

(2011) 04 MAD CK 0312

In the Madras High Court

Case No : Writ Petition No. 28280 of 2010 and M.P. No. 1 of 2010

Shree Maha Ganesa Vidyasala Middle School

APPELLANT

Vs

Director of Elementary Education, District Elementary
Educational Officer and Assistant Elementary Educational
Officer

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 18A, 18A(1),
34, 34(1)

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 19

Citation : (2011) 8 MLJ 131

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Ethirajulu, for the Appellant; A. Suresh, G.A., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner is a private Aided School governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder. The Writ Petition is filed by the petitioner School represented by its Correspondent challenging an order dated 3.12.2010 passed by the 2nd respondent District Elementary Educational Officer, Thiruvallur. By the impugned order, the 2nd respondent ordered for direct payment system on the basis of the recommendation made by the Assistant Elementary Educational Officer, Villivakkam, Chennai 40 and in the interest of the students and the school. In the very same order, the various acts and omissions of the school were set out on the basis of the Assistant Elementary Educational Officer's report dated 26.11.2010. The items listed out include the various agitations that took place in the school, improper maintenance of records, not filling up the post, not keeping the school in hygiene condition, computers in the school are under repair and despite the Government poramboke lands were given, they have not maintained the school properly, even though funds were received from various

quarters. It is also claimed that the 2nd respondent exercised his power in terms of Section 34(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Challenging the said order, the Writ Petition came to be filed.

2. When the matter came up on 10.12.2010, this Court granted an interim stay and notice to be issued on the respondents. On receipt of the notice, the respondents have filed a counter affidavit dated 18.4.2011. In the counter affidavit, the reasons which are set out in the impugned order were once again repeated. It is also claimed that the power to order direct payment system was made in terms of Section 34(1) and also as per G.O.Ms.No.1228, Education, Science and Technology Department dated 30.12.1994, wherein the duties and responsibilities of supporting staff are listed out by the Government. A rejoinder was also filed by the petitioner.

3. Mr. G. Ethirajulu, learned counsel for the petitioner contended that the impugned order was passed without due notice to the petitioner management. It is also contended that invocation of Section 34(1) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 is improper, as by the said provision the management of the school can be taken over by the Government.

4. In the present case, neither the officer who passed the impugned order has power in terms of the Act and the procedure contemplated therein has not been followed up. It must be noted that the power to order the direct payment of salaries to the Teachers flows from not from the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 but in terms of grant in aid to a recognised private school. Annexure III to Rule 19 of Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 provides for procedure for payment of pay and allowances to Teachers and other persons in Private Schools. In paragraph II of the said annexure, it has been stated as follows:

II. Under special circumstances, the District Educational Officer concerned may make direct payment to the Headmaster of a school or to the Teachers of a school.

5. If the respondents have exercised the power under the relevant Rule enabling them to resort to direct payment, there is no quarrel with the said exercise of power, but on the contrary both in the impugned order as well as in the counter affidavit the respondents placed reliance upon Section 34(1) of the Act, which reads as follows:

34. Taking over management of private school: (1) If, on receipt of a report from the competent authority or otherwise, the Government are satisfied that the educational agency of any private school has neglected to discharge any of the duties imposed or, or to perform any of the functions entrusted to, that agency by or under this Act or any Rule or order made or direction issued thereunder and that it is expedient in the interests of school education to take over the management of such private school, the Government may, by order, in writing, take over the management of such private school.

6. Section 34 of the Act obliges the State Government to pass appropriate orders that on receipt of the report from the competent authority or otherwise, the Government can invoke the power. Under the proviso to this Section, the Government shall not initiate any proceedings u/s 34(1) to take over the management of any private school unless they are satisfied that suspension of the management u/s 18-A will not be sufficient. u/s 18-A(1), the Government for any misconduct can suspend the management and appoint a special Officer. In both the circumstances, it contemplates the sheering off the management or the educationalists as the case may be and the right of appeals is also provided to this Court against the said order. It is not clear as to why the 2nd respondent is invoking Section 34, when admittedly he has no power to exercise such power.

7. A copy of the Government Order in G.O.Ms.No.1228, Education, Science and Technology Department dated 30.12.1994 is produced. The said order merely reorganised the administrative set up of the inspecting officers. It has nothing to do with the exercise of power u/s 34 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 when knowing fully that they were nowhere in the picture for exercising such power.

8. In the light of the above, the Writ Petition stands allowed. No costs. The impugned order stands set aside. However, this order will not prevent the respondents from passing appropriate orders in accordance with law and after due notice to the petitioner. The connected Miscellaneous Petition is closed.