

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.10430 of 2017

Ashish Gupta

...Petitioner

Vs.

1. The District Educational Officer,
Office of District Educational Officer,
Ponneri,
Thiruvallur District.

2. The District Registrar (Admin)
Office of District Registrar,
North Chennai,
Chennai-01.

3. The Director of School Education,
DPI, Nungambakkam,
Chennai - 6.

(R3 suo motu impleaded vide
order dated 03.07.2017 in
W.P.No.10430 of 2017)

4. Harish Gupta Respondents

(R4 impleaded vide order dated 12.07.2017 in
W.M.P.No.19052 of 2017 in W.P.No.10430 of 2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st Respondent in Na.Ka.No.2680/A3/2015, dated 31.03.2017 to quash the same and consequently direct the 1st Respondent to approve the Correspondentship of the Petitioner for 2017 to 2020 and pass further orders.

For Petitioner :Mr.A.Edwin Prabakar

For Respondents 1 to 3 :Mr.C.Munusamy,
Special Government Pleader (Edn.)
assisted by
Mr.A.Rajaperumal,
Addl. Govt. Pleader

For 4th Respondent : Mr.Venkatachalapathy,
Senior Counsel
for Mr.M.Sriram

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the proceedings of the 1st Respondent vide Na.Ka.No.2680/A3/2015, dated 31.03.2017 and for a consequential direction to the 1st Respondent to approve his Correspondentship from the year 2017 to 2020.

2. The case of the Petitioner is as follows:

2.1. The Petitioner had been the Correspondent of P.J.Gupta's High School and Primary School, Ambattur, which is a Government Aided Private School, from 2009 till 2017. The said School was originally established by Venkatapuram Cultural Association in the year 1936. The said Association was registered in the year 1939-40 with the Registrar of Societies vide Registration No.20/1939-40 and it was renewed continuously till 1970. However, due to reasons unknown, the Association was not renewed from 1970 to 2010 by the predecessor of the Petitioner. Therefore, the Association became defunct under Section 44(3)(b) of the Tamil Nadu Societies Registration Act, 1975 due to non-filing of any of the Returns including Form VII.

2.2. The Petitioner assumed charge as Correspondent of the said School in the year 2009, after taking over from one Harish Gupta, who is impleaded as the 4th Respondent in the present Writ Petition. Subsequently, on 23.02.2009, the Petitioner filed Form IV under Rule 7(3) of the Tamil Nadu Recognized Private School (Regulation) Rules, 1974 and the same was approved by the 1st Respondent vide order in Na.Ka.No.696/A3/2009, dated 30.03.2009. In the year 2011, the Petitioner approached the Registrar of Societies for renewal of Venkatapuram Cultural Association, by filing Form VII. Though the same was filed, he was given to understand by the Office of the Registrar of Societies that the said Association has become defunct, as it was not renewed for 40 years and that no Returns were filed in all these years.

2.3. As per the advise of the Office of the Sub-Registrar to re-register the Association, the Petitioner registered Venkatapuram Cultural Association in the year 2011, vide Reg.No.173/2011 with the same members found in Form VII filed with the Registrar of Societies. According to the Petitioner, the Association registered in the year 2011 is a continuation of the earlier Association, which has become defunct and hence, the School run by the Association is not affected in any manner whatsoever.

2.4. During May-June 2009, Accounts were audited and it was found that the 4th Respondent/Harish Gupta had misappropriated the funds of the Association and had not acted in the best interest of the School. Therefore, in an

Executive Committee Meeting conducted by the Association on 14.06.2009, explanations given by Harish Gupta were not accepted by the Committee unanimously and he was removed from the Primary Membership of the Association for misappropriation of the Association's funds. Thereafter, a Police complaint was lodged against the said Harish Gupta for misappropriation of funds from School's Bank Account and an FIR came to be registered in Ambattur Police Station vide Crime No.859/2010 on 30.11.2010 under Sections 406 and 420 I.P.C. and a Civil Suit was also filed against him in O.S.No.732 of 2010 in City Civil Court, Chennai for recovery of misappropriated funds and another criminal complaint was lodged against him vide CSR No.149/2014, dated 14.03.2014 before T1, Ambattur Police Station. An order was passed in the Petitioner's favour in O.S.No.732 of 2010 holding Harish Gupta liable for misappropriation of funds and challenging the same, he filed a suit before the District Munsif Court, Ambattur in O.S.No.255 of 2013 and the same stood dismissed on 06.09.2014.

2.5. Pursuant thereto, the Petitioner sent a letter to the Chief Educational Officer on 26.06.2015 vide Rc.No.AG/C/02/2015, highlighting the corrupt practices of Harish Gupta and the status of the pending legal proceedings relating to the School. Further, even on 19.08.2015, the Petitioner herein had given the same information to the District Education Officer, i.e. the 1st Respondent herein upon his visit to conduct an enquiry regarding the management of affairs in the School. While so, the 2nd Respondent issued a letter in Na.Ka.No.11541/E/2014, dated 22.07.2015 to change the name of the Association registered as 173/2011 as per Section 11 of Tamil Nadu Registration of Societies Act, 1975. A detailed reply dated 28.07.2015 was given by the Petitioner explaining the facts and circumstances as to why change of name is not necessary in view of the fact that the original Association has become defunct and only on the advice of the officials in the Office of the Registrar, new Association was registered. To the said communication dated 28.07.2015, there is no reply given by the 2nd Respondent till date.

2.6. Thereafter, the 1st Respondent issued a Show Cause Notice in Na.Ka.No.2680/A3/2016, dated 25.06.2016 seeking explanation, as to why the new Association was registered in the year 2011, when an Association in the name of 'The Venkatapuram Cultural Association' vide Regd.No.20/1939-40, is already in existence and under which Association, Income Tax Returns were filed. To the said Show Cause Notice, the Petitioner gave a detailed reply on 29.07.2016, explaining the facts and circumstances and informing them that both the Associations were one and the same and that the allegations made are false and baseless. The Income Tax Returns are being filed by the Association under PAN No.AAATT9548C for the past several years even before the Petitioner took charge as correspondent, and the same is being continued till date by

the Trust, as the change in Registration Number of the Association with the Registrar of Societies is only as a continuation of the old Association.

2.7. While so, on 09.09.2016, the Petitioner received a Show Cause Notice from the 1st Respondent vide Na.Ka.No.2580/A3/2016, dated 02.09.2016, as to why action under Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 & 1974 should not be taken for direct payment of Government aid to the School by cancelling the recognition of Correspondent. As the 1st Respondent had not supplied the documents referred in the Show Cause Notice dated 02.09.2016 to give effective reply, the Petitioner, vide his letter dated 15.09.2016, has sought copies of the same to be furnished to him to enable him to give opportunity for effective reply.

2.8. Thereafter, the 1st Respondent had visited the School in the presence of the Petitioner and conducted an enquiry. The Petitioner submitted a summary of the enquiry and the meeting held with the Teachers along with the 1st Respondent on 21.12.2016 vide Rc.No.AG/C/16/2016. Further, on 26.12.2016, the Petitioner sent a letter to the Joint Director of Education, providing explanation for continuing the same Society in a new Registration number. The Show Cause Notice dated 15.03.2017 was issued to the Petitioner calling for explanation within 7 days. The Petitioner gave a detailed reply dated 24.03.2017, explaining each and every aspect elaborately. But, without adverting to any of the explanations put forth by the Petitioner, the 1st Respondent, on 31.03.2017 vide Na.Ka.No.2680/A3/2015, passed the impugned order under Section 34 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, cancelling the approval granted to the Petitioner. Challenging the same, the Petitioner is before this Court.

3. The 1st Respondent/District Educational Officer, Ponneri has filed counter affidavit, wherein, it is stated that the Petitioner has not given a convincing reply on 26.09.2016 regarding the usage of PAN Card Number obtained in the name of the earlier Education Agency for filing Income Tax Returns, even after forming an Association in 2011. It is stated by the 1st Respondent that the Educational Agency, viz. The Venkatapuram Cultural Association became defunct, as it was not renewed between 1970 and 2010 and that no special Resolution was passed by the Association, permitting formation of a new Association. According to the 1st Respondent, the Petitioner had deliberately changed the Educational Agency of the School and registered it without informing the Educational Department, without prior permission and violated the Rules.

4. According to the 1st Respondent, the Petitioner did not apply to the competent authority viz. The Joint Director of School Education (Secondary Education) and obtain approval

of the said authority for the change in the constitution of Educational Agency in compliance of the requirements as provided under Section 8 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rule 7 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. According to the 1st Respondent, the Petitioner chose to constitute a new Educational Agency in the year 2011 and got it registered as 173/2011, in the name and style of the earlier Educational Agency viz. "The Venkatapuram Cultural Association", but conveniently deleted the word "The" and registered it as "Venkatapuram Cultural Association", so as to mislead that the old and new Association are one and the same.

5. It is further stated in the counter that the veracity of the Petitioner's contention that the members of "The Venkatapuram Cultural Association" vide Registration No.20/1939-40 and "Venkatapuram Cultural Association" vide Registration No.173/2011 are one and the same was verified with the available records. According to the 1st Respondent, when a duly registered Educational Agency exists, another Educational Agency cannot be constituted, muchless registered without the requirements as stipulated under Section 8 of the Act, 1973 and Rule 7 of the Rules, 1974. Once it is observed that registration of Educational Agency (No.173/2011) has become void, the School Committee as constituted by that Educational Agency also becomes void and non-est in law. Thus, according to the 1st Respondent, the Petitioner's contention is not maintainable and he prayed for vacating the interim stay of the impugned order dated 31.03.2017 and stated that no prejudice would be caused to the Petitioner.

6. The Petitioner filed a Reply to the Counter Affidavit, denying the contentions of the 1st Respondent. According to the Petitioner, the 1st Respondent does not have the power under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 to declare the School Committee of a School, as invalid. The Petitioner reiterated that 'Venkatapuram Cultural Association' Registered as No.173/2011 is merely a continuation of the earlier Association and hence, no violation of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rules of 1974 is made out.

7. Learned counsel for the Petitioner contended that the District Educational Officer is not the competent authority to pass the impugned order in terms of Section 34 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and on that score alone, the impugned order has to be interfered with. It is his further contention that the impugned order is based on the Show Cause Notice dated 15.03.2017 issued by the 1st Respondent, which does not relate to Section 34 of the said Act, nor has any mention been made relating to any action to be taken under Section 34. Hence, according to the learned counsel, it cannot be said that the

Petitioner has been given a reasonable opportunity to be represented, before taking any action under Section 34(1), as is stipulated under Section 34(2) of the Act.

8. Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the 4th Respondent submitted that the School was managed by the 4th Respondent for a period of 7 years between 2002 and 2009 and that it was handed over to the Petitioner in 2009 and the Petitioner became the Correspondent of that School. However, it is incorrect to state that the 4th Respondent committed malpractice. According to the learned Senior Counsel, it is the Petitioner, who has committed irregularity and when it was found out, the 4th Respondent was illegally removed.

9. Learned Senior Counsel went on to submit that the Court should take note of the fact that the Resolution passed by the Petitioner in the General Body Meeting is bad and that the contention made against the 4th Respondent is totally incorrect. He further submitted that as per Rule 7(1) of the Tamil Nadu Recognized Private Schools (Regulation) Rules 1974, the competent authority to grant approval to any change in the constitution of the Educational Agency is the Chief Educational Officer concerned, in respect of Pre-Primary, Primary and Middle Schools and the Joint Director of School Education (Secondary Education) in respect of High Schools and the Deputy Director (Teacher's Education) in respect of Teacher's Training Institute and the Joint Director of School Education (Higher Secondary) in respect of Higher Secondary Schools. Hence, according to the learned Senior Counsel appearing for the 4th Respondent, the District Educational Officer has no jurisdiction to pass the impugned order.

10. It is the further contention of the learned Senior Counsel appearing for the 4th Respondent that, even assuming that the impugned order will have to go, strictly speaking, the initial appointment of the Petitioner will have to be held bad, as there is no approval from the Joint Director. He further submitted that the permit is valid for a period of three years and from 2009 to 2017, i.e. for nearly 9 years, the Petitioner has managed to continue as the Correspondent of the School by using the name of the very same Association and got it re-registered subsequently, suppressing the fact that the old Association has not become defunct. He further submitted that it is incorrect to state that there was a judgment and decree against the 4th Respondent and since it was an exparte decree, a Petition to set aside the exparte Decree is filed and the same is pending.

11. Learned Additional Government Pleader appearing for Respondents 1 to 3 submitted that the District Educational Officer is not the competent authority to pass the impugned order and that he has granted approval of the Petitioner's appointment as Correspondent of the School in the year 2009.

He further submitted that he is not aware as to whether the Association in question was defunct during the period 1970 to 2010 and that the same has to be ascertained from the records.

12. In reply, learned counsel for the Petitioner contended that he has no objection for the erstwhile Association to continue, as, only as per the advice of the authorities of the 2nd Respondent Office, the Petitioner has submitted the renewal application, and the same, which was kept pending, has been treated as a fresh application for registering the Association in the same name. He went on to contend that if the Court accepts the contention of the 4th Respondent that the earlier Association continues to exist, the Petitioner has no objection in not continuing with the second Association that has been registered in the year 2011 and that the Petitioner is willing to function as the Correspondent of the earlier Association, that was formed in the year 1939-40. It is also his contention that there is no need of approval of the post of Secretary, as there is no re-consideration when a person has been replaced by another person. Lastly, he submitted that the Petitioner has filed all Income Tax Returns.

13. Heard the learned counsel on either side and perused the material documents available on record.

14. It is not in dispute that 'The Venkatapuram Cultural Association' was registered in 1939-40. Though, according to the official Respondents, the said Association has become defunct, it is seen from the records that the Petitioner has submitted all the Income Tax Returns pertaining to the said Association, periodically. Hence, this Court is of the view that the said Association still exists and that it has not become defunct.

15. Furthermore, it is represented by the learned counsel for the Petitioner that the Petitioner is willing to withdraw the second Association by making a representation to the authorities concerned on the score that the earlier Association continues to exist and that he is continuing as a Secretary of the said Association as on date.

16. On a reading of Rule 7(1) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, it is clear that to approve any change in the constitution of the Educational Agency or to approve the transfer of management of any private School, the Chief Educational Officer is the competent authority and that the Joint Director of School Education (Secondary Education) is the competent authority in respect of High Schools.

17. It is submitted by the learned Senior Counsel appearing for the 4th Respondent that the issue on hand pertains to High School and hence, the Joint Director of

School Education is the competent authority to approve any change in the constitution of the Association in question and thus, contended that the impugned order passed by the District Education Officer is incorrect.

18. In the case on hand, pursuant to the interim order of this Court and from taking over of the School from 2009, the Petitioner is continuing as Secretary of the Association and there is no change in the constitution. Hence, there is no need for fresh approval. If there is any change in the constitution, approval need to be obtained from the competent authority. But the competent authority viz. the Government is empowered to pass an order cancelling the approval order granted by the authority concerned, if there is any violation by the Secretary or any other person of the Association. In this case, as the order has been passed by the Joint Director of School Education, the impugned order dated 31.03.2017 passed by the 1st Respondent is set aside. However, reference to the pendency of the suit and criminal proceedings in this order are only for the purpose of disposal of the present Writ Petition and it will not any bearing on the Application said to be filed for setting aside the exparte judgment and decree and the criminal proceedings, that are initiated by the Petitioner against the 4th Respondent.

19. It is needless to mention that there is a representation made by the Petitioner on 20.01.2017 with regard to the approval of renewal of extension from 2017 to 2020. The competent authority shall consider the said representation and pass appropriate orders after hearing the Writ Petitioner, the contesting 4th Respondent and other persons, who are likely to be affected, within a period of two (2) months from the date of receipt of a copy of this order. Till a decision is taken by the competent authority, the present position is to continue.

The Writ Petition is allowed with the above direction and observations. No costs. Consequently, connected W.M.P.Nos.11310, 16559 and 20328 of 2017 are closed.

WEB COPY

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)

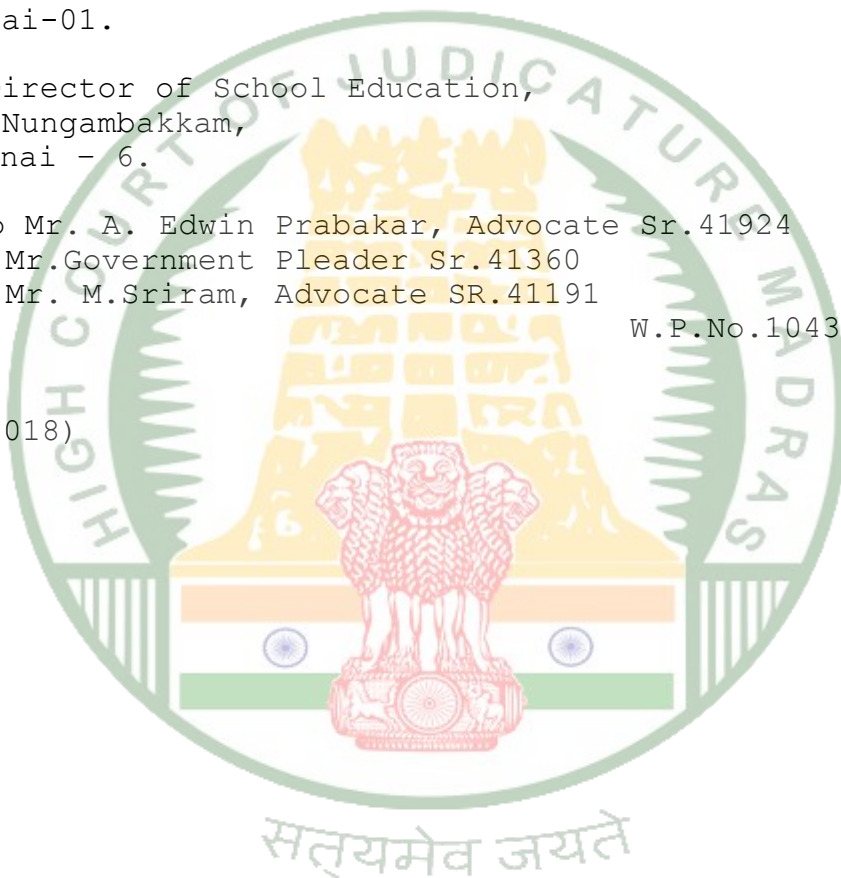
To:

1. The District Educational Officer,
Office of District Educational Officer,
Ponneri,
Thiruvallur District.
2. The District Registrar (Admin)
Office of District Registrar,
North Chennai,
Chennai-01.
3. The Director of School Education,
DPI, Nungambakkam,
Chennai - 6.

+ 5 ccs to Mr. A. Edwin Prabakar, Advocate Sr.41924
+ 1 cc to Mr. Government Pleader Sr.41360
+ 1 cc to Mr. M.Sriram, Advocate SR.41191

W.P.No.10430 of 2017

(CCC)
EU(20/07/2018)



WEB COPY