

In the High Court of Judicature at Madras

Dated : 04.3.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.702 of 2019

Paavai Engineering College, rep.
By its Chairman V.Natarajan ...Appellant/Petitioner

Vs

- 1.The State of Tamil Nadu, rep.by
Secretary to Government, Higher
Education Department, Fort.St.
George, Chennai.
- 2.The Principal Secretary & Commissioner,
Directorate of Technical Education,
Guindy, Chennai.
- 3.The District Collector, Namakkal
District, Namakkal.
- 4.The Superintendent of Police,
Namakkal District, Namakkal.
- 5.The Inspector of Police,
Puduchatiram Police Station,
Namakkal District. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 16.8.2018 passed in W.P.No.1503 of 2010.

Prayer in W.P.No.1503 of 2010 : Petition filed under Article 226
of constitution of India to issue a writ of certiorari or any
other writ or order or direction in the nature of writ of
certiorari, calling for the records comprised in G.O.(Ms.)
No.366, High Education (J2) Department dated 13.10.2009, on the
file of the 1st Respondent, quash the same.

For Appellant : Mr.V.Selvaraj, SC for
Mr.Prabhu Mukunth Arunkumar

For Respondents : Mr.V.Kathirvelu, SGP

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.V.Selvaraj, learned Senior Counsel appearing on behalf of Mr.Prabhu Mukunth Arunkumar, learned counsel on record for the appellant and Mr.V.Kathirvelu, learned Special Government Pleader accepting notice for the respondents.

2. This writ appeal is filed challenging the order passed in W.P.No.1503 of 2010 dated 16.8.2018.

3. The said writ petition was filed by the appellant challenging G.O.Ms. No.366 Higher Education (J2) Department dated 13.10.2009. The challenge to the said Government Order failed and the said writ petition was dismissed by the impugned order.

4. Mr.V.Selvaraj, learned Senior Counsel appearing on behalf of the appellant submits that there are serious flaws in the said Government Order and the consequential directions issued vide proceedings dated 02.12.2009 by the Principal Secretary and Commissioner, Directorate of Technical Education to the Superintendent of Police, Namakkal. It is further submitted that vide the deed of trust dated 13.9.2007, the appellant institution was established and administered by a trust called as Pavai Varam Educational Trust, Rasipuram, which not only established the appellant college, but also as many as seven other institutions. It is also submitted that the complaint, which was alleged to have been made, was in respect of another institution and not the appellant institution.

5. Furthermore, by referring to the provisions of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, it is also submitted by the learned Senior Counsel that Section 2(d) defines the word 'management' to include the managing committee or any person, body of persons, committee or any other governing body, by whatever name called, in whom the power to manage or administer the affairs of an educational institution is vested. Furthermore, it is submitted by the learned Senior Counsel that the management, against whom, an action is sought to be initiated under the provisions of the said Act, has to be against the body of persons or a person. Section 3 of the said Act is also relied upon, which refers to a person, who is in charge of or is responsible for the management of any educational institution. In addition to that, it is stated that the penalty, which is to be imposed, in case of contravention of the provisions of the

said Act is established, is very high and severe and therefore, this Court should consider the challenge to the said Government Order.

6. The learned Senior Counsel appearing on behalf of the appellant has also referred to Section 11 of the said Act, which deals with cognizance of offenses and submitted that no court shall take cognizance of any offense under the said Act except with the sanction of the Government or such officer as the Government may authorize in this behalf. He would further submit that the said Government Order pertains to the appellant institution whereas the Principal Secretary and Commissioner, Directorate of Technical Education addressed to the Superintendent of Police by referring to the said Government Order in respect of another institution. Furthermore, he submits that the said Government Order issuing directions to the Principal Secretary and Commissioner of Technical Education is also vague.

7. It is to be noted that pursuant to the complaint, a first information report has been lodged in Cr.No.579 of 2009 on the file of the Puduchatiram Police Station, Namakkal District on 18.12.2009 for offenses under Sections 3, 4(2)(1), 4(3) read with Section 7 of the said Act as well as Sections 467 and 506 (ii) of the Indian Penal Code.

8. It is submitted by the learned Senior Counsel appearing on behalf of the appellant that this Court should lay down correct legal position in respect of matters wherein the provisions of the said Act were invoked.

9. In our considered view, the said writ petition is premature. The said Government Order does not order sanction for prosecution. It is a direction to the Principal Secretary and Commissioner of Technical Education to consider sanction for prosecution of the management of the appellant.

10. The distinction, which is sought to be brought out before us, is by stating that the allegation, which has erupted, is in respect of a different institution.

11. We may note that all the institutions are run by the same trust constituted through the deed of trust dated 13.9.2007.

12. Apart from that, the learned Senior Counsel appearing on behalf of the appellant has referred to certain observations, which are contained in the proceedings of the Principal Secretary and Commissioner of Technical Education dated 02.12.2009 addressed to the Superintendent of Police, Namakkal.

13. In writ proceedings, we cannot consider the factual matrix and more particularly, when the first information report has already been registered in the year 2009. Therefore, we are of the considered view that the said writ petition was thoroughly misconceived and that the learned Single Judge rightly dismissed the same.

14. Accordingly, the above writ appeal is dismissed. No costs.

15. We make it clear that any observations made by us in this judgment are only confined to the issue as to whether the writ proceedings are maintainable as framed by the appellant and the observations contained in this judgment will not, in any manner, prejudice the appellant in the criminal proceedings.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

RS

To

1.The Secretary to Government of Tamil Nadu, Higher Education Department, Fort.St.George, Chennai.

2.The Principal Secretary & Commissioner, Directorate of Technical Education, Guindy, Chennai.

3.The District Collector, Namakkal District, Namakkal.

4.The Superintendent of Police, Namakkal District, Namakkal.

5.The Inspector of Police, Puduchatiram Police Station, Namakkal District.

+1cc to Mr.D.Prabhu Mukunth, Advocate SR.No.20294

WA.No.702 of 2019

SJ(CO)
GMY (29/03/2019)

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