

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.19713 of 2013

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus declaring the proceedings in R.C.No.4722/ C4/ 2011, dated 08.06.2011, issued by the 1st respondent-Collector and District Magistrate, Guntur, with regard to change of the Correspondent by accepting the 3rd respondent as the Correspondent of National Aided Upper Primary School, Repalle, Guntur District, as illegal, arbitrary and contrary to the provisions of the Education Act and to consequently set aside the same and direct the respondents 1 & 2 to appoint the petitioner as Correspondent of the said school.

2. I have heard the submissions of Sri P. Bhaskar, learned counsel appearing for the petitioner, of the learned Government Pleader for Education appearing for the respondents 1 & 2; and of Sri N. Subba Rao, learned counsel appearing for the 3rd respondent. I have perused the material record.

3. From the pleadings and submissions, the following aspects are noticeable:

The National Aided Upper Primary School, Repalle, [hereinafter, 'the School'] was established in the year 1951 by Dasari Paripurnaiah, who is the grandfather of the petitioner and the 3rd respondent. The petitioner and the 3rd respondent are brothers and sons of Babu Rao. The said Paripurnaiah managed the School till 1978. On his demise, the father of the said parties, D. Babu Rao, who is one of the sons of late Paripurnaiah, was appointed as Manager of the School and continued as such till 2011. He became old. He, after fulfilling the necessary requirements and formalities, addressed a communication to the Department of Education for change of Manager of the

School in terms of Section 24 of the A.P. Education Act, 1982 [hereinafter, 'the Act']. In view of the communication of the father of the parties, who was by then working as Manager of the School, the change of correspondentship from the father of the parties, was approved *vide* proceedings, dated 08.06.2011, of the 1st respondent. The 3rd respondent started working as Manager of the School pursuant to the said proceedings/ order. The petitioner, who is aggrieved of such appointment of the 3rd respondent as Correspondent of the School in the place of his father, the former Manager of the School, as per the communication made by the father, got issued a legal notice, dated 18.02.2013, to the Collector and District Magistrate, *inter alia*, stating that he learnt, on 17.12.2012, that his father, Babu Rao, has superstitiously and clandestinely transferred the management of the School to his second son, 3rd respondent, in the month of June, 2011, by bypassing the petitioner and ignoring the rule of succession and the dictates of Paripurnaiah, the grandfather of the parties, who wanted the management of the School to be succeeded by the eldest son of the erstwhile Manager and thus his father Babu Rao, in seeking to transfer the management of the School from him to his second son, 3rd respondent, abrogated the Will executed by him bequeathing the management of the School to the petitioner. In the said notice, the petitioner also claimed that he, being the eldest son, is entitled to succeed to the management of the School and that the right to the post of Manager of the School automatically devolves upon him and, therefore, the communication sent by his father, who was the erstwhile Manager, with regard to transfer of correspondentship of the School to the 3rd respondent is illegal, arbitrary, capricious and *mala fide*. In the said legal notice, he sought to rescind the proceedings of the District Collector and Magistrate, dated 08.06.2011. Stating that there is no reply to the said legal notice afore-stated, the present writ petition is filed.

4. The case of the 3rd respondent is this: 'His father became old. Hence, after fulfilling all required formalities, his father addressed communication to the Education Department informing/intimating the appointment of this respondent as the correspondent of the School in terms of Section 24 of the Education Act. Accordingly, *vide* proceedings of the District Collector and Magistrate, dated 08.06.2011, the change of correspondentship of the School from the father of this respondent in favour of this respondent was approved. He is working as Manager of the School. On account of the family disputes, the petitioner is troubling him and his family members by summoning them to the police station. The petitioner got summoned this respondent and his family members to the police station on four occasions apart from addressing a letter, dated 18.02.2013, for his appointment as Correspondent of the School. Later, the petitioner came up with this writ petition to harass him. The allegations that the father resorted to surreptitious and clandestine practice in the matter of appointment of this respondent as Manager and bypassed the petitioner by ignoring the rule of succession etcetera are all false. Under Section 24(2) of the Education Act, the management of the School shall, for the purpose of the Act, nominate a person to manage the affairs of the School/ institution whether called by any name, viz., Secretary or Correspondent etcetera and intimate such nomination to the competent authority. Accordingly, the father of the parties, who was the then Manager of the school, nominated this respondent as Manager of the School as his father felt that this respondent would be in a better position to manage the affairs of the school. The management of the School is not heritable. The competent authority has to recognize/ approve the appointment made by the management of the School; and, the authority has no power to appoint any other Manager. Hence, the writ petition is liable for dismissal.'

5. The District Educational Officer/ 2nd respondent filed a counter affidavit. It is stated in his counter affidavit that Babu Rao, the father of the parties, worked as Manager of the School and that as per the remarks submitted by the MRO, change of correspondentship was noted in favour of the 3rd respondent with effect from 12.06.2011 *vide* proceedings, dated 12.06.2011, of the Collector and District Magistrate, Guntur, and that this change of correspondentship was done as per G.O.Ms.No.14, Edn., dated 24.02.2006, and that the 3rd respondent assumed the charge of post of Manager from his father, Babu Rao, and is discharging duties of the Manager of the School with effect from 12.06.2011 and that as per the orders of this Court, the Mandal Educational Officer, Repalle, was appointed as Special Officer to the School in the place of the 3rd respondent, the present Manager of the School.

6. At this stage, it is necessary to refer to the relevant portion of the interim order of this Court, which reads as under:

‘...Therefore, until further orders, the Deputy Inspector of Schools, incharge of Repalle, be treated and construed as a Manager of the School.’

7. The issue involved in the writ petition need not detain this Court in view of the settled legal position.

8. In the backdrop of the facts and contentions, it is to be examined as to whether the proceedings issued approving the appointment of the 3rd respondent as Correspondent of the School are unsustainable in the facts and circumstances urged by the petitioner. The incidental question is – ‘whether the educational authorities after having once approved the transfer of the management can rescind the said orders and accord approval for fresh correspondentship of the management of the School without there being any proposal from the management of the School. The further supplementary

question also is about the educational authorities' competence to change the management of the School and the scope of Section 24 of the Act.

9. The answers to the afore-stated questions are no longer *res integra*.

The relevant extract of Section 24 of the Act is as follows:

"24. Appointment and removal of manager of private institution: -

(1) not relevant

(2) The management shall, for the purpose of this Act, nominate a person to manage the affairs of the institution, whether called by the name of secretary, correspondent or by any other name, and intimate such nomination within thirty days thereof to the competent authority.

(3) not relevant

(4) not relevant

(5) not relevant

(6) not relevant

10. A careful reference to the decisions in *SPTRM High School v. Director of School Education and others*¹; *K. Rama Sastry v. Government of Andhra Pradesh and others*²; *Pakalapati Satyanarayana Raju v. Govt., of A.P. rep., by its Secretary, Education (EE.2) Department, Hyderabad and others*³; *G.J.R. Sunand v. Convention of Baptist Churches of Northern Circars (CBCNC) rep., by its President and others*⁴; and *S. L. Kameswari v. Government of A.P. and others*⁵ would make it manifest that the competent authority under the Act is not competent to appoint the Correspondent to a private School and is also not competent to change the Correspondent appointed by the management even though it is competent to approve the change of management. From the precedential guidance, it is also clear that management of a School alone has got power to appoint a Correspondent. In the case on hand, the father of the petitioner & the 3rd respondent was the Manager of the School. However, considering his advanced age and the

¹ 1999(5) ALD 425

² 2000 (5) ALD 601

³ 2001 (5) ALT 763 (DB)

⁴ 2003 (2) ALT 261 (DB)

⁵ 2003(2) ALD 702 (BD)

suitability of the 3rd respondent for the said post, he thought it fit to handover the management of the School to the 3rd respondent. Therefore, after following the required formalities, he sent a communication intimating the change of management and appointment of the 3rd respondent as correspondent of the school. Acting upon such recommendation and recognizing the appointment made by the management of the School, the proceedings impugned were issued approving the appointment of the 3rd respondent as the Correspondent of the School. Therefore, and in the light of the obtaining legal position, the petitioner is not entitled to challenge the same by means of this writ petition; and, the competent authority is also not obligated to change the management without a communication from the existing management of the School. It is pertinent to note that in the decision in K. Rama Sastry's case [2 supra], this Court categorically laid down that under the A.P. Education Act, there is no provision for transfer of management of the school under the heritable principle and that the managing committee is empowered to nominate a person as and when required and intimate the same to the competent authority; however, in case of dispute, the said dispute is to be resolved by civil Court.

11. For the foregoing reasons, this Court holds that the writ petition is devoid of merit and is liable to be dismissed.

12. Accordingly, the Writ Petition is dismissed; and, as a sequel, the interim order, dated 10.07.2013, stands vacated.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

16.07.2018

Vjl