

(2015) 11 MAD CK 0132

In the Madras High Court

Case No : C.R.P. (PD)(MD) No. 2734 of 2014, M.P. (MD) Nos. 1 of 2014 and 1 of 2015

The Correspondent-cum-Secretary

APPELLANT

Vs

M. Mohankani and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 3A
Constitution of India, 1950 — Article 227, 30(1)

Citation : (2016) 1 LW 454 : (2016) 1 MLJ 496

Hon'ble Judges : T. Mathivanan, J.

Bench : Single Bench

Advocate : K.N. Thambi, for the Appellant; S. Subbiah, for the Respondent

Judgement

T. Mathivanan, J.—Heard Mr. K.N. Thambi, learned counsel appearing for the revision petitioner and Mr. S. Subbiah, learned counsel appearing for the 1st respondent. No appearance for the 2nd respondent.

2. The revision petitioner herein is the second defendant in the suit in O.S. No. 184 of 2014, whereas the first respondent herein is the plaintiff and the second respondent herein is the first defendant.

3. It is apparent from the records that the first respondent has filed a suit in O.S. No. 184 of 2014 as against the second respondent and the revision petitioner seeking the relief of:--

"(a) Declaration that the clause incorporated in Chapter XXIV Section 60.4 B and C of the amended Constitution to alter the seniority list once in three months is illegal and against public policy;

(b) A decree for permanent injunction restraining the defendants, their men, servants, agents or any one claiming under the defendants from issuing any appointment as per the altered list published on 31.03.2014;

(c) A decree for permanent injunction restraining the first defendant from forfeiting the membership of the plaintiff in lieu of filing of the suit."

4. Along with the said suit, the first respondent/plaintiff has filed an application in I.A. No. 407 of 2014 under Order 39 Rule 1 & 2 and section 151 of the Code of Civil Procedure, for granting temporary injunction restraining the 2nd respondent and the revision petitioner/defendants 1 and 2, their men, servants, agents or any one claiming under them from issuing any appointment as per the altered list published on 31.03.2014 and further restraining the first respondent/first defendant from forfeiting the membership of the plaintiff.

5. In so far as the application in I.A. No. 407 of 2014 is concerned, an ad-interim injunction was granted against the revision petitioner/second defendant and the second respondent/first defendant on 05.07.2014. Thereafter, the above said petition had been adjourned on various dates for service of notice to the revision petitioner/second defendant and the second respondent/first defendant and after the service of notice, the said petition was posted on 06.08.2014 for filing objections on behalf of the revision petitioner and the second respondent.

6. Thereafter, the petition had been adjourned to various dates i.e., on 20.08.2014, 27.08.2014, 08.09.2014 and 10.09.2014 for filing counter statement on behalf of the revision petitioner and the second respondent. It is revealed from the records that on 10.09.2014, a counter statement was filed on behalf of them and subsequently, the petition was adjourned to 18.09.2014 for enquiry. From 18.09.2014 to 20.10.2014, the petition had been posted for enquiry. On 29.10.2014, when the petition was taken up for enquiry, the learned trial Judge viz., the learned Principal Subordinate Judge, Nagercoil had passed an order as under:--

"The trial in the suit is commenced. Hence, the Court closed the petition with the interim order."

7. This order has been challenged in this revision by the revision petitioner/second defendant.

8. It is significant to note here that once an ad-interim injunction is granted and the petition is taken up for final hearing on subsequent dates, a duty is cast upon the court, which has granted the order of injunction, either to dispose the application on merit within the period of 30 days as contemplated under Rule 3A of Order 39 of Code or if not possible to dispose the petition within the prescribed period, the court shall adjourn the petition on the next hearing date after recording the reasons for not disposing the application within the period of 30 days.

9. It is apparent from the records that the learned Principal Subordinate Judge, Nagercoil has granted an ex-parte order of injunction on 05.07.2014. The learned Judge has also directed the first respondent, who is the plaintiff in the suit to comply with Rule 3 of Order 39 of the Code. Thereafter, the petition stood

posted on 11.07.2014. In this connection, this court would like to have reference to the provisions of Rule 3A of Order 39 of the Code of Civil Procedure.

"R.3A. Court to dispose of application for injunction within thirty days.

Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable to do so, it shall record its reasons for such inability.

This rule provides three kinds of protection to a party against whom, the ex-parte injunction order is passed:--

(a) The Court is obliged to give him notice before passing the order.

(b) The statutory obligation cast on the court to pass final orders on the application within the period of 30 days.

(c) If it is not possible to dispose of the application within 30 days, the court is bound to record reasons for such inability."

10. As observed by the Hon"ble Apex Court in A. Venkatasubbiah Naidu Vs. S. Challappan and Others, :--

"In a case where the mandate of this rule is flouted, the aggrieved party shall be entitled to the right of appeal, notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force.

Where after passing of the injunction order, no attempts were made to dispose of the injunction application finally within 30 days nor the court recorded its inability to dispose of the same within the stipulated time, it is presumed that the injunction order is neither confirmed nor extended and by efflux of time, it became inoperative."

11. In this case, on 29.10.2014, the learned trial Judge has simply proceeded to pass an one and half line order saying that:--

"The trial in the suit is commenced. Hence, the court closed the petition with the interim order."

12. This order seems to be highly unreasonable, illogical and inappropriate and in other words, this court can also say it is absurd.

13. Mr. K.N. Thambi, learned counsel appearing for the revision petitioner, while advancing his argument, has submitted that since all the respondent in the interlocutory application had filed their counter statement as earlier as on 10.09.2010, enquiry in the application ought to have been held instead of making the impugned order to be in force till the disposal of the suit, which was an indefinite period, which might pave way to procrastinate the proceedings to an unpredictable period. He has also submitted that since, the suit was filed

under Order 1 Rule 8 of the Code, wherein the people might at, any stage, file petition to implead them either as plaintiffs or defendants and the first respondent might be able to prolong the impugned order as well as the litigation by setting up the people to do so.

14. On the other hand, Mr. S. Subbiah, learned counsel appearing for the first respondent, while advancing his argument, has invited the attention of this Court to para No. 8 of the plaint, which is extracted as under:--

"8. It is humbly submitted that in the year 2011 an amendment was brought in the Constitution of CSI Kanyakumari Diocese to establish a Diocesan Employment Bureau and the same is incorporated in the Constitution. In fact, no public notice is given nor any notice is given in the Churches regarding the same."

15. It may be relevant to note here that the suit seems to have been filed by the first respondent/plaintiff for himself and on behalf of the members of the CSI Kanyakumari Diocese i.e., on representative capacity, after obtaining leave of the Court under Order 1 Rule 8 of the Code of Civil Procedure. The total strength of the members of CSI Kanyakumari Diocese is kept in dark and is not disclosed. The suit itself does not make known the fact as to who are all the beneficiaries.

16. The general rule is that all persons interested in a suit, either as a plaintiff or as a defendant, must be joined as parties so that the court may finally adjudicate upon the rights of all parties and the orders of the Court may be safely executed by those, who are compelled to obey them and future litigation may be avoided.

17. In the decision reported in Linsam Ramaseshayya Vs. Myneni Ramayya and Others--> , it is held as under:--

"..If the suit is one for the vindication of the personal or private right of individuals or for preventing an infringement of such right and is substantially one in respect of a wrong done to the plaintiff individually, the suit is not a representative one in true sense of the term. To bring a case within the provisions of Order 1 Rule 8 , Civil Procedure Code, all the members of a class should have a common interest in a subject-matter and a common grievance and the relief sought should in its nature, be beneficial to all... at the same time. (it) does not debar a member of the village community from maintaining a suit in his own right in respect of a wrong done to him though the act complained of may also be injurious to some other villagers."

18. It is thus made clear in the above cited decision that the suit is not a representative one in true sense of the term, if the suit is one for the vindication of the personal or private right of individuals or for preventing an infringement of such right and is substantially one in respect of a wrong done to the plaintiff individually.

19. Where permission is granted to file a suit in the representative capacity, then it is mandatory to give notice of the institution of the suit to all persons interested, either by personal service or by advertisement as directed by the

court. This proposition has been laid down by the Bombay High Court in Yusuf Aji Shaikh and others Vs. Special Land Acquisition Officer and others, .

20. In so far as this case is concerned, it is not disclosed to the court as to whether Sub-Rule 2 of Rule 8 of Order 1 has been complied with by the first respondent/plaintiff. As revealed from the records, the first respondent/plaintiff has obtained Post Graduate degree in History subject in the year 2006 and has completed his M. Phil in the year 2007 and thereafter, he has also obtained his Post Graduate Degree in Manonmaniam Sundaranar University in the year 2012. The CSI Kanyakumari Diocese, who is the second respondent herein and first defendant in the suit has been running various educational institutions such as Engineering College, Polytechnic College, Arts and Science College, B.Ed., College, B.Ped., College, BPT College, ITI, Matriculation Schools, High School, Middle Schools, Higher Secondary Schools, Middle Schools, Primary and Nursery Schools and apart from this, the above said institution has been administering various hospitals and schools for disabled, schools for deaf and dumb and schools for blind. It is also revealed from the averments of the affidavit filed in support of the petition in I.A. No. 407 of 2014 that when a vacancy arose for fill up several members to the above said institution, a list of candidates would be prepared by the institution. As per Rules, only after exhausting the list, new waiting list would be prepared by the institution.

21. In the year 2011, an amendment was brought in the Constitution of CSI Kanyakumari Diocese to establish a Diocesan Employment Bureau and the same has been incorporated in the Constitution. After constituting the Diocesan Employment Bureau, periodically the Executive Committee members are bringing amendments for their whims and fancies. As it is revealed from the averments of the affidavit, in the year 2012, three Self Finance vacancies were arisen at Scott Christian College for the post of Assistant Professor in the History Department.

22. The waiting list was published in 2012, wherein the first respondent/plaintiff's name was found place at Serial No. 4. Since a vacancy arose in the year 2012, the then Correspondent had issued a letter to the first respondent/plaintiff asking him to appear for an interview on 12.12.2012 and the first respondent/plaintiff had also participated in the interview held on 12.12.2012 along with one Mrs. Dinuja, who was named in serial No. 3. The candidates specified in Serial No. 1 Ms. M.S. Beena and Serial No. 2 Mrs. Sheeja got appointment in other institution.

23. However, the Governing Board had not given appointment to the first respondent/plaintiff. The said vacancies are also not filled up till the date of filing of the suit. The first respondent/plaintiff has also stated in his affidavit that he was informed that the Governing Board of Scott Christian College was taking steps to appoint some other persons for the Self-Finance vacancies arose in the year 2012. But, no letter was given to the first respondent/plaintiff in this connection.

24. When the first respondent/plaintiff had an occasion to verify the waiting list, dated 31.03.2014, he came to know that the names of one Ms. S. Chandra Meghala and Mrs. Santhoshakumari were found in Serial Nos. 2 and 3 respectively. They are in-fact far juniors than the first respondent/plaintiff and when enquired, the petitioner was informed that the waiting list would be changed once in three months.

25. As per the contention made by the 1st respondent/plaintiff, it is general policy that once a waiting list is prepared and finalized, it cannot be altered, unless there is a clerical or arithmetic error on the face of the record.

26. It is the case of the first respondent/plaintiff that he was not informed with any notice about the alteration effected in the waiting list. Under these circumstances, the first respondent/plaintiff had submitted a detailed representation on 26.06.2014 to the revision petitioner/second defendant and the second respondent/first defendant. However, he was not able to get any response from the other side. Therefore, he has approached the trial Court with the suit seeking the reliefs as stated above along with the application in I.A. No. 407 of 2014 seeking the relief of ad-interim injunction as stated in the foregoing paragraphs.

27. Mr. K.N. Thambi, learned counsel appearing for the revision petitioner/2nd defendant has maintained that the impugned order had stalled the appointment to the History Department and the administration was also not able to select the candidates for appointment. He would further submit that since the college was an aided minority Educational Institution, it was entitled inter alia to minority rights under the Constitution of India and that it was entitled to appoint staff, any candidate having minimum qualification and hence, neither the first respondent/plaintiff nor anybody could claim to be appointed to the staff of the college and hence, he has urged that the impugned order might be set aside.

28. In support of his contention, he has placed reliance on the following decisions:--

"(i) Eka Ratchagar Sabai Higher Secondary School Vs. K. Sumathi and The Chief Educational Officer, .

(ii) Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others, .

(iii) Surya Dev Rai Vs. Ram Chander Rai and Others, .

(iv) Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and others, .

(v) Varanasi Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, ."

29. In the decision reported in Eka Ratchagar Sabai Higher Secondary School, rep. by its Correspondent, Salaiputhur, A sirvathapura m (PO), Tuticorin District,

(2007-4 L.W. 617), first cited supra, a Division Bench of this Court at paragraph 14 has observed as under:--

"14. As observed in TMA Pai Foundation's case, essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai's case, which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, after referring to other earlier decisions, we do not think that the interpretation given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the minority institution under Article 30(1) of the Constitution."

30. In Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others, , second cited supra, His Lordship Mr. S. Rajendra Babu, the then Chief Justice of India, while speaking on behalf of the Division Bench has observed that:--

"However independence of the institution in the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution and that cannot be curtailed. Merely because the institution is receiving aid, its autonomy of administration cannot be totally restricted and institutions cannot be treated as a Government owned one".

31. In Surya Dev Rai Vs. Ram Chander Rai and Others, , cited third supra, the Apex Court has observed that with reference to the supervisory jurisdiction of High Court under Article 227 of the Constitution of India, His Lordship Mr. R.C. Lahoti speaks on behalf of the Division Bench of the Apex Court as under:--

"Supervisory jurisdiction under Art. 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned there by, the High Court may step in to exercise its supervisory jurisdiction."

32. In Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, , cited 5th supra, a three Bench Judges Bench of the Apex Court headed by Hon"ble Mr. Justice A.N. Ray, the then Chief Justice of India has observed in para 12 as under:--

"12. It would also like to observe that in a matter touching either the discipline or the administration of the internal affairs of a University, Courts should be most reluctant to interfere. They should refuse to grant an injunction unless a fairly good prima facie case is made out for interference with the internal affairs of educational institutions."

33. On coming to the instant case on hand, it is apparent that at the first instance, the trial Court has granted ad-interim injunction. But, even after filing of the counter statement on behalf of the revision petitioner/first defendant, without taking up the Interlocutory Application for enquiry and disposing of the matter on merits, the trial Court has simply stated that "since the trial has begun, the petition is closed with the interim order". The impugned order itself seems to be a non-speaking order, which appears to be a gross misuse of the discretionary powers vested with the trial Court, which requires the intervention of this Court, by exercising the power of supervisory jurisdiction under Article 227 of the Constitution of India. The revision petitioner as well as the second respondent had been running various educational institutions and medical institutions.

34. Insofar as the present case is concerned, in the year 2012, three self-finance vacancies arose at Scott Christian College for the post of Assistant Professor in the History Department.

35. In pursuance of a letter, the first respondent/plaintiff had participated in the interview held on 12.12.2012. However, he was not given the post. But, according to the first respondent/plaintiff, as per the waiting list, dated 31.03.2014, the most juniors were given priority after neglecting his seniority. It is also his case that despite the representation made him on 26.06.2014, there was no response from the other side and therefore, he has approached the trial Court with the suit along with the Interlocutory Application in I.A. No. 407 of 2014.

36. This Court has considered the submissions made on behalf of both sides and also gone through the decisions cited by Mr. K.N. Thambi, the learned counsel appearing for the revision petitioner/second defendant.

37. With regard to the impugned order, as observed by this Court in the earlier paragraphs, it seems to be perverse in nature, erroneous and unsustainable in law and hence, the same is liable to be set aside.

38. It is to be noted that as per the observations made by the Apex Court in Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, , " in a matter touching either the discipline or the administration of the internal affairs of a University, courts should be most reluctant to interfere. They should refuse to grant an injunction, unless a fairly good prima facie case is made out for interference with the internal affairs of educational institutions".

39. As pointed out by the learned counsel for the revision petitioner, the

impugned order has caused much inconvenience to the administration of the revision petitioner and the second respondent and paralyzed them from appointing appropriate candidates in the History Department.

40. But, it is pointed out by the learned counsel for the first respondent/plaintiff that the first respondent/plaintiff requires post in the History Department. If he is able to succeed in the suit, after substantiating his claim by production of legal and acceptable evidence, he will be entitled to get that post in accordance with his meritorious qualification. But, the entire process of filling up the post in the History Department cannot be brought to a standstill by passing an one and half line order, that too, a non-speaking order.

41. Keeping in view of the above facts, this court is of considered view that the impugned order is liable to be set side.

42. In the result, the civil revision is allowed and the impugned order, dated 29.10.2014 is set aside and the application in I.A. No. 407 of 2014 on the file of learned II Additional Subordinate Judge, Nagercoil is disposed of with a direction to the revision petitioner/second defendant and the second respondent/first defendant, to keep one post vacant as per the waiting list dated 03.12.2012 till the disposal of the suit. In other aspects, the revision petitioner/second defendant may proceed further, as there is no hurdle. The learned trial Judge is also directed to dispose of the suit in O.S. No. 184 of 2014 by the end of December 2015, without further loss of time. Further, the learned II Additional Subordinate Judge, Nagercoil is directed to submit a report to the Registry soon after the disposal of the suit without fail. No costs. Consequently, connected Miscellaneous Petitions are closed.