



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 09.08.2016

ORDERS DELIVERED ON : 29.08.2016

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THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. (MD) Nos.12320 & 12321 of 2016
and
WMP (MD) Nos.9380; 9381 & 9383 of 2016

G.Rajkumar .. Petitioner in both W.Ps.

vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary,
Higher Education (El) Department,
Fort St. George, Chennai.
- 2.The Director of Collegiate Education
Directorate of Collegiate Education,
9th Floor, E.V.K.Sampath Building,
College Road, Chennai.
- 3.Dr.K.Sekar,
The Directorate of Collegiate Education,
Directorate of Collegiate Education,
9th Floor, E.V.K.Sampath Building,
College Road, Chennai.
- 4.The Regional Joint Director of Collegiate Education,
D.No.30, Vaithinathiar Street,
Shenoy Nagar, Madurai.
- 5.R.Ramasamy .. Respondents in both W.Ps.

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the impugned order made by the Second Respondent in his proceedings in Na.Ka.No.27420/G2/2015 and Na.Ka.No.27420/G2/2015-2, dated 30.06.2016 and quash the same as illegal respectively.

For Petitioner in
both W.Ps.

: Mr.M.Ajmal Khan
Senior Counsel
for
M/s.Ajmal Associates

<https://hcservices.ecourts.gov.in/hcservices/> For R1, R2 & R4 in
both W.Ps.

: Mr.N.S.Karthikeyan,
Additional Government Pleader



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For R3
both W.Ps.

: Mr.B.S.Meltiue

For R5
both W.Ps.

: Mr.Issac Mohanlal
Senior Counsel

For
Mr.M.Senthil Kumar

C O M M O N O R D E R

W.P.(MD)No.12320 of 2016:-

The Petitioner has preferred the instant writ petition seeking to call for the records pertaining to the impugned order passed by the Second Respondent in proceedings in Na.Ka.No.27420/G2/2015, dated 30.06.2016 and to quash the same, as an illegal one.

2.W.P.(MD)No.12321 of 2016:-

The Petitioner has focused the instant writ petition praying to call for the records relating to the impugned order made by the Second Respondent in proceedings in Na.Ka.No.27420/G2/2015-2, dated 30.06.2016 and to quash the same, as an illegal one.

Petitioner's Contentions:-

3.The Learned Senior Counsel for the Petitioner urges before this Court that the impugned order, dated 30.06.2016, passed by the Second Respondent in rejecting the proposal submitted by the Petitioner is not in consonance with the order, dated 07.01.2016, in W.P.(MD)No.15799 of 2015, passed by this Court and as such, the impugned order, dated 30.06.2016, passed by the Second Respondent is an illegal one.

4.Advancing his argument, the Learned Senior Counsel for the Petitioner submits that this Court in W.P.(MD)No.291 of 2016, on 07.01.2016, had clearly directed the Second Respondent to pass order as directed by this Court in the order dated 17.11.2015 in W.P.(MD)No.15799 of 2015 by considering the representation dated 30.11.2015 sent by the Parent body together with the proposals dated 03.08.2015 and 27.07.2015. Further, it is represented on behalf of the Petitioner that the impugned order dated 30.06.2016, passed by the Second Respondent, does not reflect the consideration of the representation of the parent body dated 30.11.2015 nor the proposal of the Petitioner, thereby rendering the direction of the Court to consider them together along with each other, a futile one.

<https://hcservices.ecourtsgov.in/hcservices> 5.In this connection, the Learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in MANOHAR LAL v. UGRASEN reported in 2010 (11) SCC 557, at special

page 568, wherein at paragraph Nos.24 to 29, it is observed as under:-

"24. In Surjit Singh Vs. Harbans Singh, AIR 1996 SC 135, this Court while dealing with the similar issue held as under:

"In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes."

25. In All Bengal Excise Licensees Association Vs. Raghabendra Singh & Ors, AIR 2007 SC 1386, this court held as under:

"A party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof..... the wrong perpetrated by the Respondents in utter disregard of the order of the High Court should not be permitted to hold good."

26. In Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. & Anr. AIR 1996 SC 2005, this court after making reference to many of the earlier judgments held:

"On principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

27. In Gurunath Manohar Pavaskar Vs. Nagesh Siddappa Navalgund, AIR 2008 SC 901, this Court while dealing with the similar issues held that even a Court in exercise of its inherent jurisdiction under Section 151 of the Code of Civil Procedure, 1908, in the event of coming to the conclusion that a breach to an order of restraint had taken place, may bring back the parties to the same position as if the order of injunction has not been violated.

28. In view of the above, it is evident that any order passed by any authority in spite of the knowledge of the interim order of the court is of no consequence as it remains a nullity.

29. In Messrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made



to amend the plaint so as to incorporate in it an alternative case."

6.The Learned Senior Counsel for the Petitioner strenuously projects an argument that when a Law requires a statutory body to do a particular thing in a particular manner, it shall be done in such manner alone or not at all. Moreover, the plea taken on behalf of the Petitioner is that since this Court had expressly required the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, to pass orders by considering certain things, the same amounts to prohibition for passing orders in any other manner.

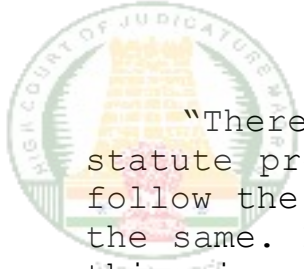
7.To lend support to the contention that where the Law provides for the thing to be done in a manner, then, it has to be done in that fashion and in no other way, the Learned Senior Counsel for the Petitioner, places reliances on the decision of the Hon'ble Supreme Court in DIPAK BABARIA v. STATE OF GUJARAT reported in 2014 (3) SCC 502, at special page 538, wherein at paragraph No.61, it is held as follows:-

"It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor ((1875) 1 Ch D 426, 431) was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor (AIR 1936 PC 253) and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh (AIR 1954 SC 322). This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges (AIR 1964 SC 358) in the following words:-

"8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted..."

This proposition has been later on reiterated in Chandra Kishore Jha Vs. Mahavir Prasad (1999 (8) SCC 266), Dhananjaya Reddy Vs. State of Karnataka (2001 (4) SCC 9) and Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited (2008 (4) SCC 755)."

8.Also, the Learned Senior Counsel for the Petitioner, relies on the decision in J.JAYALALITHAA v. STATE OF KARNATAKA reported in 2014 (2) SCC 401, at special page 416, wherein at paragraph No.34, it is held as follows:-

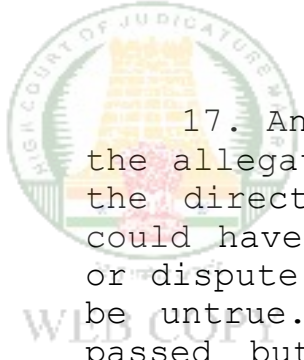


"There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible."

9. Apart from the above, the Learned Senior Counsel for the Petitioner projects an argument that the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, in the impugned order, dated 30.06.2016 (posted on 04.07.2016) had rejected the proposal submitted by the Petitioner and in fact, made a reference to the interim order dated 30.08.2004, passed by this Court in W.P.M.P. (MD) Nos.16051 of 2003; 17463 of 2004 and 867 of 2004 in W.P. (MD) Nos.12815 of 2003 and 12431 of 2004. In this regard, the Learned Senior Counsel for the Petitioner takes an emphatic plea that in the aforesaid interim order, dated 30.08.2004, mentioned in WPMPS in the writ petitions referred to supra, nowhere it is stated that the Secretaryship of the college is to be made on rotation basis among three Ambalams and since the impugned order, dated 30.06.2016 of the Second Respondent was passed based on non-existent reason, the same is vitiated by non application of mind and malice in Law.

10. The Learned Senior Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in SOMESH TIWARI v. UNION OF INDIA reported in 2009 (2) SCC 592, at special page Nos.597 to 599, wherein it is observed as follows:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.



17. An enquiry was initiated against the appellant in terms of the allegations contained in an anonymous letter. Having regard to the directives of the Central Vigilance Commission, no enquiry could have been initiated against him but it is beyond any doubt or dispute that in the said enquiry, the allegations were found to be untrue. Despite the same not only an order of transfer was passed but to a station, which, according to the Respondents themselves, was 'harsh'.

18. The competent authority of appellant did not consider his initial representation. Admittedly an order of stay was passed by the Central Administrative Tribunal while disposing of O.A. No. 897 of 2005 dated 27th September, 2005. By reason of the said order passed by the Central Administrative Tribunal, it was obligatory on the part of the Respondents to dispose of his representation. When it was rejected, he filed a fresh Original Application. Indisputably he did not join his post at Shillong.

19. We, although, are of the opinion that the appellant, thus, should have joined at his transferred post, he did not do so as a result whereof he might have committed a misconduct. But while invoking the doctrine of 'no work no pay', as urged by Mr. Quadri, the superior courts must strike a balance. With a view to do justice to both the parties, the court was required to consider the conduct of both the parties.

20. The Respondents knew that the matter was pending before the Tribunal. They did not approach the Tribunal to obtain leave for passing the second order of transfer. They passed an order of transfer while considering the cases of promotion and transfer of a large number of officers. The order of transfer suffered from a total non application of mind in so far as it proceeded on the premise that the appellant had already joined his post at Shillong. Even it was not stated that the said order of transfer was being passed in modification of the earlier order of transfer or upon reconsideration of the matter afresh on humanitarian ground or otherwise. We may place on record an extract from the note sheet of Member (P&V) dated 31st October, 2005 which reads as under :-

"AC(P) (i.e. Petitioner) has tried to fix responsibility on some superintendents for loss/closure of some files about investigations against assesseees, those superintendents, who happened to belong to SC/ST category on being thus pressured, has complained to the police and other agencies alleging harassment of backward classes by Sh. Somesh Tiwari, a Brahmin, these complaints were found to be baseless and the police had not pursued the matter. Having failed at the local level it is possible that these officers had lodged the complaint at Delhi which resulted



Sh. Tiwari's transfer. Sh. Tiwari is an honest and well intentioned officer..... It is proposed to give him less harsh posting." (Emphasis supplied)

Removal of the appellant from Bhopal to a place which is 'less harsh' was thus recommended, which had evidently been acted upon. It is thus demonstrable that 'Shillong' was considered to be a harsh posting.

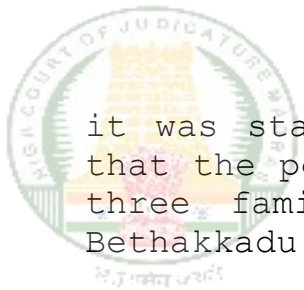
21. For appreciating the effect of such an order, we may also notice the order dated 19th October, 2005 which has been reproduced by the High Court in its impugned judgment, the relevant portion whereof reads thus :-

"2. As per Para 9.1 of the New Transfer Policy, Government may, if necessary in public interest, transfer or post any officer to any station or post. Para 9.2 of the policy stipulates that, an officer against whom the CVC has recommended initiation of vigilance proceedings, should not normally be posted or remain posted at the station where the cause of the vigilance proceedings originated. He shall also not be posted on a 'sensitive' charge. This restriction will remain in operation till such time the vigilance matter is not closed.

3. In the case of Shri Tiwari, he belongs to Madhya Pradesh and on enquiry into complaint of working on caste-biased ideology he was to be over-dependent upon a set of officers, apparently giving an impression that he (is) working on caste-biased ideology. These circumstances have necessitated his transfer from Bhopal Central Excise Commissionerate to Shillong Commissionerate."

No vigilance enquiry was initiated against him. The order of transfer was passed on material which was not existent. The order, therefore, not only suffers from total non application of mind on the part of authorities of Respondent No.1, but also suffers from malice in law."

11. Expatiating his submission, the Learned Senior Counsel for the Petitioner contends that the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, at paragraph No.10 of his Counter, had clearly mentioned that as per the earlier arrangement of Aruppukkottai Town Devangar Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangar Commercial Association, the appointment of the Fifth Respondent (R.Ramasamy) as Secretary of Aruppukkottai Devangar Arts College is legally valid. At this stage, the Learned Senior Counsel for the Petitioner draws the attention of this Court to the Additional Counter filed by the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, wherein



it was stated that the Fifth Respondent had specifically claimed that the post of Secretary was elected on rotation basis among the three families of Moolaiveedu Ambalam, Kariakkara Ambalam and Bethakkadu Ambalam.

12. The Learned Senior Counsel for the Petitioner submits that the Fifth Respondent in his counter, dated 22.07.2016 had specifically mentioned at paragraph Nos.5 and 9 that he had claimed in his proposal that the Secretaryship is made on rotation basis, and as a matter of fact, the said proposals of the Fifth Respondent dated 03.08.2015 and 13.08.2015 do not disclose any such claim made by the Fifth Respondent in this regard. Further, it is represented on behalf of the Petitioner that public orders are to be tested for the reasons assigned therein and in this connection, the Learned Senior Counsel for the Petitioner cites the order dated 12.07.2016 in W.P.(MD)No.9953 of 2016 between SANKARANARAYANAN v. THE REGIONAL PASSPORT OFFICER, GOVERNMENT OF INDIA, MADURAI & ANOTHER (Vide CDJ 2016 MHC 2607), wherein at paragraph No.25, it is observed as under:-

"In reality, the authority of an Order/Judgment is to be based on reason assigned therein and not by anything-else as per decision of the Honourable Supreme Court in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi, reported in AIR 1978 SC 851."

13. The Learned Senior Counsel for the Petitioner seeks in aid of the decision of the Hon'ble Supreme Court in STATE OF PUNJAB v. BANDEEP SINGH reported in 2016 (1) SCC 724, at special page 727, wherein at paragraph No.4, it is inter alia observed as follows:-

"There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi [1978] 2 SCR 272, of which the following paragraph deserves extraction:

"8. The second equally relevant matter is 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. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji [1952] 1 SCR 135:



'9. 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.'

Orders are not like old wine becoming better as they grow older."

14.As regards the impugned order, dated 30.06.2016, passed by the Second Respondent in W.P.(MD)No.12321 of 2016, in and by which, the Second Respondent had approved the Secretaryship of the Fifth Respondent, the Learned Senior Counsel for the Petitioner vehemently contends that that said impugned order of the Second Respondent does not disclose any reason or application of mind, for having approved the proposal of the Fifth Respondent. In short, the stand of the Petitioner is that since the impugned order, dated 30.06.2016 of the Second Respondent is a non speaking one, the same is liable to be set aside in the Eye of Law.

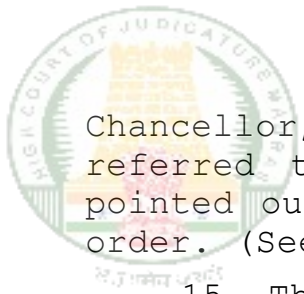
15.As a matter of fact, it is the plea of the Petitioner that no reasons were assigned by the Second Respondent at the time of passing the impugned order dated 30.06.2016 viz., in approving the candidature of the Fifth Respondent and on this score alone, the impugned order dated 30.06.2016 stands vitiated.

16.The Learned Senior Counsel for the Petitioner contends that even for an administrative order, reasons are to be assigned by the concerned authority who passes the said order and in this connection, the Learned Senior Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in KRANTI ASSOCIATES (P) LTD., v. MASOOD AHMED KHAN reported in 2010 (9) SCC 496 at special page 503, wherein at paragraph Nos.12 to 15, it is held as follows:-

"12.The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak and others vs. Union of India and others reported in AIR 1970 SC 150.

13. In Kesava Mills Co. Ltd. and another vs. Union of India and others reported in AIR 1973 SC 389, this Court approvingly referred to the opinion of Lord Denning in Regina vs. Gaming Board Ex parte Benaim [(1970) 2 WLR 1009] and quoted him as saying "that heresy was scotched in Ridge and Baldwin, 1964 AC 40".

14. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord



Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

17. Further, in the aforesaid decision at page Nos.510 to 512, at paragraph No.47, it is observed as follows:-

"Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.



j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

18. The Learned Senior Counsel for the Petitioner refers to the decision in G. RAJAM v. DIRECTOR OF RURAL DEVELOPMENT, CHENNAI reported in 2006 (2) M.L.J. 532, wherein it is held that 'the impugned order shall state the reasons and the reasons cannot be incorporated or supplemented while filing the counter affidavit.'

19. In substance, the Learned Senior Counsel for the Petitioner takes a plea that whether the Second Respondent's impugned orders either administrative or judicial are required to assign reasons and unreasoned orders in Law, cannot stand scrutiny and as such, the impugned order dated 30.06.2016 of the Second Respondent are not valid in the Eye of Law.

Submissions of Respondent Nos.1, 2 and 4:-

20. In response, the Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 submits that based on the orders of this Court, a proposal was received by the Director of Collegiate Education, who approved the Secretaryship of one Soundiah, as per proceedings dated 08.11.2004. Later, the said Soundiah, was held the post of Secretary for 8 years and he resigned the



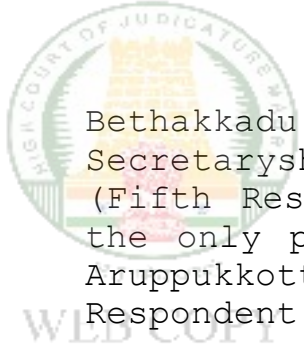
Secretaryship on 22.08.2012 due to his family circumstances and on health grounds.

21.It is represented on behalf of the Second Respondent that after the resignation of the said Soundiah, the Petitioner (G.Rajkumar) was selected as Secretary and based on his selection, an approval was given to him for three years and in the meanwhile, certain allegations were made against the writ Petitioner (G.Rajkumar) and the members of the Administrative Committee of the Devangar Arts College had passed the resolution and removed the Petitioner (G.Rajkumar) from the Secretaryship and selected one S.Jeyaraj Sundaram as the Secretary of Devangar Arts College.

22.Apart from that, a change of Secretaryship proposal was received from the Fourth Respondent/Regional Joint Director of Collegiate Education, Madurai, as per letter dated 22.07.2013 and based on the aforesaid proposal, the appointment of S.Jeyaraj Sundaram as the Secretary of Devangar Arts College, was approved by the Director of Collegiate Education, through proceedings dated 06.08.2013. Being dissatisfied with the order of the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, the writ Petitioner (G.Rajkumar) filed W.P.(MD)Nos.13241 and 13774 of 2013 and obtained an interim order in the said writ petitions.

23.In fact, based on the order of the High Court, the Secretaryship of the Petitioner (G.Rajkumar) was again approved by the Director of Collegiate Education through proceedings dated 20.08.2013. At this stage, the Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 brings it to the notice of this Court that the period of approval of the Secretaryship of the writ Petitioner (G.Rajkumar) came to an end on 22.08.2015 and before the expiry of the term of the Secretaryship, the Petitioner (G.Rajkumar) had submitted an application dated 27.07.2015 for extension of Secretaryship of Aruppukkottai Devangar Arts College. Also it is represented that in the meanwhile, one N.Mani Chettiyar (who claimed as Secretary, Aruppukkottai Devangar Moondru Mirasu Uravinmurai) recommended the name of Dr.R.Ramasamy as College Secretary. Indeed, the said N.Mani Chettiyar, Secretary, Aruppukkottai Devangar Moondru Mirasu Uravinmurai had claimed that 'they are the original committee members formed in accordance with the interim orders of the High Court'. Moreover, they had also cited in their favour a decree in O.S.No.99 of 1984 on the file of the Learned District Munsif, Aruppukkottai, and claimed that the post of College Secretary, who was selected on rotation basis between the three Ambalams i.e. Bethakkadu Ambalam, Kariakkara Ambalam and Moolaiveedu Ambalam.

<https://hcservices.ecourts.gov.in> 24. And indeed further, they claimed that the Petitioner (G.Rajkumar) belongs to Kariakara Ambalam, who enjoyed the Secretaryship of three years. As such, a member belonging to the



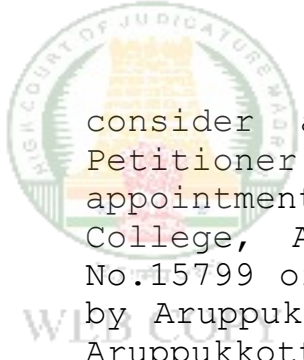
Bethakkadu Ambalam is the person eligible for the next Secretaryship as per earlier settlement and therefore, R.Ramasamy (Fifth Respondent), who is representing the Bethakkadu Ambalam is the only person eligible for the appointment of Secretaryship of Aruppukkottai Devangar Arts College and requested the Second Respondent to approve the Secretaryship made by them.

25. The Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 contends that the Fifth Respondent (R.Ramasamy) filed W.P.(MD)No.15799 of 2015 before this Court and prayed for passing of an order in directing the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, to consider the proposal submitted on 03.08.2015 and representation submitted on 13.08.2015 (through proper channel) appointing the Petitioner therein as Secretary of the Devangar Arts College, Aruppukkottai and accord approval in favour of the Petitioner within the time frame etc. In the said writ petition, this Court passed an interim order of status-quo on 01.09.2015 by making the following observation at paragraph No.12, which runs as under:-

"12. In view of such a submission made by both parties, a direction issued to the 2nd Respondent to consider the proposals dated 03.08.2015 and 27.07.2015 referred to above and to pass orders on merits and in accordance with law. However, it is made clear that such order is subject to any order, including interim orders to be passed in O.S.Nos.55 and 56 of 2015 on the file of the Sub Court, Aruppukkottai."

26. The Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 submits that later Mani Chettiyar, Secretary/Trustee, Aruppukkottai Devangar Moondru Mirasugal Ullitta Uravinmurai, Aruppukkottai and ten others instituted a suit in O.S.No.56 of 2015 on the file of Sub-Court, Aruppukkottai and sought for a declaration that the administrative committee headed by plaintiffs 1 to 3, as Aruppukkottai Town Moondru Mirasugal Uravinmurai and also prayed for forbearing the Respondents 1 to 3 therein not to interfere with the administration of the plaintiff Nos.1 to 3. Also, in the suit, a relief to restrain the Respondents 1 to 16, to elect a new Secretary to the Devangar Arts College, Aruppukkottai and Respondents 17 and 18 i.e. the Director of Collegiate Education and Regional Joint Director of Collegiate Education, Madurai Region not to approve the selection made by the Respondents 1 to 16 was sought for and in the suit, no interim order/direction, has been passed and the matter is pending.

27. The Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 refers to W.P.(MD)No.291 of 2016 filed by the writ Petitioner (S. Rajkumar), wherein a relief was sought to pass an order in directing the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, to



consider and pass orders on the proposal submitted by the Petitioner (G.Rajkumar) dated 27.07.2015 seeking approval for appointment of the Petitioner as the Secretary of Devangar Arts College, Aruppukkottai, as directed by this Court in W.P.(MD) No.15799 of 2015 together with the representation jointly prepared by Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangarr Commercial Association, dated 30.11.2015 and the said writ petition, this Court at paragraph No.6, had observed the following:-

"6.In view of such a narrow prayer, the Second Respondent is directed to pass orders as directed by this Court in the order dated 17.11.2015 in W.P.(MD)No.15799 of 2015 by considering the representation dated 30.11.2015 sent by the parent body along with the above proposals dated 03.08.2015 and 27.07.2015."

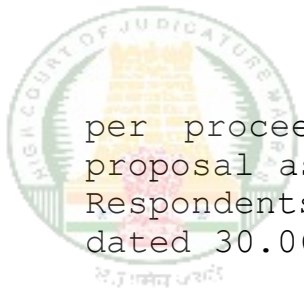
28.The Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 takes an emphatic plea that the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, had examined the writ Petitioner and the Fifth Respondent's proposal/representation and considered the same in detail. Further, the proposals received from the Petitioner and the Fifth Respondent were supported by different groups of Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangarr Commercial Association.

29.The Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 submits that the Fifth Respondent (R.Ramasamy) claimed that the post of Secretary was elected on rotation basis among the three families of Bethakkadu Ambalam, Kariakkara Ambalam and Moolaiveedu Ambalam and he also claimed that former Secretary G.Rajkumar (the writ Petitioner) belongs to Kariakkara Ambalam and exhausted their turn and now the post of Secretary should be from the members of Moolaiveedu Ambalam as per the earlier agreement and as such, the plea of the Fifth Respondent is that based on the aforesaid rotational system adopted, he was selected for the appointment of Secretary.

30.The core plea taken on behalf of the Respondents 1, 2 and 4 is that by virtue of the orders of this Court, dated 17.11.2015 and 07.01.2016, the Petitioner's and the Fifth Respondent's proposals/representations dated 27.07.2015; 30.11.2015 and 13.08.2015 were examined in detail and necessary orders were passed and besides this, as per the earlier arrangement of Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangarr Commercial Association, the appointment of the Fifth Respondent (R.Ramasamy) as Secretary of Aruppukkottai Devangar Arts College, is legally valid and

https://hcdirect.gov.in/hcdirect/

Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, had approved the appointment of the Fifth Respondent as Secretary of the College as



per proceedings dated 30.06.2016 and rejected the Petitioner's proposal as per order dated 30.06.2016. In short, the stand of the Respondents 1, 2 and 4 is that the orders of the Second Respondent dated 30.06.2016 are valid in Law.

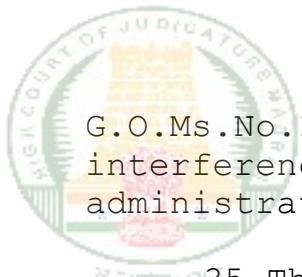
31. The Learned Additional Government Pleader for Respondent Nos.1, 2 and 4 contends that the Fifth Respondent filed W.P.(MD) No.15799 of 2015 and on 17.11.2015, this Court had passed an order in directing the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, to consider the representation dated 30.11.2015 sent by the parent body along with the proposals dated 03.08.2015 and 27.07.2015. As such, the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, had issued two separate orders by considering the proposals of the Petitioner and the Fifth Respondent separately. In fact, the proposals of the individuals were considered based on merits.

Pleas of Third Respondent:-

32. The Learned Counsel for the Third Respondent submits that the third Respondent had served as Director of College Education (Full Additional Charge) till 31.07.2016 and he attained the superannuation on 31.07.2016. Further, it is represented that from 01.08.2016 onwards, the third Respondent is serving as Joint Director of Collegiate Education (Finance) Chennai under re-employment as per orders of the First Respondent/Secretary, Higher Education (El) Department, Fort St. George, Chennai, dated 30.07.2016 in G.O.(Rt) No.107.

33. The Learned Counsel for the Third Respondent contends that the third Respondent had denied that he had received a huge sum as bribe from the Fifth Respondent and without any semblance of material on record, the writ Petitioner had made allegation against the Fifth Respondent that he had received huge sum as bribe and approved the proposal sent by the parent body for appointing Secretaryship post to the Fifth Respondent. Also, it is the plea of the third Respondent that the writ Petitioner with a mala fide intention and in order to tarnish his image of the highest post, had made a bald untenable allegation against him, because of the reason that the writ Petitioner's proposal approved him as the Secretary of the College, has not been considered in his favour. At this stage, the Learned Counsel for the Third Respondent proceeds to state that the third Respondent had reserved his right to proceed against the writ Petitioner in regard to the purported 'Malice'.

34. Apart from that, the Learned Counsel for the Third Respondent submits that the writ Petitioner's Secretaryship post came to an end on 22.08.2015 and later the college was under the Management of the Fourth Respondent for direct payment as per



G.O.Ms.No.1021, vide order, dated 14.10.2015 and as such, the interference of the third Respondent in the internal administration of the College does not arise.

35.The Learned Counsel for the Third Respondent contends that the writ Petitioner and the Fifth Respondent had sent proposals on 27.07.2015 and 03.08.2015 and besides this, Petitioner's numerous representations dated 07.04.2015; 27.07.2015; 14.08.2015; 16.10.2015; 31.12.2015; 08.01.2016; 27.01.2016 and 20.06.2016 were received by the office of the Second Respondent. Moreover, the Fifth Respondent had also given several representations on various dates seeking to approve him as Secretary of Devangar Arts College, Aruppukkottai. Because of the voluminous workload, the proposals of the Petitioner and the Fifth Respondent were not considered in time. In fact, the impugned orders were passed on 30.06.2016 and because of the intervening holidays, the Despatch Section posted the order only on 04.07.2016.

36.The Learned Counsel for the Third Respondent cites a decision of this Court in SHRI ANDAL ALAGAR KALYANA MANDAPAM PRIVATE LTD. v. UNION OF INDIA reported in 2007 (7) MLJ 1021, at special page 1023, wherein it is inter alia observed that 'landowners are not entitled to allege malafide in acquisition proceedings, when the sequence of the events clearly show that the authorities have acted in accordance with law.'

Submissions of Fifth Respondent:-

37.The Learned Senior Counsel for the Fifth Respondent submits that since the Petitioner had not administered the College in an efficient manner due to his autocratic way of functioning, numerous disputes arose between the members of the Devangarr Community and the above said two organisations. Also, it is the stand of the Fifth Respondent that the Office Bearers of Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangarr Commercial Association had convened a joint meeting on 15.07.2015 and they had resolved to remove the Petitioner from the post of Secretaryship and the other members from the College Committee and in fact, the Fifth Respondent was elected as Secretary of the Devangar Arts College, Aruppukkottai. Moreover, after passing the resolution, it was properly submitted to the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai for his approval as per the communication sent by (1) Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and (2) Aruppukkottai Town Devangarr Commercial Association, dated 03.08.2015 for granting approval of the Fifth Respondent as Secretary of the Devangar Arts College, Aruppukkottai.

<https://hcservices.ecourts.gov.in/hcservices/> 38.The Learned Senior Counsel for the Fifth Respondent proceeds to state that later on 10.08.2015, the joint meeting of the two associations were convened and they are decided that the

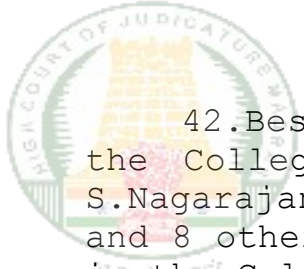


new Secretary and the members of the College Committee, who are nominated shall take charge, on 22.08.2015, when the tenure of the writ Petitioner had expired. In this connection, the plea of the Fifth Respondent is that the Secretary post for the Devangar Arts College is selected on the basis of rotation, which is accepted and in force from time memorial. In fact, Moondru Mirasugal means three sub-sects of Devangar Community viz., (1) Moolai Veedu Ambalam; (2) Kariakkarar Ambalam and (3) Bethakkadu Ambalam residing at Aruppukkottai town.

39. That part, it is represented on the side of the Fifth Respondent that the membership in the College Committee is apportioned between the three Ambalakarars in the ratio of 2 for Moolai Veedu Ambalam, one for Kariakkarar Ambalam and one for Bethakkadu Ambalam. Besides that, the Secretaryship of the College is held by a person belonging to one Ambalam at a time and later on the expiry of the tenure, it is allotted to other Ambalams on ratio basis. In reality, the stand of the Fifth Respondent is that this rotation was determined in O.S.No.99 of 1984 on the file of District Munsif Court, Aruppukkottai through an order dated 13.7.1989.

40. Continuing further, the Learned Senior Counsel for the Fifth Respondent brings it to the notice of this Court that when the Petitioner's claim as Secretary of the College was under threat, he addressed a communication dated 08.08.2013 to the Revenue Divisional Officer, Aruppukkottai, wherein he himself had admitted about the rotation among the three Ambalams and he belongs to Kariakkarar Ambalam and on expiry of his tenure as Secretary of the College, the next three years tenure commencing from 2015 to 2018 would be held by a person belongs to Bethakkadu Ambalam.

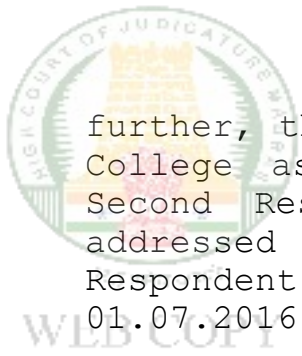
41. The Learned Senior Counsel for the Fifth Respondent contends that although the tenure of the Petitioner had expired and he failed to demit the Secretaryship post, there arose the dispute between the Devangar Community people and also that several complaints were made against him arraying him as prime accused and therefore, the College was brought the same under the Management of the Second Respondent as per proceedings in Na.Ka.No.27420/G2/2015, dated 14.10.2015 based on G.O.Ms.No.1021, Education Department, dated 02.09.1985. That part, it is brought to the notice of this Court on behalf of the Fifth Respondent that though the tenure of the writ Petitioner had expired as on 22.08.2015, he had sent a proposal to the Second Respondent as if the above stated two organisations have once again elected him as Secretary of the College for the three years period commencing from 23.08.2015 to 22.08.2018 as per the College Committee meeting



42. Besides this, it is the stand of the Fifth Respondent that the College Committee consists of the writ Petitioner and one S.Nagarajan as President, and one K.Sathiyamoorthy, as Treasurer and 8 other Committee Members had convened a meeting on 19.07.2015 in the College premises and they had unanimously resolved to elect the writ Petitioner as Secretary of the College for the period from 23.08.2015 to 22.08.2018. In fact, this resolution was sent to the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai as per letter, dated 27.07.2015. In this connection, the plea taken on behalf of the Fifth Respondent is that Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangarr Commercial Association had not nominated the Petitioner as Secretary of the College and in fact, the Petitioner, who was the then Secretary of the College Committee had created a letter dated 27.07.2015 nominating himself as Secretary of the College and the Fifth Respondent filed W.P.(MD)No.15799 of 2015 seeking approval from the Second Respondent as Secretary of the Devangarr Arts College. This Court, finally on 17.11.2015 in W.P.(MD)No.15799 of 2015 had directed the Second Respondent to consider the proposals sent by the Fifth Respondent and the proposal sent by the writ Petitioner dated 27.07.2015 on merits and in accordance with Law. Furthermore, in the order itself, it was made clear that 'such order, which is to be passed by the Second Respondent is subject to any order including interim orders to be passed in O.S.Nos.55 and 56 of 2015 pending on the file of Sub Court, Aruppukkottai.

43. The Learned Senior Counsel for the Fifth Respondent invites the attention of this Court that N.Mani Chettiyar, Secretary/Trustee of Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai, had filed a suit in O.S.No.56 of 2015, on the file of Sub Court, Aruppukkottai praying that the defendant in the suit are not entitled to nominate the Secretary of Devangarr Arts College, Aruppukkottai. Likewise, it is represented on behalf of the Fifth Respondent that the suit in O.S.No.55 of 2015 was filed by the President and Secretary of the Aruppukkottai Town Devangarr Commercial Association against one S.Paramasivam and G.Meenakshi Sundaram, who claims to be the President and Secretary of Aruppukkottai Town Devangarr Commercial Association after obtaining resignation letters forcibly from one R.Jeyaseelan and K.Jeyasuri and as on date, the said two suits are pending.

44. The Learned Senior Counsel for the Fifth Respondent submits that the Second Respondent/Director of Collegiate Education, Directorate of Collegiate Education, Chennai, after a careful consideration of the resolutions passed by (1) Aruppukkottai Town Devangarr Moondru Mirasugal Uravinmurai and (2) Aruppukkottai Town Devangarr Commercial Association and on the basis of the resolution followed in approving the Secretaryship had granted approval in favour of the Fifth Respondent as Secretary of the Devangarr Arts College, as per order dated 30.06.2016 and



further, the Fifth Respondent had taken charge as Secretary of the College as on 01.07.2016, which was also communicated to the Second Respondent. Furthermore, Principal of the College had addressed a communication to the Second Respondent that the Fifth Respondent had taken over charge as Secretary of the College on 01.07.2016.

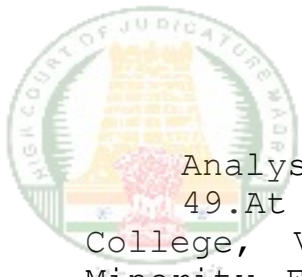
45. Moreover, it is brought to the notice of this Court on behalf of the Fifth Respondent that the Fifth Respondent after taking charge had made certain proceedings viz., promoting one S.Parisithu @ Mariappan, as Office Superintendent and also one S.Veerapandi was promoted as Assistant and one S.Suriya Prabha was promoted as Junior Assistant, as per order dated 03.07.2016. Besides this, the Fifth Respondent had also sent the arrears of the salary bill for the Teaching Staff to the Fourth Respondent, on 05.07.2016, which was also approved by the Fourth Respondent.

46. The Learned Senior Counsel for the Fifth Respondent submits that the Secretary post is a pivotal one as per Rule 9 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 and already, the NAAC Committee had visited the College on two occasions and the College was re-accredited with 'A' Grade etc. Finally, it is the contention of the Fifth Respondent that considering the welfare of the College as well as the student community, his appointment as Secretary of the College is to be sustained.

Reply of the Petitioner:-

47. By means of Reply, the Learned Senior Counsel for the Petitioner submits that the Petitioner denies the fact that the Secretaryship of the College is made on rotation basis and the same is in force from time memorial. Apart from that, it is represented on behalf of the Petitioner that the averment/allegation that the Petitioner had addressed a communication on 08.08.2013 to the Revenue Divisional Officer, Aruppukkottai accepting the rotation basis and the next turn belongs to a person from Bethakkadu Ambalam group is an absolute falsehood and in short, the said letter is a product of fabrication.

48. The Learned Senior Counsel for the Petitioner proceeds to take a stand that the criminal cases registered against the Petitioner, wherein he is arrayed an accused, are all false cases at the instance of complaint filed by the said Mani Chettiar and his close aide one Sankaralingam and on the side of the Petitioner, it is denied that he had created a letter on 27.07.2015 nominating him as a Secretary of the College and submitted the said proposal to the Second Respondent. In short, the Petitioner is that in his capacity, on 27.07.2015, he had sent proposal, on the basis of the appointment made by the Joint Committee.



Analysis:-

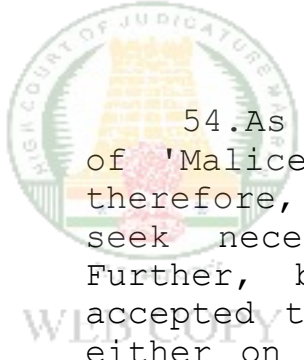
49. At the outset, it is to be pointed out that Devangar Arts College, Virudhunagar, Aruppukkottai District, is a linguistic Minority Educational Institution. It comes to be known that the Petitioner/College has been administered by an Administrative Committee jointly appointed by Aruppukkottai Town Devangar Moondru Mirasugal Uravinmurai and Aruppukkottai Town Devangar Commercial Association.

50. It transpires that one Soundaiah, who was appointed as Secretary resigned on 22.08.2012. The stand of the writ Petitioner is that he was appointed as Secretary of the College for the period of three years till 22.08.2015. Further, his version is that the parent body prior to the expiry of his tenure, at its meeting, re-appointed him a Secretary of the College for another three years from 23.08.2015 to 22.08.2018. In this regard, a proposal was projected through College to the Second Respondent seeking approval on 27.07.2015.

51. While that being so, Aruppukkottai Town Devangar Commercial Association, Rep. by its President R.Jeyaseelan and three others filed a suit in O.S.No.55 of 2015 on the file of Sub-Court, Aruppukkottai against one Paramasivam and 10 others seeking necessary relief of declaration to the effect that the resignation letter obtained by the defendant No.1 to 7, by threatening the suit plaintiff Nos.1 and 2 and the suit Societies Treasurer G.S.Boominath, is illegal and for consequential relief of permanent injunction etc.

52. Further, the said N.Mani Chettiar along with others as plaintiffs filed O.S.No.56 of 2015 on the file of Sub-Court, Srivilliputhur, against one M.Siva and 18 others seeking a relief of declaration to the effect that the plaintiff Nos.1 to 3 under whose head the Administrative Committee functions (The suit Society of Aruppukkottai Town Devangar Moondru Mirasugal Uravinmurai) etc.

53. It is to be noted that the Fifth Respondent (R.Rajkumar) in W.P.(MD)Nos.12320 and 12321 of 2016 filed W.P.(MD)No.15799 of 2015 before this Court praying to approve him as Secretary of the College. However, this Court, on 17.11.2015, directed the Second Respondent to consider the proposal of the Petitioner, dated 03.08.2015 and the claim of the Fourth Respondent that he was appointed as Secretary and the proposal dated 27.07.2015 sent to the Second Respondent and to pass orders on merits and in accordance with Law. Further, in the said order, it was made clear that such order is subject to any order including interim orders to be passed by the Court in O.S.Nos.55 and 56 of 2015 on the file of trial Court, Aruppukkottai.



54.As far as the present cases are concerned, the allegations of 'Malice Infact' are very much disputed in serious terms and therefore, this Court, opines that it is for the affected party to seek necessary relief(s) before the competent Civil Forum. Further, before any such aspects of 'Malice in Law' can be accepted the individual, who avers/alleges it ought to establish either on admitted or proved facts, in the considered opinion of this Court.

55.As far as W.P.(MD)No.12320 of 2016 is concerned, it is filed against the order, dated 30.06.2016 passed by the Second Respondent in approving the appointment of Fifth Respondent to act as Secretary of the College. In this regard, the plea taken on behalf of the Petitioner is that the impugned order, dated 30.06.2016 of the Second Respondent is in violation of the order passed by this Court in W.P.(MD)No.291 of 2016, dated 07.11.2016 and as such, the same is non-erst in Law. Furthermore, it is the categorical stand of the Petitioner that the impugned order, dated 30.06.2016 of the Second Respondent referred to supra does not reflect the consideration of the representation of the parent body, dated 30.11.2015 along with proposals dated 03.08.2015 and 27.07.2015.

56.At this juncture, this Court on perusal of the impugned order dated 30.06.2016 passed by the Second Respondent is of the considered view that except in the reference No.2 there being a mentioned of the order made in W.P.(MD)No.15799 of 2015, dated 17.11.2015, the impugned order does not exhibit any consideration of the representation dated 30.11.2015 sent by the parent body together with the proposals dated 03.08.2015 and 27.07.2015 respectively.

57.In fact, the impugned order dated 30.06.2016 in W.P.(MD) No.12320 of 2016, at paragraph No.2, only speaks of consideration of the petition of the Fifth Respondent, dated 13.08.2015 (together with enclosures) based on pendency of cases, as per Rules and on merits. Furthermore, it refers to the pendency of W.P.(MD)no.12815 of 2003 and 12413 of 2004 and the pendency of O.S.Nos.55 and 56 of 2015 on the file of Sub Court, Aruppukkottai and further that subject to the out come of the Judgment, the appointment of the Fifth Respondent as Secretary till 09.08.2018 was approved.

58.Besides the above, in this connection, it is not out of place for this Court to make a relevant mention that this Court in W.P.(MD)No.291 of 2016, on 07.01.2016 (in the writ petition filed by the writ Petitioner), at paragraph Nos.5 to 6, had observed the following:-

"5.The learned Senior Counsel has submitted that the aforesaid parent body that administered the college, sent a representation dated 30.11.2015 and the same could also be considered by the Second Respondent while passing orders as directed by this Court in its order, dated 17.11.2015 in W.P.(MD)No.15799 of 2015.



6. In view of such a narrow prayer, the Second Respondent is directed to pass orders as directed by this Court in the order dated 17.11.2015 in W.P.(MD)No.15799 of 2015 by considering the representation dated 30.11.2015 sent by the parent body along with the proposals dated 03.08.2015 and 27.07.2015, referred to above.

7. The writ petition is disposed of in the above terms. No costs. Consequently, the connected Miscellaneous Petition is closed."

59. It is needless for this Court to point out that if an act is directed to be performed by the 'Concerned Authority', then, the 'Concerned Authority' is to perform the same in a certain manner and cannot perform differently than the one commanded/ordered in this regard. In short, if the particular Authority does an act contrary to the order passed by a Court of Law, then, it is clear case of violation of the order passed. Inasmuch as the impugned order, dated 30.06.2016 of the Second Respondent/ Director of Collegiate Education, Directorate of Collegiate Education, Chennai, had not either reflected or considered the representation of the parent body dated 30.11.2015 together with the proposals dated 03.08.2015 and 27.07.2015, then the impugned order, dated 30.06.2016, suffers from legal infirmity in Law, in the considered opinion of this Court.

60. It is to be borne in mind that an 'unreasoned' order may be just and valid from the point of view of an individual, who issued the same. However, as regards an affected person, the said order may not appear to be so. Instead a reasoned order will certainly have an 'Appearance of Justice'. Apart from that, passing of a considered reasoned order, even in respect of administrative ground, by an authority, will certainly bring cheers to the heart and soul of an Homo-Sapien. When it affects, especially, liberty and property of a person, then, speaking order by application of mind is a must and in short, an order cannot be passed by a 'Competent Authority' bereft of necessary qualitative and quantitative reasons/judgments, as opined by this Court.

61. Insofar as the impugned order, dated 30.06.2016 in W.P.(MD) No.12321 of 2016 is concerned, it is to be pointed out that in the said order, it was mentioned that the writ Petitioner's request for appointment as Secretary of the College for another period of three years was not to be approved, because of the reason that he had already served as Secretary for the period of three years and further that, as per the order made in WPMP.Nos.16051 of 2003 and 17463 of 2004 and W.V.M.P.No.867 of 2004 in W.P.Nos.12815 of 2003 and 12431 of 2004, the office of Secretary is to be held in rotation between three sub-communities forming 'Moondru Mirasugal Uravinmurai'.

62. At this stage, a mere glance of the order, dated 30.08.2004 in WPMP.Nos.16051 of 2003 and 17463 of 2004 and W.V.M.P.No.867 of 2004 in W.P.Nos.12815 of 2003 and 12431 of 2004, indicates that the Court had passed the following order:-

"14.As regards the impleading petition, the fact that it was only at the instance that the Liquidator came to be appointed cannot give the Petitioner any right to be impleaded. Considering the relief that is sought for, he is neither a proper nor a necessary party. In any event, the claim that Aruppukkottai Devangar Pothunala Uravinmurai (Regn. No.24/99) of which the Petitioner claims to be the Secretary cannot be said to be a body incharge of the College since it is not in the terms of the compromise decree. Therefore, the impleading petition is dismissed.

15.It is open to the parties to move this Court for any direction, clarification or modification. Respondents 4 and 5 shall expeditiously decide the manner in which the College should be administered so that the custodian, who has continued from the date of the compromise decree shall be relieved."

63.At this stage, this Court points out that it is represented on behalf of the Fifth Respondent that in O.S.No.99 of 1984 filed by one T.V.V.Veerappan (deceased) and another against M.S.Sabapathi Chettiyar and seven others, on the file of the learned District Munsif, Aruppukkottai, the rotation was decided and in fact, it is the case of the Fifth Respondent that the writ Petitioner (G.Rajkumar) had sent a communication on 08.08.2013 addressed to the Revenue Divisional Officer, Aruppukkottai, wherein he had admitted about the rotation among the three Ambalams and he belongs to Kariakkarar Ambalam and on expiry of his tenure as Secretary of the College, the next three years tenure commencing from 2015 to 2018 would be held by an individual belonging to Bethakkadu Ambalam, which is denied by the Petitioner (in his rejoinder to W.P.(MD)Nos.12320 and 12321 of 2016), stating that he had not written any such letter and the said letter is a product of fabrication.

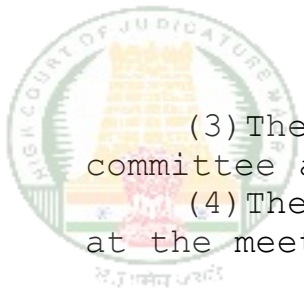
64.Ordinarily it is to be be pertinently pointed out that the disputed question of facts should be left to the decision of Fact Finding Authorities.

65.Indeed, it is useful for this Court to refer to Rule 9 of Tamil Nadu Private Colleges (Regulation) Rules, 1976, which runs as follows:-

"9.Secretary of the Committee.- (1) The educational agency shall nominate one of its representatives as Secretary of the Committee:

Provided that it shall be open to the educational agency to nominate the Principal as Secretary of the committee.

(2)The term of office of the Secretary shall, ordinarily, be three years. However, he/she shall be eligible for re-nomination for subsequent terms. If the educational agency intends to change the Secretary within the period of three years, it shall do so on the basis of the prior approval of the Director. Application for approval of change in the Secretaryship shall be made to the Director in Form 6.



(3) The Secretary shall function for and on behalf of the committee and educational agency.

(4) The Secretary shall act according to the resolutions passed at the meeting of the committee.

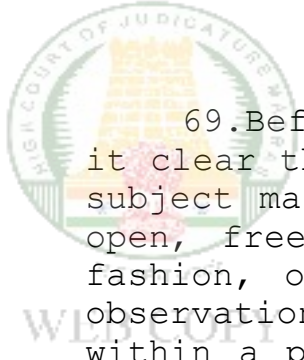
(5) The Secretary shall not interfere in the internal administration of the college such as admission, examination, promotion of student and other academic matters as also the administration of the special fee funds, which shall be made the exclusive responsibility of the Principal.

(6) The Secretary shall be responsible for the maintenance of proper and accurate accounts and the administration of college funds except special fee funds."

66. Be that as it may, on a careful consideration of respective contentions and also this Court, taking note of the entire gamut of the facts and circumstances of the present cases, in an integral fashion, without expressing any opinion on the merits of the matter and also not delving deep into the subject matter in issue, at this stage, simpliciter, comes to an comes to a consequent conclusion that the Second Respondent had considered the proposals disjunctively/separately and not in a cumulative fashion. Furthermore, the impugned order is silent and there is no evaluation of assessing the comparative merits and demerits of the Petitioner and the Fifth Respondent. In fact, the proposals of the Petitioner, dated 27.07.2015 was not considered in the impugned order, dated 30.06.2016 and it is quite evident from the fact that the same was not referred to, in the impugned order.

67. In view of the foregoing, suffice it for this Court to point out in a candid manner that the impugned order, dated 30.06.2016, in W.P.(MD)No.12321 of 2016, does not reflect the consideration of the representation of the parent body, dated 30.11.2015 and also it does not speak of the proposal of the Petitioner. As such, the order dated 07.11.2016 in W.P.(MD)No.291 of 2016 passed by this Court, was not adhered to, by the Second Respondent and therefore, the said impugned order is dated 30.06.2016 held to be illegal by this Court. Likewise, the order, dated 30.06.2016 passed in W.P.(MD)No.12320 of 2016, in and by which, the Second Respondent had approved the Secretaryship of the Fifth Respondent had not assigned necessary reasons in a speaking manner and as such, the said order suffers from legal flaw, in the considered opinion of this Court. Looking at from any angle, this Court interferes with the impugned orders, dated 30.06.2016, passed by the Second Respondent and set aside the same in furtherance of substantial cause of justice. Consequently, the writ petitions succeed.

68. In the result, the writ petitions are allowed leaving the parties to bear their own costs. The impugned orders, dated 30.06.2016 passed by the Second Respondent, are set aside by this Court for the reasons assigned in the present writ petitions. Consequently, connected Miscellaneous Petitions are closed.



69. Before parting with the cases, this Court abundantly makes it clear that the Second Respondent is to pass fresh orders in the subject matter in issue in a cumulative/contemporary with a fair, open, free mind and especially in an unbiased and dispassionate fashion, ofcourse, uninfluenced and untrammelled with any of the observations made by this Court in the present writ petitions, within a period of four weeks from the date of receipt of a copy of this order (Ofcourse, based on the facts and circumstances of the present cases, which float on the surface). At the time of passing the fresh orders, the Second Respondent is directed to bear in mind the order, dated 07.01.2016, made in W.P.(MD)No.291 of 2016 and the other order, dated 17.11.2015 in W.P.(MD)No.15799 of 2015 etc. and to proceed further in the manner known to Law and in accordance with Law. Liberty is granted to the writ Petitioner as well as the Fifth Respondent and other Respondents to raise all factual and legal pleas (including the truthfulness, veracity or otherwise of the purported letter of the alleged letter, dated 08.08.2013 of the writ Petitioner (R.Rajkumar) before the Second Respondent and that the Second Respondent shall take into account of the same and to advert about the same while passing the fresh orders, in the subject matter in issue, within the time specified by this Court, as aforestated. It is open to the Second Respondent to permit the Petitioner as well as the Fifth Respondent and other Respondents to let in oral and documentary evidence (and to mark the documents as exhibits) on their side, if they so desire/advised.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Secretary,
Higher Education (E1) Department, Fort St. George, Chennai.
 - 2.The Director of Collegiate Education
Directorate of Collegiate Education,
9th Floor, E.V.K.Sampath Building, College Road, Chennai.
 - 3.The Regional Joint Director of Collegiate Education,
D.No.30, Vaithinathiar Street, Shenoy Nagar, Madurai.
- +One cc to M/s.Ajmal Associates, Advocate, SR.No.48275
 +One cc to The Special Government Pleader, SR.No.48110
 +2 ccs to Mr.RR.Kannan, Advocate, SR.No.48070
 +One cc to M/S.B.S.MELTUE, Advocate, SR.No.48697

rj2

RL/9C/25P/ARK/1/9/2016

Order Made in

W.P.(MD) Nos.12320 & 12321 of 2016
29.08.2016