7, 8

Citation : AIR 1992 Mad 15 : (1991) 2 LW 605 : (1992) 1 MLJ 127

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Mr. K. Chandramouli, for Mr. K. Venkatasubramanian, for the Appellant; Mr. K.V. Subramanian, for the Respondent

Judgement

1. The plaintiff is the appellant. Her suit for declaration that the resolutions passed on 22-8-1980 and 31-8-1980 by the Uppukottai Pachayappa Educational Institutions Committee are null and void and that they do not bind the members of the Committee, and for an injunction restraining the first defendant from enforcing the said resolutions, has been dismissed on the ground that the suit is not maintainable in a civil Court because of the bar u/s 53 of the Tamil Nadu Recognised Private Schools Regulations Act, 1973. As both the Courts have dismissed the suit as not maintainable, it is not necessary for me to set out the facts in detail. Suffice it to point out that there is a dispute between the plaintiff on the one hand and the first defendant on the other, as to whether the meetings hold on 22-8-1980 and 31-8-1980 and the resolutions purported to have been passed by the Committee in those meetings are valid and in accordance with law.

2. Section 53 of the Tamil Nadu Recognised Private Schools Regulations Act, 1973, hereinafter referred to as "the Act", reads thus:

"No Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or

officer mentioned in this Act."

Under the Section, the Civil Court is prevented from deciding or dealing with any question which is required to be decided or dealt with by any authority or officer mentioned in the Act as per the provisions of the Act. The Courts below have taken the view that Sections 7 and 8 of the Act provide for a decision of the dispute which has arisen in this case by the educational authorities. Section 7 of the Act relates to permission to be granted u/s 6 of the Act for establishing a school. It is not necessary for the purpose of this case to refer to the provisions of Section 7 of the Act in detail as it has nothing to do with the facts of the case. Section 8 of the Act is the one that is relied on by the respondents and the Courts below. It reads as follows:

"8. (1)-(a) Whenever there is any change in the constitution of the educational agency, that agency shall apply to the competent authority for approval of such change.

(b) Whenever the management of any private school is proposed to be transferred, the educational agency and the person to whom the management is proposed to be transferred may, before such transfer, apply jointly to the competent authority for approval of the transfer.

(c) On any transfer of the management of private school, without approval having been obtained for such transfer under clause (b), the transferee shall, if he desires to run it as such, apply to the competent authority within three months of the date of the transfer, for approval of the transfer.

(d) An application under clause (a), clause (b) or clause (c) shall in such form and contain such particulars as may be prescribed.

(2) On receipt of an application under subsection (1), the competent authority shall-

(a) if it is satisfied, after making such inquiry as it deems fit, that the educational agency will continue to maintain and manage or, as the case may be, that the transferee will maintain and manage, the private school in accordance with the provisions of this Act and the rules made thereunder, approve the change or, as the case may be, the transfer, subject to such conditions as it may impose; and

(b) communicate its decisions to the applicant within a period of three months from the date of such receipt."

3. It is contended before me that u/s 8 of the Act, the authorities are empowered to consider an application for transfer or change of an educational agency. Under sub-section (2) of Section 8 of the Act, the authority shall decide whether the educational agency will continue to maintain and manage the school in accordance with the provisions of the Act and the rules made thereunder in spite of the change and whether the transferee in cases of transfer will maintain and manage the school in accordance with the provisions of the Act and the rules

made thereunder. Only on such satisfaction, the authority has to approve the change or the transfer, as the case may be, subject to such conditions as it may impose. The Section has expressly restricted the authority to consider only the question that is mentioned in the Section itself. It does not permit the authority to consider other disputes which might have arisen between the parties. When the very validity of the change or transfer is called in question, it is a civil dispute and it cannot be decided by the authority by stretching the language of the sub-section to any extent. Hence, I do not accept the contention of learned counsel for the respondents that the dispute is one which has to be decided u/s 8(2) of the Act by the educational authorities and consequently, there is a bar u/s 53 of the Act.

4. The Supreme Court had occasion to consider the question of exclusion of jurisdiction of the civil Court under special enactments in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, . The principles regarding exclusion of jurisdiction of civil Court have been laid down very clearly by the Supreme Court in that case as follows at page 89:

"(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Whether there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intent necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provide for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into the question on a revision or reference from the decision of the Tribunals,

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil Court is not readily to be inferred unless the conditions above set down apply."

5. If the above principles are borne in mind, there can be no doubt whatever that Section 53 of the Act does not bar the jurisdiction of the civil Court when the dispute relates to the very validity or the legality of the transfer or the change on which reliance is placed by one party.

6. In this case there is a further circumstance that the Act has been amended by Tamil Nadu Act 39 of 1987 which introduced Section 53-A in the Act. That Section reads thus:

"53-A. Settlement of dispute as to educational agency, etc.-- (1) Notwithstanding anything contained in section 53, whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a school committee, or as to the appointment of secretary of the school committee, arises, such dispute may be referred by the persons interested or by the competent authority to the civil court having jurisdiction, for its decision.

(2) Pending the decision of the civil Court on a dispute referred to it under sub-sec. (1), or the making of an interim arrangement by the civil court for the running of the private school, the Government may nominate an officer to discharge the functions of the educational agency, the school committee or the secretary, as the case may be, in relation to the private school concerned."

7. Even if the suit was not maintainable in the civil Court on the date when it was filed, there is no doubt that the civil court has jurisdiction to decide the same by virtue of the amendment of the Act. When the Act came into force, the matter was pending in the lower appellate Court. A reading of Section 53-A of the Act shows that it will be applicable even to pending disputes. Before considering the question of the applicability of the Section to the pending disputes, it is necessary to refer to one of the arguments advanced by learned counsel for the respondents based on the language of Section 53-A of the Act.

8. It is argued that the language of the Section indicates that Section 53 of the Act would not apply to disputes relating to the constitution of an educational agency. According to learned counsel when Section 53-A of the Act expressly provides for reference of disputes as to the constitution of an educational agency and as to whether any person or body of persons is an educational agency in

relation to any private school, Section 53 of the Act could not have intended to exclude such disputes from the bar under the section. According to learned counsel, the amendment has, for the first time, brought into existence a new situation under which the disputes covered by Section 53-A of the Act are excluded from the bar u/s 53 of the Act. I do not agree. Just because Section 53-A of the Act provides for a particular kind of dispute, it does not mean that other civil disputes which can be decided only by civil courts finally could be entertained by the authorities and finally decided. Hence, the contention of learned counsel is not accepted.

9. Turning to the applicability of Section 53-A of the Act to pending disputes, reliance is placed by learned counsel for the respondents on the expression "arises". Learned counsel submits that when the Section expressly states that it will apply only to dispute, which arises, it means that it will not apply to a dispute which is already in existence. Here again, I do not agree. When the Section uses the term "arises" it only means that if there is a dispute between the parties as to the constitution of an educational agency or as to whether any person or body of persons is an educational agency, it can be referred to the civil Court for its decision. Hence, there is no substance in the contention that the Section will not apply to pending disputes.

10. Learned counsel submits that the rights of the parties have to be decided as on the date of the suit and a subsequent legislation cannot be taken note of by this Court. Reliance is placed on the judgment of a Division Bench of this Court, to which I was a party, in *S.N. Kube v. P.P.I. Vaithyanathan* 1988 TLNJ 1. The Bench had to refer to the judgment of the Supreme Court in *Nand Kishore Marwah and Others Vs. Samundri Devi*, . In the case before the Supreme Court, the question was whether a building which was exempted by the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 could be brought within the scope of the Act. because the proceeding instituted at the time when the exemption was applicable was pending, even after the period of exemption had come to an end. The Supreme Court decided in that case that the rights of parties had to be determined on the basis of the rights available to them on the date of suit. That was not a case in which there was a subsequent legislation and no question arose before the Supreme Court as to whether the subsequent legislation would apply to pending proceedings. That was a case in which the party had a particular right under an existing legislation which continued to be so even at the time when the matter was pending in the appellate Courts. The contention raised was, the period prescribed in the legislation had come to an end and the exemption granted to the building had also ceased to apply. The basis on which the Supreme Court decided the matter was that the party should not be prejudiced because the matter was pending in the Courts. Just because the Courts took their own time for deciding the matter, the party's rights cannot be jeopardised.

11. Another Bench of this Court applied the same principle in *N. Sripadmanabha*

Nadar v. P. Ramalinga Nadar and others (1991) 1 LW 495. They referred to the decision in S. N. Kube's case, 1988 TLNJ 1 and reiterated the principle that the rights of the parties should be determined on the basis of the rights available to them on the date of suit. In that case also, there was no question of a subsequent legislation being made applicable to the pending proceedings. Hence, the decisions relied on by learned counsel for the respondents will have no bearing in the present case.

12. It is also contended that u/s 53-A of the Act, it is for the parties to file an application before the civil Court for deciding the dispute. According to learned counsel, if an application is filed today, it will be barred by Article 137 of the Limitation Act, as it will not be covered by any other Article and it has necessarily to be governed by the residuary Article viz., Article 137 of the Limitation Act. According to him, under that Article, the period of limitation is three years from the date when the right accrued and in this case, the said period had already come to an end. There is no substance in this contention.

13. The Act does not say that there should be an application by a party to the civil Court. The procedure by which the dispute is to be referred to the civil court is not prescribed by the Act. Nothing prevents a party from filing a suit and agitating the dispute before the civil Court by virtue of Section 53-A of the Act. In this case the suit was already pending and there was no question of bar of limitation as there was no necessity for the party to file a fresh application or a fresh suit u/s 53-A of the Act.

14. As I have taken the view that the provisions of the Amended Act would apply to existing proceeding, viz., the present suit, the maintainability of the suit has to be upheld u/s 53-A of the Act. Apart from that, I have already held that even u/s 53-A of the Act, the suit was not barred and the same was maintainable in a civil Court. The view taken by the Courts below is clearly erroneous. Hence, the second appeal is allowed, the judgments and decrees of the Courts below, are set aside and the suit O.S. No. 896 of 1981 is remanded to the Court of the District Munsif, Uthamapalayam for disposal on merits in accordance with law.

15. As the suit is of the year 1981, the District Munsif is directed to dispose of the same giving top priority to the same. The suit shall be disposed of on or before 31-12-1991, and a report should be sent to this Court. Under the provisions of Order XLI, Rule 26-A of the Code of Civil Procedure, I direct both the parties to appear before the District Munsif, Uthamapalayam on 1-10-1991. The parties will bear their respective costs in this appeal.

16. Appeal allowed.