

(2012) 02 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 29908 of 2011 and M.P. No. 1 of 2011

Sri Krishna Middle School

APPELLANT

Vs

The Chief Educational Officer Kancheepuram, The District
Elementary Educational Officer Kancheepuram and The
Additional Assistant Elementary Educational Officer
Kancheepuram.

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Tamil Nadu Aided School Teachers Act, 1973 — Section 19

Citation : (2012) 02 MAD CK 0071

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : S.V. Ramamurthy, for the Appellant; R. Ravichandran Addl Govt.
Pleader, for the Respondent

Final Decision : Allowed

Judgement

Vinod K.Sharma

1. Sri Krishna Middle School, through its Correspondent, K. Rajagopal, has invoked the extra-ordinary writ jurisdiction of this Court, for issuance

of a writ in the nature of Certiorari, to quash the final order dated 02.12.2011, passed by the District Elementary Educational Officer,

Kancheepuram. The petitioner School was established, as Primary School in the year 1931 and was upgraded as a Middle School. The school

was recognized in the year 1955 for studies up to VIII Standard. The school was established by C. Kalyanakodi Sundara Varadachari and

thereafter Parthasarathy Iyeangar managed the school. Thiru Srinivasa Iyengar was the last in the family to manage the school, which was

subsequently taken over by K. Rajagopal.

2. Thiru K. Rajagopal worked as Teacher and Head Master in the school and it was after his retirement that the original founder transferred the school to him. The land of the school belongs to K. Rajagopal, and it is on the said land, the building was also constructed by him.

3. The school is a co-education one, where both boys and girls are studying up to VIII standard. The school had a strength of 758 students, which now stands reduced to 300 children only, due to the routine problems caused by the teachers. The school is aided school, getting Government aid, and is also recognized as private school.

4. The case of the petitioner is that the discipline enforced by Thiru K. Rajagopal was not liked by the newly appointed teachers, who instigated the students and their parents to make allegations against the Correspondent to various Government officials. The object of the complaint was that the management of the school should be taken over by the Government. Serious allegations were levelled against the Correspondent.

5. The District Elementary Educational Officer, vide Mu.Mu.No.0002/A-4 2010 dated 04.01.2010, ordered the direct payment of salary to the teachers and further restrained its Correspondent K. Rajagopal from entering the school.

6. Even though the petitioner is a recognized school and could not be said to be having any grievance against action taken on its Correspondent, but for the reason best known, the petitioner school challenged the order by filing W.P.No.1538 of 2010, on the ground that the order was without jurisdiction and passed in violation of principles of natural justice.

7. The writ petition was dismissed by this Court on 09.09.2011. One of the reasons for dismissing the writ petition was that it was only the interim order and not the final order.

8. This Court, while dismissing the writ, made the following observations:

12. However, it is made clear that as the petitioner alleged that he was not any opportunity, it is for the respondents 1 to 3 to conduct enquiry in respect of the direct payment of salary to the teaching and non-teaching staff in the manner known to law by affording reasonable opportunity to

the petitioner as well as the teachers and thereafter, pass orders on merits and in accordance with law. It is further made clear that the above said

exercise shall be completed within a period of twelve (12) weeks from the date of

receipt of a copy of this order.

In pursuance to the order, passed by this Court, the respondent no.2 issued show cause notice to the petitioner and in response to it, the

Correspondent filed objections, controverting allegations levelled against him.

9. On consideration of the matter, the District Elementary Educational Officer, Kancheepuram, passed the impugned order dated 02.12.2011. The

operative part of the order, as translated, reads as under:

Hence, for the welfare of teachers and for the welfare of the school, in exercise of powers conferred under paragraph 7 this order is imposed to

the Sri Krishna Aided Middle School. The Kancheepuram Additional Assistant Elementary School Officer, has to implement the regulation without

giving any room and implement the same.

10. The impugned order is challenged by the petitioner, on the ground, that it was not as per directions issued by this Court in W.P.No.1538 of

2010, decided on 09.09.2010.

11. This contention, on the face of it, is not sustainable, as no directions were issued by this Court. The observation made by this Court was that

the final order with regard to direct payment of salary to teachers and non teaching staff, should be passed after affording reasonable opportunity

to the petitioner, as well as teachers and thereafter orders on merits in accordance with law be passed.

12. The contention of the petitioner that no finding has been recorded regarding the ban on entry to the Correspondent, and the contention raised

by the Correspondent was not answered. This contention again is devoid of any merit, inasmuch as the order banning his entry, was upheld by this

Court.

13. The only direction issued to the respondent no.2 was to pass a final order in accordance with law.

14. The impugned order is also challenged, on the ground that there is no rival claim or any dispute in management of the educational agency,

therefore, the impugned order could not have been passed, as the jurisdiction to interfere only arises when there is rival claim or dispute of the

managing committee.

15. This contention again is misconceived. The impugned order only states that

the Kancheepuram Additional Assistant Elementary School Officer

has to implement the regulation without giving any room for deviation. This general direction cannot be said to be contrary to law, as not only the

Additional Assistant Elementary School Officer, but all the authorities are bound to implement the regulations in letter and spirit.

16. However, it may be noticed that the impugned order does not comply with the principles of natural justice, inasmuch as in the impugned order,

no finding has been recorded to justify the order passed u/s 19 of the Tamil Aided School Teachers Act, 1973.

17. The Hon'ble Supreme Court, in the case of ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, has laid down that a

quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind. It was also held that justice

must not only be done, but it must eminently appear to be done so as to inspire confidence in the mind of those who are subject to it.

18. It is also pre-requisite of principles of natural justice that the reply submitted to the allegations be taken note of and reasons for its rejection are

required to be recorded in the order passed. The impugned order is totally non speaking order, as it deals only with allegations of the teachers,

against the Correspondent without recording the defense of the Correspondent and the petitioner. The impugned order also is vague and directs

implementation of regulation in letter and spirit, but no specific order has been passed for disbursing the salary by respondent no.2, nor it deals with

action taken to prohibit the Correspondent of the petitioner school from entering the school premises.

19. In view of the fact that the impugned order does not stand as touch stone of principles of natural justice, as laid down by the Hon'ble Supreme

Court in the case of Oryx Fisheries Private Limited vs. Union of India and others (supra), it cannot be sustained in law.

20. Consequently, this writ petition is allowed. The impugned order is set aside and the case is remitted back to respondent no.2 to take decision

afresh and pass a detailed speaking order, taking into consideration the defense raised by the petitioner school and its Correspondent to dispute

the allegations levelled against its Correspondent by the teachers and others.

21. Setting aside of the impugned order, therefore, results in reviving the order

dated 04.01.2010, issued vide Letter Mu.Mu.No.0002/A-4 2010, which bars the Correspondent of the petitioner school to enter the premises and directs the disbursement of salary directly to the teachers by the department.

22. The respondent no.2 is directed to pass a final order in terms of the direction issued herein above, within two months of receipt of certified copy of this order. No costs. Consequently, connected miscellaneous petition is closed.