

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.04.2018
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
and
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

W.A.No.2415 of 2013
and M.P.Nos.1 and 2 of 2014 and
C.M.P.No.6389 of 2017

The Secretary and Correspondent,
Sri Kumaragurubara Swamigal
Middle School,
Tirupanandal,
Thanjavur District.

... Appellant /4th
respondent

versus

1. B.Bhuvaneswari ... 1st respondent/Petitioner
2. The Director of Elementary Education,
College Road,
Chennai - 6.
3. The District Elementary Educational Officer,
Thanjavur District,
Thanjavur.
4. The Additional Assistant Elementary
Educational Officer,
Tirupanandal,
Thanjavur District.

... Respondents 2 to 4/
Respondents 1 to 3

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order, dated 07.08.2013, passed in Writ Petition
No.46673 of 2002.

WP.No.46673 of 2002:Writ Petition filed under Article 226 of the
Constitution of India for a Writ of Certiorarified Mandamus to
call for the records relating to the order of the second
Respondent passed in his proceedings Na.Ka.No.1624/A3/2001 dt.
23.12.2002 quash the same and consequently direct the
2ndRespondent to approve the appointment of the petitioner as
secondary Trade Teacher of the 4th Respondent School from
10.1.2000 with salary and all other benefits forthwith.

For Appellant : Mr. K. Doraisamy,
Senior Counsel
for Mr.Kandhan Doraisamy

For R1 : Mrs.P.Mahalakshmi

For R2 to R4 : Mr.K.Karthikeyan,
Special Govt. Pleader (Education)

Orders Reserved on	11.04.2018
Orders Pronounced on	23.04.2018

JUDGMENT

DR.S.VIMALA, J.

When the declaration of minority status is only an open acceptance of legal character which existed antecedent to such declaration and when such minority status of the institution has been declared by the Civil Court, whether it is essential that the Government should once again declare the minority status of the institution, in order to enable the institution to claim protection, is the issue raised in this writ appeal by the fourth respondent in the writ petition.

2. The parties are described as per the nomenclature in the writ petition.

3. The writ petition in W.P.No.46673 of 2002 was filed by Bhuvaneswari, as the petitioner / 1st respondent herein, seeking direction to quash the order passed by the 2nd respondent, District Elementary Officer, Thanjavur, dated 23.12.2002, declining to grant approval for the appointment of petitioner Bhuvaneswari and also to direct the 2nd respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent school from 10.01.2000 with all attendant benefits.

4. The claim of the writ petitioner was dealt with by the learned single Judge and by order dated 07.08.2013, the order declining to grant approval, passed by the 2nd respondent dated 23.12.2002, was quashed with a direction to respondents 1 to 3 therein to approve the appointment of the petitioner as a Secondary Grade Teacher in the 4th respondent school from 10.01.2000 with salary and other benefits.

4.1. However, in paragraph 18 of the order, a finding has been rendered that the 4th respondent Educational Institution is not a religious minority or linguistic minority institution as per Article 30 (1) of the Constitution of India, and that the 4th

respondent school is not administering Tamil language and that it belongs to Hindu religion.

5. Challenging this finding, this writ appeal No.2415 of 2013 has been filed by the 4th respondent school.

6. The main contentions raised in the writ appeal are

a) the order of the learned single judge is against the principles laid down by the Division Bench of this Court in 2001 (4) CTC 641 (The Secretary, D.G.Vaishnav College, Arumbakkam, Chennai and another vs. Dr.T.Venkataraman Reader and Head, Post Graduate and Research, Dept. of Chemistry, D.G.Vaishnav College, Chennai and 3 others) and against the decision of the Supreme Court reported in AIR 2005 SC 3096 (R.Murali and others vs. Kanyaka P.Devasthanam & Charities and others).

b) It is also contended that there is already a decree declaring the minority status of the 4th respondent school and the same is allowed to become final and therefore, the learned single judge is not correct in giving a finding that the appellant institution is not a minority institution.

7. The appellant is aggrieved by the observation made by the learned single Judge in the order dated 07.08.2003, where an observation is made that there is no Government Order conferring minority status to the 4th respondent school.

8. Be that as it may, in view of the contentions raised, it is necessary to look into the decisions brought to the notice of this Court relating to minority status declared by the Civil Court .

9. In the decision of the Division Bench of this Court, reported in 2001 (4) CTC 641 (The Secretary, D.G.Vaishnav College, Arumbakkam, Chennai - 600 106 and another vs. Dr.T.Venkataraman Reader and Head, Post Graduate and Research, Dept. of Chemistry, D.G.Vaishnav College, Chennai and 3 others), it has been held as under :-

"3. The appellant in W.A. No.2387 of 2001 has been granted a minority status by a declaration granted by a decree dated 19.2.1988 by the Court of the Principal District Judge, Madras, in A.S. No.275 of 1987. It is not disputed that the said decree had become final. As on date, the said decree has not been nullified. But Mr. P. Jyothimani, learned counsel for the first respondent, submits that in view of G.O.(Ms.) No. 270, dated 17.6.1998, the decree, which has been granted on 19.2.1988, had become inoperative. Prima facie, we are unable to agree with the said submission as the Government has been a party and suffered a decree on 19.2.1988

and the said decree having become final, the Government is bound by the same unless there is a specific legislation that too, if it is not an affront to the above decree granted by the judicial authority. Then Mr.Jothimani takes us to the order of the Supreme Court in TMA. Pai Foundation and Ors. v. State of Karnataka and Ors, LA. No.20 in WP(C) No.317 of 1993 dated 17.10.1994. It is not disputed that the said writ petition is still pending on the file of the Supreme Court. In the interim order passed on the above date, the Civil Court's decree granting minority status to the respondents, who have been parties therein, that is respondents 2 to 6, has not been taken cognisance of Particular reference has been made to the said respondents and the said order does not operate in rem. In fact that position has been clarified by a learned single Judge of this Court in The Correspondent, St. Ignatius Higher Secondary School, Kurumbanai - 629 251, Kanyakutnari District and Ors. v. Director of School Education, College Road, Chennai 6 and Ors.. It is not brought to our notice that this judgment of the learned single Judge has been overruled. As such, we find a prima facie case in favour of the appellant in W.A. No.2387 of 2001 that it still enjoys minority status as on date. "

10. In the decision of the Apex Court, reported in AIR 2005 SC 3096 (R.Murali and others vs. Kanyaka P.Devasthanan & Charities and others), it has been held as under :-

We have extracted above the relevant portions of the decree granted by the city civil court in the year 1976. The respondents themselves obtained a decree of declaration that the institution belongs to a religious denomination and the authorities under Tamil Nadu Act, have no powers of framing or modifying any scheme of administration of the institution under the Tamil Nadu Act. We fail to understand how an executable part of decree granted by the city civil court which clearly restrains the authorities under the Tamil Nadu Act from modifying or framing the scheme of administration of the institution and declares the institution to be of a religious denomination, can be described as merely 'incidental observation', 'obiter dicta', 'not part of ratio decidendi' and 'not authoritative.' The operative part of the judgment containing the decree, rightly or

erroneously granted, having not been appealed against, has attained finality and cannot be described as an 'incidental observation', 'not a part of ratio decidendi', 'obiter dicta' and 'not authoritative' as has been done by the Division Bench in its impugned judgment. The conclusion of the city civil court on which decree is based is the main and operative part of the decision. The Division Bench has committed a gross error of law in ignoring a vital part of the judgment and decree dated 13.12.1976 of the City Civil Court, Madras which was obtained by the respondents themselves as the members of the Board of Trustee in their own suit instituted and numbered as O.S.No.7453 of 1972. Such a judgment and decree is valid and binding on the respondents. By their own conduct of obtaining a decree of declaration and injunction against the authorities, under the Tamil Nadu Act, they are estopped from raising a contrary plea in the subsequent suit instituted against them and oppose grant of leave of the Court sought by the present appellants under Section 92 of the Code of Civil Procedure. The respondents cannot be allowed to approbate and reprobate in the two suits in which the subject matter and issue of jurisdiction of civil court involved are the same.

11. Contending that the decree obtained from the Civil Court cannot be permitted to be declared a nullity in a writ proceedings, the learned counsel for the appellant relied upon the decision reported in AIR 1997 Madras 386 (Manonmaniam Sundaranar vs. Kumaragurubara Swamigal Arts), where under, the Court passed the following observation, which reads as under:

26. As already noticed, the decree granted by the sub-Court, Kumbakonam in O.S. 18/85 is a nullity is not challenged in the counter nor argued before the learned single Judge. Therefore, we are of the view that the appellant University cannot now be permitted to raise the question of nullity of a Civil Court decree at this distance of time. This apart, Civil Court's decree dated 12-8-1985 was confirmed in A.S. No. 62/86 by the Appellate Court and no second appeal has been filed against the said Appellate Court's order. In fact, the application filed by University to implead itself as a party in A.S. 62/86 was also dismissed by the Appellate Court and further revision to this court was also dismissed. Therefore, we hold that the decree of declaration granted by the competent sub-Court

at Kumbakonam dated 12-8-1985 is valid in law and not a nullity and that the said decree is not a nullity as contended by the appellant-University. The said contention therefore fails and is dismissed.

12. A perusal of the records, more particularly, the judgment in O.S.No.18 of 1985, which was confirmed in A.S.No.62 of 1986, reveals that the minority status of the 4th respondent has been upheld. The State has not chosen to file appeal against the said order and, therefore, the said order has attained finality. The minority status of the 4th respondent has become final. Therefore, it is not open to the State to contend that the fourth respondent is not entitled to minority status.

13. Once the minority status of the appellant institution is upheld, the findings rendered by the learned single Judge relating to the minority status of the 4th respondent school is liable to be set aside.

14. The learned Special Government Pleader appearing for respondents 2 to 4 submits that it is only the State Government which has to declare the minority status of the Institution and unless it is done, the school cannot claim minority status.

14.1. This contention is repelled by learned counsel appearing for the appellant by relying upon 1999 (1) CTC 121 (The correspondent, St. Ignatius Higher Secondary School, Kurumbanai vs. Director of School Education, College Road, Chennai and others) and contending that declaration of minority status is only an acceptance of legal character which existed anterior to such declaration and that the status of the minority institution will continue even if the Government not declaring such institutions as minority institutions.

15. Explaining the effect of declaration, the learned counsel for the appellant relied upon the Judgment of the Supreme Court 1998 (6) SCC 674 (N.Ammad vs. Manager, Enjay High School and others), where under, it has been held that even if the Government had not declared the Institution as minority institution, the status of the minority institution will continue and the effect of declaration is only a recognition of its legal character. The relevant observation reads as under:

"When the Government declared the School as a minority school, it has recognised a factual position that the School was established and is being administered by a minority community, the declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the School can claim protection

only after the Government declared it as minority school on 02.08.1994."

Thus, it is clear that, in order to claim protection as a minority institution, separate declaration by the State Government is not mandatory and the order of the civil court itself is sufficient. The findings contrary to this established rule is liable to be set aside.

16. In the result, the Writ Appeal is allowed. The findings with regard to the status of the fourth respondent school are hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Director of Elementary Education,
College Road,
Chennai - 6.
2. The District Elementary Educational Officer,
Thanjavur District,
Thanjavur.
3. The Additional Assistant Elementary
Educational Officer,
Tirupanandal, Thanjavur District.

+1 cc to the Govt Pleader sr 30686
+1 cc to Mrs.P.Mahalakshmi Advocate sr 29786
+1 cc to M/s.K.Doraisami Advocate sr 29782

W.A.No.2415 of 2013

aa25/04/2018