

(1999) 12 MAD CK 0081

In the Madras High Court

Case No : Writ Appeal No's. 1263 and 1264 of 1999

Smt. Prema and Another

APPELLANT

Vs

Dr. N. Rengarajan and Others

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 153A, 18, 18A, 2(3), 34

Citation : (1999) 12 MAD CK 0081

Hon'ble Judges : N.V. Balasubramanian, J;N.K. Jain, J

Bench : Division Bench

Advocate : K.M. Vijayan for La Law, for the Appellant; S. Parthasarathy, for 1st Respondent, T.R. Rajagopaian, Additional Advocate General assisted by S. Nagarajan, A.G.P. for Respondents 2 to 5, for the Respondent

Judgement

N.K. Jain, J.—These Writ Appeals are filed against the Common order of the learned Single Judge made in W.P. Nos. 7220 and 8056 of 1998 dated 9.9.1998. (reported in this issue at 2000 Writ L.R. 444).

2. The brief facts that are necessary for the disposal of the Writ Appeals are as follows:

One Dr. N. Rengarajan has filed W.P. No. 7220 of 1998 alleging that he was appointed as B.T. Assistant in Swami Vivekananda Vidhyalayam Higher Secondary School, Vairichettipalayam, Turaiyur Taluk, Trichy District and subsequently he became the Headmaster of the School. The Petitioner alleges that there is no proper School Committee and the authorities have recognised the 5th Respondent R. Prema as Secretary. The 5th Respondent constituted an illegal School Committee on 10.4.1997 and as such seeks direction to appoint of Special Officer by invoking Section 53(A)(2) of the Tamil Nadu Recognised Private Schools (Regulation) Act. 1973 (hereinafter referred to as the Act). It is also alleged that to safeguard the interest of the Petitioner, he has already filed a suit in O.S. No. 327 of 1997 on the file of the District Munsif Court, Turaiyur for a

declaration to declare him as the President of the Educational Agency and sought injunction, restraining Respondents 5 and 7 from interfering with the functioning and the management of the School. It is also alleged that in that suit, interim order u/s 18(a) of the Act directing the Respondents 2 and 3 to appoint a Special Officer to the school till the dispute with respect to the management of the school is finally settled and the same is pending in the Civil Court. It is further alleged that the so-called school committee had suspended the Petitioner Dr. N. Rengarajan, on the basis of charge levelled by the School Committee. The suspension order was under challenge in W.P. No. 8056 of 1998.

2. A counter affidavit has been filed by the 5th Respondent denying the allegations as alleged. It is stated that by distorting the facts and pending suit, the Petitioner has filed the writ petitions which are not maintainable. It is also submitted that in the absence of violation of any conditions, Section 53(a) of the Act cannot be invoked. On account of several lapses, breaches, irregularities and mis-appropriation of funds and abuse of office, the management suspended the Petitioner from functioning as Headmaster and he has been given a charge memo. It is also stated that the Petitioner has not filed the suit to appoint a Special Officer u/s 18-A of the Act, but filed Just to blackmail and threaten the School Committees and no writ of Mandamus can be issued on the facts of the given case

3. The learned Single Judge after hearing the learned Counsel on both sides and after perusing the materials on records and upon considering the decisions cited before him, and also taking into consideration the decision in 1994 I L.W. 506, allowed both W.P. Nos. 7220 and 8056 of 1998, directing Respondents 1 to 3 in W.P. No. 7220 of 1998 to refer the dispute before the competent Court having jurisdiction where the school is situated to resolve the dispute as to the constitution of the Educational Agency, i.e. persons who are entitled to be members of such Educational Agency and also as to the constitution of the School Committee including the appointment of Secretary for the same, and also decide the question whether the fifth Respondent herein is entitled to continue as Secretary taking into consideration the bye laws of the society. Learned Single Judge also directed Respondents 1 to 3 to refer the dispute within a month from the date of order and on such failure of compliance, the District Munsif, Turaiyur was directed to resolve the dispute in O.S. No. 327 of 1997, pending of its file.

4. In W.P.8056 of 1998, the learned single Judge considering the decision in K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others, quashed the order of suspension, giving an observation that Petitioner/Dr. R. Rangarajan, is entitled to discharge his duties as Headmaster of the school without any obstruction from any of the Respondents. It is further directed that O.S. No. 291 of 1998 pending on the file of Sub-Judge, Trichy will get struck off from the file. Hence, these Writ Appeals, as mentioned above.

5. Mr. K.M. Vijayan, learned Senior counsel appearing for the Appellants- school committee submits that the order of quashing the suspension order against the

Headmaster, pending enquiry is not correct, more particularly when an alternative remedy is available and that the question can be properly appreciated in the appeal. With regard to the appointment, by invoking Section 53-A of the Act, learned Senior Counsel submitted that the management of a School can be taken over by the Government u/s 18-A and also u/s 34 of the Act. Unless the case falls in any one of the above sections, no mandamus as prayed for can be granted. The learned Senior Counsel also submitted that in *M. Ayyasamy Vs. The District Educational Officer, (Elementary Education), District Education Officer and Another*, five ingredients have been given which cannot be comprehensive and other ingredients have also to be considered viz., making a statement seeking joint permission for appointments or it can be invoked by the competent authority himself, It is further submitted that when there is no dispute and ingredients invoking Section 18A and 34 are pending before Civil Court, at this stage, Section 53-A cannot be invoked. Further the learned Single Judge while giving direction changed the scope of the plaint pending suit O.S. No. 327 of 1997 and therefore, the order is liable to be set aside. Learned Senior Counsel further submitted that the Writ Petitioner alleged to be the Headmaster, filed O.S. No. 327 of 1997 praying to declare him as the President of the Educational Agency, which otherwise cannot be granted. Learned Senior Counsel further submitted that admittedly the Headmaster of the school is only a member and as such, the Petitioner alleging to be the Headmaster, seeking a declaration that he may be declared as the President of the School, cannot come within the purview of Educational Agency under the provisions of the act and as per the code of conduct and in such circumstances, the order of the learned single Judge is liable to be set aside. Learned Senior Counsel submitted that as per the definitions of Section 2(3) of the Act, an Educational Agency can be any person or body of persons permitted under the Act to establish and maintain such other private school and functions of School Committee as, provided u/s 18A of the Act, Learned Senior Counsel also submitted that the learned Single Judge on consideration found that a person claiming himself to be an Educational Agency against another cannot be said to be a reference and that all persons interested must submit to the jurisdiction of the Court but the learned Single Judge has wrongly relied on the *Karupppiah Pillai's* case, In that ease, the only question raised was regarding the scope of the discretion exercised by the State Government, but considering that the rival claimants have filed a suit before the Civil Court and become unsuccessful in getting the interim order, directed to invoke Section 53-A of the Act as obligatory on the Government to nominate an Officer to discharge the functions of Educational Agency, wherein in the instant case the matter was never pending before the Civil Court agitating and the matter which is pending is nothing to do with invoking of Section 53-A of the Act.

6. On the other hand, Mr.S. Parthasarathy learned Counsel for the Respondent (Dr. Rengarajan) relied on the common counter and submitted that the society has been registered under the Tamil Nadu Societies Registration Act, 1975

having registration No. 1451. But on account of certain irregularities and on account Of not maintaining proper accounts, it was declared as defunct society, vide Government notification dated 12.11.1991 along with 101 societies. Therefore, no Educational Agency is in existence at present. He relied on the decision reported in 1996-1-L.W.567 and submitted that the Appellant/committee Is not entitled to be claimed as Secretary. He also submitted that the Petitioner (Dr. Rengarajan) has been functioning as Headmaster and not misused his office. Therefore, passing the suspension order is not a reasonable one and the learned single Judge has rightly quashed the same.

7. To find out the stand of the Government, Additional Advocate General was asked to appear by this Court.

Learned Additional Advocate General submitted that the dispute related to family members, between one claiming as wife of one son of the deceased, and the other Dr. Rangarajan, who is alleged to be the Headmaster, claiming as brother of the deceased. It is also stated that none has taken consent as required under Rule 7(2). However, the brother of the deceased claiming right has filed O.S. No. 327 of 1997 which is now pending. On the basis of the alleged facts, learned Additional Advocate General submitted that conditions 1 and 2, mentioned in the judgment reported in 1996-1-L.W.567, however, are not applicable, but Clause 3 is applicable and can be invoked in the facts of the given case. It is also submitted that the learned single Judge has only given a direction to pass necessary orders as an Interim arrangement, subject to any order passed by the competent Civil Court. Therefore, to this extent the order of the learned Single Judge needs no interference.

8. In reply, while reiterating his arugments, Mr. K. Vijayan, learned Counsel, in his rejoinder, submitted that in this case a separate stand has been taken by the Additional Advocate General with new plea, that too on incorrect facts and the same cannot be permitted. In reply to the argument of the learned Counsel for Dr. N. Rengarajan is concerned, Mr. K. Vijayan submits that assurang that the Society is not in existence, then how Dr. N. Rengarajan can claim to be the President and how he can file a suit praying to declare him as the President of the Society, Actually Smt. Prema has been given permission, and therefore there is no embargo for educational Agency to be registered under the Societies Registration Act. Learned Counsel further submitted that Government can take over the management only on two occasions. As there is a bar u/s 53, Section 53(a) can be invoked, only for a limited period, viz. pending decision of the Civil Courts, that too, by only the persons interested for reference, and not otherwise. In the absence of an application invoking Section 53(a) of the Act or filing a suit independently, and when the competent authority has not made any grievance before the Concerned Court, the order of the learned single Judge is not sustainable and is liable to be set aside.

9. We have heard the learned Counsel for the parties at great length.

In so far as Writ Appeal No. 1263 of 1998 is concerned, as discussed above, the learned Single Judge had revoked the order of suspension holding that the Education Committee is not competent to pass such an order of suspension without deciding the issue-as to who is the Educational Agency. It is also to be seen that the learned single Judge, in deciding the same controversy pertaining to a different Society involving Section 53(A) of the Act, in W.P. No. 7449 of 1998 dated 25.08.1998, [The judgment in the appeal from the said judgment, W.A. NO. 1173 and 1175 of 1998 dated 22.12.1999 is reported next to this judgment at page No. 463-Ed.] passed an order holding thatt he is not inclined to interfere with the matter, as it has to be decided finally by a Civil Court, having competent jurisdiction. Under such circumstances, we are of the view that the order of the learned Single Judge in W.P. No. 7220 of 1998 dated 09.09.1998 which is impugned in W.A. No. 1263 of 1998, taking a different approach, is not well founded and is liable to be set aside to that extent.

10. Further, the observation of the learned Single Judge in W.P. No. 8056 of 1998, striking off the suit in O.S. No. 291 of 1998 on the file of the Sub Judge, Trichy, is concerned, in our opinion, is not sustainable for the reason that the Petitioner/Dr. Rengarajan got the relief in the Writ jurisdiction itself, instead of pending suit, as the matter can only be decided by a competent Civil Court, after taking evidence to prove the required facts.

11. Otherwise also, all the questions agitated in the suit and also in the Writ petitions need investigation and cannot be gone into in the Writ jurisdiction. It will also not be proper and appropriate for this Court to consider the respective arguments and decide the real controversy here itself, which can only be decided by the competent Court as stated.

12. We have also considered as to whether the order of the learned Single Judge is right or not, in invoking Section 53(a) of the Act, in such similar facts and circumstances of the case on hand, in W.A. Nos. 1173 to 1175 of 1998, today on 22.12.1998 in detail, and we have applied the same proposition of law in this case also, for the reasons mentioned in that case. We have also left open all the issues to be adjudicated upon by the Civil Court having competent jurisdiction.

13. A perusal of the scheme Act reveals that Section 18(A) of the Act deals with the "Appointment of Special Officers in certain cases", Section 34 deals with the "Taking over of the Management of Private School" and Section 153A deals with the "Settlement of dispute as to the Educational Agency.

14. No doubt, Government can invoke Section 53(A). of the Act stating that in an Educational Agency of a private school by person or by body of persons, pending decision, as an interim arrangement, the Government can appoint a Special Officer to dischrge the functions of the Educational Agency.

15. As mentioned above, though the Government has power to invoke Section 53(A) of the Act ultimately, but there must be a Reference by the competent authority requesting the Government to invoke the same and then only the

Government can name any officer to discharge the functions of the Educational Agency, as a temporary measure till the controversy is decided by the competent Court having jurisdiction.

16. We have already made that O.S. No. 251 of 1998, pending on the file of Sub Judge, Trichy, cannot be struck down, as the issue regarding as to who is the educational agency is to be decided by the Civil Court. In that suit, the Government, if it is a party, can move before the Court concerned, seeking relief.

17. As discussed above, for the reasons stated above, the order of the revocation of suspension is bad till the matter is decided by the Civil Court. Therefore, Appellant/ Dr. Rangarajan, cannot be allowed to continue. It is made clear that this Court has not gone into the merits of the case, nor had gone into the issue which is to be adjudicated upon by the Civil Court. We have also not gone into the questions as to what is the effect of the defunct society, and the effect of granting permission till 08.10.2000 and the merits of O.S. No. 321 of 1998 pending on the file of Sub-Court, Trichy. We make it clear that all parties are free to agitate their arguments and objections before the Civil Court, having competent jurisdiction. Independently, Dr. Rangarajan is also free to move before the appropriate Court seeking appropriate relief, which shall pass orders regarding this issue, in accordance with law. Any observation made in the order of the learned Single Judge or by this Court will not prejudice the case of either side in deciding the controversy.

18. In view of what has been stated above, both the Writ Appeals are disposed of accordingly, as indicated above, setting aside the quashing of suspension order made by the learned single Judge in W.P. No. 8056 of 1998 dated 09.09.1998. Consequently, connected CM. Ps are also closed. No costs.