
(2009) 08 MAD CK 0461

In the Madras High Court

Case No : Writ Petition No. 28665 of 2008 and M.P. No. 1 of 2008

Sri Malolan Educational Trust (Reg.)

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Education Rules, 1892 — Rule 63

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 2(3), 53A

Trusts Act, 1882 — Section 47

Citation : (2009) 08 MAD CK 0461

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : T.V. Ramanujam for T.V. Krishnamachari, for the Appellant;
Dakshayani Reddy, Government Advocate (R1 to R4) and R. Sundar Rajan, (R5),
for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsels appearing for the respondents.

2. This writ petition has been filed challenging the proceedings of the Director of School Education, dated 3.5.2008, made in Na.Ka. No. 18830/W4/E3/2006. By the said impugned order, the Director of School Education had stated that the petitioner Trust, to get its relief, of changing the Educational Agency of Sri Ahobila Mutt Oriental Higher Secondary School, West Mamabalam, Chennai, should go to the Registrar of Societies and cancel the registration of the fifth respondent Sabha. In such circumstances, the petitioner Trust has preferred the present writ petition before this Court, under Article 226 of the Constitution of India, challenging the said proceedings, dated 3.5.2008, and for a consequential direction to consider the matter, on merits and in accordance with law, based on the records and the evidence available, u/s 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

3. The petitioner Trust has stated that many educational institutions have been established by Sri Ahobila Mutt. One such institution is Sri Ahobila Mutt Oriental Higher Secondary School, West Mamabalam, Chennai. The said school had been established by His Holiness, the 43rd Jeer of Sri Ahobila Mutt, in the year, 1953. The land on which the School is housed had been taken on lease by Sri Ahobila Mutt, for a period of 99 years, by means of a registered lease deed, dated 10.5.1954. The School has been managed by the successive heads of Sri Ahobila Mutt, from the 43rd Jeer onwards.

4. It has been further stated that by a Government Order in G.O.(Ms.) No. 1911, Education and Public Health Department, dated 23.7.1962, the Government of Madras, had granted recognition to the Oriental Schools founded and run by Sri Ahobila Mutt, under Rule 63 of the Madras Educational Rules. While so, in the year 1968, a few persons had got together and formed a society and registered the same under the banner `Sri Ahobila Mutt Samaskrita Vidya Abhivardhini Sabha", the fifth respondent herein.

5. It was stated that the formation of such a registered Society was necessary due to the fact that the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, had come into force. Subsequently, some of the persons appointed by His Holiness for looking after the educational institutions, had also registered a Society, under the Tamil Nadu Societies Registration Act, 1975.

6. Thereafter, in the year 1982, certain disputes had arisen amongst the members of the Society, resulting in litigation. A suit in C.S. No. 221 of 1986 had been filed before this Court, for a declaration that the Sri Ahobila Mutt Oriental Higher Secondary School, West Mambalam, Chennai, was owned by Sri Ahobila Mutt and that the fifth respondent Sabha and its members have no right to manage, or to administer the schools and for a permanent injunction restraining the fifth respondent Sabha from interfering with the management of the educational institutions and for a mandatory injunction, directing the defendants therein to hand over the records, and for other reliefs.

7. By an order of injunction, dated 11.4.1986, the defendants and all other persons claiming through them were restrained from interfering with the management and administration of the Sri Ahobila Mutt Oriental Higher Secondary School, West Mambalam, Chennai, during the pendency of the suit. Subsequently, the suit had been transferred to the City Civil Court, Chennai, and re-numbered as O.S. No. 3395 of 1996. During the pendency of the suit a settlement had been made between the members of the fifth respondent Sabha and His Holiness the 45th jeer of Sri Ahobila Mutt.

8. By an order, dated 6.8.1999, the suit in O.S. No. 3395 of 1996, had been dismissed, as settled out of Court. However, a suit in C.S. No. 16 of 2004, had been filed before this Court, praying for a permanent injunction to restrain the defendants therein, including the fifth respondent Sabha in the present writ petition, from interfering with the plaintiff's possession and management of Sri

Ahobila Mutt educational institutions at Madurantakam and for other reliefs.

9. It has been further stated that the fifth respondent Sabha had started acting in a unilateral manner, contrary to the objects for which it had been formed. Therefore, His Holiness the 45th Jeer of Sri Ahobila Mutt had revoked the permission given to the fifth respondent Sabha by his office order, dated 17.1.2004, and he had appointed the petitioner Trust to manage the affairs of the School.

10. In spite of many requests the fifth respondent Sabha had failed to hand over the records, accounts and vouchers to His Holiness. Since the fifth respondent Sabha was evading from its duty to hand over the records to the petitioner Trust, a representation, dated 24.1.2005, had been submitted to the Joint Director of Education, Chennai, who is the competent authority. Copies had been marked to the District Educational Officer, the Chief Educational Officer, Chennai, and the other authorities stating that the petitioner Trust is the educational agency in respect of the educational institutions run by the petitioner Trust. Thereafter, several other representations had also been made.

11. A writ petition, in W.P. No. 3741 of 2006, had been filed before this Court praying for a Writ of Mandamus to direct the third respondent, the Joint Director (Higher Secondary), Chennai, to consider the representations, dated 24.1.2005, 11.2.2005, and 10.3.2005. By an order, dated 11.7.2006, this Court had passed an order directing the respondents in the said writ petition, namely, the Joint Director (Higher Secondary) and the Chief Educational Officer, to consider the said representations of the petitioner Trust.

12. It had been further stated that the petitioner Trust had received an order, dated 30.3.2006, from the Joint Director (Higher Secondary), wherein, it had been stated that the fifth respondent Sabha, represented by Dr. N.V. Vasudevachariar, was to furnish certain particulars. In the said order, it had been stated that the fifth respondent Sabha had been registered under the Tamil Nadu Societies Registration Act, 1975, and that the educational agency has been registered before the Registrar of Societies and that His Holiness of Sri Ahobila Mutt should take steps to cancel the registration, under the provisions of the Tamil Nadu Societies Registration Act, 1975, and that till such steps had been taken no further action would be initiated.

13. Aggrieved by the said order, dated 30.3.2006, the petitioner Trust had filed an appeal before the appellate authority, namely, the Director of School Education, raising various grounds. Since there was a delay of 9 days in filing the appeal, the appellate authority had passed an order declining the request of the petitioner Trust to condone the delay of nine days. Therefore, the appeal had been rejected, by an order, dated 9.5.2006.

14. Aggrieved by the said order, a revision petition has been preferred by the petitioner Trust to the Secretary of the State of Tamil Nadu, Education Department, on 23.5.2006. Since the said revision petition was pending for a

long time, a writ petition had been moved by the petitioner Trust before this Court, in W.P. No. 31804 of 2006. By an order, dated 8.9.2006, the first respondent therein had been directed to hear and dispose of the revision petition filed by the petitioner Trust. However, the State Government had passed an order, dated 16.2.2007, dismissing the revision petition.

15. Aggrieved by the said order of the first respondent, a writ petition, in W.P. No. 9715 of 2007, had been filed before this Court. The said writ petition had been allowed, on 15.3.2007, setting aside the order passed by the first respondent. A direction had also been issued to the appellate authority, the second respondent therein, on 9.5.2006, to hear the appeal that had been filed by the petitioner Trust. The direction had been issued to the second respondent to pass appropriate orders, within a period of four weeks from the date of the production of a copy of the order. However, the appellate authority, the second respondent herein, had passed a vague order, dated 3.5.2008, stating that the petitioner Trust should go before the Registrar of Societies and to cancel the registration of the fifth respondent Sabha. Such a procedure is unknown to law.

16. The learned Counsel for the petitioner Trust had further stated that Sri Ahobila Mutt Oriental Higher Secondary School, was founded by Sri Ahobila Mutt, in the year, 1952 and it is the absolute owner of the School. The concerned authorities of the education Department had granted recognition to the schools maintained by Sri Ahobila Mutt, in the year, 1962, vide G.O.(Ms.) No. 1911, Education and Public Health Department, dated 23.7.1962 and in Government Memo No. 48725/I-3/66-18, Director of School Education 44554/66, dated 31.12.1969. Thus, Sri Ahobila Mutt is the educational agency of the School, in accordance with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

17. The learned Counsel for the petitioner Trust had further stated that the fifth respondent Sabha had been found only in the year, 1968 and it had managed the School only on behalf of Sri Ahobila Mutt, by forming a School Committee, from time to time, as per the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The fifth respondent Sabha does not own the School, nor the land on which the School building is situated. Sri Ahobila Mutt, which is the owner and the educational agency of the School, had revoked the permission given to the fifth respondent Sabha to run the School, through a letter, dated 17.1.2004.

18. It has been further stated that the third respondent had failed to see that Sri Ahobila Mutt, headed by the present His Holiness Jeer of Sri Ahobila Mutt, is the owner of Sri Ahobila Mutt Oriental Higher Secondary School, West Mambalam, Chennai, and as the educational agency, the said Mutt is entitled to appoint the School Committee, which would decide as to who should manage the School, from time to time. The directions given by the second and third respondents, that the petitioner Trust should go to the Registrar of Societies, to carry out certain formalities, under the Tamil Nadu Societies Registration Act, 1975, are improper and illegal. Such directions are not contemplated by the provisions of

the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Since the said order had been passed without appreciating the facts and the circumstances of the case and as it has been issued contrary to the directions issued by this Court, in its order, dated 15.3.2007, made in W.P. No. 9715 of 2007, the impugned order is arbitrary, illegal and void.

19. In the counter affidavit filed on behalf of the fifth respondent Sabha the averments and allegations made by the petitioner Trust have been denied. It has been stated that the trustees of the petitioner Trust had chosen to file the present writ petition authorising Mr. P.N. Sridharan to act on their behalf. Though the writ petition is alleged to have been filed by the registered Trust, it has not been represented by the managing trustees or the Chairman of the Trust. The Constitution of the Trust had not been disclosed. The Scheme of the Trust does not permit the delegation of its powers to a third party. Therefore, the writ petition is not maintainable in law.

20. In fact, Section 47 of The Indian Trusts Act, 1882, does not permit delegation. The document produced by the petitioner Trust, by which it has claimed that Dr. P.N. Sridharan has been authorised to do all acts and things on behalf of the petitioner Trust, is only the minutes of the meeting of the Board of Trustees, said to have been held, on 21.10.2008, wherein, a resolution is said to have been passed. The petitioner Trust, in fact, had not authorised, Dr. P.N. Sridharan, to file the present writ petition or the suit in C.S. No. 16 of 2004, before this Court. Therefore, Dr. P.N. Sridharan, does not have the locus standi to file the present writ petition, on behalf of the petitioner Trust. Since there is no dispute between an educational agency and the fifth respondent Sabha, the educational authorities concerned cannot invoke Section 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The petitioner Trust cannot be called as an educational agency, u/s 2(3) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

21. The main claim of the petitioner Trust is that they want only the transfer of the agency and the management of Sri Ahobila Mutt Oriental Higher Secondary School, West Mambalam, Chennai. Since the petitioner Trust is not an educational agency, it cannot raise a dispute before the educational authorities concerned. In fact, the petitioner Trust is a stranger to the said school. Since there is no dispute between two educational agencies, Section 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, cannot be invoked in the present case.

22. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner, as well as the respondents and on a perusal of the records available, it is clear that there has been a long standing dispute between the petitioner Trust and the fifth respondent Sabha. Various civil suits and writ petitions had been filed before this Court, as well as the Civil Courts, wherein, many issues had been raised, including the issue relating to the management of Sri Ahobila Mutt Oriental Higher Secondary School, West Mambalam, Chennai.

23. On a perusal of the records relating to C.S. No. 16 of 2004, pending before this Court, it is seen that the said suit has been filed by one Dr. P.N. Sridharan, wherein the fifth respondent Sabha had been arrayed as the first defendant. The said suit has been filed praying for a permanent injunction to restrain the defendants therein and their agents and servants from, in any way, interfering with the plaintiff's possession and management of Sri Ahobila Mutt Educational Institution at Madurantakam. The present writ petition has been filed by Dr. P.N. Sridharan, said to be the authorised agent of the petitioner Trust.

24. The prayer in the present writ petition is for a writ of Certiorarified Mandamus to call for and quash the proceedings of the Director of School Education, dated 3.5.2008, stating that the petitioner Trust should approach the Registrar of Societies, to alter the name of the educational agency, before the other issues raised before him could be gone into. The petitioner Trust has placed before this Court an order, dated 15.3.2007, passed by this Court, in W.P. No. 9715 of 2007, wherein a direction has been issued to the second respondent therein for fresh consideration of the appeal filed by the petitioner Trust, on merits and in accordance with law, within a specified period. However, the Director of School Education, Chennai, the second respondent herein, had passed the impugned order, dated 3.5.2008, without going into the merits of the matter, contrary to the directions issued by this Court, by its order, dated 15.3.2007.

25. At the time of the hearing of the present writ petition, the learned Counsel appearing on behalf of the petitioner Trust had submitted that it would suffice if the impugned order of the second respondent, dated 3.5.2008, is set aside and the matter is remitted back to the third respondent for its decision, on the merits of the matter, u/s 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, after hearing the petitioner Trust, as well as the fifth respondent Sabha, and the other parties concerned, if any, and pass appropriate orders thereon, in accordance with law, within a specified period.

26. In view of the submissions made on behalf of the parties concerned and on considering the facts and circumstances of the present case, this Court finds it appropriate to set aside the impugned order of the Director of School Education, dated 3.5.2008, and to remit the matter back to the third respondent, namely, the Joint Director (Higher Secondary), to consider the matter, afresh, on merits and in accordance with law, as prayed for by the petitioner.

27. Accordingly, the impugned order of the second respondent, dated 3.5.2008, is set aside and the matter is remitted back to the third respondent to be heard, on merits and in accordance with law, after giving a reasonable opportunity of hearing to the petitioner, the fifth respondent Sabha and the other parties concerned, if any, and for passing appropriate orders thereon, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that it would be open to the fifth respondent Sabha to raise all the issues before the concerned authority hearing the matter, u/s 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. However, if the concerned

authority, authorised to hear the matter, u/s 53-A of the the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is of the considered opinion that the matter involves intricate disputed issues, which have to be necessarily decided by a civil forum, it would be open to the said authority to refer the dispute to the appropriate civil forum for the adjudication of the dispute, in accordance with the procedures established by law. Accordingly, the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.