
(1976) 04 MAD CK 0004
In the Madras High Court

Theagaraya Chetty Educational Institutions	APPELLANT
Vs	
Dr. G. Madan Mohan Rao	RESPONDENT

Date of Decision : 30-04-1976

Acts Referred:

Constitution of India, 1950 — Article 356
General Clauses Act, 1897 — Section 6

Citation : (1977) 90 LW 90 : (1977) 1 MLJ 446

Hon'ble Judges : Kailasam, C.J; Balasubrahmayan, J

Bench : Division Bench

Advocate : V.K. Thiruvenkata Chari for M/s. B. PunyaKoti Chetty and V. Shanmugham, for the Appellant; R. Kesava Iyengar and E. Padmanabhan, for the Respondent

Judgement

1. This writ appeal is preferred against the judgment of Ramanujam, J., by the second respondent in Writ Petition No. 7444 of 1975. The writ petition was filed by the first respondent herein, Dr G. Madan Mohan Rao, praying for the issue of a writ of a mandamus directing the respondents, namely, The State of Tamil Nadu, Theagaraya Chetty Educational Institutions represented by the Managing Committee's Secretary and the Managing Committee, to implement the provisional of Section 19 of Ordinance 17 of 1975 so far as it related to the order of suspension passed against him on 26th September, 1975.
2. The first respondent is the Principal and Professor of Zoology in Sir Theagaraya College, Madras. On 26th May, 1975, the Committee of Management served on him a memo, of charges. He was asked to give his explanation before 1st July, 1975. The Committee of Management proposed to convene a meeting on 25th August, 1975, to consider the charges

framed against him. The appellant filed a petition, see Theagaraya Chetty Educational Institutions, represented by its Secretary and Correspondent v. University of Madras W.P. No. 3872 of 1975 since reported in (1977) 90 L.W. 22. to quash the order of the University directing the appellant to make the Principal responsible for all admissions, and in W.M.P. No. 5607 of 1975 in W.P. No. 3872 of 1975, the first respondent obtained a stay of disciplinary proceedings against him. The stay of enquiry was granted till 15th July, 1975. But the first respondent was asked to file his explanation before 1st July, 1975. On 1st July 1975, the first respondent filed his explanation. The appellant withdrew W.P. No. 3872 of 1975. Soon after, the first respondent filed a suit, O.S.No. 6051 of 1975. On 25th August, 1975, for a declaration that the Constitution of the committee was illegal and for an injunction restraining the managing committee from interfering with his duties and functions as Principal. On the same date, an interim . injunction was granted in I.A. No. 16649 of 1975. On 24th September, 1975, the order of injunction was vacated and I.A. No. 16649 of 1975, was dismissed. The first respondent preferred an appeal, C.M.A. No. 158 of 1975, against the dismissal of I.A. No. 16649 of 1975 and, pending that appeal, in C.M.P. No. 82 of 1975, an interim injunction was granted restraining the managing committee from, holding the meeting at 4 p.m. on 26th September, 1975. The meeting of the managing committee was in fact held at 4-10 p.m. and the first respondent was suspended and the thirteenth respondent was appointed as principal in charge. Immediately, the thirteenth respondent assumed charge as principal. A little later, at 4-30 p.m. on 26th September, 1975. in C.M.P, No. 82 of 1975, the Court directed the parties to maintain the status quo as at 4-30 p.m. on 26th September, 1975.

3. The Tamil Nadu Private Colleges (Regulation) Ordinance, 1975 (17 of 1975) was promulgated on 21st November, 1975. On 5th December, 1975, the first respondent filed C.M.P. No. 123 of 1975 in C.M.A. No. 158 of 1975 praying for leave to raise additional grounds relating to the applicability of the Ordinance. On 12th December, 1975, the first respondent filed O.S. No 9297 off 1975 for a declaration that the order dated 26th September, 1975, suspending him was inoperative and not honest. Tune for counter was granted in I.A. No. 26298 of 1975 and the

application was posted to 12th January, 1975. In the meantime, on 20th December, 1975, W.P. No. 7444 of 1975, out of which this writ appeal

arises, was filed by the first respondent. On 5th January, 1976, C.M.A. No. 158 of 1975 and the applications filed by the first respondent were

dismissed. The suit, O.S. No. 9297 of 1975, filed by the first respondent was dismissed on 2nd February, 1976. On 21st January, 1976,

judgment was pronounced in W.P. No. 7444 of 1975 holding that the suspension made on 26th September, 1975, expired under the Ordinance,

Aggrieved against that order, Theagaraya Chetty Educational Institutions, represented by the Managing Committee's Secretary the second

respondent in the writ petition, has preferred the present writ appeal.

4. The learned Judge held that, after the coming into force of the Ordinance, the college committee which existed before the Ordinance came into

force could not have any disciplinary jurisdiction over the teachers of the college except In respect of proceedings that were saved by the

explanation to Section 20. According to the learned Judge, the order of suspension pending enquiry passed earlier by the former committee cannot

be said to survive. Holding that the order of suspension is subject to Section 19(3)(b) and its duration is curtailed by the rule of limitation

prescribed therein, the learned Judge held that the order of suspension should be taken to have been limited for a period of two months.

5. In this appeal Mr. V.K. Tiruvenkatachari, the learned Counsel for the appellant, submitted that, on an analysis of the various provisions of the

Act, it would be clear that the Act had not come into force at all and that till the various steps contemplated under the Act were taken, the contract

entered into between the management and the principal would continue, to govern and the enquiry could be proceeded only under the terms of the

contract of service. Regarding the question of the duration of suspension, it is contended by the learned Counsel that the provisions of Section 19(

3)(b) are not applicable as the provisions are intended to apply only to enquiries that commence after the Act came into force, and as such, the

period of suspension is not limited to two months.

6. The Tamil Nadu Private Colleges (Regulation) Ordinance, 1975, was promulgated on 21st November, 1975. The President issued a

proclamation on 31st January, 1976, under Article 356 of the Constitution in

relation to the State of Tamil Nadu declaring that the powers of the Legislature of the State shall be exercisable by or under the authority of the Parliament. The Governor of Tamil Nadu by virtue of the powers conferred on him by the President promulgated the Tamil Nadu Private Colleges (Regulation) Ordinance, 1976 (Tamil Nadu Ordinance 11 of 1976). The present Act, (Act XIX of 1976) was passed by the Parliament repealing the provision of Tamil Nadu Private Colleges (Regulation) (Ordinance, 1976).

7. Under the enactment certain safeguards are given to the teachers and other persons employed in private colleges in Tamil Nadu. Chapter III of the Act provides for the formation of a College Committee, its constitution and functions. Section 11 requires that every private college shall have a collage committee, which shall include the principal of the private college and two senior professors employed in the private college. Section 12 provides for the appointment of a, Secretary empowered to exercise such powers and perform such functions as may be prescribed. Section 13 provides for meetings of the college committee, which is enjoined to observe rules of procedure in regard to transaction of business at its meetings as may be prescribed. Regarding the functions of the college committee, Section 14 enacts that the committee has the authority to take disciplinary action against teachers and other persons of the private college. It also provides that the educational agency, which is the management of the private college, shall be bound by anything done by the College Committee in the discharge of the functions of the committee under the Act.

8. Chapter IV deals with the terms and conditions of service of teachers and other persons employed in private colleges. Section 13 provides that every teacher or every other person employed in any private college shall be governed by such code of conduct as may be prescribed and if any teacher or other person so employed violates any provision of such code of conduct, he shall be liable to such disciplinary action as may be prescribed. The college committee is empowered to define the standards of conduct to be observed by teachers and other persons employed in the private college, such standards not being inconsistent with the provisions of the Act and the rules made thereunder. Section 19 deals with the power of dismissal, removal or reduction in rank or suspension of teachers or

other persons employed in private colleges. The section protects a teacher or any other person employed in private colleges by providing that he shall not be dismissed, removed or reduced in rank or his appointment otherwise terminated, except, with the prior approval of the competent authority. The college committee will have to enquire. Disciplinary action will) have to be taken by the college committee and the dismissal or removal or reduction in rank can only be made with the prior approval, of the competent authority.

9. Before considering the other sub-sections of Section 19 it is necessary to notice a contention that was put forward by Mr. V.K.

Thiruvengkatachari on behalf of the appellant. He submitted that, though the Act states that the provisions of the Act shall be deemed to have come

into force on 21st November, 1975, it cannot be taken that the Act has come into force at all; the machinery for the working of the Act has not

been put into operation. In other words, the learned Counsel submitted that the colleges committee as required u/s 11 had not been constituted as

the two senior professors had not been named. The Secretary of the colleges committee as required u/s 12 had not been appointed. It was also

pointed out that the rules of procedure governing the college committee as contemplated u/s 13 had not been prescribed. It was further pointed out

that the Code of Conduct as required u/s 18, the violation of which makes a teacher liable to disciplinary action, had not been prescribed and the

college committee has not defined the standards of conduct required to be observed by the teachers as envisaged u/s 18 (2). As no College

Committee has been appointed, as no rules of procedure for the conduct of the meetings have been prescribed, as no Code of Conduct has been

prescribed as envisaged under the Act and as such standards of conduct have not been defined by the college committee, it was submitted that the

enactment is just a skeleton without any flesh or blood or life, and, therefore., in effect, the law cannot be deemed to have come into force. The

learned Counsel invited us to decide this question as a large number of private colleges, in taking disciplinary proceedings, will be governed by the

judicial ruling on this matter. However interesting the question may be and however tempting the invitation of the learned Counsel is, we refrain

from expressing our opinion on this question, as the appeal can be decided

without answering this difficult question.

10. in the present appeal, we are concerned with the disciplinary action that was launched against the first respondent on 26th May, 1975. The Act

came into force on 21st November, 1975-. Unless the proceedings that were commenced before the Act had been invalidated because of the

coming into force of the Act, there could be no objection to the proceedings going on, it being a pre-Act enquiry, which is governed by the

contract between the parties. On this aspect, Mr. Kesava Iyengar, the learned Counsel for the first respondent-principal, submitted that the Act is

a beneficial legislation intended to protect the teachers and others employed in private colleges from the arbitrary and unjustified actions of the

private management, and as such, from the date of the Act, it must be presumed that the rights of the private institutions to take any disciplinary

action had ceased, whether it was for acts that were committed before the Act came into force, or later. To substantiate this contention, the

learned Counsel relied on the provisions relating to the constitution of the college committee and entrustment of disciplinary jurisdiction against

teachers and. other persons of the private colleges to the committee from the date the Act came into force. Though the submission appears

reasonable with regard to the acts committed and disciplinary proceedings commenced after the Act came into force, it does not on the face of it

appear to apply to acts committed by teachers and others before the Act came into force and to disciplinary proceedings commenced before the

Act came into force under the agreement between a private college and teachers. While it is possible to construe the provisions of the Act as

governing disciplinary enquiry which commenced after the Act came into force, we are unable to construe the sections as requiring that the

disciplinary enquiry which commenced before the Act came into force can only be conducted by the committee that is to be formed under the Act.

To answer the question whether the enquiry that was commenced before the Act came into force could be continued under the terms, of the

contract, and more especially the question that arises for consideration in this writ appeal, namely, whether the provision of Section 19 (O) (b)

which restricts the period of suspension to two months, is applicable to an enquiry that commenced before the Act came into force, it is necessary

to consider the provisions of Section 19 and Sections 20, 21 and 22,

11. Section 19 (3) (a) prohibits placing under suspension any teacher except when an enquiry into the gross misconduct within the meaning of the

Code of Conduct prescribed under Sub-section (1) of Section 18 is contemplated. Section 19 (3) (P) protects a teacher from being kept under

suspension for more than a period of two months from the date of suspension. If the enquiry is not completed within the period contemplated,

without prejudice to the enquiry, the teacher shall be deemed to have been restored as teacher. The proviso to Section 19 (3) (b) enables in

certain circumstances the competent authority to extend the suspension for another period of two months. The answer to the crucial question

whether the first respondent in this case can be kept under suspension for more than two months will depend upon the construction of Section 19

(3) (a) and (b). Section 19 (3) (a) provides that no teacher can be placed under suspension except when an enquiry into the gross misconduct

within the meaning of the Code of Conduct prescribed under Sub-section (1) of Section 18 of such teacher is contemplated (underlining is ours).

The section therefore relates to enquiries into gross misconduct that commenced after the Act came into force. This is made clear by the opening

words of Section 19 (3) (b) which are as follows:

No such suspension shall remain in force for more than a period of two months.

(The underlining is ours.)

The suspension contemplated is one made"" u/s 19 (3) (a), that is in an enquiry into the gross misconduct as contemplated u/s 18(1), that is an

enquiry which commenced after the Act came into force. It, therefore, cannot apply to an enquiry that was commenced before the Act came into

force. In this view, the restriction of the period of suspension to two months cannot apply to an enquiry that was commenced before the Act came

into force.

12. A reading of Sections 20, 21 and 22 lends considerable support to this view. The Explanation to Section 20 is very important and it runs as

follows:

In this section, the expression "order" includes any order under made on or after the date of the commencement of this Act in any disciplinary

proceeding which was pending on that date.

An order made on the date of the commencement of this Act can only relate to an enquiry which was pending on the date of the commencement of

the Act. This is made clear by the last part of the Explanation, which says ""in any disciplinary proceeding which was pending on that date."" It is

clear therefore that the order contemplated in the Explanation is an order passed on or after the date of the commencement of the Act in any

disciplinary proceedings which was pending on that date. Against such an order, an appeal is available to such authority or officer as may be

prescribed. For the purpose of an appeal, the validity of an order passed on or after the date of the commencement of the Act in any proceeding

which was pending on the date when the Act came into force is recognised and the appeal is provided to the authority constituted under the Act.

So also a second appeal is provided for u/s 21. Section 22 makes the position clear. It provides that if before the date of the commencement of

the Act, any teacher or other person employed in any private college has been dismissed, or removed, or reduced in rank, and any appeal

preferred before that date is pending, such appeal shall stand transferred to the appellate authority prescribed u/s 20 and to the Tribunal as the

case may be. It is also provided that any order made in at appeal before the date of the commencement of the Act is deemed to be an order made

under this Act and shall have effect accordingly. It is therefore clear on a reading of Sections 19, 20, 21 and 22j that not only proceedings that

were commenced before the Act came into force are not repealed, but they are also recognised and dovetailed into the provisions of the Act

enabling the aggrieved teacher to appeal. The order passed before the Act came into force is appealable u/s 22 and a second appeal is provided

u/s 21. We have therefore no hesitation in coming to the conclusion that the enquiry, which commenced before the Act came into force does not

stand repealed on the coming into force of the Act, but, on the other hand, is effective and can be gone into under the contract of service entered

into between the parties. It is also clear from the provisions of Section 19 (3) (a) and (i) that the restriction to the period of suspension to two

months is confined only to enquiries that had commenced after the Act came into force. We are, on a reading of the sections, satisfied that the

provisions relied on by the learned Counsel for the first respondent, namely, Sections 19 (3) (a) and (b) are not applicable.

13. Mr. Kesava Iyengar finding an insurmountable obstacle in the working of Section 19 to his contention that the maximum period of suspension

prescribed is applicable to enquiries that commenced before the Act came into force, tried to approach the problem in a different manner. He

submitted that the object of the enactment was to provide protection for the teachers and others employed in private colleges from the whimsical

and arbitrary acts of the private management. In doing so, the Legislature wanted to restrict the period of suspension to two months and under,

special reasons, to a total period of four months, and this principle should be made applicable to enquiries that commenced before the Act came

into force. The learned Counsel relied on Section 24 in support of his contention and submitted that the intention of the enactment should prevail

over any contractual relationship between the parties. Section 24 provides as follows:

(i) This Chapter or any rule providing for all or any of the matters specified in this Chapter or any order made in relation to any such matter shall

have effect notwithstanding anything contained in any--(i) other law for the time being in force, or

(ii) award, agreement or contract of service, whether such award, agreement or contract of service was made before or after the date of

commencement of this Act, or

(iii) judgment, decree or order of Court, tribunal or other authority.

It may be noted that the terms of any award, agreement or contract of service, which provides more favourable terms to the teacher or other

persons is saved. The contention of the learned Counsel is that not only the provisions of Chapter IV, but also the rules, provide that any of the

matters or orders made in relation to any other matter should prevail over the terms of the contract, including the mode of enquiry and also the right

to suspend for a particular period. It was submitted that, If the Chapter had an overriding effect, it would be contrary to the spirit of the legislation

to say that in the case of some enquiries, namely, those enquiries that were commenced before the Act came into force, the period of suspension

might be indefinite. However attractive this contention may be, we are unable to

accept it, for, in fact the enquiries that were commenced before the Act came into force are not at all covered by any of the provisions of the Act. Though Section 19 contemplates suspension only for a period of two months and four months under special circumstances, it is not made applicable under any of the provisions of the Act to enquiries that were commenced before the Act came into force. In determining the rights of the parties, the Court will have to construe the provisions of the enactment. Thus construing Sections 18 to 24, it is clear that the provisions of Section 19 are not made applicable to enquiries that had commenced before the Act came into force.

14. In *State of Punjab v. Mohar Singh* 1955 S.C.J. 25 : (1955) 1 S.C.R. 89 A.I.R.1955 S.C. 84. Singh the Supreme Court laid down the

principle governing the result of a repeal of an enactment and the effect of the provisions of Section 6 of the General Clauses Act. The Supreme

Court observed that when the repeal is followed by fresh legislation on the same subject, the Court will have to look to the provisions of the new

Act, but only for the purpose of determining whether they indicate a different intention. The Supreme Court held:

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to

destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal

of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention

incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the

relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

Applying the above principle to the new enactment, we are unable to find any manifest intention to destroy the provisions of the contractual

relationship regarding the enquiries that were started before the Act came into force. On the other hand, as pointed out by us, Sections 19, 20 and

22 keep alive the enquiries that were commenced before the Act came into force. For these reasons we are unable to agree with the reasoning and

conclusions arrived at by the learned Judge that u/s 24 the private management

cannot pass an order of suspension against a teacher beyond a period of two months as the provisions of the Ordinance would override the provisions of the agreement of service and any order of suspension

based on the power traceable to the agreement of service cannot survive for more than two months. We hold that the order of suspension survives.

15. In the result, the writ appeal is allowed. No order as to costs.