



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.04.2017
CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WEB COPY

**W.P(MD) .No.14483 of 2011
and
M.P. (MD) .Nos.1 to 3 of 2011**

Srivilliputtur Lions School Committee,
Srivilliputtur rep by its Secretary and
Correspondent,
P.R.Srirenga Raja,
4, Periasamy Kovil Street, Srivilliputtur,
Virudhunagar District.

... Petitioner

Vs.

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Senior Bank Manager,
Indian Overseas bank,
Virudhunagar District.
- 3.The Branch Manager,
Indian Bank, Srivilliputtur,
Virudhunagar District.
- 4.The Branch Manager,
Indian Overseas Bank,
Srivilliputtur, Virudhunagar District.
- 5.The Branch Manager,
Pandian Grama Bank,
Srivilliputtur, Virudhunagar District.
- 6.The Branch Manager,
State Bank of India,
Srivilliputtur, Virudhunagar District.
- 7.The Branch Manager,
Canara Bank,
Srivilliputtur, Virudhunagar District.
- 8.The Branch Manager,
Co-operative Urban Bank,
Srivilliputtur, Virudhunagar District.



9. The Branch Manager,
SBSPL 30 SVPR Primary Agri.Co-operative Bank,
Srivilliputtur, Virudhunagar District.

... Respondents

Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings in Ma.Mu.Va/Vnr/49/2011-12 dated 13.12.2011 and quash the same as illegal and violation of principles of law and further direct the respondents 3 to 9 to permit the petitioner to operate its bank accounts.

For Petitioner : Mr.V.Radhakrishnan,
Senior Counsel for
Mr.S.Kadarkarai

For 1st Respondent : Mr.S.Kumar,
Additional Government Pleader.

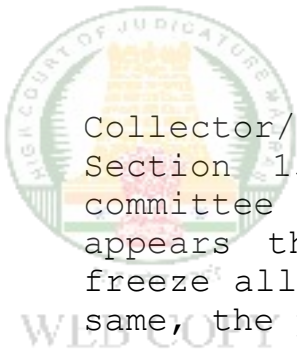
For Respondents 2-4: Mr.R.Pandivel

ORDER

The petitioner challenges an order communicated by the Lead District Manager, Indian Overseas Bank, Virudhunagar to the Branch Managers of Indian Bank, Indian Overseas Bank, State Bank of India and Pandian Grama Bank, Srivilliputhur, in and by which, the accounts of the petitioner's school were directed to be frozen, pursuant to the order of the District Collector/Executive Magistrate, Virudhunagar in M.C.(C1)03/2011, dated on 12.12.2011.

2.The factual background is as follows:

The petitioner is the educational agency, namely, Srivilliputtur Lions School Committee. It is running Higher Secondary School in Srivilliputtur. The educational agency itself is a society registered under Tamil Nadu Societies Registration Act, 1975. The Registration Number is 75/1980. It appears that there were certain complaints regarding the conduct of the Principal of the school as well as collection of smart class fee by the school, without conducting smart classes. It is also said that the toilet facilities in the school are less taking into account the students strength of 2281. It appears that there has been certain demonstrations by some people against the Principal of the school and therefore, the Inspector of Matriculation Schools, Virudhunagar District visited the school on 05.12.2011 and advised the school committee to convene a Parent Teachers Association Meeting. The meeting of the Parent Teachers Association was held on 08.12.2011 and in that meeting, it was decided to continue to allow the Principal to continue in office. On 10.12.2011, the first respondent, namely, the District



Collector/Executive Magistrate, Virudhunagar issued summons under Section 133 Cr.P.C. to the Principal and two of the former committee members of the school committee. Simultaneously, it appears that the District Collector has directed the banks to freeze all bank accounts of the school committee. Aggrieved by the same, the present writ petition has been filed.

3.The petitioner would aver in the affidavit filed in support of this writ petition that the District Collector functioning as Executive Magistrate has no power to direct the banks to freeze the accounts of the petitioner school. It is contended that the collection of fee by this school is governed by the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. It is also contended that the extreme step of freezing of bank accounts cannot be taken by the District Collector/ Executive Magistrate, without notice to the petitioner.

4.The first respondent, the District Collector has filed a counter affidavit narrating the facts leading to initiation of the proceedings under Section 133 Cr.P.C. It is stated that since the compulsory collection of more than Rs.85 lakhs was made from the students on the pretext of smart class fee, he had directed freezing of the accounts of the school committee.

5.A reading of the counter affidavit would make it clear that the District Collector has taken note of the fact that the management was not coming forward to change the Principal of the school despite agitations by some of the parents. The initiation of proceedings under Section 133 Cr.P.C., has been challenged separately by way of Criminal Revision Petition which are pending before this Court.

6.Be that as it may, the question that arises for consideration in this writ petition is as to whether the District Collector/Executive Magistrate, has power to direct freezing of bank accounts of the institution by invoking power under Section 133 Cr.P.C.,

7.Section 133 of Code of Criminal Procedure, 1973 reads as follows.

"133.Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially powered in this behalf the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, consider --

(a) That any unlawful obstruction or nuisance should be removed from any public place or from any way, channel, which is or may be lawfully used by the public: or



(b) That the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such, goods or merchandise should be removed or the keeping thereof regulated; or

(c) That the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) That any building tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary: or

(e) That any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public: or (f) That any dangerous animal should be destroyed, confined or otherwise disposed of,

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank well or excavation, or owning or possessing such animal or tree, within time to be fixed in the order-

(i) To remove such obstruction or nuisance; or

(ii) To desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) To prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) To remove, repair or support such building, tent or structure, or to remove or support such trees; or



(v) To fence such tank, well or excavation; or

(vi) To destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

WEB COPY

or, if he objects so to do, to appear before himself or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any civil court.

Explanation. A "public place" includes also property belonging to the state, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

8.A reading of the above section would show that the District Collector/Executive Magistrate has no power to order freezing of bank accounts. The tenor of the counter affidavit filed by the Executive Magistrate would show that he has taken action against the school committee for not accepting the demands made by the agitating parents. At this juncture, it should be pointed out that the school is unaided private school and if the fee is excessive, the parents are at liberty to approach the concerned authority. In my considered view, the unwillingness on the part of the management to budge to the demands of the parents cannot be a ground for invoking Section 133 Cr.P.C and taking coercive action by freezing bank accounts of this school.

9.Of course, Section 102 Cr.P.C., enables a Police Officer to to freeze the bank accounts which may be alleged or suspected to have been used for a crime or which may be found under circumstances which create suspicion of commission of any offence. While considering the power of a Police Officer to freeze the bank accounts under Section 102 Cr.P.C, this Court, in **His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru etc., The State of Tamil Nadu and others** reported in **2005-1-L.W.534** has observed as follows.

"32.The legal position for invoking Section 102 of Cr.P.C. is thus very clear, namely, that bank deposits can also be brought under the provision, provided, the deposits represent either stolen money or should be connected with commission of any offence. In short, there must be nexus to the crime alleged and the money to be seized. The charge in this case is not of theft, and therefore, the first alternative, which is specific, is not satisfied. The second alternative, which is general



in nature, has to be examined in the light of the factual background of this case."

10.This Court has further observed at paragraph 45 as follows:-

"45.Prof.Wade, in his magnum opus "ADMINISTRATIVE LAW", (9th Edition-page 343), observes as follows, while dealing with "Restriction of Discretion": "The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the courts should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act."

11.In yet another decision in **Rakesh P.Sheth and Ors., Vs.The State**, MANU/TN/2192/2016, this Court after considering the power of seizure under Section 102 Cr.P.C. had held that the freezing of bank accounts of the account holder could not be resorted to as a matter of course.

12.In the case on hand, the complaints are that the Principal is not behaving in a conducive manner, there are no toilet facilities for the students numbering 2281 and smart class fee has been collected without conducting smart classes. It is also seen that based on the direction of the first respondent, namely, the District Collector, the Inspector of Matriculation Schools has visited the school on 05.12.2011 and advised the school committee to convene a Parent Teachers Association Meeting and directed the petitioner school to refund the excess smart class fee collected from the parents and also to provide toilet facilities to the children and to instruct the Principal to adopt conciliatory approach with the parents and the students.

13.It is also pertinent to point out that the Parents Welfare Association of the petitioner school has filed a writ petition in W.P(MD)No.7221 of 2012 seeking issuance of a writ of mandamus, directing the respondents 1 to 3 therein to issue direction to the fourth respondent (the petitioner in this writ petition) in the matter of collection of fees from its students as determined by this Court in W.P(MD)No.8489 of 2011 etc., batch, dated 09.03.2012 and consequently, to direct the third respondent to enforce the order passed in Na.Ka.No.133/Aa/2011, dated



03.01.2002 and said writ petition has also been withdrawn on 27.06.2012.

14. In view of the above, the action of the first respondent, namely, the District Collector, Virudhunagar in freezing of bank accounts of the petitioner institution is not coming within the purview of any statutory power and hence, the same is liable to be quashed.

15. Accordingly, this writ petition is allowed. Rule nisi is made absolute. The order freezing the bank accounts of the petitioner institution with the respondents 3 to 9 is set aside and the accounts shall stand defreezed forthwith. No costs. Consequently, M.P(MD)Nos.1 to 3 of 2011 are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The District Collector,
Virudhunagar District,
Virudhunagar.

+1 CC to Mr.S.Kadarkarai, Advocate, SR No. 51523

+1 CC to Mr.R.Pandivel, Advocate, SR No. 51439

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 51763

RMI

PSM/SKN/02.05.2017/7P/5C

W.P(MD) .No.14483 of 2011
and

M.P.(MD) .Nos.1 to 3 of 2011
11.04.2017