



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.05.2017

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The Hon'ble Mr.JUSTICE M.V.MURALIDARAN

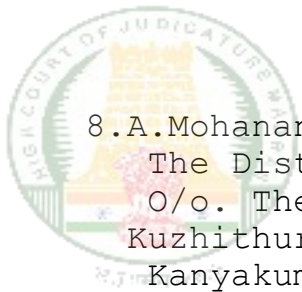
W.P. (MD) No.9676 of 2017
AND
WMP Nos.7431 and 7432 of 2017

Aided Higher Secondary School,
Arumanai,
Rep. By its Correspondence and Manager
B.Saraswathy Amma,
Arumanai - 629 151.
Kanyakumari District.

.. Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Secretariat,
Chennai - 9.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The Joint Director of School Education,
(Higher Secondary), College Road,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.
- 5.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.
- 6.S.Jayasreekumar
- 7.S.Kishore Chand,
Administrative Officer,
Higher Secondary School, Arumana,
Kanyakumari District.



8.A.Mohanan,
The District Educational Officer,
O/o. The District Educational Office,
Kuzhithurai,
Kanyakumari District.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 5th respondent in his Proceedings Na.Ka.No.1374/Aa3/2017, dated 27.4.2017 (served to the petitioner only on 13.5.2017) and quash the same as illegal and consequently to direct the 5th respondent to approve the Correspondentship of the petitioner.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
For M/s.Ajmal Associates

For Respondents : Mr. A.Muthukaruppan
Addl. Government Pleader
For R1 to R5 & R8

Mr.Veera Kathiravan
Senior Counsel for R6 & R7

ORDER

This writ petition has been filed by the petitioner seeking to quash the proceedings of the fifth respondent in Na.Ka.No.1374/Aa3/2017, dated 27.04.2017 and to direct the fifth respondent to approve the Correspondentship/Manager of the petitioner qua Aided Higher Secondary School, Arumanai.

2. Briefly stated case of the petitioner is as follows:

- a) The petitioner school is Aided Higher Secondary School (Malayalam Linguistic Minority Institution) and a recognised private school receiving aid from the Government of Tamil Nadu. The school offers education from Standards VI to XII. The petitioner school is offering education in three mediums viz., Tamil, Malayalam and English up to standard X. The Government is giving financial aid only for Tamil and Malayalam media up to High School sections i.e., standards VI to X, and for Tamil and English mediums in Higher Secondary sections i.e., standards XI and XII. The teachers are appointed in accordance with the teacher-students ratio prescribed by the Government.

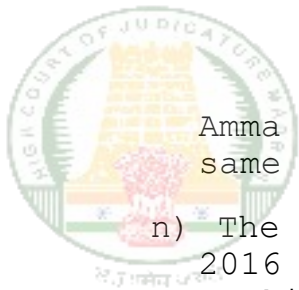


- b) One Sekarapillai, husband of Saraswathy Amma was the Correspondent and Manager of the petitioner school and he died on 5.1.2002 and after his demise, Saraswathy Amma was nominated as the Correspondent and Manager of the petitioner school w.e.f. 6.1.2002 and the same was approved by the fifth respondent in its order dated 07.02.2002 and Sarawathy Amma is continuing in the same post till date. The respondents 6 and 7, who are the sons of Saraswathy Amma, convened a meeting on 16.08.2013 claiming that they are the members of the Managing Committee of the school and resolved to remove Saraswathy Amma from the post of Correspondent and Manager and nominated the sixth respondent as the Manager of the school. The sixth respondent submitted a proposal to the fifth respondent requesting to approve him as Correspondent of the school.
- c) The sixth respondent has filed W.P.(MD) No.1100 of 2014 seeking a writ of quo warranto against Dr.S.Prathibha, who was discharging her duties as Headmistress of the school, and the said writ petition was later withdrawn. The fifth respondent declined to approve the appointment of Dr.S.Prathibha as Headmistress of the school. Therefore, Dr.S.Prathiba has filed filed W.P.(MD) No.13486 of 2014 and the same was allowed by this Court.
- d) At the instigation of 6th respondent, the seventh respondent has filed W.P.(MD) No.17023 of 2013 seeking direction on the fifth respondent to appoint a qualified person as Headmaster of the school by removing Dr.S.Prathibha and the same was dismissed by this Court on 16.07.2015.
- e) On 19.12.2006, the petitioner created a Trust, namely "T.Sekhara Pilla Memorial Education and Cultural Department Trust" with an aim of promoting education to the Malayalam speaking people in Tamil Nadu and the same was registered. The petitioner was the Chairman of the said Trust. There is no relationship between the petitioner school and the Trust.
- f) The petitioner has neither transferred the management of the school in favour of the Trust nor signed in Form III or in Form IV, nor submitted proposal to the Joint Director. On 23.01.2012, a supplementary Trust deed was registered indicating that the Trust will come into force only after the demise of Saraswathy Ammal. In the meanwhile, one of the Trustees and beneficiary of the Trust has filed a civil suit in O.S.No.162 of 2014 on the file of the Sub-Court, Kuzhithurai seeking to frame a Scheme and the same is pending.
- g) According to the petitioner, having failed in all his attempts to take over the management of the school, the sixth respondent conducted election on 18.10.2014 and he



himself declared that he was elected as the Chairman of the Trust and he submitted proposal to the fifth respondent on the same date requesting to approve himself as Correspondent of the school. Since the fifth respondent had not passed any orders, the sixth respondent filed W.P.(MD) No.941 of 2015 seeking direction to consider and pass orders on the representation dated 18.10.2014. The said writ petition was disposed with a direction on the DEO to consider and pass orders on the representation submitted by the sixth respondent after giving an opportunity to rival claimants. While so, the fifth respondent approved the appointment of the sixth respondent as Correspondent of the petitioner school vide proceedings dated 25.05.2015.

- h) Challenging the same, the petitioner filed W.P.(MD) No.8682 of 2015 and this Court vide order dated 2.6.2015 set aside the order of the fifth respondent and remitted the matter to the fifth respondent to decide the issue afresh within a time frame and granted status quo as on date to be maintained till the decision taken by the fifth respondent. The fifth respondent, without maintaining status quo, had dispersed grant-in-aid towards the salary of the staff through the sixth respondent by disobeying the order of this Court. Therefore, Saraswathy Amma filed Contempt Petition (MD) No.967 of 2015 to punish the DEO and the same is pending.
- i) Meanwhile, alleging that the petitioner has not submitted the required copy of explanation to the DEO, the 6th respondent filed Contempt Petition (MD) No.3932 of 2015 seeking to punish Saraswathy Amma and the same is also pending.
- j) While things stood thus, to the shock and surprise, the DEO again approved the appointment of the sixth respondent as Correspondent of the petitioner school vide proceedings dated 07.08.2015.
- k) According to the petitioner, Saraswathy Amma cancelled the Trust deed by way of a revocation deed dated 20.5.2016 and the same was registered. In view of the revocation of the trust deed, the same never came into effect.
- l) Thereafter, Saraswathy Amma has also filed W.P.(MD) No.10670 of 2016 seeking to appoint her as Correspondent and the same was allowed on 16.6.2016. Aggrieved by the order made in W.P.(MD) No.10670 of 2016, the sixth respondent filed W.A.(MD) No.1149 of 2016 and the same was also dismissed with an observation that sixth respondent should also be heard. Against the dismissal of the writ appeal, the sixth respondent preferred SLP (Civil) No.6886 of 2016. The same was dismissed by the Apex Court.
- m) Since the fifth respondent not obeyed the order, Saraswathy



Amma filed Contempt Petition (MD) No.727 of 2017 and the same is pending.

- n) The sixth respondent has also filed suit in O.S.No.126 of 2016 before the learned District Munsif Court, Kuzhithurai seeking declaration to declare that the revocation deed dated 20.5.2016 is null and void and the said suit is pending.
- o) Thereafter, the fifth respondent issued the impugned order, rejecting the claim of Saraswathy Amma on the ground that since the suit in O.S.No.126 of 2016 and W.P.(MD) No.14303 of 2015 are pending, a decision could be taken only after the disposal of the case and till such time, the sixth respondent would continue as Correspondent of the petitioner school.
- p) Challenging the same, the petitioner school has filed the present writ petition seeking to quash the order impugned and to direct the fifth respondent to approve the Correspondentship of Saraswathy Amma.

3. I heard Mr.Ajmal Khan, learned Senior Counsel for the petitioner, Mr.A.Muthukaruppan, learned Additional Government Pleader for the respondents 1 to 5 and 8 and Mr.Veera Kathiravan, learned Senior Counsel for the respondents 6 and 7 and perused the materials available on record.

4. The learned Senior Counsel for the petitioner assailed the impugned proceedings on the following grounds:

a) The fifth respondent ought to have seen that W.P.(MD) No.14303 of 2015 does not have any nexus in the present scenario.

b) Qua the supplementary trust deed, it is submitted that when the trust deed itself is cancelled, there is no legal sanctity to rely on the supplementary trust deed.

c) The suit in O.S.No.126 of 2016 on the file of District Munsif Court, Kuzhithurai filed by the sixth respondent seeking for declaration to declare that the revocation deed dated 20.05.2016 executed by Saraswathy Amma as null and void is pending without any interim order.

5. The impugned order states that till a decision is taken in the matters being W.P.(MD) No.14303 of 2015 filed by Saraswathy Amma and the suit in O.S.No.126 of 2016 filed by the sixth respondent, the sixth respondent would continue as Correspondent in the petitioner school. The aforesaid conclusion arrived at by the fifth respondent, in my view, is unsustainable in the eye of law for the reason that W.P.(MD) No.14303 of 2015 does not have any nexus in the present scenario in view of the fact that the trust deed is stated



to have been cancelled by Saraswathy Amma through revocation deed dated 20.05.2016. Challenging the revocation of the trust deed, admittedly, the sixth respondent filed O.S.No.126 of 2016 before the District Munsif Court, Kuzhithurai, and the same is pending.

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6. On perusal of the typed set of papers, I find that W.P.(MD) No.10670 of 2016 has been filed by Saraswathy Amma seeking direction to appoint her as Correspondent. By an order dated 16.6.2016, the said writ petition was allowed. Against which, the sixth respondent preferred W.A.(MD) No.1149 of 2016 and the same was dismissed by the Hon'ble Division Bench of this Court, however, with an observation that the sixth respondent should also be heard. Aggrieved by the said decision of the Hon'ble Division Bench, the sixth respondent preferred SLP (Civil) No.6886 of 2017 before the Hon'ble Apex Court and the same was also dismissed.

7. While passing the impugned order, the fifth respondent has failed to consider the fact that the sixth respondent got his name approved as Correspondent of the petitioner school in the non-existing trust. The fifth respondent has also failed to consider the fact that it is only on the strength of the trust deed executed by Saraswathy Amma, her son, the sixth respondent, alleges to have won the election.

8. On perusal of the impugned order, I find that before passing the order, the fifth respondent has not heard the petitioner. The fifth respondent had merely stated that they received preliminary objection dated 27.3.2017 from the sixth respondent and based on the information and the documents received, he is passing the impugned order.

9. In my considered view, the direction issued in W.P.(MD) No.10670 of 2016 to the effect that the second respondent/District Educational Officer should dispose of the representation of the petitioner dated 4.6.2016 after affording necessary opportunity to the petitioner and others concerned, by adhering to the principles of natural justice, has not been strictly followed by the fifth respondent. There is no whisper in the order impugned that opportunity of personal hearing has been afforded to the petitioner before passing the impugned order.

10. It is pertinent to note that after the dismissal of the SLP, confirming the order made in W.P.(MD) No.10670 of 2016 and also after filing contempt petition on 10.04.2017 by Saraswathy Amma, only on 27.04.2017, in a hurried manner, the fifth respondent passed the impugned order without looking into the relevant materials and affording personal hearing to the petitioner. A reading of the order impugned shows that views expressed by the fifth respondent are

purely based on apriori considerations and not based on materials on record and, therefore, the same are unsustainable in law. Therefore, the respondent authority is required to examine the matter afresh in the light of the order passed by this Court in W.P.(MD) No.10670 of 2016, which was confirmed by the Hon'ble Division Bench and the Hon'ble Apex Court as stated above.

11. In the result:

(a) the writ petition is allowed;

(b) the impugned order passed by the fifth respondent is set aside and the matter is remitted to the second respondent for passing an order afresh, after giving an opportunity of personal hearing to the petitioner as well as the private respondents and all persons concerned;

(c) the said exercise shall be done within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed. It is made clear that this Court has not expressed any opinion on the merits of the matter.

Sd/

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.

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

3.The Joint Director of School Education,
(Higher Secondary), College Road, Chennai - 600 006.

4.The Chief Educational Officer,
Kanyakumari District, Nagercoil - 629 001.

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

+1cc to Mr/s.AJMAL ASSOCIATES, Advocate, SR.No. 57513

+1cc to M/s.Special Government Pleader, SR.No. 57933

+1cc to Mr. VEERA ASSOCIATES Advocate, SR.No. 62011

W.P. (MD) .9676 of 2017

25.05.2017