



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD) .No.10602 of 2017

T.N.Vidyanandan

: Petitioner

Vs .

1. The Secretary to Government,
Department of School Education,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Director of School Education,
College Road,
Chennai-600 006.

3. S.Peter Raj
(Respondent No.3 is impleaded
as per the order dated 05.07.2017
in W.M.P.MD) .No.9593 of 2017)

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to declare Section 28 of the Tamil Nadu Act 29 of 1974, having over-riding effect for the chapter V of the Act, with a saving clause according to which a teacher is entitled to the more favourable benefits contained in the appeal provision in the agreement in Appendix 28 of the Tamil Nadu Educational Rules which makes the entering into agreement in Appendix 28 as sine qua non for recognition, does apply to all aided minority schools in Tamil Nadu and to direct the respondents to entertain appeals from the affected teachers of minority schools and dispose of them on merits within a reasonable time.

For Petitioner : Mr.T.N.Vidyanandan
party-in-person

For Respondents 1& 2 : Mr.V.R.Shanmuganathan
Special Government Pleader

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent No.3 : No Appearance

**O R D E R**

[Order of the Court was made by M.M.SUNDRESH,J.]

This Public Interest Litigation is filed by the petitioner after filing of earlier series of writ petitions touching upon the very same subject.

2. In sum and substance, the case of the petitioner is that the right of appeal under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, [for brevity, "the Act"] cannot be taken away, even for minority institutions. The challenge was made to certain provisions of the aforesaid enactment before the Division Bench, including Section 23 of the Act, which provides for an appeal. The Division Bench of this Court passed an order in W.P.No.4478 of 1974, etc batch, dated 17.12.1975, declaring that certain provisions are not applicable to the minority institutions, one such provision is Section 23. When challenge was made before the Apex Court, in Civil Appeal Nos.1521 to 1556 & 3042 to 3091 of 1979, the entire matter was remitted back by the following order dated 04.03.2003:

"The several questions raised in these matters are covered by the decision of a constitution Bench of this Court in Writ Petition No.317 of 1993- T.M.A. Pai Foundation & others, Etc, Vs. State of Karanataka & others etc., and connected batch was decided on 31st October, 2002. Since larger questions have been decided by this Court, it becomes necessary for the High Courts to re-examine the matters which have been decided and which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the matters are remitted to the High Court for fresh consideration in accordance with law.

Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to it, by any of the parties. The parties are at liberty to file fresh pleadings, if any, within the period fixed by the High Court. It is made clear that all statutory enactments, orders, schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A. Pai Foundation's case decided on 31.10.2002. As and when any problem arises the same can be dealt with by an appropriate forum in an appropriate proceedings.

The appeals are disposed of accordingly."

3.The aforesaid writ petitions were heard once again, pursuant to the order passed by the Hon'ble Apex court, cited supra and only have been disposed of accordingly, on 10.10.2012, by recording the undertaking given by the learned Advocate General,

based on the affidavit filed. It is appropriate to place on record the order passed by the Division Bench:

All these writ petitions have been filed challenging various provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act (Tamil Nadu Act 29 of 1974). A Division Bench of this Court by order dated 17.12.1975 has struck down certain provisions of the said Act and the Rules as inapplicable to minority institutions. Being aggrieved, the matter was taken in appeal Court by dated 04.03.2003, remitted the matter to the Hon'ble High Court by observing as follows:

"The several questions raised in these matters are covered by the decision of a Constitution Bench of this Court in Writ Petition No.317 of 1993 - T.M.A. Pai Foundation and Ors etc Vs. State of Karnataka & Ors etc and connected batch decided on 31st October, 2002. Since larger questions have been decided by this Court, it becomes necessary for the High Courts to re-examine the matters which have been decided and which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the matters are remitted to the High Court for fresh consideration in accordance with law.

Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to them by any of the parties. The parties are at liberty to file fresh pleading, if any, within the period fixed by the High Court. It is made clear that all statutory enactments, orders, schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A Pai Foundation's case decided on 31.10.2002. As and when any problem arises the same can be dealt with by an appropriate Forum in an appropriate proceedings.

2. Accordingly, the matters have been remitted and listed for hearing before this Court as Specially Ordered Cases. Learned Counsel appearing for the petitioners have filed affidavits raising additional grounds and documents in support of their contentions. In the meantime, some writ petitions have been filed challenging the very same provisions and those writ petitions are also ordered to be tagged with these batch of cases. The Rev. Appln (MD).No.28 of 2008 filed before the Madurai Bench of Madras High Court regarding applicability of certain provisions of the Act and the Rules has also been tagged with these batch of cases.

3. When the matter came up for hearing to-day, the learned Advocate General filed an affidavit sworn to by the respondent, viz, The Joint Director of School Education (Secondary), wherein in paras 12 and 13 it is stated as follows.



12.As announcement has been made to form one common comprehensive Act to govern all the private schools, in the light of the Uniform system of school Education Act, 2010 introduced by the State Government and Right of Children to Free and Compulsory Education Act, 2009 introduced by the Central Government.

13.It is submitted that it is a matter of time, before the present law is replaced with a new one. The position that is being followed for the last 37 years, that is non applicability of certain provisions of the said Act and the Rules, 1974 to the writ petitioners in SLP(Civil) Nos.1521-1556 and 3042 to 3091 of 1979 by virtue of the order of the Hon'ble Court dated 17.12.1975 shall retain for the present.

4.By filing the aforesaid affidavit, the learned Advocate General submitted that the writ petitions may be disposed of with a direction to maintain status quo of the position that prevailed as on the date of earlier judgment dated 17.12.1975 till the new comprehensive Act coming into force.

5.Learned Senior Counsel appearing for the petitioners has no objections for the writ petitions being disposed of in the Light of the averments made in the affidavit filed on behalf of the respondents.

6.In view of the above, the writ petitions and the Review Application are disposed of with a direction to the respondents to maintain status quo as on the date of the earlier judgment of this Court dated 17.12.1975, till the new comprehensive Act comes into force in this regard".

4.Therefore, there exists an order of Status-quo till new enactment comes into force. This order of status-quo would govern Section 23 of the Act also.

5. Resultantly, the right of appeal available under the aforesaid provision cannot be exercised as of now. When the Division Bench of this Court, being the Cardinal Bench, has already passed an order based upon the undertaking given by the learned Advocate General, we cannot review the matter.

6. In such view of the matter, this Writ Petition stands dismissed. We also note that the petitioner was also a party to the order dated 10.10.2012 passed by the Division Bench. It is needless to state that he is bound by the same. No costs.

Sd/-

Assistant Registrar (CS-I)



To

1. The Secretary to Government,
Department of School Education,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Director of School Education,
College Road,
Chennai-600 006.

+ 1 CC TO Mr.T.N.VIDYANANDAN, PARTY IN PERSON IN SR No. 78549
+ 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 78884

TSG/DSK

TE/SV-MMS/SAR-I : 26/09/2017 : 5P/5C

W.P. (MD) .No.10602 of 2017
13.09.2017