
(2014) 09 MAD CK 0357

In the Madras High Court

Case No : W.P. (MD) Nos. 1 to 4, 2, 2, 8498, 11198 and 11199 of 2014

Sri Manthiramoorthi Higher Secondary School Committee

APPELLANT

Vs

The District Educational Officer

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0357

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Judgement

K.K. Sasidharan, J.—The life member of an Educational Agency duly declared by the first Appellate Court and upheld by the High Court and Supreme Court is wandering in the corridors of this Court on account of the order passed by the District Educational Officer and the District Elementary Educational Officer, approving the School Committee, without reference to the decree of declaration.

THE CHALLENGE:

2. Challenge in W.P. (MD) No. 8498 of 2014 is to the notice dated 14 May, 2014, whereby and whereunder, the second respondent convened a meeting of the Educational Agency.

3. Challenge in W.P. (MD) No. 11198 of 2014 is to the order dated 31 August, 2012, whereby and whereunder, the District Elementary Educational Officer approved the School Committee and Secretary of Sri Manthiramoorthi Primary School.

4. Challenge in W.P. (MD) No. 11199 of 2014 is to the order dated 31 July, 2012 passed by the District Educational Officer, approving the School Committee and Secretary of Sri Manthiramoorthi Higher Secondary School.

FACTUAL MATRIX:

5. The great grandfather of the petitioner, by name Thiru. S. Manthiram Pillai

(hereinafter referred to as "the founder") established an Educational Institution, by name Sri Manthiramoorthi Secondary School. Subsequently, he started Sri Manthiramoorthi Primary School and Higher Secondary School. The founder executed a deed of declaration of trust in the year 1918, wherein it was provided that any two members of his family and his brother Thiru. T.S. Kuthalam Pillai shall succeed in the natural course of time and they would be the life members. It was further provided that out of those two, he who succeeds Thiru. T.S. Kuthalam Pillai shall be the eldest male adult member of the family and he shall be the Secretary of the Association. The founder, further, made a condition that in case any of the eldest member is unable to hold office, any other member of the family, who is fit to hold office, would be made the Secretary of the Association. The Trust was, subsequently, converted as a Company. The Memorandum of Association and Articles of Association contain similar terms and conditions and mode of management of the institution. The founder had no male issues. Therefore, his two brothers viz., Kuthalam Pillai and Suriyan Pillai were entitled to be the life members of the Educational Agency. After the life time of the founder, Kuthalam Pillai was inducted as life member-cum-Secretary. Subsequently, the father of the petitioner, by name Manthiram Pillai was inducted as life member-cum-Secretary of the Committee and Educational Agency. He continued to be the Secretary of Society till his death in 1976. Thereafter, Thiru. T.S. Arul Kumar, was inducted as ordinary member and he was also nominated as Secretary of the School Committee.

6. The petitioner filed a suit in O.S. No. 507 of 1993 before the Principal District Munsif Court, Tirunelveli, praying for a decree of declaration and consequential injunction. The suit was dismissed. The petitioner filed a first appeal in A.S. No. 22 of 2002 before the First Additional Sub Court, Tirunelveli. The appeal was allowed, by judgment and decree dated 26 February, 2004, whereby and whereunder, a decree of declaration was granted to the effect that the petitioner is the life member of the Educational Agency. The said decree was confirmed by the High Court in S.A. No. 1174 of 2004. It was, unsuccessfully, challenged before the Supreme Court in S.L.P. No. 7547 of 2014.

7. The petitioner submitted a representation to the District Educational Officer, Tirunelveli, requesting to re-constitute the Educational Agency and the School Committee in accordance with the decree in A.S. No. 22 of 2002. Since there was no follow-up action, the petitioner filed a Writ Petition in W.P. (MD) No. 7047 of 2014. This Court, by order dated 23 April, 2014, directed the District Educational Officer, Tirunelveli, to consider the representation and pass appropriate orders within a period of six weeks. The District Educational Officer failed to pass orders till date.

8. While so, the Secretary of the Higher Secondary School Committee issued a notice dated 14 May, 2014, calling for a meeting on 24 May, 2014. The members were directed to assemble in the house of the President of the School Committee. The said notice is challenged in W.P. (MD) No. 8498 of 2014.

9. The District Elementary Educational Officer, Tirunelveli, approved the School Committee and the Secretaryship of third respondent in W.P. (MD) No. 11198 of 2014 (Sri Manthiramoorthi Primary School), vide order dated 31 August, 2012. Similarly, the District Educational Officer, Tirunelveli, approved the School Committee and the Secretaryship of third respondent in W.P. (MD) No. 11199 of 2014 (Sri Manthiramoorthi Higher Secondary School), vide order dated 31 July, 2012. Those two approval orders are challenged in W.P. (MD) No. 11198 and 11199 of 2014 respectively.

10. The Secretary of the School Committee, by name T.S. Arul Kumar, in his counter-affidavit, contended that he was elected by the Educational Agency to function as Secretary of the School Committee. He is stated to be a highly qualified teacher and that was the reason for giving him responsibility to manage the School. According to the Secretary, the petitioner cannot claim to be a member or Secretary of the School Committee on the strength of the decree, recognizing him as a life member of the Educational Agency. It was his further contention that the Articles of Association of the Company in question would not be applicable to the members of School Committee constituted under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

11. The District Educational Officer, Tirunelveli, filed a counter-affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petitions. The District Educational Officer has gone to the extent of saying that the second appeal was not passed on merits and it was an *ex parte* decree. According to the District Educational Officer, the petitioner cannot become the Secretary of the School Committee, by virtue of his position as a life member of the Managing Committee of the Institution.

SUBMISSIONS IN BRIEF:

12. The learned Senior Counsel for the petitioner, by placing reliance on Section 16(2) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, contended that the father of the petitioner was the Secretary of the School Committee as on the date on which the Act came into force. Therefore, by virtue of Sub-Section (2) of Section 16, the petitioner is deemed to be the Secretary of the Educational Agency and the School Committee. The learned Senior Counsel contended that in spite of issuing a direction by this Court, the District Educational Officer failed to pass orders and permitted the present Secretary of the School Committee to function, by granting approval. The learned Senior Counsel further contended that the Civil Court has already declared the status of the petitioner and as such, the District Educational Officer and the District Elementary Educational Officer were not correct in approving the appointment of the Secretary and the other members of the School Committee.

13. The learned counsel for the Secretary of the School Committee contended that the petitioner failed to note the difference between the Educational Agency and the School Committee. According to the learned counsel, constituting the

School Committee is a statutory requirement. The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 contains detailed provisions with regard to the appointment of Secretary and other members of School Committee. The present Secretary was elected by the Educational Agency and as such, it is not open to the petitioner to contend that by virtue of his position, as life member, he is entitled to remove the members of the School Committee. It was further contended that the petitioner is unfit to hold the office of Secretary on account of his claim that he is in adverse possession of the property of the institution.

DISCUSSION:

14. The Educational Agency in question was founded by S. Manthiram Pillai with a laudable purpose. The deed of declaration of trust dated 23 October, 1918 contains the intention of the founder as to how the administration of the Educational Agency should be conducted. Subsequently, the trust was converted as a company and it was registered before the Registrar of Companies. The Articles of Association of Sri Manthiramurthi Secondary School Committee, Tirunelveli, indicates the manner in which the School Committee should be selected. Clause Nos. 4 and 6 of the Articles of Association read thus:

"4. The Committee shall consist of seven members of whom one shall be Honorary President and one Honorary Secretary and five Honorary Members.

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6. Any two members of the family of M.R. Ry. S. Manthiram Pillai and his brother M.R. Ry. T.S. Kuthalam Pillai shall succeed them in the natural course of time and be life members. Of those two he who succeeds M.R. Ry. T.S. Kuthalam Pillai shall be the eldest male adult member of their family and he shall be the Secretary of the Association also. If for any reason such eldest member is unfit to hold office any other member of the family who is fit to hold it may be selected. He and the ordinary member of this family will be chosen by the members of the family and in default by the Association."

15. There is no dispute that Certificate of Incorporation was made long before the introduction of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The Act was enacted to provide for the regulation of recognized private schools in the State of Tamil Nadu. Section 2(3) defines the Educational Agency. Section 2(8) says that School Committee in relation to a private school, means the School Committee constituted under Section 15. Similarly, Section 2(9) provides that Secretary means the Secretary referred to in Section 16. Chapter IV deals with the School Committee and its Constitution and Functions. Section 15 provides for constitution of School Committee. Sub-Section (1) of Section 16 provides that every School Committee shall have a Secretary who shall exercise such powers and perform such functions as may be prescribed. It is, therefore, not in dispute that Educational Agency and the School Committee are two different entities. However, there is nothing in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 to the effect that while constituting the School

Committee, members are not bound by the Articles of Association/Deed of Trust.

16. It is the common case of the parties that the father of the petitioner functioned as life member-cum-Secretary of Educational Agency and the School Committee till his death on 01 February, 1976.

17. The members of the Educational Agency denied the petitioner of his right to be a life member of Sri Manthiramoorthi Higher Secondary School Committee. The petitioner filed a suit in O.S. No. 507 of 1993. The suit was dismissed by the learned Principal District Munsif, Tirunelveli. However, the appeal preferred against the said judgment was allowed and a decree of declaration was passed by the learned First Additional Sub Judge, Tirunelveli, in A.S. No. 22 of 2002. The said decree was upheld by the High Court, in S.A. No. 1174 of 2004. It is also a matter of record that the contesting respondent has filed a Special Leave Petition bearing S.L.P. No. 7547 of 2014, challenging the judgment and decree in S.A. No. 1174 of 2004 and it was, ultimately, dismissed as withdrawn.

18. While considering the issue raised by the petitioner, necessarily, the findings given by this Court in S.A. No. 1174 of 2004 should also be taken note of.

19. This Court in paragraph No. 8 of the judgment in S.A. No. 1174 of 2004, observed that the Managing Committee should consist of two members of family and it is a mandatory requirement. This Court, in paragraph No. 11 of the judgment, very clearly stated that the father of the petitioner herein continued to be the member till his death in the year 1976. Similarly, there is a further finding that right from the year 1976, the family of the founder was not made part of the Committee.

20. The learned counsel for the Secretary confirmed the factual position that the present Secretary was initially appointed by resolution dated 20 November, 1998 and his final appointment was on 31 July, 2012. Therefore, it is very clear that it was only long after the decree of declaration by the first Appellate Court, that the Secretary was appointed. The first appeal was decreed on 26 February, 2004. Though the respondents in A.S. No. 22 of 2002 filed a second appeal before this Court, there was no stay of the judgment and decree. Therefore, the decree, directing that the petitioner is entitled to be included in the School Committee as a life member of Sri Manthira Moorthy Higher Secondary School Committee, was very much in operation as on the date on which the third respondent in W.P. (MD) Nos. 11198 and 11199 of 2014 was taken as the Secretary.

21. The District Educational Officer, appears to have acted, like a faithful servant of the Secretary of the School Committee. I am constrained to make this observation on account of the counter-affidavit filed by the District Educational Officer taking sides. The District Educational Officer exceeded her brief by saying that the decree was not on merits, as contended by the petitioner herein. The District Educational Officer interpreted the judgment passed by the High Court in S.A. No. 1174 of 2004, as according to her, the meaning of the decree is that the petitioner can be a life member in the Managing Committee of the School. The

District Educational Officer has gone to the extent of saying that the petitioner cannot be the Secretary of the School Committee, being the life member of Managing Committee of the School. I have my own doubt as to whether the counter-affidavit itself was prepared only by the Secretary of the School Committee and the District Educational Officer is only a name lender.

22. While considering the application for approval, the District Educational Officer and the District Elementary Educational Officer, respectively, were expected to look into the Memorandum and Articles of Association of the Company, which is the Educational Agency. The founder has made it clear that the immediate family member shall be the life member and he is also entitled to be the Secretary of the Association. The first Appellate Court has already declared the status of the petitioner as a life member and a consequential injunction was also given. The said decree was omitted to be considered by the District Educational Officer and the District Elementary Educational Officer, while approving the appointment of the Secretary and the other members of the School Committee. The decree was upheld by this Court in S.A. No. 1174 of 2004. The judgment was passed on 17 April, 2013. It is true that approval was given before the judgment and decree in S.A. No. 1174 of 2004. However, it is clear that as on the date on which approval was granted by the District Educational Officer and the District Elementary Education Officer, there was a decree in operation declaring the status of the petitioner.

23. This Court passed an order dated 23 April, 2014 in W.P. (MD) No. 7047 of 2014, directing the District Educational Officer to consider the representation submitted by the petitioner. Time for disposal of the representation expired on 11 July, 2014. The District Educational Officer, instead of filing a counter-affidavit, virtually taking a stand in favour of the Secretary of the School Committee, ought not to have disposed of the representation within the outer time limit prescribed by this Court. I do not approve the conduct of the District Educational Officer, Tirunelveli, in keeping the matter pending, in spite of passing a time bound order by this Court.

24. The School Committee should be elected by the Educational Agency. In case the trust deed or Articles of Association of the Company contain the manner in which the Educational Agency should be elected or the School Committee should be formed, such mandatory conditions should be given due weight. The School Education Act was not enacted for the purpose of taking away the Management of the institution. It is only for the smooth functioning of the institution, the Act provided for constitution of School Committee. That does not mean that those who are entitled to be appointed as life members or a particular position in the School Committee, should be denied of their claim to occupy the position. It is now very clear that the petitioner was not a party to the decision taken by the Educational Agency to appoint the School Committee and its Secretary. Even the respondents have no case that they have associated the petitioner also to the process of selection and it was a collective decision or a decision by the majority

of members. The petitioner was kept at a distance, in spite of the binding decree dated 26 February, 2004 in A.S. No. 22 of 2002. The impugned notice dated 14 May, 2014 itself appears to be an afterthought to take a decision in favour of the present School Committee to the detriment of the petitioner. Therefore, on a careful consideration of the entire factual matrix, I am of the view that the District Educational Officer and the District Elementary Educational Officer grievously erred in approving the School Committee and its Secretary. The question of convening the committee would arise only after taking a decision in the matter by the District Educational Officer and the District Elementary Educational Officer.

DISPOSITION:

25. In the result, the impugned notice dated 14 May, 2014 is quashed. Similarly, the orders of approval dated 31 July, 2012 and 31 August, 2012, are also quashed. The District Educational Officer, Tirunelveli, is directed to consider the application for approval afresh, in the light of the Articles of Association and the decree in A.S. No. 22 of 2002 and the judgment and decree in S.A. 1174 of 2004. Similarly, the District Elementary Educational Officer, Tirunelveli, is directed to consider the application for approval afresh, in the light of the Articles of Association and the decree in A.S. No. 22 of 2002 and the judgment and decree in S.A. 1174 of 2004. It is needless to mention that opportunity of personal hearing should be given to the petitioner and the other members of the Educational Agency and the School Committee before taking a decision in the matter one way or the other. Such exercise shall be completed, within a period of two months from the date of receipt of a copy of this order.

26. In the upshot, I allow the Writ Petitions. Consequently, the connected miscellaneous petitions are closed. No costs.