
(2014) 09 MAD CK 0082

In the Madras High Court

Case No : W.A. (MD). Nos. 1240 and 1241 of 2013 and Review Application [MD].
No. 97 and 98 of 2013, etc.

The State of Tamil Nadu

APPELLANT

Vs

Jeevana Schools

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2014) 5 LW 178 : (2014) WritLR 972

Hon'ble Judges : R. Mahadevan, J; M. Jaichandren, J

Bench : Division Bench

Judgement

R. Mahadevan, J.—Since common issues are arising for the consideration of this Court, the Writ Appeals, the Review Applications and the Writ Petition are heard together and a Common Judgment is being passed. The Writ Appeals, in WA. (MD). Nos. 1240 and 1241 of 2013, have been filed, challenging the order of the learned Judge, dated 19.09.2013, made in W.P.(MD). Nos. 14756 and 5249 of 2013.

2. The Review Applications, in R.A.[MD]. Nos. 97, 98 of 2012 and 14 of 2014, have been filed against the order, dated 21.03.2012, 07.03.2012 and 21.01.2014, made in W.A.[MD]. Nos. 181, 182 of 2012 and 81 of 2014.

3. The Writ Petition, in W.P.[MD]. No. 7136 of 2013, has been filed, challenging the order of the third respondent, dated 09.04.2013, in and by which the request of the petitioner to start XI and XII, which was already granted by the Director of School Education, Chennai, has been cancelled by the order of the Joint Director of School Education, [Higher Secondary], Chennai.

4. For the sake of convenience, the parties are referred to, as arrayed in the Writ Petitions.

5. The petitioners schools made applications before the third respondent through the fifth respondent, seeking permission to start XI and XII Standards in their

schools, under the Tamil Nadu State Board Syllabus. The said requests of the petitioners schools were rejected. Aggrieved over the same, the petitioners schools filed W.P.(MD). Nos. 14756, 5249 of 2013, 14872, 14873 of 2010 and 18670 of 2012. The said Writ Petitions came to be allowed, by the learned Judges of this Court. Questioning the validity of the said orders, the respondents have come up with the Writ Appeals, in W.A.(MD). Nos. 1240 and 1241 of 2013. Seeking to review the Judgments, dated 21.03.2012, 07.03.2012 and 21.01.2014, made in W.A.[MD]. Nos. 181, 182 of 2012 and 81 of 2014, the respondents have come up with the present Review Application [MD]. Nos. 97, 98 of 2012 and 14 of 2014.

6. The learned counsel appearing on behalf of the petitioners submits that though the petitioners schools are offering education upto 10th standard, under ICSE Stream, as well as under Matriculation Stream, the schools were granted provisional recognition to offer XI and XII Classes, under the Tamil Nadu State Board Syllabus, and therefore, the schools are entitled for renewal of the recognition, by virtue of the Government Order, issued in G.O.Ms. No. 102, School Education - U2 Department, dated 26.07.2001. The learned counsel further submits that the object of the said Government Order is to discourage truncated schools, which are offering XI and XII classes alone, like tutorial institutions. In the case of the petitioners, they have already got classes upto 10th Standard, and thus, the petitioners schools are entitled for starting classes XI and XII, under the Tamil Nadu State Syllabus.

7. The learned counsel brings to the notice of this Court that a similar question arose before the learned Judge of this Court, in W.P.[MD]. No. 2473 of 2011, which was, by order, dated 13.12.2011, allowed by the learned Judge, directing the Joint Director of School Education, [Higher Secondary], Chennai, to grant permission to the petitioner school therein to start XI and XII Classes, though the said school was offering education upto 10th Standard, under a different stream. Questioning the validity of the said order, dated 13.12.2011, the Government filed W.A.[MD]. No. 118 of 2011. A Division Bench of this Court, by Judgment, dated 07.03.2012, dismissed the said Writ Appeal, thereby confirming the order of the learned Judge. Grieved over the same, the Government filed SLP [Civil] No.23223 of 2012, which was also dismissed by the Supreme Court, on 22.02.2013. Relying on the above Judgments, the learned counsel submits that the petitioners schools are also entitled to continue XI and XII classes, under the Tamil Nadu State Board Syllabus, and thus, the Writ Appeals filed by the Government are liable to be dismissed.

8. The learned Special Government Pleader appearing on behalf of the respondents submits that the validity of the Government Order, issued in G.O.Ms.No. 102, School Education - U2 Department, dated 26.07.2001, cannot be gone into, as there was no challenge made to the said Government Order and the said Government Order, upon which much reliance has been made by the learned counsel appearing on behalf of the petitioners schools, has got no

application to the facts of the present case. The learned Special Government Pleader further submits that the said Government Order is applicable only in respect of the schools, which are imparting education upto 10th standard, under the Tamil Nadu State Board Syllabus and if the schools are imparting education upto 10th Standard, under different streams, like ICSE, CBSE, etc., such schools are not entitled for starting XI and XII Classes, under the Tamil Nadu State Board Syllabus.

9. The learned Special Government Pleader further submits that the petitioners schools have not at all obtained permission from the Tamil Nadu State Educational Authorities to impart education from classes 1 to 10, as required under the provisions of the Tamil Nadu Recognized Private Schools [Regulation] Act, 1973 and the Rules framed thereunder, and therefore, they are not entitled for permission to impart education for the classes XI and XII, under the State Board Syllabus. The learned Special Government Pleader also submits that the Judgment of the Division Bench of this Court, dated 07.03.2012, made in W.A. [MD]. No. 118 of 2011, cannot be taken as a precedent. Based on the above, the learned Special Government Pleader prays for setting aside of the order of the learned Judge.

10. We have considered the above submissions made by the learned counsel appearing on behalf of the petitioners, the learned Special Government Pleader appearing on behalf of the respondents and perused the records carefully, including the Judgments made in W.P.[MD]. No. 2473 of 2011, dated 13.12.2011, W.A.[MD]. No. 118 of 2012, dated 07.03.2012, W.A.[MD]. Nos. 181, 182 of 2012 and 81 of 2014, dated 21.03.2012, 07.03.2012 and 21.01.2014, and the Government Order, issued in G.O.Ms. No. 102, School Education - U2 Department, dated 26.07.2001.

11. The Government Order, issued in G.O.Ms. No. 102, School Education-U2 Department, dated 26.07.2001, upon which much reliance has been made, on either side, reads as follows:

12. On a perusal of the above Government Order would make it manifestly clear that the Government was conscious of the fact that there were mushroom growth of schools in the State of Tamil Nadu, offering XI and XII Courses alone. Since these schools were showing mushroom growth, like private tutorial institutions, the Government thought it fit to curb the said practice of schools having XI and XII courses alone. Having the said good intention in mind, the Government issued G.O.Ms. No. 102, School Education-U2 Department, dated 26.07.2001, directing that there shall be no schools having truncated courses like XI and XII alone. The said Government Order further directs that if any school wants to start XI and XII courses, the school should, simultaneously, have classes from 6th standard to 10th standard. In respect of the schools, which are already running truncated courses, like XI and XII alone, the Government Order directs them to start classes from 6th standard to 10th standard also, within the prescribed time. Thus, the intention of the Government Order is inferable and it

is, of course, a good intention.

13. Now, coming to the petitioners schools, already the petitioners schools are imparting education upto 10th standard, of course, it is under a different stream, namely ICSE stream. Thus, the Government Order, issued in G.O.Ms. No. 102, School Education-U2 Department, dated 26.07.2001, is applicable to the petitioners schools and they are entitled for starting the classes XI and XII, though the petitioners schools are offering classes upto 10th standard, under a different stream. Further, the submissions of the learned Special Government Pleader appearing on behalf of the respondents that the the petitioners schools have not at all obtained permission from the Tamil Nadu State Educational Authorities to impart education from classes 1 to 10, as required under the provisions of the Tamil Nadu Recognized Private Schools [Regulation] Act, 1973 and the Rules framed thereunder, and therefore, they are not entitled for permission to impart education for the classes XI and XII, under the State Board Syllabus, cannot be countenanced, for the simple reason that the said objection was not at all raised by the educational authorities concerned, at the time when the request of the petitioners schools was rejected by the impugned orders. Therefore, we have no hesitation to hold that the order of the learned Judge does not require any interference at the hands of this Court.

14. Now, coming to the Review Applications, in R.A.[MD]. Nos. 97, 98 of 2012 and 14 of 2014, which have been filed against the order, dated 21.03.2012, 07.03.2012 and 21.01.2014, made in W.A.[MD]. Nos. 181, 182 of 2012 and 81 of 2014, we are of the considered view that in view of the conclusions arrived at, as above, we do not find any reason to take a different view than the one taken by the earlier Division Benches. Moreover, when there is no error apparent on the face of record, the Review Applications need not be entertained, in the light of the Judgment of a Division Bench of this Court in Union of India, rep by the Union of India Vs. The Registrar, Central Administrative Tribunal and A. Dumenil, , wherein the Division Bench has made a complete survey of several Judgments of the Supreme Court, on this question, and has ultimately, in Paragraph No. 10, held as follows:-

"In yet another Judgment reported in Kamlesh Verma Vs. Mayawati and Others, , the Hon"ble Apex Court, after examining various Judgments passed earlier has held as follows:

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

In the above Judgment, the Hon"ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

- (i). Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii). Mistake or error apparent on the face of record;
- (iii). Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in AIR 1922 112 (Privy Council) and approved by this Court in *Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others*, , to mean, "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India (UOI) Vs. Sandur Manganese and Iron Ores Ltd. and Others*, .

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii). Minor mistakes of inconsequential import.
- (iii). Review proceedings cannot be equated with the original hearing of the case.
- (iv). Review is not maintainable, unless the material error, manifest on the face of the order, undermine its soundness or results in miscarriage of justice.
- (v). A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi). The mere possibility of two views on the subject cannot be a ground for review.
- (vii). The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii). The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix). Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

Applying the said legal principles to the facts of the present case, if we analyze the grounds of review, we find no error apparent on the face of record in the Judgments of the Division Benches. Thus, the Review Applications are liable to be dismissed.

15. Now, coming to the Writ Petition, in W.P. [MD]. No. 7136 of 2013, in view of the reasons stated above, we are of the considered view that as the petitioner school also stands in the same footing, no further detailed adjudication is required in the present Writ Petition. Therefore, the impugned order of the third respondent, dated 09.04.2013, is liable to be set aside. In the result,

The Writ Appeals, in W.A.(MD). Nos. 1240 and 1241 of 2013, are dismissed, confirming the order passed by the learned Judge, dated 19.09.2013, made in W.P.(MD). Nos. 14756 and 5249 of 2013,

The Review Applications, in R.A.[MD]. Nos. 97, 98 of 2012 and 14 of 2014, are dismissed, upholding the Judgments, dated 21.03.2012, 07.03.2012 and 21.01.2014, made in W.A.[MD]. Nos. 181, 182 of 2012 and 81 of 2014

The Writ Petition, in W.P.[MD]. No. 7136 of 2013, is allowed, setting aside the impugned order of the third respondent, dated 09.04.2013.

Consequently, connected Miscellaneous Petitions are closed. No costs.