
(2003) 03 AP CK 0122

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13482 of 1997

S.L. Kameswari

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 24(2)

Citation : (2003) 2 ALD 702 : (2003) 3 ALT 28

Hon'ble Judges : G. Yethirajulu, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Philkana Rama Rao, for the Appellant; Government Pleader for School Education for Respondents Nos. 1 to 4 and Y. Venkata Sastry, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—This is a writ petition filed by the petitioner seeking quashing of order dated 14-6-97 passed in proceedings Rc. No. 2631/C5/90 by District Educational Officer, Ongole. The controversy in this Writ petition has remained unresolved although many proceedings have been taken by the parties. The facts leading to the filing of this Writ Petition are as follows:

2. The petitioner contended that, her father-in-law Sri S. Venkateswarlu established an Elementary school in the year 1926 at Ravinuthala village in Prakasam district. The school was recognized by the Government of Andhra Pradesh and received grant-in-aid. The petitioner contended that, her father-in-law got established the school with his own funds and he was the owner of the building and entire infrastructure of the school. He continued to remain its owner and manager till his death. The building in which the school was housed was self acquired property of Sri Venkateswarlu who died on 12-12-1987. Few years prior to the death Sri Venkateswarlu executed a Will on 1-4-1985 in favour of his second son Sri S. Suryanarayana who is the husband of the petitioner. By this Will he revoked the earlier Will dated 12-12-1984 executed in favour of his

another son Sri S. Sriramulu. By the latest Will dated 1-4-85 he bequeathed the school and all his properties in favour of the husband of the petitioner. The husband of the petitioner is working as a Teacher in Mandal Parishad primary school as such he is disabled from discharging the functions of Manager of the school which he got by virtue of the Will. Thereafter the husband of the petitioner executed a power of attorney in favour of the petitioner on 13-10-88 authorizing the petitioner to function as Manager of the school and run the same. She informed the 4th respondent and the 4th respondent issued proceedings on 22-5-1990 confirming the appointment of the petitioner as Manager of the school. The brother of the husband of the petitioner made some representations before the 3rd respondent claiming the right of management of the school on the basis of earlier Will dated 12-12-1984. According to the petitioner, the 5th respondent suppressed the fact that the said Will had been cancelled and revoked by a later Will. The 3rd respondent on 7-8-1990 dismissed the representation made by the 5th respondent informing him that the Will on which he based his claim had already been cancelled by the executant. The 5th respondent filed an appeal to the 2nd respondent. He also dismissed the appeal. The 5th respondent thereafter filed another appeal before the 1st respondent. The 1st respondent allowed the appeal by order dated 9-1-1996 and directed the 2nd respondent to appoint the 5th respondent as Manager. This process was done behind the back of the Writ petitioner. The petitioner contended that the 5th respondent had not challenged the validity of the Will dated 1-4-1985 therefore he could not claim any rights of ownership of the school. A Writ petition came to be filed which was disposed of by an order dated 29-11-1996 with a direction to the 4th respondent to consider afresh the whole matter and appoint an eligible person as Manager/correspondent of the school. Pursuant to the orders of the Court the 4th respondent passed an order on 14-6-1997 wherein he appointed 5th respondent as Manager of the school in place of the petitioner. This order is challenged by way of this Writ petition on various grounds.

3. This Writ Petition came to be decided by an earlier judgment of the learned Single Judge on 8th November, 1998. The Writ petition was allowed by the learned Single Judge and the impugned order was set aside. The judgment of the learned Single Judge was challenged in Writ Appeal No. 2224 of 1998. The Division Bench found that there had been an earlier opinion in the matter of another learned Single Judge and the Judges had taken different views in the matter therefore the learned Single Judge who decided W.P. No. 13482 of 1997 should have referred the matter to a larger Bench. Therefore, the Division Bench set aside the judgment of the learned Single Judge. Thereafter this matter appears to have been posted before another learned Single Judge who said that it would be appropriate to place the matter before Division Bench because an opinion had already been expressed by one Judge which is contrary to the opinion expressed by another Judge in W.P. No. 14361 of 1996. In these circumstances this case has come up before us and we have heard the learned Counsel for the parties.

4. The facts are not at dispute except the fact that who would be entitled to own the property in terms of the Will. We were told at the Bar that genuineness of the two Wills is subject-matter of a civil suit, therefore we want to make it clear in the first instance that, whatever view we take in this matter it will not reflect any opinion on the genuineness of either of the wills. But, prima facie, the Will which was executed at a later point of time can be taken as the last Will for the purpose of decision in this matter. According to this Will, the property has been bequeathed in favour of husband of the Writ petitioner. It is also an admitted fact that the husband of the petitioner cannot be Manager of a private school because he is serving the Government. Now the only question is, if the petitioner's husband cannot manage the school whether the management of this school can be given by the State authorities to any other person. The learned Counsel appearing for the petitioner submits that, though there was an earlier judgment by a learned Single Judge in W.P. No. 14361/96 but that did not consider these questions. However, the learned Counsel for the respondents submits that this question is not at all res Integra and it has been decided by the learned Single Judge of this Court in the same Writ petition and by virtue of the order passed by the learned Single Judge in that Writ petition the official respondents appointed the 5th respondent as Manager of the school. In the judgment which was given in this W.P. No. 14361/96 after narrating the facts it gave a finding that, "There is absolutely no difficulty in agreeing with the finding given by the first respondent so far as it relates to the appointment of the petitioner herein as Manager/Correspondent of the school in question. The first respondent had rightly intervened the matter and set aside the order passed by the fourth respondent on 22-5-1990 appointing the petitioner herein as the Manager/Correspondent of the school in question." According to the learned Counsel for the respondent, this question has also been decided that the present writ petitioner cannot be appointed as Manager/Correspondent of the school. The matter was remanded back to the official authorities to see whether the 5th respondent was eligible to be appointed as Manager or not and there was no question of appointing the petitioner as Manager which was concluded by the judgment of the High Court. Needless to say that, with the opinion "expressed by the learned Single Judge with regard to the appointment of the petitioner another Single Judge differed and therefore he allowed the Writ petition which finally was set aside because the learned Single Judge had not referred the matter to a larger Bench. Therefore, we take it that the question is still open for the Court to be decided. Even if it were not open to be decided, even then the learned Counsel for the petitioner submits that the learned Single Judge in judgment in W.P. No. 14361/96 has not at all gone into the relevant rules and unless relevant rules were examined the writ petitioner cannot be held to be not entitled to be appointed as Manager of the school. We have gone through the judgment. The learned Single Judge in W.P. No. 14361/96 has taken note of the fact that the husband of the petitioner was in service of the Government therefore he was ineligible to run a school therefore his wife could also not run the school, but the relevant rules have not been taken into consideration.

5. In nut shell, the case of the affected respondent i.e., respondent No. 5 is the same what was held by the learned Single Judge in this Writ petition that the husband of the petitioner was in the service of the Government therefore he was not eligible to be appointed as Manager of a private school. In the light of these arguments and contentions it would be necessary to examine the relevant rules.

6. We have glanced at A.P. Education Act, 1982. After coming into force this Act no individual can establish a school, but the present school had been established prior to the Act coming into force. u/s 19 the educational institutions which could be established were classified as (i) State institutions established by the Government, (ii) Local authority institutions established by the local authorities, and (iii) Private institutions established by body of persons registered in the manner prescribed. Section 20 gives the method by which these institutions can be established. The Act was amended in 1987 and Section 20A was incorporated. Section 20-A reads as under-:

"20-A. Prohibition of individual to establish institutions :--On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987 no individual shall establish a private institution:

Provided that this section shall not have any effect on any private institution established by an individual and recognised by the competent authority prior to such commencement."

So, in terms of Section 20 read with Section 20-A it becomes clear that an institution established by an individual prior to the commencement of the Act would be entitled to run the institution. Section 52 which relates to Chapter-X dealing with Prohibition of Transfer of properties by aided Educational Institutions defines "Manager" as under:

"Manager" means the owner, trustee or other person who has power to transfer any land or building belonging to an educational institution and includes a local authority".

Section 53 prohibits transfer of lands and buildings by educational institutions without the permission from Government in certain cases. If one reads these sections together it becomes clear that a school established by an individual from his own funds is the owner of the school and he is also the "Manager" within the meaning of Section 52. Now, let us assume a situation where there is an individual who is owner of the property which is a school and who has only one son. After his death the son would inherit the property and if that son by any chance is in Government service would he loose the right to inherit the property? That would certainly not be the import of the Act.

7. The most important question in these proceedings is, who has inherited this property from its original owner. Unfortunately, we cannot go into that question because both sons of deceased owner claim the property on the basis of two Wills which subject-matter of a suit. But, we have already stated that, prima

facie it appears that the husband of the petitioner is in possession of a Will which is the last Will.

8. Now, if there is an owner who is disqualified to manage the school, does he loose all the rights, even of ownership of the property? That is not possible. Secondly, the official respondents have no business in appointing a Manager of a private aided school in terms of the Act. This question has also not been gone into by the learned Single Judge in the earlier Writ petition. The Manager/ Correspondent (whoever manages the school) has to be appointed in accordance with Section 24 of the Act. Let us have a look to Section 24 of the Act. Section 24 reads as under:

"24. Appointment and removal of manager of private institution:--

(1)..... not relevant.....

(2) The management shall, for the purpose of this Act, nominate a person to manage the affairs of the institution, whether called by the name of secretary, correspondent or by any other name, and intimate such nomination within thirty days thereof to the competent authority.

(3)..... not relevant...

(4)..... not relevant.....

(5).....not relevant.....

(6)..... not relevant....."

Since the property is held by single individual and the owner thereof is Manager in terms of Section 52, therefore the owner of the property should be construed to be "Manager" within the meaning of Section 24(2) and in the present case the management would be its owner which, prima-facie, we are holding that husband of the petitioner is the owner of the property. It is the power of the management to appoint a Secretary, Correspondent or by any other name a person who manages the school. u/s 24(2) the competent authority has only to be informed and intimated about his action. Power of appointment is not with the official respondents. Power of appointment is with the management.

9. In this case, mistakes have been committed from the inception itself even by the petitioner. The petitioner did not need any order of appointment from the official respondents. She needed an order of appointment by the owner of the property which in this case was her husband and this information had to be intimated within particular period of time to the competent authority. The import of Section 24(2) has also not been considered by the learned Single Judge in W.P. No. 14361/96. The petitioner's husband and the petitioner have also committed a mistake whereby the petitioner's husband has given a power of attorney to manage the affairs of the school to the petitioner, rather he was free as owner of the property to appoint her as Manager or Correspondent or Secretary of the school and intimate it to the concerned authorities. We do not

think that by virtue of being in Government service the petitioner's husband is deprived of his rights as owner of the school. He certainly is deprived of taking over the management of the school. In terms of Section 24(2) read with 53 he is also not deprived of appointing a Manager/Correspondent/Secretary to the school.

10. In these circumstances, the writ petition has to be allowed and is accordingly allowed. The impugned order is quashed. The husband of the petitioner is at liberty to appoint anybody, including his wife, as Manager in terms of Section 24(2) of the A.P. Education Act, 1982 and intimate it to the competent authority in accordance with Section 24(2) of the Act No order as to costs.