

(1997) 11 MAD CK 0116

In the Madras High Court

Case No : W.P.Nos.215 and 13109 of 1997

The Management of Papanasam Labour Welfare Association
Higher Secondary School

APPELLANT

Vs

The Chief Educational Officer, Tirunelveli - 9 and six others

RESPONDENT

Date of Decision : 24-11-1997

Acts Referred:

State Financial Corporations Act, 1951 — Section 24, 29

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 18, 27

Citation : (1998) 3 CTC 753

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr.T.S. Sivagnanam, Mr.S.Sundar, for the Appellant; Mr.S. Manikumar, A.G.P. Education, Mr.R.T. Shyamala, Mr.T.S. Sivagnanam, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner seeks the issuance of a writ of certiorari or any other appropriate writ, order or direction in the nature of a writ, calling for the records relating to the proceedings of the 1st respondent in Na.Ka.No. 126746 W 12 of 96 dated 12.8.1997 and the consequential proceedings of the third respondent in Na.Ka.No. 11867/47/96 dated 14.8.1997, and quash the same, and pass such further or other orders as this Court may deem fit and proper.

2. This writ petition has been filed by the Management of Papanasam Labour Welfare Association Higher Secondary School, and the affidavit has been sworn to by Secretary of the School Committee.

3. It is said that the Papanasam Labour Welfare Association came into existence during 1942 for the Welfare of the employees of the Coats Viyalla India Limited. The Welfare Association during 1952 started a Primary School for the welfare of the children of the employees of Coats Viyella India Ltd. which became a Middle School during 1954, and it later became a High School during 1966, and a Higher

Secondary School during 1984. It is said that there are more than 2500 students of whom 1747 are in the Higher Secondary Sections and 903 students are in the Primary Section. The School is an Aided School receiving grant from the Government and has a staff strength of 73 teachers who are working in sanctioned approved posts. The Educational Agency which runs the school is the Papanasam Labour Welfare Association, Vikramasingapuram. The affairs of the school are being managed by a single School Committee as contemplated under the Tamil Nadu Recognised Private School (Regulation) Act, 1973. It is also said that the various decisions taken by the School Committee have been approved by the Department. It is submitted that the Department has been hitherto sanctioning the grant in the pursuance of a Staff Grant Statement submitted by the Management every month around the 20th of each month, Based on the statement furnished by the Secretary which is signed by the Headmaster, the third respondent sanctions the staff grant in a specified bill form to enable the Secretary to encash the bill and disburse the salary to the employees. The said procedure is being followed as contemplated in Clause 2 Annexure III framed under Rule 19 of the Tamil Nadu Recognised Private School (Regulation) Rules, 1974. It is said that the Management has been promptly submitting the Staff Grant Statement all these years, and the salary is being disbursed to the employees without giving room for any complaint. It is also said that in cases where the staff grant could not be obtained in time, the Management used to disburse 80% of the salary to avoid difficulty for the employees.

4. It is said that a small group of teachers against some of whom the Management had initiated disciplinary action for contravention of the Code of Conduct, with the help of the Ruling Party M.L.A., had caused disturbance to the smooth functioning of the school by conducting an illegal strike. On account of that political pressure, the respondents 2 and 3 have adopted an attitude to support the teachers who had participated in the illegal strike. It is further submitted that a Peace Committee was formed under the Auspices of the Sub Collector. The said Committee sought to invalidate the valid decisions taken by the School Committee and in fact attempted to interfere with regard to admission of students contrary to the procedure contemplated under the Act and Rules. The Management has already filed a Writ Petition as W.P. 215 of 1997, challenging the constitution of the Peace Committee, and the same is also disposed of along with this writ petition. It is the grievance of the Petitioner that the Department is always adopting a partisan attitude for reasons better known to the Department, in spite of the fact that the petitioner and the School Committee were acting according to law. The third respondent is acting in contravention of the Government Orders by directing the Management to claim salary for the .. teachers who had participated in the strike contrary to the Regulations framed by the Government in that regard. Whiles, the third respondent issued a proceedings dated 14.8.1997, relying upon the proceedings of the first respondent dated 12.8.1997 ordering direct payment of the salaries of employees of the petitioner- School in terms of para II of Annexure III framed

under Rule 19 of the Rules. The reasons given in the said proceedings of the third respondent ordering direct payment of the salary is that there was no cordial relationship between the teachers and the Management resulting in the interest of the students being affected. It is said that the Order of the first respondent is invalid. In the various grounds that are taken in the writ petition, it is said that as per Clause 2 of the Annexure III of the Rules, special circumstances have to be made out, and only in such cases, the District Educational Officer can make direct payment to the Headmaster of a School or to the teachers of a School. Therefore, the direction for direct payment is an exception, and reasons must also be made known to the Management. The Act or Rule does not provide the special circumstances under which the District Educational Officer can exercise the power. But the same cannot be arbitrary. When no guidelines are given for exercising that power, the third respondent is bound to record reasons in writing specifically stating the circumstances which compelled him to effect direct payment. It is said that the reasons set out primarily relate to sanction of grant, and how the third explained. It is further said that except for reproducing the rule, third respondent has not stated that reason for ordering direct payment. Before passing the impugned Order, no notice was also issued. It is said that it is the cardinal rule of law that every action of the Government should be fair and reasonable, and the impugned Order is unfair and unreasonable. It is further said that the impugned Order passed by the third respondent was signed on 14.8.1997, the same was handed over to a scavenger of the School on 18.8.1997 at about 4.30 P.M. when the School was closed on account of "Aavani Avittam". The action of the third respondent is, therefore, tainted with mala fides, and it has been passed only to support the erring teachers, against whom the Management has taken disciplinary action. It is further said that the third respondent has relied on the proceedings dated 12.8.1997 which was never communicated to the petitioner before. It was communicated only on 19.9.1997. It also does not disclose any reason. For proceedings dated 12.8.1997, no notice was given to the petitioner. The allegation that there is no cordial relationship between the Management and the staff is also without any basis. The third respondent is imputing something against the Management since they have taken action against the staff for indiscipline. That cannot be a ground to allege that there is no cordial relationship. It is said that the School has achieved excellent results and the percentage of pass in the Xth Standard is 97% and in the XIIth Standard, it is 97.01%. It is only because of the cordial relationship between the Management and the teachers, the students could be successful in the Institution. It is said that since the Management has taken action against some of the staff members for participating in illegal strike, they have motivated the respondents to act against the interests of the Management. The third respondent, by his proceedings dated 26.6.1997 had called for certain particulars regarding the period from 17.6.1997 to 22.6.1997 during which period a group of teachers were on illegal strike. The Management immediately furnished all particulars called for by the third respondent. In spite of it, without passing any order on the

Explanation, the impugned Order has been passed.

5. A detailed counter affidavit has been filed by the respondent refuting the allegations. The counter-affidavit has been filed by the District Educational Officer, Charanmahadevi at Tirunelveli, who is the third respondent, stating that for a Primary School as well as Higher Secondary School, there should be two School Committees, and the very formation of a single Committee is in violation of the Act and Rules. It is further stated by the third respondent that the Management was not having a cordial relationship with the teaching staff. There are 49 teachers, 9 non-teaching staff in the School. Out of the 49 teachers, 28 teachers have represented that they are being subjected to harassment by way of non-sanctioning of leave, increment or other legitimate concession and benefits extended by the Government from time to time. The secretary, out of malice, has denied payment of incentive amount which is usually paid by the Management of the School to a section of the teachers and has created a division among them even in payment of such incentives. It is stated that the School had to be closed from 6.6.1996 to 23.6.1996 due to unrest among the teachers as per the Report dated 14.11.1996 of the Secretary of the School. Again the School was closed from 6.11.1996 to 10.11.1996 as per the Report dated 6.11.1996, of the Headmaster. It is said that even though the school happened to be closed from 6.6.1996 to 23.6.1996 and from 6.11.1996 to 17.11.1996, in the staff attendance register, it has been recorded against the names of the teachers against whom the Secretary is indisposed as participated in the strike, when the school was closed during the above period, the Secretary claimed salary in the staff grant statement for the respective months in full for those who were loyal to him, and denied salary to others. The Secretary has also asked for salary of only those teachers who according to the attendance register, were present. This, the third respondent alleges as a partisan attitude of the Secretary and that it has caused hardship to the teachers. It is said that to mitigate the sufferings of the teachers, orders was passed treating the above period as closure of the school. But the Management has not acted according to the Instructions. It is said that the Headmaster is a pliable person who acts according to the wishes of the Secretary, and this has resulted in unrest amongst the teachers of the School. In paragraph 9 of the counter, the third respondent has given certain instances to justify his statement that the relationship between the management and the teachers was never cordial. It is said that the Secretary is not experienced in running the School smoothly, and this has created law and order problem in the area. Third respondent has also denied the influence of the local MLA and the alleged pressure brought about by him. It is said that the Department is interested only in the welfare of the students. It is further said that the Secretary has not complied with the provisions of the Act and Rules. The partisan attitude of the Secretary has worked out great hardship to the teachers in the denial of salary for the period of closure of school. Hence orders were issued treating the period mentioned above as closure of the school and regulating the above period accordingly to mitigate the hardship of a section of

teachers of the school who were purposely denied not only the salary for the above period but also other consequential service benefits such as increment, selection grade, special grade, etc., which were bound to be affected by the improper action of the Secretary of the School. But the secretary did not carry out the orders of the C.E.O. Various other contentions have been raised in paragraph 13 of the counter affidavit. Because of the attitude of the Secretary to take vengeance on some teachers, unrest prevailed in the complex and it led to the closure of the School, and also created law and order problem. It is also said that a Peace Committee was formed, and it was agreed to reopen the School in a good atmosphere. But it became the practice of the Secretary to initially agree to abide by the decisions of the Peace Committee meetings and then revolt against the same later, creating division among the teachers. It is stated that the action taken by the Department was in the best interest of the Institution, and the same is not liable to be interfered with by this Court.

6. A detailed reply affidavit has also been filed by the petitioner. The main averment therein is that in the impugned Orders, no reasons have been given, and when the writ petition is filed, the Department is justifying their action by giving reasons. They cannot improve their case which is not apparent in the impugned Orders. Each and every paragraph in the counter has been disputed by the petitioner in the reply affidavit. Even in respect of formation of separate School Committee, it is said that it is not necessary, and the same was also concluded by decisions of this Court. It is also said that even in respect of payment of salary, statements of Secretary and the Headmaster should prevail, and the Department should act only on the basis of their statements. It is further stated that the action of the third respondent is tainted with mala fides. After the impugned Order was passed, the second respondent disbursed the salary only to those staff members who had participated in the strike and not the teachers who were loyal in their work. It is said that if a teacher participated in an illegal strike, there is a Government Order which prohibits the Management from paying the salary. It is for that reason, for those teachers, the Secretary was not claiming salaries and their names were not included in the statement. But, ignoring the statement, salary was paid to those teachers alone. It is also said that the various statements in the counter-affidavit amount to interference in the internal management of the Institution. Being a private school, it is the petitioner alone as appointing Authority and as controlling authority, entitled to disburse the salary to its staff. That right cannot be taken away unless some special circumstances as envisaged in the Rules are made out. The impugned Orders are silent about the special circumstances and, therefore, they are void.

7. In the counter affidavit various instances have been mentioned and they have been answered in the reply affidavit.

8. I do not want to go meticulously into those details which, according to me, are unnecessary for proper disposal of the writ petition.

9. I heard learned counsel for all the parties in detail. The learned Additional

Government Pleader also placed before me the entire file concerning the case.

10. Before going into the merits of the case, it is better to extract the impugned Orders.

11. The main challenge of the petitioner is that the impugned Orders were passed without notice to it, and in fact the impugned Orders amount to interference in the internal management by the Secretary and the School Committee. As against the said contention, the Department as well as learned counsel for respondents 4 to 30 who were additionally implead, contend that the atmosphere of the School was not good, and it was in the best interest of the Institution that the impugned Orders had to be passed. It is also contended by them that the Management had no vested right to obtain the amount from the State and there is no deprivation of their impugned Orders. Learned counsel also relied on the decision reported in *Kandasamy v. The District Educational Officer, Etc*, 1996 W.L.R. 439, wherein a learned Judge of this Court has held thus:

"There is no vested right in the petitioner to obtain amounts from the State. Petitioner is not deprived of any right by the direct payment of salaries. It is in the interest of the institution and of the teachers which are far more important and these interests are well served by the impugned Order."

It is also said that the above Order was taken in Appeal in Writ Appeal No. 762 of 1995 where in the Order passed by the learned single Judge was confirmed.

12. The petitioner-Management School is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Section 27 reads thus:

"The pay and allowances of any teacher or other person employed in any private school shall be paid on or before such day of every month, in such manner and by or through such authority, officer or person, as may be prescribed." (Italics supplied)

Rule 10 of the Rules framed under the above said Act says thus:

"The procedure for payment of pay and allowances to teachers and other persons employed in private schools shall be as in Annexure III."

Annexure III deals with the "Procedure for Payment of Pay and Allowances to Teachers and other persons in Private Schools." As per the said Rule, the Secretary of the School has to submit a monthly Statement containing the details of teachers and other persons, their pay and allowances, etc., for the month, to the Deputy Inspector of Schools, who, after scrutiny of the statement, shall submit the same to the District Educational Officer concerned with his recommendations. Thereafter, the District Educational Officer shall release the Teaching Grant bills to the Secretary of the School marking a copy of the sanction orders to the Treasury and who shall disburse the pay and allowances to the teachers and other persons employed in a private school on the 1st of every month or any date authorised by the Director of School Education. This is the

normal procedure, whether it be a primary school or a middle school or high school. Clause I to Annexure III contains the normal procedure regarding payment of pay and allowances. Clause II of that Annexure under which the impugned Orders have been passed reads thus:

"Under special circumstances, the District Educational Officer concerned may make direct payments to the Headmaster of a school or to the teachers of a school."

The argument of the respondents is that the powers were invoked under this Clause, since there were various special circumstances.

13. One of the main contentions that was raised by learned counsel for petitioner is that the impugned Orders dated 12.8.1997 and 14.8.1997 were passed without notice to them and that alone is sufficient to quash the same. It is against the said contention, respondents submitted that if the petitioners have no vested right to get the amount for payment to the teachers, instead of the management paying the salary, if the Government does it, there is no question of any prejudice. According to them, the principle of natural justice has no application in such cases.

14. While considering the scope of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, it is clear that the Government has got only a controlling power over the Institution and the Act regulates the power that has to be exercised. From the very heading of the enactment, it is clear that it is the Management that has established the school, and has also appointed the staff according to their qualification. It takes disciplinary proceedings and also pays the salary. The activities of the Management and also the smooth functioning of the school are regulated by the provisions of the Act. The Government is not the Master, nor the Employer. The Employer is the School of Management, who pays the salary to the staff. The Employer has the duty to pay salary, though the amount is paid by the Government. It is an action on the part of the employer to have a control over his employee/employees. It is the School Committee which is reasonable for the smooth functioning of the school. u/s 18 of the Act, the School Committee is having the power to carry on the general administration of the private school. It has the power to appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service, and to take disciplinary action against teachers and other employees of the private school. Even if the Management gets a grant, that is also on the basis of the statement of the Secretary of the School Committee. The Government is only extending financial assistance; the actual control is only with the Management, when we go by the Rules, the right of the Management is recognised and that it is said that the statement must be prepared by the Secretary and signed both by the Secretary and the Headmaster, and the Bill is also handed over to the Secretary, who encashes the same for payment to the teachers. If that is the ordinary procedure contemplated under the Act and Rules, it only means that the Management has got the absolute control over the

teachers. It cannot be disputed that the payment of salary is one of the acts of management and general administration. The Management may not have any right to get a grant, but the right to pay the salary is only with the Management, unless special circumstances are made out.

15. When the Government says that it will pay the salary to the teachers directly, that means that the Management is now incapacitated to pay the salary, or that there are special circumstances which have made the Management. Naturally, the right of the employer in managing the School is seriously affected by such an action on the part of the Government. It has got civil consequences. Therefore, the principle of natural justice will have to be applied in such cases.

16. Clause II of Annexure III only says "Under Special circumstances. It has not defined "the Special circumstances", nor has it given any guidelines. An absolute power is given to the Department. In such circumstances, the Department must be little more careful in exercising the power.

17. In *The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of Karnataka and others*, , their Lordships have said thus:

It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the audi alteram partem rule could be imported.. .."

I have already said that the purpose of the Act is only to regulate the management of activities of the school. While exercising the power of Regulation, it is not expected of the Department to take away the right of the Management which the Act recognised. It is within its framework the Department has to decide the "Special circumstances.

18. In *U.P. State Road Transport Corporation and another v. Mohd. Ismail and others*, 1991 (3) SCC 289 their Lordships were considering as to how to exercise the discretion. In para 15, their Lordships have held thus:

"There are two aspects take borne in mind in exercising the discretion. Firstly, there are constraints within which the Corporation has to exercise its discretion. The Corporation is a public utility organisation where mediating motion is efficiency and effectiveness of public service. Efficiency and effectiveness of public service are the basic concepts which cannot be satisfied in public

administration by any statutory corporation. The Corporation has to render this public service within the resource use and allocation. It is within these constraints the Corporation has to exercise its discretion and perform its task. The second aspect relates to the manner in which statutory discretion is to be exercised. The discretion allowed by the statute to the holder of an office, as Lord Halshury observed in *Susannah SharP v. Wake field*, is intended to be exercised "according to the rules of reason and justice, not "according to private opinion; ... according to law and not humour. It is to be. not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself." Every discretion conferred by statute on a holder of public office must be exercised in furtherance of accomplishment of purpose of the power. The purpose of discretionary decision making under Regulation 17 (3) was intended to rehabilitate the disabled drivers to the extent possible and within the abovesaid constraints. The Corporation, therefore, cannot act mechanically. The discretion should not be exercised according to whim, caprice or ritual. The discretion should be exercised reasonably and rationally. It should be exercised faithfully and impartially. There should be proper value judgment with fairness and equity... .."

19. In *Mahesh Chandra v. Regional Manager U.P. Financial Corporation and others*, 1993 (1) SCC 279, their Lordships were considering the scope of Sections 24 of the State Financial Corporations Act. Under that Section, the Financial Corporation is entitled to bring the property of a debtor to sale and realise the proceeds. The circumstances under which the property could be brought to sale are not clearly stated. But the power is given. Their Lordships considered under what circumstances the power has to be exercised. In paragraph 15 (at page 292), their Lordships have said thus:

"Section 29 confers very wide power on the Corporation to ensure prompt payment by arming it with effective measures to realise the arrears. But the simplicity of the language is not an index of the enormous power stored in it, From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far-reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touch stone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is *ultra vires*. It does not become *bona fide* and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is *mala fide* if it is contrary to the purpose for which it was authorised to be exercised. Dishonestly in discharge of duty vitiates the action

without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. Power u/s 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act cautiously, honestly, fairly and reasonably"

Little down, their Lordships, have further said thus:

"...Even though no rules appear to have been framed nor any guideline framed by the Corporation was placed, yet the basic philosophy enshrined in Section 24 has to be kept in mind.

"Rationality of action and motive in exercise of it has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the sale over and transfer invalid....."

If this is the guideline on which a discretion has to be exercised, can it be said that respondents 1 to 3 have acted bona fide? Fairness in action contemplates a hearing before action is taken. Admittedly in this case, no notice was issued before the impugned Orders were issued. The same is sought to be explained in the counter-affidavit. It is here the contention of the petitioner requires consideration. In the reply affidavit, it is said that even in the impugned notice, no reasons are mentioned, but the validity of the Orders is sought to be supported by supplementing reasons. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, a Constitution Bench of the Apex Court held that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by [the time it comes to court on account of a challenge, get validated by additional grounds later brought out". In that decision, their Lordships followed an earlier decision in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, wherein it was held that "public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. After extracting the above passage, their Lordships said that "Orders are not like old wine becoming better as they grow older".

20. On going by the impugned orders and taking into account the counter-affidavit of the respondents, I only find that what is deprecated by the Supreme Court has been repeated by the respondents. What is prohibited by law is now supplemented.

21. In "Administrative Law" by H.W.R. Wade & C.F. Forsyth - 7th Edition 1995 at pages 513 and 514, the learned Authors have said thus:

"Although Ridge v. Bat dwin sorted out the confusion caused by the artificial use of the word "judicial" to describe functions which were in reality administrative, it did not eliminate this misnomer from the law. A means of doing so, however, appeared in a later line of cases which laid down that powers of purely administrative character must be exercised "fairly", meaning in accordance with natural justice - "which after all is only fair play in action". "Natural justice is but fairness writ large and judicially." By this verbal short-cut the misuse of the term "judicial" can be avoided altogether. At last we reach the result directly instead of by a devious path; administrative powers which effect right must be exercised in accordance with natural justice. As Lord Diplock has put it:

"Where an Act of Parliament upon an administrative body functions which involve its making decisions which affect to their detriment the rights of the other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decisions."

22. In "Administrative Law" - by C.K. Thakker 1992 Edition, at page 165, the learned Author has considered how the principles of natural justice are applicable to administrative authorities. At page 166, the learned Author has extracted the observation of Lord Denning, The relevant portion reads thus:

...In Breen v. Amalgamated Engineer in Union, 1971 (1) All. ER 1148 Lord Denning observed: "It is now well settled that a statutory body, which is entrusted by statute with a discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial the one hand, or as administrative on the other hand." Lord Morris declares:

"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed." (Italics as in the Textbook)

In case of Frame United Breweries Co v. V- Bath Justices, it has been observed:

"This rule of natural justice has been assented to not only in the case of courts of justice and other judicial tribunals but in the case of authorities which though in no sense to be called courts, have to act as judges of the rights of others."

This principle is accepted in India also. In State of Orissa v. Dr. Binapani, speaking for the Supreme Court, Shah, J. (as he then was) observed:

"It is true that the order is administrative in character but even an administrative order which involves civil consequences... must be made consistently with the rules of natural justice."

Again in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Hegde, J.

observed;

"Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules, of natural justice is to prevent miscarriage of justice one Tails to see why those rules should be made inapplicable to administrative enquiries. (Italics supplied as in the original textbook)

In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Kailasam, J. pronounced:

"The frontier between judicial or quasi-judicial determination on the one hand and an executive on the other has become blurred. The rigid view that principles of natural justice applied only to judicial and quasi-judicial acts and not to administrative acts no longer holds the field."..."

Therefore, the only requirement is, whether there are civil consequences by the passing of the impugned Orders.

23. Now let us see how the counter-affidavit has improved the case of the respondents. Various instances are given in paragraph 9 of the counter. According to me, most of the instances concern about the internal management of the institution. The accusation is that the Management has not given the leave salary and allowances. Certain benefits have not been given to the teachers. Certain teachers have not been treated equally with other teachers, etc. A duty is cast on the respondents to place these accusations before the Management, prior to passing the impugned Orders. Whether the Management has really done so or whether they are justified in action as alleged by the respondents, can be considered only when the entire materials are placed. What was the evidence that was before the Government to initiate action, is not known to the School. One of the main accusations of the third respondent is that some of the teachers were not paid salary and their names were not included in the salary statement. Petitioner has got a definite case why their names have not been included. It said that it is only obeying the Government Order, G.O.Ms.No. 365, Education Department, dated 2.3.1982 which says that "if the staff go on strike or agitate or go on mass casual leave, etc.. the period of absence of the Staff shall be treated as leave on loss of pay". If the Government has passed such an Order and the same is still in force, is not the management entitled to take notice of the said G.O. and contend that those teachers who had gone on illegal strike, are not entitled to salary and, therefore, it is not drawing salary for them? If the Management had drawn salary for those staff who had gone on illegal strike, will it not be an action against the Government Order? Has the third respondent taken into consideration these facts before accusing the petitioner-Management? The petitioner has been repeatedly stating in their various Reports that the staff who had gone on illegal strike, are prohibited from getting salary in view of the

Government Order. The third respondent has acted against this Government Order by disbursing the salary to them.

24. By not withdrawing the grant for payment of salary, is not the Management exercising its control over the teachers? The suspension of payment of salary is also the right of the Management. When the Government Order says that the striking employees shall not be paid the salary, and when the Management obeys it, it only exercises that right, and it is not treating the teachers in a different way as is now sought to be made out by the respondents in the counter-affidavit.

25. The action of the third respondent also cannot be said to be bona fide. Immediately after the Orders were passed, though the Secretary and Headmaster did not include the names of the striking staff in the salary statement, third respondent himself prepares a statement and disburses the salary only for the striking staff. If is acting honestly, why should he make a difference between the striking staff and non-striking staff? He ought to have disbursed salary to all the teachers. From the conduct of the third respondent, it is clear that he has taken a partisan attitude, and that too without placing all the materials before the Management. Is it not a case of violation of the principles of natural justice? Can the Court find that such an action of the third respondent was in fairness? Has he acted in good faith?

26. Another main contention that is taken in the counter is over the formation of School Committees for Primary Section and Higher Secondary Section. According to the respondents, there should be two separate Committees. In fact, till the impugned Orders were passed, as such allegation was made by the Department against the petitioner. It is only a reason found out when the counter-affidavit was filed. In fact, such question has come for consideration before this Court in *The Management of Hindu and Saraswathy Middle Schools, etc. v. Government of Tamil Nadu*, W.P.No. 9649 of 1982. - Order dated 5.10.1990, and learned Judge of this Court has held that formation of separate committee is not necessary. The law does, not say that the petitioner must get approval as corporate body. It is only at the instance of the Government, and for their convenience. Primary Section and Higher Secondary were bifurcated, and it is also narrated in the reply affidavit that from the very beginning it was in single management, and the same has issued Various Circulars for both these Sections, and the same was also acted upon by the Department. It is also said that only in cases where the striking staff was to benefit, the Department used to take a different note. The said complaint of the petitioner cannot be said to be without any basis. If only the Authority had considered the Order passed by this Court in *The Management of Hindu and Saraswathy Middle Schools, etc v. Government of Tamil Nadu*, W.P. No.9649 of 1982, it would not have stated so in the counter affidavit. I do not want to go into the minute to the notice of the petitioner Management before the impugned Orders were passed.

27. The argument that the petitioner was also aware of these complaints is not an answered for violating the principles of fairness. The Management is not

expected to know that such and such instance is going to take place in future. The complaint must also be brought to the notice of the Management, and explanation must be taken and then only the Order ought to have been passed. The attitude of the third respondent seems to be vindictive and not in fairness. It is violative of the fundamental principles of natural justice. The third respondent has usurped the powers of the Management. Even the impleading respondents have not given that much details as given in the counter of the Department. That shows how the third respondent was taking a partisan attitude in his action. Even though the entire file was placed before me, I do not think that is going to improve the matter, once I hold that the action of the third respondent was act in good faith.

28. The argument on the basis of the decision reported in *Kandasamy v. The District Educational Officer, Etc*, 1996 W.L.R. 439 also cannot be supported. That is a case where there an inter se dispute between the Management and the School was also not functioning in the way in which it should have functioned under law. On factual basis, a learned Judge of this Court has held that special circumstances had been made out in that case, and the Government was justified in paying salary direct to the teachers. When the matter was taken in Appeal, the Division Bench also confirmed the findings on facts. In this case, what the petitioner seeks before is now tried to be usurped or taken away by the Department. The complaint of the petitioner is only that if this action of the Department is allowed to stand, the rights of action of the Management over its employees is also likely to be taken away. I find that the said argument is correct. The decision reported in *Kandasamy v. The District Educational Officer, Etc*, 1996 W.L.R. 439 has no application to the facts of this case. It may also be stated that the petitioner is not claiming the right to get funds from the Government as of right. It is admitted even by the petitioner that it has no vested right to get the amount. The question is, whether the power vested with the third respondent has been exercised arbitrarily. My conclusion is that the respondents in this case have acted arbitrarily and without any fairness. They have also violated the principles of natural justice. Consequently the impugned Orders are quashed. Respondents 1 to 3 are directed to act in accordance with the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act and also the Rules framed thereunder. As per Rule 19 read with Annexure III, they have to act on the basis of the statements of the Secretary and Headmaster of the School. They are also not entitled to interfere with the internal management of the School under the guise of keeping good relationship between the petitioner and the Staff. The writ petition W.P.No. 13109 of 1997 is allowed as indicated above, however, without any order as to costs.

W.P.No.215 of 1997

29. This writ petition is also concerning the same School wherein the petitioner-Management has prayed for the issuance of a writ of certiorarified mandamus calling for the records relating to the proceedings of the third respondent dated

26.6.1996 and the consequential proceedings of the 1st respondent in Na.Ka.No.16372/El/95 dated 13.7.1996 and quash the same and consequently direct the respondents to hold that the subsequent Peace Committee Meetings held on 27.6.1996, 20.8.1996 and 19.12.1996 are without jurisdiction, and forbear the respondents from interfering with the day-to-day administration and the decisions of the School Committee of the petitioner-School by constituting Peace Committee, and pass such further or other Orders as this Court may deem fit and proper.

30. Facts narrated in the other writ petition show how a section of teachers of the petitioner-School participated in strike, and how the respondents in the case have acted in partisan manner. In this writ petition, the third respondent is the Sub-Collector-cum-Chairman of Peace Committee, under whose instance, the said Committee was formed, so as to make the atmosphere in the School peaceful. In this writ petition, the petitioner contends that the formation of the Peace Committee itself is without jurisdiction, and it acts against the spirit of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Third respondent in the other case, who is the second respondent herein, has filed a counter-affidavit, containing similar averments, accusing the Secretary and also the Headmaster. I do not want to go into further details, for, the main question that has to be considered is, whether the formation of the Peace Committee is one without jurisdiction.

31. I do not think, the petitioner is successful in impeaching the right of the Government in that regard. It is not disputed that the petitioner is an Institution which receives grant from the Government. Section 14 of the Act deals with the same. Being an Aided School, I feel that the Government is justified in forming a Peace Committee so as to create a cordial atmosphere in the Institution. According to me, u/s 14 and also taking into consideration the right of recognition, the Government is entitled to form such Committees. In fact, no serious argument was advanced by learned counsel for the petitioner regarding the power of the Government in forming such Peace Committees. The Government has exercised the power taking into consideration the best interest of the School, the students and the teachers.

32. The further question that arises for consideration in the writ petition is, whether the Peace Committee can interfere with the day-to-day management of the School., The Peace Committee is entitled only to create a good atmosphere, and give advises suggestions or directions to the School Authorities, for that purpose. It cannot act as a Management, nor as an Appellate Authority. The day-to-day management and the right of control over the teachers and the students is only with the petitioner, and any decision taken by the Management is to be implemented only taking into consideration the provisions of the Act. The responsibility of the entire Management is only with the petitioner. School Committee, Secretary and the Headmaster. When they are made responsible for the action of the Institution. I do not think the Peace Committee can interfere in

the activities of the Management, nor has it any power to revoke or alter the decisions of the School Committee. If any decision of the School Committee is to be altered, modified or suspended, that can only be by the Authorities under the Act. The Peace Committee not being an Authority under the Act is not entitled to take any decision of its own and impose the same on the petitioner Management. The above clarification in this Order will be sufficient for the disposal of this writ petition. I hold that the Government has got the power to appoint Peace Committee for creating a good atmosphere in the School, but not for the purpose of the Management of the School or to interfere with the management of the school. The writ petition is disposed of as above. No costs. The pending W.M.Ps. connected with both these Writ Petitions are dismissed.