

(2011) 09 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 8246 of 2001

Usilampatti Nattathi Hindu Nadar Uravinmurai Peravai

APPELLANT

Vs

The Inspector General of Registration, Santhome High Road,
Mylapore, Chennai-4 and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Societies Registration Act, 1860 — Section 5

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 53, 54

Citation : (2011) 09 MAD CK 0025

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Mr. V. Jayachandran for Jayachandran Associates, for the Appellant;
Rm. Muthukumar, G.A. for R1 and R2, N. Rufus Apioham, G.A. for R3 and R5 and
Mr. A.S. Vijayaraghavan, for R6 and R7, for the Respondent

Final Decision : Dismissed

Judgement

The Hon''ble Mr. Justice K. Chandru

1. These two Writ Petitions came to be posted on being specially ordered by the Hon''ble Chief Justice vide order dated 13.9.2011. The first Writ

Petition is filed by a registered Association seeking for a direction to the District Registrar, Periakulam to accept and record all the returns

submitted by the Petitioner society since 1992 relating to the affairs of the society as also the Nadar Saraswathy Higher Secondary and Primary

School and send a reply to that effect to the Petitioner.

2. In the said Writ Petition, Notice of Motion was ordered for 8 weeks and interim injunction was granted only till then. Subsequently, as the

interim order was not extended, the Miscellaneous Petition for injunction stands

dismissed on 3.4.2002.

3. On notice from this Court, the 7th Respondent claiming to be the Secretary of the registered society No. 442 of 1991 has filed a counter

affidavit. They have also filed a common typed set along with the counter affidavit. In the counter affidavit, the maintainability of the Writ Petition

was raised as a preliminary issue. It was contended that all the members are originally paying their mahamai to the 7th Respondent society with

Registration No. 442 of 1991 and it is the society with registration No. 35 of 1961 is in charge of the School. The 7th Respondent are not

interfering with the running of the School. In the typed set filed by them, they have also enclosed a copy of the proceedings issued by the District

Registrar dated 6.8.1996 in returning the documents submitted by the Petitioner society asking for rectification of the mistake pointed out.

4. In any event, the prayer sought for by the Petitioner in this Writ Petition cannot be countenanced by this Court in the light of the Full Bench

judgment of this Court in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal Vs. The District Registrar and

Others, . In the said Full Bench judgment, it was held that the Registrar in receiving the statutory forms and filing the same has to prima facie come

to a conclusion with reference to the correctness of the particulars. But, he cannot give any direction to the registered society in terms of another

issue, which does not arise out of the said returns. Subsequently certain further clarification was made by a judgment in R. Muralidaran and Others

Vs. The District Registrar and Sidharth Heights Apartments Owners Association, . But, in that case once again the Division Bench stated that

disputed questions of fact cannot be decided in a Writ Petition under Article 226 of the Constitution. Thereafter, the effect of the Full Bench

judgment came to be considered by another judgment in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal

v. District Registrar reported in 2008 (4) LW 1080. In that case, while following the Full Bench judgment, this Court held that since there has been

numerous disputes raised in such societies, the State Government make specific provisions in deciding the list between the parties including the

election dispute as had been done in the other States. Notwithstanding the observations made by the Division Bench, No. such amendments have

been made.

5. Therefore, in the light of the Full Bench judgment and the factual dispute involved, this Court is not inclined to entertain the first Writ Petition No.

8246 of 2001 and the Writ Petition stands dismissed.

6. In the second Writ Petition, namely W.P. No. 13465 of 2003, the Petitioner has challenged an order dated 11.7.2001 passed by the Director of

School Education (Higher Secondary), Chennai 6 and after setting aside the same seeks for a direction to recognize the Petitioner as

Correspondent of Usilampatti Nattathi Nadargal Uravinmuraikku Pathiamana Nadar Saraswathi Higher Secondary School and Primary School,

Usilampatti. That Writ Petition was admitted on 26.7.2001. Pending the Writ Petition, in the application for stay, only notice was ordered.

7. The contention raised by the Petitioner was that the order of the Director dated 11.7.2001 came to be passed on erroneous circumstances and

this society with Registration No. 98/1991 headed by P. Jeyarajan, who was the deponent of the previous Writ Petition alone is entitled to

hierarchy of the 4th Respondent as usurper based upon the fabricated documents and any return submitted by the society with Registration No.

442 of 1991 cannot be accepted as it has been specifically prohibited by orders of the court.

8. On the contrary, reliance was placed upon in the revised order of the District Educational Officer dated 16.12.1999, recognising the 4th

Respondent as Secretary and Correspondent of the School. In essence, the dispute between the Petitioner and the 4th Respondent based upon

the claims of two associations to which both of them respectively belong is the first root cause for the present dispute as to who is the

Correspondent and Secretary of the School to be nominated by the educational Secretary as per the provisions of the Tamil Nadu Private Schools

Regulation Act. It is essentially the civil dispute. this Court in exercising the power under Article 226 of the Constitution cannot decide the lis

between the parties.

9. In fact, the Supreme Court has held that the Writ Petition is not appropriate remedy in such cases vide its judgment in *Swamy Atmananda Vs.*

Swami Bodhananda and Others, . In paragraph 2, it was held as follows:

2. A decree passed by the civil court must bypass in terms of the provisions

contained in the Code of Civil Procedure. The Writ Petition is not the appropriate remedy therefor. In that view of the matter, the impugned judgment cannot be sustained, which is set aside accordingly? The appeal is allowed. It, however, goes without saying that the 1st Respondent herein shall be entitled to execute the decree in accordance with law.

10. Subsequently, the dispute was raised before the Supreme Court u/s 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act and

the dispute will have to be referred by the educational authorities for consideration by the civil courts and the internal management of the society

cannot be decided, was also considered. The Supreme Court while considering the scope of Section 53 and Section 54 of the Tamil Nadu

Recognised Private Schools (Regulation) Act vide its judgment in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, in

paragraph 49, held as follows:

49. A dispute as to who is the real educational agency in relation to a private school is not a matter which in terms of the provisions of the said Act

would be determined by an authority under the provisions of the said Act. Section 53-A of the Act carves out an exception to Section 53 thereof.

In terms of the said provision, any dispute as to the educational institution is to be determined by a civil court having jurisdiction for its decision.

The submission of Mr. Sukumaran, however, is that the jurisdiction of the civil court is required to be invoked in such matters specified therein by

way of reference by the persons interested or by the competent authority. Mr. Sukumaran would contend that such a reference would be akin to a

dispute pending under the Industrial Disputes Act. We cannot accept the said contention. A party to a dispute may not join the other in referring

the same to the civil court. The party may agree or may not agree therefore. A person having a grievance as against another must have a remedy.

The maxim "*ubi jus, ibi remedium*" is not an empty formality. The jurisdiction of the civil court exemplifies the said doctrine. The jurisdiction of the

civil court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute. In terms of Section 53-A

of the Act, a dispute as to educational agency is concededly required to be decided by a civil court. How the jurisdiction of the civil court is

required to be invoked is a matter to be examined by the civil court. Unlike a

private tribunal or a statutory tribunal which would not derive a jurisdiction unless a reference in terms of the provisions of the Act is made to it, the civil court enjoys a plenary jurisdiction. Furthermore, if and when a dispute arises before the competent authority as regards entitlement of an educational agency in relation to educational institutions, the same must also be referred to the civil court. Statutory authority in terms of Section 5 of the Act cannot be said to have any jurisdiction to determine such a dispute. A statute, as is well known, must be read in such a manner so as to give effect to the provisions thereof. It must be read reasonably. A statute must be construed in such a manner so as to make it workable. The wording ""referred by the persons interested"" would, thus, mean a person who has a grievance as regards claim of other side relating to educational agency of the educational institutions. It can be done by filing a suit before the civil court. The term ""persons"", which is plural, has been used having regard to the fact that educational agency need not be a person alone but would also include a society registered under the Societies Registration Act or a body corporate in terms of the Companies Act. In any event, if such a dispute within the contemplation of Section 53-A has to be decided by a civil court, it will not attract the bar u/s 53 which applies only to a question which is required to be dealt with or decided by any authority or officer mentioned in the Act.

11. In the light of these legal authorities, even the 2nd Respondent's right to hold the office of Secretary cum Correspondent also will have to be resolved by an appropriate civil court and a Writ Petition will not lie. In the light of the judgment referred to above, the second Writ Petition is misconceived and the same is dismissed.

12. In the result, both the Writ Petitions stand dismissed. No. costs. The connected Miscellaneous Petition is closed.