

(2001) 02 MAD CK 0008
In the Madras High Court
Case No : Writ Petition No. 13880 of 2000

V. Muthuraja

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 53, 53A, 53A(1)

Citation : (2001) 02 MAD CK 0008

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : M. Krishnappan, for the Appellant; R. Muthaian, GA (Edu.), A Subramania Iyer and S. Ramamurthy for Respondents 1, 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The Petitioner has filed this petition for a direction to the Respondents 1 to 3 to initiate proper legal proceedings u/s 53-

A of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 by referring the dispute in regard to Educational Agency/ constitution of

School Committee 1973 to the Civil Court having jurisdiction for its decision in respect of Thavasumuthu Nadar Higher Secondary School,

Porayar, Nagapattinam District, as requested in the letter of the Petitioner dated 27.6.2000.

2. The facts of the case relating to the Writ Petition as could be called out from the affidavit of the Petitioner filed in support of the Writ Petition are

as follows:

The school, in question was started by one late V. Thavasumuthu Nadar, who managed the school till he passed away in or about 1905. After his

demise, the management of the school came into the hands of his grandson. Since, dispute arose between the heirs of late V. Thavasumuthu

Nadar, a suit in C.S. No. 655 of 1921 came to be filed before the High Court, Madras. Finally, the said suit ended in a compromise on

25.4.1941, as per the terms of compromise filed by the parties to the suit.

As per the terms of compromise as incorporated in the final decree, Clause 18 provided the Constitution of the management committee of the

school. As per the said Clause, affairs of the institution shall be managed by a committee of three members, one member to be nominated by

Plaintiffs 1 and 2, another member to be nominated by Plaintiffs 3 to 5 and the third member to be nominated by Defendants 2,3,4 and 13 that until

Defendant 13 attained majority, Defendants 2,3, and 4 shall nominate their representatives. The said Clause also provided R. Muthusamy Nadar,

G. Rathinasamy Nadar and V. Jambukesa Nadar shall be the members of the first committee of management of the School representing the above

three categories.

The Petitioner in the Writ Petition is the son of R. Muthusamy Nadar, who is Plaintiff No. 2 in Civil Suit No. 655 of 1921. Till the Tamil Nadu

Recognised Private Schools (Regulation) Act, 1973, hereinafter called ""THE ACT"" was passed, the school was managed in accordance with the

provisions of the decree. After ""The Act"" came into force, three senior most teachers, Head Master as ex-officio member and the representatives

of the Educational Agency were included in the Committee in addition to the nominated members as per the decree.

During the year 1980, as per the guidelines of the Government for the purpose of continuation of the aid, a society was formed and the same was

registered under The Societies Registration Act, 1975 with effect from 1.4.1982, As per the Rules and bye-laws of the Society, the members of

the Society were namely (a) nominated three members as per the decree who are also the Educational Agency members and (b) representatives of

the Educational Agency members as per the provisions contemplated under ""The Act"".

When the school committee election was held on 30.11.1996 for a period of three years from 1.1.1997 to 31.12.1999, the Petitioner, the

Respondents 4 and 5 and other members of the society were elected as

committee members of the school. Since three years period of the committee came to an end on 31.12.1999, the fourth Respondent issued a notice calling for a meeting to be held on 31.12.1999 to elect the members of the school committee as per the bye-laws of the society. The Petitioner also received a notice dated 28.12.1999 from the President of School S. Thavasumuthu, the 5th Respondent intimating that the General Body Meeting was fixed on 31.12.1999. The said notice was issued not only to the existing members of the society and also to other descendants of late Thavasumuthu Nadar, who were not members of the society, which was a clear violation of the bye-laws in as much as only the Secretary, the fourth Respondent, was empowered to convene a meeting and further the notice was issued to persons, who were not at all members of the society. Therefore, the action of the 5th Respondent was illegal, high-handed and in gross violation of the compromise decree passed in C.S. No. 655 of 1921. Apprehending law and order problem, the fourth Respondent, also lodged a police complaint in Crime No. 198 of 1999 on 31.12.1999 at Porayar Police Station and the said complaint is pending investigation. Therefore, the Petitioner sent a lawyer's notice dated 7.1.2000 to the 5th Respondent stating that the notice dated 28.12.1999 issued to convene a general body meeting was illegal and contrary to the decree passed by the High Court, Madras in C.S. No. 655 of 1921. Hence, the Petitioner called upon the 5th Respondent to withdraw the notice dated 28.12.1999. The 5th Respondent sent a reply dated 31.1.2000 stating that the meeting was duly convened, and it was decided to nominate five persons as members of the School Committee for which the Petitioner had also sent a rejoinder dated 6.2.2000 once again reiterating the action of the 5th Respondent as contrary to the decree passed by the High Court, Madras. Since the School Committee and Educational Agency have not been constituted in accordance with the decree in C.S. No. 655 of 1921 and by the bye-laws of the society, the Petitioner, along with the 4th Respondent, sent a letter dated 27.6.2000 to the Respondents 1 to 3 requesting to take appropriate proceedings u/s 53-A of "The Act" for settlement of the disputes and also for referring the same for adjudication to the Civil Court having jurisdiction. The Respondents 1 to 3 as well as the 5th Respondent

received the said letter, but, however the Respondents have not taken any steps to settle the disputes referred to above, therefore, the Petitioner is constrained to file the present Writ Petition.

3. Mr. M. Krishnappan, the Learned Counsel for the Petitioner, would submit that the Educational Agency shall be formed only in terms of Clause

18 of the compromise entered into between the parties to the suit in C.S. No. 655 of 1921 and the School Committee should be constituted as per

the bye-laws of the society. As per the bye-laws of the society, the Secretary, the 4th Respondent is alone empowered to convene the general

body meeting and not the President. In the instant case, the 5th Respondent had called for the general body meeting which was objected to by the

Petitioner, in his notice dated 7.1.2000. Ignoring the said letter, the 5th Respondent convened the meeting on 31.12.1999 and declared nominating

five persons to the school committee as the representatives of the families of the educational agency. The Learned Counsel submitted that in view

of the above there existed a dispute in the constitution of school committee since the Petitioner did not agree to the action of the 5th Respondent in

convening general body meeting and nominating the five members to the school committee. Therefore, the Petitioner represented to the

Respondents 1 to 3 including the 4th Respondent requesting them to refer the matter to Civil Court u/s 53-A of the ""The Act"".

4. As per the provisions of Section 53-A (1) of the ""The Act"" whenever any dispute as to the constitution of any educational agency, or as to

whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a school committee,

or as to the appointment of the secretary of the school committee arises, such dispute may be referred by the persons interested or by the

competent authority to the Civil Court having jurisdiction for its decision"".

5. As per the said provision, in the event the dispute is referred to the Competent Civil Court by the parties, all persons interested in the disputes

can jointly refer the dispute. In the event of there being no consensus among the parties, an individual cannot approach the Court for redressal and

therefore, the Respondents who are competent to refer the dispute u/s 53-A of ""The Act"" ought to have referred the dispute as the Respondents

have an obligation u/s 53-A of ""The Act"" to refer the dispute. Since the

Respondents 1 to 3 failed in their statutory duty to refer the dispute to the Civil Court, this Court has to direct the Respondents 1 to 3 to refer the dispute to the Civil Court for its decision. Therefore, the Learned Counsel submits that a direction as has been sought for in the Writ Petition should be granted.

6. Mr. S. Ramamurthy, the Learned Counsel appearing for the 5th Respondent would contend that the 5th Respondent is competent to convene the general body meeting and by virtue of the said power, he has convened the general body meeting and in the general body meeting, 5 members were nominated as the representatives of the educational agency to the school committee. The said nomination was in fact informed to the Petitioner while replying to the Petitioner's lawyer's notice on 31.1.2000.

Moreover, the Petitioner himself, along with one Mr. Rathinasamy Nadar, sent a letter dated 27.6.2000 to the Respondents 1 to 3 as well as the 5th Respondent to refer the dispute u/s 53-A of "The Act". In fact the said Rathinasamy Nadar, himself has filed a suit in O.S. No. 95 of 2000 before the District Munsif, Sirkali for a judgment and decree for declaration, declaring that the school committee alleged to have been formed on 31.12.1999 is illegal. Similarly, one Velliyan has also filed suit in O.S. No. 96 of 2000 before the District Munsif, Sirkali, with a similar prayer.

7. Therefore, the Learned Counsel submitted that the dispute is already pending before the Civil Court having jurisdiction, and there is no necessity for the Respondents 1 to 3 to refer the dispute once again to the Civil Court. Therefore, the Learned Counsel submitted that the Petitioner himself is entitled to raise a dispute u/s 53-A of "The Act" as a person interested, and without availing the said remedy, the Petitioner cannot seek for a direction to the Respondents to refer the dispute.

8. Mr. M. Krishnappan, the Learned Counsel appearing for the Petitioner in reply contended that it is not correct to say that by virtue of the provisions of Section 53-A of "The Act", the Petitioner can approach the Civil Court against the constitution of the school committee for its decision. Such a dispute can be filed only by persons interested and not by an individual person. In this case even though two individuals have approached the Civil Court, it cannot be called a dispute referred by persons interested. Therefore, the Learned Counsel submitted that when the

Respondents 1 to 3 are duty-bound to refer the dispute, they cannot refuse to refer the dispute on the ground that some of the parties are already

before the Civil Court and hence the Learned Counsel submitted that the prayer in the Writ Petition should be granted.

9. Mr. R. Muthaian, the learned Government Advocate appearing for the Respondents 1 to 3 would contend that it is true that the Petitioner sent a

letter to the Respondents on 27.6.2000 requesting the Respondents to take proper action u/s 53-A of ""The Act"" by referring the dispute to the

Court having jurisdiction and the said representation has not been so far considered by the Respondents and the Respondents 1 to 3 have not

referred the dispute as required by the Petitioner to the Civil Court. In fact, the learned Government Advocate, submitted that this Court can direct

the Respondents 1 to 3 to refer the dispute to the Civil Court having jurisdiction for its decision as requested by the Petitioner in his letter dated

27.6.2000.

10. In view of the above rival submissions, the point for determination by this Court is as to whether, when the suits are already pending between

some of the parties in respect of Constitution of School Committee, the educational authorities are precluded from referring the dispute to the Civil

Court at the instance of a person who is not a party to the suit already pending.

11. Section 53-A of ""The Act"" read as follows:

Settlement of dispute as to educational agency, etc.(1) Notwithstanding anything contained in Section 53, whenever any dispute as to the

Constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school,

or as to the constitution of a school committee, or as to the appointment of any secretary of the school committee, arises, such dispute may be

referred by the persons interested or by the competent authority to the Civil Court having jurisdiction, for its decision.

(2) Pending the decision of the Civil Court on a dispute referred to it under Sub-section (1), or the making of an interim arrangement by the Civil

Court for the running of the private school, the Government may nominate an Officer to discharge the functions of the educational agency, the

school committee or the secretary, as the case may be, in relation to the private school concerned.

12. A reading of the said section would indicate that when there is a dispute as to the formation of educational agency or constitution of school

committee, such dispute can be referred by the educational authorities to the Civil Court having jurisdiction for its decision. Such a dispute can also

be brought before the Civil Court by persons interested. It is not in dispute that the request has been made by the Petitioner to the Respondents in

his letter dated 27.06.2000 for referring the dispute in the Civil Court for its decision and the said request has not so far been considered by the

Respondents 1 to 3. Therefore, the Competent Authority should refer the dispute to the Court having jurisdiction. However, the submission of the

Learned Counsel for the 5th Respondent is that when the same dispute is already pending before the Civil Court, it is not necessary for the

Competent Authority to refer the same dispute once again to the Civil Court for its decision.

13. In this connection, it is to be noted that as per Section 53A of ""The Act"" when a dispute is to be referred by the parties to the dispute, it must

be referred only by the persons interested. The words ""Persons Interested"" should mean that all the persons who are interested in the dispute

should be parties to the suit. In the absence of all the persons interested join together to raise a dispute, the powers conferred on the Competent

Authority to refer the dispute assumes importance. Moreover, when a dispute is referred by an individual person interested impleading the persons

of his choice, any decree that may be passed on such dispute may not be binding on the other persons interested in the dispute. Only to avoid such

a contingency, the Legislatures have thought it fit to use the words ""Persons Interested"" in Section 53-A of ""The Act"". Admittedly in this case

though the Petitioner along with one M. Rathinasamy Nadar disputed and questioned the formation of educational agency and school committee,

only M. Rathinasamy Nadar resorted to file the suit and the Petitioner had resorted to pursue his letter dated 27.6.2000 addressed to the

Respondents 1 to 3 requesting them to refer the dispute. Section 53-A enables either the Competent Authority to refer the dispute or the persons

interested. Therefore, it is for the persons interested to either go to Civil Court or to approach the Authorities requesting the Authorities to refer the

matter to Civil Court. When a suit could not be initiated by all persons interested, the only remedy to an individual person interested is to request

the Competent Authorities to refer the dispute. When in fact a power is conferred on the Competent Authority, I do not find any error in the

Petitioner approaching the Competent Authority requesting for referring the matter to the dispute instead of approaching this Court.

14. In this connection, the submissions of the Learned Counsel for the Petitioner that some of the persons who are interested in the dispute have

not joined together to file a suit before the Civil Court which necessitated the Petitioner to approach the Competent Authority requesting them to

refer the same, is to be accepted. Moreover, in the suit filed by M. Rathinasamy Nadar in O.S. No. 95 of 2000 as well as by G. Vellaiyan in O.S.

No. 96 of 2000, the 5th Respondent of the Writ Petition and one Ramakrishnan alone have been impleaded as Respondents. The educational

authorities are not parties to the suit.

15. The words ""Persons Interested"" assume significance in the sense, all persons interested shall approach the Court only to avoid multiplicity of

litigations especially in the constitution of school committee whether it is in charge of day-to day affairs of the-administration or the affairs of the

school. Such a dispute in the constitution of school committee cannot be kept pending in Court for indefinite period. To give a quietus to the issue,

as to have a complete redressal in my considered view, it would be appropriate that all the persons interested in the dispute should be parties in the

suit in addition to the Competent Authority. The Competent Authority is necessary in the dispute even though they may not have any say as regards

the disputes raised by the rival claimants but to give effect to the judgment and decree and also to see that the judgment and decree are not

obtained by both the parties in any manner ignoring the real persons interested in such dispute and they are within the knowledge of the Competent

Authorities through any representation as has been made by the Petitioner. In the absence of the Competent Authority as well as other persons

interested in the suit, I do not find that any judgment and decree passed at the instance of the said M. Rathinasamy Nadar and G. Vellaiyan, against

the 5th Respondent and Radhakrishnan will once for all solve the issue. In such event, it is appropriate to accept the contention of the Learned

Counsel for the Petitioner that the dispute should be referred to the Civil Court for its decision at the instance of the Competent Authority. In this

connection, it would also be relevant to note the contentions of Respondents 1 to 3. The learned Government Advocate representing the

Respondents 1 to 3 also submitted that the dispute can be referred by the Respondents 1 to 3 and the Respondents cannot have any objection to refuse to refer dispute.

16. This Court had an occasion to consider a similar question in the judgment reported in Dr. N. Rengarajan v. The State of Tamil Nadu and Ors.

2000 Writ L.R.444. That was also a case of a dispute as to the constitution of the school committee and the Writ Petition prayer was for a

direction to the Competent Authority to refer the dispute to the Competent Court having jurisdiction u/s 53-A of "The Act". While considering

Section 53-A with reference to the dispute referred by the persons interested, the learned Judge has held that even when there is a dispute pending

before the Competent Civil Court, the same will not prohibit this Court from giving necessary direction to the Respondents to make a reference u/s

53-A of the Court, if the Court finds that there is a bona fide dispute between the members of educational agency regarding the right of

management including the members of the Selection Committee.

17. In this case admittedly, the Petitioner has disputed the power of the President, the 5th Respondent to convene the general body meeting and

the consequential nomination of five members to the school committee as representatives of educational agency. The Petitioner has also requested

the Respondents 1 to 3 in his letter dated 27.6.2000 to refer the dispute. The power of the President as well as the school committee has been

questioned and disputed by the Petitioner on the strength of Clause 18 of the compromise as contained in the decree of this Court in C.S. No.

655/1921.

18. From the facts of the case, I find that there exists a dispute in the constitution of the School Committee and such dispute ought to have been

referred by the Competent Authority as the same has been brought to its notice at the instance of the Petitioner in letter dated 27.6.2000.

Admittedly, the said letter has not been considered by the Competent Authority by referring the dispute to the Court having jurisdiction for its

decision.

19. In that view of the matter, I have no hesitation to direct the Competent

Authority under the Act to refer the dispute with regard to the constitution of the School Committee as raised by the Petitioner in his letter dated 27.06.2000 to the Civil Court having the jurisdiction over the school for its decision. Accordingly there will be a direction to the Competent Authority to refer the dispute as to the constitution of School Committee of Thavasa Muthu Nadar Higher Secondary School, Porayar, as requested by the Petitioner in his letter dated 27.06.2000 to the Civil Court having jurisdiction over the area where the school is located for its decision within a period of one month from the date of the receipt of copy of this order.

20. With these directions, this Writ Petition is allowed. No costs. The connected W.M.P. No. 20116 of 2000 is closed.