



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2017

CORAM:

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THE HONOURABLE MR.JUSTICE V.PARTHIBANW.P.(MD) No.5908 of 2017andW.M.P(MD)No.4680 of 2017

S.Jayasreekumar

: Petitioner

Vs.

1.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

2.B.Saraswathi Amma

: Respondents

Prayer : This Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus directing the first respondent to decide the preliminary objection made by the petitioner in his representation dated 14.03.2017 forthwith within the stipulated time and consequently forbear the first respondent herein from passing any order changing the management of the petitioner in the minority school in Arumanai, Kanyakumari District.

For Petitioner : Mr.Veerakathiravan
Senior Counsel for
M/s Veera Associates

For Respondent : Mr.M.Alagadevan
Special Government Pleader

O R D E R

This writ petitioner has approached this Court seeking for issuance of a Writ of Mandamus directing the first respondent to decide the preliminary objection made by the petitioner in his representation dated 14.03.2017 forthwith and to forbear the first respondent herein from passing any order changing the management of the petitioner in the minority school in Arumanai, Kanyakumari District.



2. According to the petitioner, his father has started an Educational Institution as a linguistic minority school in the name of Arumanai Higher Secondary School, Arumanai. His father was the Manager-cum-Correspondent of the said school till his death on 05.01.2002. The school is a private aided minority institution. After the death of his father, the family members founded the Trust in the name of the great grandfather, namely, T.Sekara Pillai Memorial Educational and Cultural Development Trust by a registered Trust deed, dated 19.12.2006. The family members are the Board of Trustees. According to the petitioner, initially his mother and the second respondent were appointed as the Chairperson of the Trust. But subsequently, on 18.10.2014, there was an election for electing the new Board of Trustees and the petitioner was elected as Chairman of the Trust. Therefore, the petitioner became the Correspondent of the said School. After becoming the Correspondent, the petitioner sent a communication to the first respondent to permit him to continue as the Correspondent in terms of the Trust deed. In response to the request of the petitioner, the first respondent has approved the petitioner to function as the Correspondent-cum-Manager of the school. Against the said approval, the second respondent herein filed a writ petition in W.P(MD)No.14303 of 2015 and the same is pending without any interim order.

3. While matter stood thus, the second respondent, who is none other than the mother of the petitioner, has registered a revocation deed dated 20.05.2016, revoking the earlier Trust Deed registered on 19.12.2006. A suit was also filed in O.S.No.126 of 2016 on the file of the District Munsif Court, Kuzhithurai, challenging the revocation of the Trust Deed. In the meantime, the second respondent filed yet another writ petition in W.P(MD) No.10670 of 2016 directing the first respondent to consider her representation, dated 04.06.2015 and seeking to cancel the earlier order of approval granted to the educational agency dated 07.08.2015 without impleading the petitioner. The direction issued in the said writ petition, as found in the paragraph 6 of the order dated 16.06.2016 is extracted as under:-

"6. In view of the fact that the petitioner's representation dated 04.06.2016 is pending as on date (without any progress or disposal), this Court, at this stage, in the interest of Justice and Fair Play, directs the second respondent/District Educational Officer, Kuzhithurai, Kanyakumari District to take up the representation of the petitioner dated 04.06.2016 within a period of one week from the date of receipt of a copy of this order. Thereafter, the second respondent is directed to dispose of the said representation of the petitioner, dated 04.06.2016, within a period of four weeks, by passing a speaking order on merits, after affording necessary opportunity



to the petitioner and others concerned, by adhering to the principles of Natural Justice. The petitioner is required to co-operate with the second respondent in regard to the disposal of the representation dated 04.06.2015."

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4. Against the above direction issued by this Court, the petitioner filed a writ appeal in W.A(MD)No.1149 of 2016 and it was disposed of by directing the first respondent to consider the representation in the light of the order passed by the learned single Judge in the above-said writ petition. As against the said order, a Special Leave Petition was also filed before the Honourable Supreme Court of India. But the Honourable Supreme Court of India has passed the final order in S.L.P(C)No.6886 of 2017 on 06.03.2017 holding that the petitioner is entitled to object the representation on all available grounds and with that liberty, the Special Leave Petition came to be dismissed.

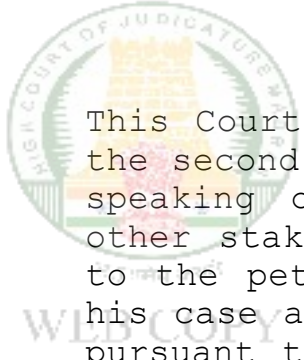
5. In pursuance of the above litigation, the petitioner is said to have submitted a detailed representation on 14.03.2017 making preliminary objection about the maintainability of the representation of the second respondent to the educational authority and the power as well as the jurisdiction of the first respondent in deciding the dispute, which according to the petitioner, falls squarely within the jurisdiction of civil Court.

6. According to the petitioner, a civil suit is also pending with the competent civil Court and therefore, it is incumbent upon the first respondent to decide the preliminary objection before any order is passed on the merits of the second respondent's representation.

7. Mr. Veerakathiravan, learned Senior Counsel appearing for the petitioner would submit that it is imperative that the preliminary objection first has to be considered by the first respondent before the matter is dealt with on its merits, since the question involved is one of jurisdiction. He would further submit that the first respondent is not inclined to pass any orders on the preliminary objection but would deal with the case on merits, which according to the learned senior counsel, cannot be done in view of the lack of jurisdiction on the part of the first respondent.

8. I have considered the contentions raised by the learned senior counsel and perused the pleadings and materials on record.

9. The present writ petition is not maintainable for more reasons. Since the court has already held that this Court, in the earlier writ petition in W.P(MD)No.10670 of 2016, has passed an order on 16.06.2016. The operative portion of the direction has already extracted supra.



This Court has given a clear direction that the representation of the second respondent has to be disposed of on merits by passing a speaking order and opportunity should also be afforded to all other stake-holders in the matter. Therefore, it is always open to the petitioner herein to submit whatever objection to advance his case and the same would be considered by the first respondent pursuant to the direction passed by this Court in the above said writ petition. Therefore, the petitioner cannot approach this Court with the prayer as it is sought and any order to be passed in the present writ petition would only run contrary to the direction passed by this Court in the said writ petition dated 16.06.2016. Moreover, the writ petitioner having failed in all his attempts before this Court and the Honourable Supreme Court of India, cannot be allowed to stall the consideration of the representation made by second respondent, by the first respondent under one pretext or the other.

10. In any event, the petitioner can always impress upon the first respondent on the question of jurisdiction and also the other preliminary objection as to the maintainability of the representation submitted by the second respondent with reference to the direction issued by this Court in the earlier proceedings. Therefore, it is not open to the petitioner to rush to this Court and invoke the extraordinary remedy provided under Article 226 of the Constitution of India by seeking a direction to the first respondent to consider the preliminary issue alone before deciding the representation of the second respondent on merits. Such a course will run counter to the direction issued by this Court in the earlier writ petition dated 16.06.2016.

11. In view of the above narrative, this writ petition is not maintainable and therefore, the same fails and dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

The District Educational Officer, Kuzhithurai,
Kanyakumari District.

+One cc to M/s. Veera Associates, Advocate, SR.No.50133

+One cc to The Special Government Pleader, SR.No.50946

skn

RL/4C/4P/SV/MMS/SAR3/20/6/2017

W.P. (MD) No.5908 of 2017

and

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