

(1972) 03 MAD CK 0046

In the Madras High Court

Case No : Writ Appeal No's. 130 to 182 of 1969

State of Tamil Nadu

APPELLANT

Vs

Savari Cruz and Another

RESPONDENT

Date of Decision : 07-03-1972

Acts Referred:

Constitution of India, 1950 — Article 162, 19(1), 19(6), 226, 46
Madras Hereditary Village Offices Act, 1895 — Section 10(5)
Madras Motor Vehicles (Amendment) Act, 1948 — Section 43A
Motor Vehicles Act, 1988 — Section 43A
Penal Code, 1860 (IPC) — Section 304A
Rice Milling Industry (Regulation) Act, 1958 — Section 5, 6, 8(3)
Tamil Nadu Education Rules, 1892 — Rule 22, 4, 56, 57, 86
Tamil Nadu Elementary Education Act, 1920 — Section 56

Citation : (1973) ILR (Mad) 364

Hon'ble Judges : Ramamurthi, J;Maharajan, J

Bench : Division Bench

Advocate : S. Mohan, Government Pleader, D. Raju and K.K. Venugopal, for S. Ralasubramaniam, for the Appellant; S. Chellaswamy, for the Respondent

Judgement

Maharajan, J.—One Pitchai started the Saraswathi, Higher Elementary School at Maninagaram, Madurai in 1953. The school was gradually expanded till in 1961, it became a full fledged High School. In 1964 there were as many as 3,763 pupils and 100 teachers in the Elementary School and 837 pupils and 29 teachers in the High School. Both the Saraswathi Higher Elementary School and the High School were originally conducted in eight different buildings, one of which was Door No. 40, Maninagaram Second Street. On 4th April 1964, this building collapsed with the result that 35 students and one adult teacher died and a number of students were injured. This tragic mishap aroused public indignation, and consequently administrative steps were taken to assuage it. The Education Department refused to extend recognition to the schools beyond June 1964. The CorRespondent of the Schools was prosecuted u/s 304-A, Indian Penal Code and convicted by the trial Court, but the Sessions Judge of Madurai allowed the appeal, filed by

Pitchai, by his judgment, dated 18th February 1966 with the following observations:

It must be remember that even though the Buildings Inspector and Assistant Planning Officer inspected the building in connection with the petition sent by the Appellant and the Educational Authorities also had inspected the school, not one of them had referred at any stage, to the defect in the building and that the building was in an unsafe condition. If any of the inspecting authorities had noted this fact and action had been taken u/s 218 of the District Municipalities Act, this tragedy would act have occurred, But considering the evidence tendered in the case and the legal principles involved, I find that it had not been established that the Appellant has been either rash or negligent to find him guilty under the charges.

Meanwhile, after the closure of the school, a number of educational institutions in the locality some distance away from the Saraswathi Higher Elementary and High Schools absorbed the teachers and the students thereof. After the closure of the schools, the CorRespondent of the Schools made frantic, but futile, attempts to persuade the Government to restore recognition to the defunct Saraswathi Higher Elementary and High Schools. He filed a writ petition in this Court impeaching the order of the Education Department withdrawing recognition. While that petition was pending, the Chief Engineer to the Government of Madras was asked by this Court to make inspection of all the buildings in which the defunct institutions were run and to make a report of the condition of these buildings. The Chief Engineer made an inspection and submitted his report, in which he pointed out certain defects in some of the buildings. There upon, the CorRespondent of the Schools withdraw his writ petition upon this Court passing an order to the effect that the Government might consider the request of the CorRespondent when he made the application for restoration of the recognition after rectifying the defects mentioned by the Chief Engineer. It appears that subsequent appeals sent by the CorRespondent to the Government for restoration of recognition fell on deaf ears, whereupon the Saraswathi High School Managing Committee was reconstituted, and Thiru S. Palaniswami, a leading Advocate of Madurai, was elected as President. The record shows that he sent a petition to the Chief Minister, Government of Madras, praying for restoration of the recognition on the ground that as a result of the closure of the institutions, the public of Maninagaram and adjoining areas had been put to great inconvenience. He also gave the assurance that the new Committee would conduct the institutions properly. His application dated 13th June 1966 was rejected on the ground that it was belated and he was asked by a Memo of the Education Department dated 6th September 1966 to renew his application for restoration of recognition well before the commencement of the school year 1907-6 for consideration of the Government. Consequently, he sent two communications to the Education Department, on 12th March 1967 and 22nd March 1967 finally on 11th May 1907, the Government passed G.O. Ms. No. 708, dated 11th May 1907 to the following effect:

In April, 1964 a building of the Saraswathi Higher Elementary School and Saraswati High school, Maninagaram, Madurai, collapsed, resulting in the death of few students. Consequently, the departmental recognition to these two institutions was withdrawn.

The Government have since received representations for re-opening these institutions in the interest of the public of the locality.

They have, therefore, re-examined the matter. As there is need for additional educational facilities to the locality, the Government have decided to restore recognition to these two institutions subject to the following conditions:

- (a) The buildings where these schools are proposed to be located should be certified by The Public Works Department authorities as sound
- (b) A new management committee should be constituted and a new CorRespondent appointed for the institution. The old manager and CorRespondent should not be associated with the management of the schools. Thiru S. Palaniswamy, B.A.B.L., may be CorRespondent of the new schools, Thiru Pitchiah should not be a member of the managing committee.
- (c) The names of the schools should be changed so that the schools may not be connected with the tragedy that took place earlier.
- (d) The recognition to the school will, for the present be on a temporary basis. The question of according permanent recognition will be considered after watching the working of the school for some years.
- (e) The endowment already created for the old schools should be transferred in the new schools. The Director of Secondary Education is requested to check up whether the old institutions had the Cull endowment of Rs. 35,000.

3. The Director of Secondary Education is requested to issue necessary instructions for restoring recognition to the two institutions from the school year 1967-68.

In pursuance of this order, the names of the institutions were changed into Mangayarkarasi Higher Elementary School and Mangayarkarasi High School with Thiru S. Palaniswami, Advocate, as the CorRespondent. In his affidavit, the new CorRespondent stated that within two or three days after the opening of the institution, about 1,500 pupils joined the Higher Elementary School and about 699 pupils joined the High School, and it has become necessary for the management to stop further admissions, and that a good many of the pupils so admitted belonged to the families of those who had died in the 1964 disaster, and about 66 of those admitted had been actually injured during that accident.

2. Within a week after coming to know of the admissions in the Mangayarkarasi Higher Elementary and High Schools in pursuance of the Order of the Government, Thiru Savari Cruz, the CorRespondent of Veeramamunivar Vidyasala which is a Higher Elementary School and which he has been conducting

since 1955 in Annathope Street, Madurai, filed two writ petitions out of which these appeals arise. In Writ Petition No. 1598 of 1967, he prayed for the issue of a writ of certiorari to call for the records in G.O. Ms. No. 708, Education, dated 11th May 1967 and to quash the order granting restoration of recognition to the Mangayarkarasi Higher Elementary and High Schools Maninagaram. In Writ Petition No. 1341 of 1968, he asked for the issue of a writ of mandamus directing the Government not to give recognition to the institutions mentioned in the said G.O. The ground urged by him in support of his writ petitions were--(i) that the restoration of recognition was in violation of rules 56 and 57 of the Madras Education Rules; (ii) that the institutions to which recognition has been accorded are no other than the ones which had been closed down on the orders of the Government on the ground of negligence and the condition of the buildings in which the institutions, are housed is unsafe and it would be contrary to public interests to grant recognition to the institutions; and (iii) that there had been no enquiry conducted by the Educational Authorities before the order was passed and no opportunity had been given to the neighbouring schools to put forth their case and the recognition accorded is, therefore, opposed to the principles of natural justice.

3. The State of Madras represented by the Director of Secondary Education was impleaded as the first Respondent in both the writ petitions. It is the complaint of the Government Pleader that though time for filing a counter was asked for on behalf of the State of Madras the learned Judge Kailasam J. refused to grant time Thiru S. Palaniswami, the new CorRespondent of the Mangayarkarasi High School, was impleaded as the second Respondent in both the petitions. The second Respondent in his counter-affidavit alleged inter alia that in view of the great popularity that the Saraswathi Higher Elementary and High Schools had earned, the public of the locality who experienced difficulty in sending their children to institutions far away from home, desired the revival of the Saraswathi Higher Elementary and High Schools, and it was on account of the pressure of the public of the locality, the Government decided to restore the recognition of the school subject to the conditions laid down in the G.O. He denied that there had been any infringement of the Madras Educational Rules, which he contended were merely administrative instructions of the Government to their subordinates. He also questioned the locus standi of the Petitioner to impugn the order of the Government directing restoration of recognition.

4. The learned Judge (Kailasam J)., expressed his conclusion in the following words:

On the material on record, the proper conclusion would be that the recognition was not granted on proper grounds and that the recognition should be held as invalid. But taking into account the fact that about 1,000 pupils have been admitted into the school on the strength of the recognition granted and that they have already put in over four months of study, holding that the recognition is invalid would affect the carrier of 1,500 pupils and the staff employed in the

school. In the circumstances the only order that could be made to obviate this unfortunate result would be to hold that the recognition would be held to be valid for the academic year commencing from June 1968 to April, 1970, and beyond that periods this recognition will be invalid. The authorities are, of course, at liberty to consider the circumstances and on proper material decide as to whether recognition should be granted for the academic year commencing from June, 1969.

The petition is allowed to the extent indicated above. The first Respondent will pay the cost of the Petitioner. Counsel's fee Rs. 250 one set.

The learned Judge, while refusing to decide the question whether the Madras Educational Rules are mandatory or not, observed that the grant of recognition by the Government could not be questioned on the basis that the Director of Secondary Education alone could grant the recognition under the rules, because, in the view of the learned Judge, it was open to the Government, on a perusal of the records and as a result of the enquiries made by the Educational Authorities, to feel satisfied and grant recognition. But the learned Judge found that unless the Government was satisfied about the necessity for granting the recognition to the school, the grant of recognition could not be sustained in law. The learned Judge then proceeded to investigate whether there are materials on record on the basis of which the Government could have satisfied itself that the educational requirements of the area justified the grant of recognition to the Mangayarkarasi schools. After adversely commenting upon the fact that the Government had not chosen to file a counter-affidavit traversing the allegations made by the writ Petitioner, the learned Judge says that he looked into the D.O., dated 15th April 1967 from the Director of Secondary Education second cited in the impugned G.O. and found that it referred to a previous letter, dated 3rd July 1965, in which the Director had stated that the area was now well served by the existing secondary schools in the area and that the petition of Thiru Palaniswami deserved no consideration. In the absence, according to him, of any other material in the file on which the Government could have satisfied itself that the educational requirements of the area justified the grant of recognition to the schools, the learned Judge came to the conclusion that the grant of recognition could not be sustained. Consequently, the learned Judge quashed the Government order granting recognition to the Saraswathi Higher Elementary and High Schools, but having regard to the unfortunate repercussions this order would have on the career of 1500 pupils in the schools, who had put in over four months of study, the learned Judge deferred the effect of this order till the commencement of the Academic year 1968-69, leaving the authorities free to consider the circumstances and decide on proper material if recognition should be granted for the Academic year commencing from June, 1969. Writ Petition No. 1598 of 1967 was allowed to the extent indicated above, and the Government (first Respondent therein) directed to pay Petitioner's Counsel fee of Rs. 250 (one set). As regards Writ Petition No. 1341 of 1968, the learned Judge disposed it of with the remark that no order was necessary therein.

5. Against the orders in Writ Petition No. 1598 of 1967 and Writ Petition No. 1341 of 1968, the State of Tamil Nadu has preferred Writ Appeal Nos. 180 and 181 of 1969 respectively impleading the Veeramamunivar Vidyasala as the only Respondent, whereas the corRespondent of the Mangayarkarasi High School has preferred Writ Appeal No. 182 of 1969 against the order in Writ Petition No. 1598 of 1967 impleading the writ Petitioner as the first Respondent and as the

State of Tamil Nadu as the second Respondent.

6. We have looked into the file referred to by the learned Judge and we find that there is in the file a letter, dated 16th April 1967 addressed by D. Sonthosham, M.L.C., Madurai, to the Minister for Education, in which, he strongly recommended, both in his personal Rapacity and as representative of a large volume of public (sic) that the applications for recognition by the Sree Saraswathi Higher Elementary School and the Sree Saraswathi High School should be considered with favour and the a recognition sanctioned from the ensuing school year. In this letter, Mr. Santhosham says:

I also understand" that a new Managing (sic) has been setup for the school (sic) Thiru S. Palanisamy, Ex. Government (sic) and a top-ranking lawyer of the City as the Chairman and CorRespondent. I have no doubt that this new Committee, if permitted to run the school with Government recognition would take special care to provide stable and secure accommodation while achieving the same high standard in discipline and tutorial efficiency.

There is in the file another memorial, dated 25th March 1967 sent by the parents of the children, who had died as a result of the building collapse on 4th April 1964. This memorial has been addressed to the Education Minister, and it says that recognition of the of the school was necessary in public interest.

7. We, have also seen the letters, dated 8th July 1865, 12th March 1967 and 22nd March 1967 mentioned in G.O. Ms, No. 708. These are letters sent by the new President of the Managing Committee in which representations have been made to the Government for restoration of, recognition, in the interests of the public of the locality. In the Government Order the Government have also stated that they had received representations for re-opening these institution in the interest of the public of the locality, and they have re-examined the matter, and finding that there is need for additional educational facilities to the locality, the Government have decided to restore recognition to these two institutions subject to certain conditions which have already been mentioned. A Bench of this Court consisting of Venkataraman J., and Gokulakrishnan J., has permitted the Government to file a counter-affidavit during the pendency of these appeals. In that counter-affidavit, the Education Secretary to the Government has fully traversed the allegations of the writ Petitioner and said that even though there were High Schools and Elementary Schools in the area, the Government carefully considered the representations received for re-opening of these institutions in the interests of the public in the locality and after satisfying themselves that

there is need for additional educational facilities and only after a careful consideration of all the materials, the impugned order was passed. He has also stated that the conditions laid down in the order sufficiently safeguard the interests of the public and that the Government were not bound to consult the writ Petitioner before issuing final orders. We have reason to think that if this counter-affidavit had been filed before him, Kailasam J., himself would have held that the Government had ample material for satisfying themselves about the necessity for restoring recognition to the school even on the assumption that the impugned order is reviewable by this Court. But, after the judgment of the learned Judge, dated 29th October, 1969, the Supreme Court has held that the rules which are alleged to have been violated by the impugned Government Order are in the nature of administrative instructions having no force of law and the violation thereof is not justiciable.

8. According to Mr. Chellaswamy, learned Counsel appearing for the respondent of the Veeramamunivar Vidaysala, the impugned G.O. has been passed in violation of the rules framed by the Madras Government relating to elementary schools as well as the Madras Educational Rules. Rule 4 of Part II of the Rules for the Grant of Recognition and Aid to Elementary Schools prescribes:

No new school shall be permitted to be opened by a local authority in a locality which is adequately served by an aided school or schools already existing in the locality.

The argument is that in as much as according to the report of the Director of Secondary Education, the locality is adequately served by the schools already existing in the locality, the recognition accorded by the Government to the Mangayarkarasi Elementary School is in violation of this rule. Reference is also made to Rule 86 of the Madras Educational Rules, according to which,

A school or class from which the privilege of recognition has been withdrawn shall not be restored to that privilege until it has been certified by the District Educational Officer that the defects which led to the withdrawal of the recognition have been remedied and that in all other respects the school or class fulfils the prescribed conditions.

In the absence of a certificate from the District Educational Officer, it is contended, the privilege of recognition ought not to have been restored to the Mangayarkarasi High School. Rule 57 of the Madras Educational Rules provides:

If a recognised school ceases to exist or is transferred to a different locality or a different managing body, its recognition lapses and for the purposes of future recognition, it shall be treated as a new school.

The contention is that the Saraswathi High School having ceased to exist the recognition originally accorded has lapsed and no restoration of recognition could be ordered unless the procedure prescribed in the rules for recognition of a new school had been followed. Under Rule 22 of the Madras Educational Rules:

Buildings for secondary schools will ordinarily be expected to meet the pedagogic, sanitary and hygienic requirements given in Appendix L.A. of the grant in aid Code;

It is stated that the requirement prescribed in the Appendix L.A. of the Grant in aid code have not been fulfilled by the Mangayarkarasi High School.

9. So far as the Part-II Rules relating to the Grant of Recognition and Aid to Elementary Schools, are Concerned the Supreme Court has in Regina, V. St. Aloysius Higher Elementary School (1) elaborately examined the history of the Madras Elementary Education Act and the provision there and the Rules framed thereunder and held that Part II Rules do not have the status of statutory Rules made u/s 56 of the Madras Elementary Education Act and that they have been framed merely for the administrative purpose of enforcing the satisfaction of conditions under which the recognition and aid would be granted or withdrawn,

10. As regards the Madras Educational Rules, which are said to have been violated, it is admitted that they have not been framed in pursuance of any statute they are merely in the nature of administrative instructions issued by the Government to the Educational Authorities. It may be observed in passing that the bona fides of the Government in extending recognition to the Mangayarkarasi Higher Elementary and High Schools is not attacked. The refusal of the Government for nearly three years to consider the application of the original correspond of the School, the hesitation of the Government to recognise the school even after the management had been reconstituted, the repeated petitions filed by Mr. S. Palaniswami, an Advocate of Madurai, as President of the Managing Committee, for restoration of recognition, and the ultimate order passed by the Government laying down stringent conditions precedent to the restoration of recognition would, all, go to, suggest that the order of the Government was not the result of any lack of deliberation or disregard, of the interests of the public. The condition in the G.O. insisting upon the Public Works Department certifying the buildings to be sound would negative the plea that there was any breach of Rules 22 of the Madras Educational Rules. Having regard to the directive principles of State policy as laid down in Part IV of the Constitution of India, it was the duty of the State to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. (Vide Article 46 of the Constitution of India), and to promote with special care the educational and economic interest of the weaker sections of the people (vide Article 46). There is ample material on record to show that after satisfying themselves about the need for reviving the defunct school and in implementation of the State policy, the restoration of recognition has been accorded. The only breach that can be said to have been committed is the technical breach of Rules 56 and 57 of the Madras Educational rules which require (1) that the privilege of recognition should not be restored without a certificate from the District Educational Officer that the defects which led to the withdrawal of recognition had

been remedied; and (2) if a recognized school ceased to exist, it shall be treated as a new school for the purpose of future recognition. Be it remembered that these rules have been framed for regulating the conduct of the Educational Officers of the State. There is nothing in then rules to negative the residuary power which the Government must always be deemed to retain. Nor is there anything in the rules to show that they purport to regulate the exercise by the Government of the residuary power to extend recognition to schools and grant aid to them on the basis of such recognition. In fact in *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, the Supreme Court has ruled that the Government has the power to admit schools to recognition and grants-in-aid de hors the Act (The Elementary Education Act), and can lay down conditions under which it would grant recognition and aid. It cannot, therefore, be contended that the Government which can extend recognition de hors the Act, has committed violation of rules, which it has framed, not for the purpose of fettering its own discretion, but for the purpose of regulating the conduct of the Officers of the Education Department of the Government vis-a-vis the management of private schools.

11. Even assuming that there has been a breach by the Government of the non-statutory rules in question, the question arises whether a third party whose legal rights have not been infringed by the restoration of recognition, can apply to the High Court for a mandamus asking for the enforcement of the rules. We are clearly of the opinion that of cannot. The distinction between statutory rules having the force of law and merely administrative or executive directions was emphasised by the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . In that case, it was, urged before the Supreme Court that the appellate, authority had not carried out the instructions issued for its guidance by the State Government and had failed to observe the specific instruction that tribal people had to be given certain preference or that persons on the debarred lists like smugglers should be kept out. The Supreme Court observed:

All these are only executive instructions which have no statutory force. Hence, even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the appellate authority to make its own selection or affect the validity of the order passed by it. These observations were quoted with approval by the Supreme Court in *Abdulla Rowther v. S.T.A. Tribunal*. (2) It was held in that case that if the Government Order contains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ of certiorari. Their Lordship"s explained that the executive orders, properly so-called, do not confer any. legally enforceable right on any persons and impose no legal obligations on the subordinate authorities for whose guidance they are issued, and though the subordinate authorities are expected to follow the executive directions and might expose themselves to disciplinary action for breach- of the directions, it would confer no legal or enforceable rights on any Applicant for permits, so that even if

any of the directions contained in the order is found to have been ignored or misapplied, the Applicant for a permit cannot claim any ; relief by way of a writ of certiorari. The basis of this decision is that though the executive direction is binding on the subordinate authorities, it does not constitute a statutory rule and has no force of law and so the infringement thereof cannot be said to involve an error of law. The directions in that case were issued u/s 43(A) of the Motor Vehicles Act. Their Lordships pointed out that those directions were not required to be published and might not be known to the several persons applying for permits. In fact, they had been issued, not for the information of the Applicants, but for the information and guidance of the authorities, and that is no matter for surprise because the public at large would be entitled to know these directions only if they conferred any legally enforceable rights on the Applicants for permits. Finally, Their Lordships observed:

Since we hold that the directions issued by the relevant Government order are no more than executive or administrative instructions, we must confirm the finding of the, High Court that, even if the rule as to the assignment of marks has been infringed it is not an error of law at all and so the application for the issue of writ of certiorari based on the alleged infringement-of-the rule must fail.

12. In *Raman and Raman Ltd. Vs. The State of Madras and Others*, , the Supreme Court had to consider again certain orders and directions issued u/s 43-A of the Motor Vehicles (Madras Amendment) Act. 1948. The question arose who orders issued u/s 43-A had the status of law or not. The Supreme Court held that such orders did not have the status of law regulating the rights of parties and must partake of the character of administrative orders. It was further held that there could be no right arising out of mere executive instructions, much less vested right, and if such instructions were changed pending any appeal, there would be no change in the law pending the appeal, so as to affect any vested right of a party.

13. In *State of Assam v. Ajit Kumar Sarma* A.G.R. 1965 S.C. 1196, the Supreme Court explained that there is no law preventing the State from prescribing the conditions for giving grants-in-aid to educational institutions by mere executive instructions, which have not the force of statutory rules, and that what grants the State should make to private educational institutions and upon what terms are matters for the State to decide. In that case, the rules had been framed in order to give revised grants to enable Colleges to give higher scales of pay, etc., to the teachers in accordance with the recommendations of the University Grants Commission. The rules were held by the High Court to have no statutory force, and this finding was not canvassed before the Supreme Court. In these circumstances, the Supreme Court held that the rules were merely executive instructions which it was open to a private College to accept or not. If the College decided not to accept the instructions, it would not get the grants-in-aid, and if it accepted the conditions contained in the instructions, it would receive the grant. If, having accepted the instructions contained in the conditions and terms, the

College failed to carry out the instructions, the Government would naturally have the right to withhold the in-aid. That is, however, a matter between the Government and the private College concerned. But such conditions and instructions as to grants-in-aid confer no right on the teachers of the private Colleges and they cannot ask that either a particular instruction or coalition should be enforced should not be enforced, and the teachers could not apply to the High Court for a mandamus asking for the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them, because of the grant-in-aid being withheld in whole or in part. The Supreme Court further held that the breach of such administrative instructions could not form the basis of a petition for writ under Article 226 by a teacher.

14. Such a relief was denied by the Supreme Court even to a tenderer, whose grievance can be said to be more substantial than that of the CorRespondent of the Veeramamunivar School, and this is what the Supreme Court observed in *Fernandez v. State Mysore* AIR 1967. Before however we consider the question whether instructions in the Code (The Mysore Public Work Code) have been followed or not we have to decide whether these instructions have any statuafory force. If they have no statutory force, they confer no right on any body and a tenderer cannot claim any rights on the basis of these administrative instructions. If they are mere administrative instructions, it may be open to the Government to take the disciplinary action against its servants, who do not follow these instruction but non-observance of such administrative instructions, does not in our opinion confer any right on any member of the public like a tenderer to a for a writ against the Government by a petition under Article 226. The matter may be different if the instructions contained in the Code are statutory rules...We are of opinion that no claim for any relief before the Court of law can be founded by a member of the public, like the Appellant, on the breach of mere administrative instructions.

15. The same principle was emphasized in *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, . Here the Supreme Court held that though the administrative rules framed by the Government for grant of recognition and aid could be enforced upon the management of schools, the enforcement of such rules was a matter between the Government and the management, and a third party, such as a teacher aggrieved by some order of the management, cannot derive from the rules any enforceable right against the management on the ground of a breach or non-compliance of any of the rules.

16. In *State of Maharashtra v. Lok Shikshan Sansatha* (1971) 2 S.C. 410 it was held by the Supreme Court that so long as there is no violation of any fundamental rights and of the principles of natural justice, it is not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools because the question of policy is essentially for the State and such policy will depend upon an overale assessment of the requirements of the residents of a particular locality

and other categories of persons for whom it is essential to provide facilities for education. In that case, as in this the writ Petitioner filed objection to the grant of permission to the third Respondent therein on the ground that the locality was not in need of any additional school as it would involve unhealthy competition. The High Court rejected the writ petition on the ground that the writ Petitioner could not make any grievance of the grant made to the third Respondent therein to start a school after a proper consideration of the merits of the claim of the latter. The Supreme Court while confirming the view of the High Court observed that the writ Petitioner failed to satisfy the Court that any legal rights of his had been infringed by grant of permission to the third Respondent. Their Lordships also made the following observation, which is pertinent for the present purpose:

From the mere fact that by the opening of another school, some of the students of the Appellant school may seek admission in the new school, it cannot be stated that any of the Appellant's legal rights have been infringed.

17. Learned Counsel for the first Respondent (the CorRespondent of the Veeramamunivar Vidayasala) made a gallant attempt to establish that the Madras Educational Rules and part II of the Rules relating to Elementary Schools must be deemed to be rules issued under Article 162 of the Constitution of India. An identical argument was advanced before the Supreme Court in *G.J. Fernandez Vs. State of Mysore and Others*, and negatived in the following words:

Article 162 provides that

The Executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

This Article in our opinion merely indicates the scope of the executive power of a State; it does not confer any power on the State Government to issue rules thereunder. As a matter of fact, wherever the Constitution envisages the issue of rules, it has so provided in specific terms...Of course under such executive power, the State can give administrative instructions to its servants how to act under certain circumstances; but that will not make such instructions statutory rules which are justifiable under certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred in the State Government by some statute or under some provisions of the Constitution providing therefore it is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules.

Relying on these observations, we reject the contention that the rules, upon the violation of which the impugned G.O., is said to be founded, can be said to be rules framed under Article 162 of the Constitution.

18. Learned Counsel for the first Respondent then cited the decision of the Supreme Court in *Indian Airlines Corporation v. Sukhdeo Rai* (1971) 2 S.C. W.R. 780 where it has been held that all rules and regulations made by authorities in pursuance of a power under the statute do not necessarily have the force of law and that such rules and regulations would have the force of law only if they affected the public or some section of the public, but not otherwise. Relying upon this observation, learned Counsel contends that if there can be statutory rules which do not have the force of law, the converse can be equally true, namely, that there can be executive instructions having the force of law. We are unable to agree. Under our Constitution, the power to legislate belongs exclusively to the Legislature, and under certain circumstances to the President. The executive can have no power to frame rules having the force of law unless such power is delegated to it under the Constitution, or under an Act passed by the Legislature. Where there is no such power, the instructions issued by the Executive cannot have the force of law.

19. It is then contended by Mr. Chellaswamy that after de-recognition of the Saraswathi Higher Elementary and High Schools, the Veeramamunivar Vidyasala and other schools in the locality were persuaded by the Government to absorb the pupils and members of the staff of the derecognised school, and consequently the management of the Veeramamunivar Vidyasala has put up special constructions at considerable cost and would be greatly prejudiced by the restoration of recognition to the defunct school because it would reduce the strength of the pupils in the neighbouring schools. We have already referred to the observation of the Supreme Court in *State of Maharashtra v. Lok Shikshan Sansatha* (1971) 2 S.C.R. 410, to the effect that from the mere fact that by the opening of another school, some of the students of the writ Petitioners' school may seek admission in the new school, it cannot be said that any of the writ Petitioner's legal rights have been infringed. It would indeed be sordid to equate the management of an educational institution with the conduct of a business or a commercial concern, though some corRespondents of private management schools seem clined to do so. Assuming that such an equation permissible, the right to carry on business being fundamental right under Article 19(1)(g) of the Constitution, the exercise of that right is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i). A competitor in the business cannot prevent the CorRespondent of the Mangayarkarasi Schools from exercising his right to carry on business, merely on the ground that there has been some breach of the administrative instructions relating to recognition and grant-in-aid accorded to the latter. Even if the Government refuses to recognise the institution and to grant aid, it is open to the CorRespondent of the Mangayarkarasi Schools to carry on the business of imparting education and attracting students from neighbouring schools. The first Respondent is not therefore, entitled to challenge the grant of recognition because no right vested in him has been infringed. This is the basis of the ruling of the Supreme Court in *Nagpur Rice and Flour Mills v. Teekappa Gowda and Bros.* (1970) 1 S.C.W.R. 627.

In that case, the Appellants, who were the owners of an existing rice mill, got an order sanctioning the change in the location of the mill from its original site to a new site in the vicinity of the Respondents' rice mill, and the Respondents applied for a direction to quash the said order on the ground that the shifting was in contravention of Sections 5 and 6 of the Rice Milling Industry (Regulation) Act, 1958, and that in consequence of the shifting, the Respondents' business was likely to be adversely affected. The Supreme Court negatived the contentions of the Respondents on the ground that the right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i), and if Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, which was merely regulatory, was not complied with the Appellants may perhaps be exposed to a penalty, but a competitor in the business cannot seek to prevent the Appellants from exercising their right to carry on business, because of the default-Their Lordships have held further that competition on the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely.

20. Lastly, Mr. Chellaswamy contends that if the area of unreviewable administrative actions is extended, there is the danger of administrative caprice and discriminatory treatment going unchallenged. The answer to this objection has been effectively stated at page 28 of Judicial Review, of Administrative Action (Second Edition) by S.A. de Smith, as follows:

They (the Judges) are legal experts, but not experts in the evaluation of administrative ethics the gentlemen in Whitehall do not always know best, but unless they misapply the law or otherwise misconstrue the limits of their own powers it is not for the judges to correct them.

21. For the reasons supra stated we reverse the orders of Kailasam J., and allow the appeals, Writ Appeal Nos. 180 and 181 of 1969 filed by the state of Tamil Nadu and Writ Appeal No. 182 of 1969 filed by the CorRespondent of the Mangayarkaragi High school, with costs.

22. No costs in the Writ Petition. In writ Appeals Nos. 180 and 181 of 1969, we allow one set of costs to be paid by Savari Cruz (Respondent in both the appeals). Counsel's fee Rs. 750 (Rupees Seven hundred and fifty).

23. In Writ Appeals No. 182 of 1969, Appellant therein will be entitled to costs from Respondent-1 (Savari Cruz).

24. Ramamurti J.,--While I am in complete agreement with the judgment of my learned brother, I wish to add the following observations:

25. Kailasam J., appears to have proceeded on the footing that after the letter of

the Director of Secondary Education, Madras, dated 12th July 1966. the Government received no fresh representations for reopening the Saraswathi Higher Elementary School and Saraswathi High School, Madurai, in the interests of the public of the locality. But the fact is that in March-April 1967, several representations were received from the public urging the reopening of these institutions. The file referred to by Kailasam J., contains those representations and show that the Government asked the Director of Secondary Education to express his views in the light of the subsequent representations received by them. But the Director of Secondary Education, without examining the subsequent representations on the merits, sent a communication, dated 15th April, 1967 to the Government in which he merely said that he had no further remarks to offer in view of what he had already stated in his letter, dated 12th July 1966. Paragraph 2 of the impugned order of the Government which has been overlooked by Kailasam J., recites:

The Government have since received representations for reopening these institutions in the interest of the public of the locality. They have, therefore, re-examined the matter. As there is need for additional educational facilities to the locality, the Government have decided to restore recognition to these two institutions subject to the following conditions. The recital in the G.O. since received is fortified by the additional material we find in the relevant file of the Government. It is therefore, wrong to suppose that the Government acted without any additional material before restoring recognition.

26. A large number of decisions has been cited at the Bar as to the circumstances under which a person can invoke the jurisdiction of this Court under Article 226 of the Constitution of India. A detailed examination of the citations has been rendered unnecessary by a Full Bench decision of this Court in *Lakshminarayanan v. Maruthappa Nainar (I)* in which Natesan J. speaking for the Full Bench, has elaborately and exhaustively reviewed the relevant case law. Suffice for our present purpose to say that persons who invoke the writ jurisdiction of this Court fall under three broad categories. The first category consists of mere busy bodies, who interfere in things which do not concern them. Though in strict law any member of the public may apply for a writ of certiorari to quash an order, in practice no application is likely to succeed when made by a meddlesome interloper.

27. The second category consists of persons who have sustained legal injury and who are therefore entitled to relief *ex debito justice*. For instance, where a judicial or quasi-judicial order or even an executive order has been passed on a *his inter se* between the parties and such an order has adversely affected the legal rights of a party, he would undoubtedly have a *locus standi* to apply for a writ. Such a person can show that a personal right of his has been invaded; the personal right need not be in respect of a proprietary interest; it may also relate to an interest of a trustee.

28. Then there is the third category of persons, who stand midway between the

first and the second categories. It may not be right to describe them as officious interlopers. But they may not have suffered a legal injury either. While, on the one hand, they may not be entitled to relief *ex debito justitiae*, they will not be ruled out of Court summarily either. The issuance of a writ at their instance will be in the discretion of the Court and before issuing the writ, the Court will consider whether he is a person aggrieved and whether he has a genuine grievance because an order has been made which prejudicially affects his interests. A wide interpretation has been given to the words persons aggrieved and as the determination of this question is one of great nicety, it may be rash to lay down an inflexible formula. One of the tests is to find out whether the Applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered. Has he got a personal interest in the matter is his interest more substantial than the academic anxiety of a citizen to see that law is observed by the authorities; or is his interest too remote to impel the Court to exercise its writ jurisdiction? These are merely illustrations of questions which the Court will put before acting on an application made by the third category of persons, without insisting stringently on the proof of their *locus standi*. This freedom from strict proof of *locus standi* is one of the valuable characteristics of the prerogative orders.

29. The question next arises under which of the three categories does the writ Petitioner in this case fall? It can certainly not be suggested that he has sustained any legal injury as a result of the alleged violation of the executive instructions of the Government in restoring recognition to the Mangayarkarase School; nor are we prepared to hold that he is a meddlesome interloper. We shall then examine if he is an aggrieved person falling under the third category. The business of running a school is a fundamental right under our Constitution, and if as a result of his rival conducting a school efficiently he is able to attract pupils from the school of the writ Petitioner, the writ Petitioner can have no legitimate grievance, living as he does in a free competitive Society. No legal right of his has been infringed thereby and the interest which, according to him, he may suffer is too remote to impel the Court to exercise its writ jurisdiction. This as I understand, is the basis of the ruling of the Supreme Court in *State of Maharashtra v. Lok Shikshan Sanstha* (1971) 2 S.C.R. 410 in which it has been held that the mere opening of another school and the likelihood of the students of the writ Petitioner's school seeking admission in the new school does not affect the writ Petitioner's rights in such a way as to justify the issuance of a writ at his instance.

30. Mr. Chellaswamy contends that in the said ruling, the Supreme Court has not considered the third category of cases in which, a writ could issue if the Applicant had some interest in the subject matter, which is distinct from the general inconvenience to the public. We are not prepared to accept his argument, because it has been negated by the Supreme Court in the above ruling by necessary implication, if not expressly.

31. We may in this connection refer to the judgment of Ramaprasada Rao J., in Writ Petition Nos. 1633 of 1970 and 1491 of 1971, in which the learned Judge has held, following the said ruling of the Supreme Court, that a competitor in the same avocation, who is aggrieved by a fall in the strength of the school, is disentitled to a writ of the kind asked for here.

32. Mr. Chellaswamy next contended that where the Government has power to issue instructions and has issued instructions in exercise of that power, any case v. Inch comes up must be disposed of in accordance with the rules so framed. Though it is open to the Government to revise or amend the rules, he argues, (sic) the existing rules must be honoured and given effect to till the rules are revised or amended. In support of this argument, Mr. Chellaswamy relied upon the observations made by a Full Bench of this Court in Nagarathamnial v. Ibrahim Saheb (1955) 2 M.L.J. 49. The main question that arose for consideration in that case was whether the Board of Revenue had power to interfere with the statutory order made by the District Collector u/s 10(5) of the Madras Hereditary Village Offices, Act. The statute did not provide for an appeal to the Board of Revenue from an order made u/s 10(5) of the Act. It was contended that because the Revenue Board had supervisory jurisdiction over the District Collector, it was competent to interfere with the statutory order u/s 10(5) of the Act. The Full Bench held that the supervisory power extended only to the administrative orders of the District Collector and could not be invoked to interfere with the quasi-judicial order of the District Collector. In the course of the discussion, the Full Bench disagreed with certain observations made in Thimmiah v. Commissioner of Land Revenue, Board of Revenue, Madras in Letter Patent Appeal No. 225 of 1952 to the following effect:

The fact that there is no executive order enabling a party to come by way of revision would not take away from the Board the statutory right conferred upon it u/s 5 of Madras Regulation I of 1803. The mere fact that the Board has thought fit under its superintending powers to interfere is itself an instance of the issue of an executive instruction.

Adverting to this passage, the Full Bench observed as follows:

We do not suppose that in making these observations the learned Judges intended to refer to matters for which statutory provisions exist, for example, Madras Act III of 1895 and the Rule framed thereunder. As we have already pointed out, the case which the learned Judges had to decide was not governed by any statutes. But even with reference to matters not governed by the statutory provisions or rules, but governed only by the Standing Orders of the Board of Revenue, the passage we have extracted above is liable to be misunderstood. We are unable to subscribe to the view that where a rule already exists and provides for any specific matter, still when an individual comes up before the Board, it is open to the Board notwithstanding the existence of that rule, to decide that case in any manner it thinks fit, even in contravention of the existing rule....Thus, while the Board has undoubted power of superintendence

and a power to frame rules and amend them from time to time in exercise of that power of superintendence, the Board JS bound by those very rules when it acts as quasi judicial tribunal and adjudicates on rights of parties founded on those rules.

These observations, which are obiter, have to be construed in the light of the subsequent rulings of the Supreme Court that where executive instruction have been violated, their breach, even if patent, would not justify the issue of a writ of certiorari. Further, the above observations rest upon the theory that under the Boards Standing Orders there was no residual power in the Government or in the Board of Revenue. So far as the educational rules are concerned, it would be wrong to contend that the Government have divested themselves of their power and abdicated the same in favour of the educational authorities in a matter of such paramount importance as education and in the teeth of the directive principles of the Constitution, whereby an obligation has been cast upon the State to eradicate illiteracy and promote mass education.

33. In *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, the Supreme Court has clearly held that the Madras Educational Rules do not exhaust the powers of the Government, and the Government has ample ad hoc and residuary powers. In fact, Kailasam J. himself has taken the same view. It is true that the observations of the Full Bench in *Nagarathnammal v. Ibrahim Saheb* (1955) 2 M.L.J. 49 were followed by a Bench of this Court, to which one of us was a party, in *Union of India (UOI) Vs. India Cements Ltd. and Others*, . It is also true that Umamaheswaran J., in *Govindaswami v. State of A.P.* (1962) 1 A.W.R. 26 applied the observations of the Full Bench to a case involving the violation of the Madras Educational Rules and held that the discretion vested under the rules in the District Educational Officer, who is sub-ordinate to the Government, is final and that the power of superintendence of the Government over the subordinate educational officer cannot be invoked to justify the Government's interference with the discretion of the educational officer, since no appeal to the Government had been provided in the Educational Rules. But this view has not found favour with later Bench decision of the Andhra Pradesh High Court reported in *Moss v. Management of St. Patricks High School* (1970) 2 A.W.R. 157

34. The Supreme Court in *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, , made a reference to the decision of Umamaheswaran J., and the later Bench decision of the Andhra Pradesh High Court and I held that the later decision is correct. We therefore, repel the argument that under the Educational Rules the Government have no residuary power there the rules to restore or grant recognition to schools.

It may also be added it is not possible to exhaustively enumerate and deal with the several contingencies in which the Government may be called upon to accord or withdraw recognition after relaxing the relevant conditions in the Educational Rules. The recognition of an overriding and residuary power the Government

they have undoubted power to issue suitable and appropriate directions, in the light of the circumstances, relaxing the existing condition or imposing fresh ones. The legality or propriety of this directions not liable to be questioned a long as there is no attack against the bona fides of the Government and no legal injury has been sustained by the Petitioner as a result of these directions. With these observations, I concur with my learned brother in allowing the appeals.