

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P.No.32322 of 2017 RESERVED ON :03.07.2017

W.P.No.18777 of 2019 RESERVED ON :19.07.2017

PRONOUNCED ON : 24.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.Nos.32322 of 2017 and 18777 of 2019 and
W.M.P.No.6690 of 2019 in W.P.No.32322 of 2017 and
W.M.P.Nos.18119 & 20374 of 2019 in W.P.No.18777 of 2019

M.Sardarmal Chordia

...

Petitioner in both W.Ps

Vs

1.State of Tamil Nadu,
Rep. By the Principal Secretary,
Higher Education Department,
Secretariat,
Chennai – 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai – 600 006.

3.The Joint Director of Collegiate Education,
Chennai Region,
Chennai – 600 015.

... Respondents in W.P.No.32322 of 2017

1.State of Tamil Nadu,
Rep. By the Principal Secretary,
Higher Education Department,
Secretariat,
Chennai – 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai – 600 006.

3.The Joint Director of Collegiate Education,
Chennai Region,
Chennai – 600 015.

4.S.D.Manohar Kumar Lodha
(4th respondent impleaded as
per order in W.M.P.No.20374 of 2019
dated)

... Respondents in W.P.No.18777 of 2019

Prayer in W.P.No.32322 of 2017:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records in the order bearing Moo.Mu.No.44933/G1/2016 dated 02.03.2017 passed by the second respondent and quashing the same and forbearing the respondents from interfering with the functioning of the petitioner as the Secretary of the Agurchand Manmull Jain College, Meenambakkam, Chennai as per clause 20(a) of the Memorandum of Association of Shri Sweatambar Stanakwasi Jaoin Educational Society.

Prayer in W.P.No.18777 of 2019:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorari calling for the records in the order bearing Na.Ka.No.04844/vu1/2018-1 dated 28.06.2019 and the order bearing Na.Ka.No.04844/vu1/2018-2 dated 28.06.2019 passed by the third respondent and quashing the same.

In W.P.No.32322 of 2017:-

For Petitioner : Mr.M.Radhakrishnan
 For Respondents : Mr.V.Kathirvelu,
 Special Government Pleader

In W.P.No.18777 of 2019:-

For Petitioner : Mr.M.Radhakrishnan
 For Respondents 1 to 3 : Mr.V.Kathirvelu,
 Special Government Pleader
 For 4th Respondent : Mr.Sunil Kumar

COMMON ORDER

Though the said two writ petitions were heard on different dates and reserved for orders, as the issue involved in both the writ petitions is common, this Court is proposed to pass the following common order.

2.Through the pleadings of the respective parties, the following facts are culled out for appreciation of the dispute and to arrive at a finding:

Shri Swethambar Jain Educational Society was registered under the Societies Registration Act, 1860 in the year 1938. In the year 1952, the

said Society established a college by name, Aguchand Manmull Jain College, Meenambakkam shortly and popularly known as A.M.Jain college, Meenambakkam. The Government of Tamil Nadu has recognised this college as a religious minority institution for the purpose of enjoying the protection and privileges under the provisions of Tamil Nadu Private College (Regulation) Act, 1974. The college is administered by the society as per the Memorandum of Association and Rules and Regulations. Being a minority aided college, they are governed by the Tamil Nadu Private Colleges (Regulation) Act and Rules to the extent applicable to minority institutions.

3.As per the Society bye-laws, the affairs of the society shall be managed by an Executive Committee consisting of hereditary patron members and elected members (clause 15). The members of the committee shall be elected once in two years from among the members of the society (clause 18 [a]) The committee shall at the commencement of its term, elect amongst its members the officer bearers namely President, Vice-President, Secretary General, Joint Secretary and Treasurer (clause 19 [a]). The office bearers so elected shall continue in office till their successors are elected and take charge of their respective offices (clause 20[a]). In case of any dispute regarding the decision of the committee or interpretation of the Bye-laws of the society or about the rights of the member or any about any matters of

procedure pertaining to any meetings including general meetings may be referred to arbitration of 3 members committee chosen from among the members of the society in accordance with the Arbitration Act. (clause 68 [a] and [b]).

4.In the above back ground, the election of Shri Swetambar Stanakwasi Jain Educational Society was conducted on 12/10/2014. The newly constituted Management Committee of the college nominated the petitioner herein as the Secretary. The election of the office bearers was challenged by one of its member Shri. Monohar Kumar Loda before the IV Assistant City Civil Court, Chennai in O.S.No.3502 of 2015. The defendants filed interlocutory application to refer the matter for arbitration. Hence, the said suit was dismissed on 21/02/2017 with liberty to the plaintiff to seek remedy through arbitration. This judgement is challenged by the plaintiff and the same is pending before the High Court in C.R.P.No. 2440 of 2017.

5.By this time, the tenure of the office bearers elected on 12/10/2014 expired on 11/10/2016. However, by virtue of clause 20[a] of the bye-laws, the management committee of the college continue to hold the office. By a resolution dated 01/10/2016, the management committee resolved to continue the present Secretary Shri.M.Sardarmal Chordia (writ petitioner) for

next 3 years i.e., from 01/10/2016 to 30/09/2019. When the re-nomination of the petitioner as Secretary was informed to the Director of collegiate Education, taking note of interim injunction granted by the Civil Court in the pending suit and considering the interest of the staff and students, the petitioner was recognised as Secretary temporarily for a period of 3 months. The proceeding to the above effect was issued by the Director of Collegiate Education on 29/12/2016. Later, Director of Collegiate Education vide proceedings dated 02/03/2017 passed order extending the recognition of the petitioner as Secretary of the college for a further period ending 31/12/2017, subject to the final outcome of the suit. The said proceedings of the Director of Collegiate Education is challenged by the petitioner in W.P.No. 32322 of 2017.

6. Pending this writ petition, the salary of the staff for the month of April 2019 was not disbursed by the respondents. Hence, W.P.No.14964 of 2019 was filed for disbursement of salary. After notice to the respondents, it was reported by the parties that the salary for the month of April' 2019 disbursed. Recording the same, this writ petition was disposed by this Court on 01/07/2019.

7. In the meanwhile, the Joint Director of Collegiate Education, (3rd respondent) served a proceedings dated 26/06/2019 to the petitioner, wherein, referring the letter of the petitioner dated 15/03/2016, requesting to recognise him as the Secretary of the college for the period between 01/04/2016 and 31/03/2018 and the orders passed by the Department recognising the petitioner as Secretary of the college temporarily upto 31/12/2017, had pointed that though the college has sent proposal to recognise him as Secretary upto 30/09/2019, his Secretary-ship was not extended further, due to pendency of the suit. So, the petitioner was told to send proposal along with Form 6 and Form 7 relating to his re-nomination as Secretary of the institution for recognising him as Secretary of the college.

8. That apart, the Director of Collegiate Education (2nd respondent) invoking the power conferred under G.O.Ms.No. 1021, Education Department, dated 02/09/1985, ordered to make direct payment to the staff. Based on this order, the 2nd respondent has communicated to the principal of the petitioner college to forward the bills of the staff. This communication dated 28/06/2019 is impugned in the writ petition W.P. 18777/2019.

9.Submission of the petitioner counsel:

The learned counsel for the petitioner questions the legality of the impugned communication of the 3rd respondent on four grounds.

(i)First, it is contented that, the order has been passed with malafide intention without affording opportunity to the petitioner. On 27/06/2019 at about 11.15 am the 3rd respondent served the proceedings dated 26/06/2019 to produce Form 6 and Form 7 to process the application for recognising the Secretary of the institution. The next day on 28/06/2019, served with the notice ordering direct payment and to present the bills through the Principal of the college. Having addressed a letter dated 26/06/2019 to the petitioner demanding necessary particulars in Form 6 and Form 7 for the purpose of re-nomination of the petitioner as the Secretary of the Jain College, for the period in question, the respondents 2 and 3 ought to have waited for the response of the petitioner for a reasonable time. They without waiting for the reply, hurriedly passed an order on 28/06/2019 ordering direct payment. Therefore, the proceeding of the 2nd respondent suffers from the vice of malice in law, arbitrary, unfair, unreasonable and violate Article 14 of the constitution.

(ii)Next, pursuant to the order of the 2nd respondent, the 3rd respondent has issued the letter dated 28/06/2019 to the effect that, the Principal of the College should sign the bills of the staff for the month of May' 2019 to September' 2019 and sent it to the 3rd respondent for appropriate action. The order of direct payment is passed referring the power under G.O.Ms.No. 1021. This Government Order could be invoked only when there is dispute over the Secretary-ship. As far as the petitioner college is concerned, there is no dispute whatsoever with regard to the Secretary-ship of the Jain College. The continuation of the petitioner as Secretary of the college till 30/09/2019 is legal or not, is yet to be decided by the High Court in W.P.No.32322 of 2017, so, during the pendency of that writ petition, the respondents could not pass order affecting the functions of the petitioner as the Secretary of the college.

(iii)Third, having approved the Secretary-ship of the petitioner for the period from 01.10.2016 to 31.09.2019, directing the Principal of the college to sign the pay bills of the staff for the period from May '2019 to September' 2019 would be in breach of the principle of equitable estoppels, arbitrary and violative of Article 14 of the Constitution of India.

(iv) Lastly, the petitioner college is a declared minority Institute. Section 11 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, exempts college run by minorities from constituting college committee under Rule 8 of the Tamil Nadu Private Colleges (Regulation) Rules. Nomination of Secretary by college committee under Rule 9 is applicable only to the schools which are required to constitute College Committee. When Rule 9 is not applicable to the petitioner college being administrated as college by minorities, application of Rule 9 to the petitioner college and invoking G.O.Ms.No.1021 amounts to violation of right of the minorities to establish and administer education institute.

10. The gist of the Common Counter affidavit filed by the respondents 1 to 3.

As per Rule 9(2) of the Tamil Nadu Private colleges Regulation Rules, the term of Secretary shall normally be for 3 years and he shall be eligible to be re-nominated for subsequent terms. In this case, the election of the Committee which nominated the petitioner itself is under challenge and sub-judice. The contention of the petitioner that he has been recognised as Secretary till 31/09/2019 is not correct. His nomination as Secretary was approved temporarily only upto 31/12/2018 in view of case filed by one S.D.Manohar Kumar Lodha.

11.The last election of the S.S.Jain Educational Society was conducted on 12/10/2014 for the term 2014-2016 and same under challenge by S.D.Manohar Kumar Lodha. The orders impugned were passed in view of dispute between the members of the educational agency. Shri. Manohar Kumar Lodha who has filed case challenging the election is a necessary party in the writ petition. When the election is under dispute, 'whether the existing committee can function in view of the dispute regarding their election and/ or continue to function even after expiry of their term' is a matter to be decided by the Registrar of Societies after analysing the bye-laws of the S.S.Jain Educational Society. The Education Department is no way connected with this issue.

12.Whenever there is change in the members of the Educational Agency/Trust under section 15(1) and (2) of the Registration Act r/w Rule 17(2) framed there under, the society has to inform the change and submit the list of new members in Form VII to the Registrar of Societies for Registration. The duly certified copy of Form VII by the competent Authority of the Registration office has to be given to the Education Department. After 01/01/2018, till date, the petitioner college has not submitted form VII for deletion or inclusion of members of the society.

13.Huge sum of money is paid by way of grant –in- aid for salary of staff. Hence, it is mandatory for the authorities to ensure and check the validity of the Managing Committee of the Trust and the Secretary nominated by such Managing Committee. In the said circumstances, to protect the interest of the staff and students, direct payment was ordered by the second respondent on 28/06/2019. That order was in turn communicated to the petitioner by the third respondent. Further, the Principal of the college was intimated to sign the pay bills of the staff and forward to the Department for disbursement.

14.The learned Special Government pleader appearing for the respondents 1 to 3 submits that, the proceedings of the 3rd respondent dated 26/06/2019 calling for Form VII and the proceedings of the 2nd respondent dated 28/06/2019 ordering direct payment which in turn communicated to the Principal of the petitioner college are not consequence of one to another. They are independent and passed in different context. Once the petitioner college conduct election and elects its office bearers and furnish Form VII to the Education Department as requested by the 3rd respondent in his proceedings dated 26/06/2019, recognising the Secretary as per Rule 9 of the TNPR Rules will be considered. Whereas, the proceedings of the 2nd respondent ordering direct payment to the staff is in

view of the dispute between the members of the society and due to the failure of the education agency to conduct the election which is due for a long time. The proceedings of the second respondent ordering direct payment issued as per G.O.Ms.No.1021 and in compliance of the Court direction in W.P.No.14964 of 2019 to immediately arrange for the payment of salaries to the staff. Hence submit that, the petitioner right to seek the relief lacks bonafide and merit.

15.W.M.P.No.20374 of 2019 in W.P.No.18777 of 2019 filed by Shri.Manohar Kumar Lodha :-

Shri.Manohar Kumar Lodha who is the plaintiff in O.S.No.3502 of 2017 and C.R.P.No.4220 of 2017 on the file of this Court, has filed petition to implead in W.M.P.No.20374 of 2019 in W.P.No.18777 of 2019. The implead petition is opposed by the writ petitioner on the ground that the implead petitioner has not disclosed how he is interested in the subject matter of the writ petition. The writ petition is filed challenging the vires of the proceedings issued by the 3rd respondent at the instance of the 2nd respondent. The dispute is between the writ petitioner and the respondents 2 and 3. Only they are bound to justify their orders. Third party unconnected with the order impugned in the writ petition is neither a necessary party nor a proper party to the litigation.

16.The communications of the 2nd and 3rd respondents which are now impugned in these writ petitions have its roots to the suit filed by Shri.Manohar Kumar Lodha. No proceedings is without the reference of the Suit filed by Shri.Manohar Kumar Lodha. Hearing his version of the case is proper and necessary to adjudicate the case appropriately. Hence, Shri.Manohar Kumar Lodha petition to implead (W.M.P.No.20374 of 2019 in W.P.No.18777 of 2019) is allowed and he is impleaded as fourth respondent in W.P.No.18777 of 2019, by this Court and his learned counsel was heard.

17.Submission of the learned counsel for Shri.Manohar Kumar Lodha (newly impleaded fourth respondent in W.P.No.18777 of 2019):

The S.S.Jain Educational Society has established and administering about 10 Educational Institutions. A.M.Jain College, Meenambakkam, Chennai is one among them. As per the bye-laws of the Society, election for the members of the executive committee has to be conducted once in 2 years from among the members. The election has to be conducted on or before 30th September. While so, the election in the year 2014 was scheduled on 12/10/2014 without furnishing details of members. While 118 posts were to be elected, notification was for only 104 posts. No reason for reducing the posts was assigned. Hence, the said election was challenged in

O.S.No.3502 of 2015. In view of the arbitration clause in the society bye-laws, the suit was dismissed. Against which, Civil Revision Petition is filed before the High Court and the same is pending.

18.The last election of the society was conducted in the year 2014 and thereafter, no election conducted for more than 4 years inspite of several request made by the members of the society. Therefore, he has filed W.P.No.29899 of 2018 seeking indulgence of the Registrar of Societies to conduct the election of the society and the said writ petition is pending.

19.Findings:-

The A.M.Jain College is administered by S.S.Jain Educational Society and governed by its bye-laws. It is a society registered under the Societies Registration Act. It is a religious minority institution. The last election for its office bearers held on 12/10/2014. The term of office bearers is two years. The office bearers have to nominate the Secretary of the college and inform the same to the Directorate of Collegiate Education. Due to pendency of Civil Suit, the nomination of the petitioner herein was recognised temporarily upto 31/12/2017. Thereafter, no further extension of recognition was formally issued by the Director of Collegiate Education. However, the

petitioner was allowed to act as the Secretary in view of the writ petition in W.P.No.32322 of 2017 filed by the petitioner.

20.The contention of the writ petitioner in W.P.No.32322 of 2017 is that, the committee has nominated him as Secretary for three years and proposal was sent to recognise him as Secretary for three years till 31/09/2019. Only if the tenure is prematurely terminated before the expiry of 3 years, the new Secretary has to be nominated and intimated under Rule 9 (2) of the said Rules, if there is only renewal of the existing Secretary, no intimation is required.

21.The other contention of the learned counsel for the petitioner is that, being a minority institution even appointing a Secretary of the college committee is not required under Rule 8 of the said Rules. So, no nomination of Secretary or intimating it to the authorities under Rule 9 arises.

22.The said contention is totally misplaced and misdirected. No doubt, Rule 8 of the said Rules exempts minority Institutions from constitution of managing committee, but under Rule 9, it is mandated upon the educational agency to nominate one of its member as its Secretary and intimate the same to the Education Department. This provision is independent of Rule 8.

It applies to all institutes irrespective of its status. Further, the bye-laws of the S.S. Jain Educational Society provides for the election of the executive committee, sub-committees for each institutions and election/nomination/appointment of the General Secretary of the Executive committee and Secretaries of the sub-committees respectively. The term of their office is two years and they can hold office till their successor are elected and takes charge. This provision is to avoid the possible vacuum in the office after the end of the term. It is only a rule of convenience. Taking advantage of clause 20(a) the office bearer once elected cannot refuse to conduct election and continue to hold the office in perpetuity.

23. For easy reference, The Rules 8 and 9 are extracted below which will fortify the above clarification.

"8. Constitution of committee.-(1)*The educational agency of every college other than minority college, shall constitute a committee.*

(2) The term of office of the members of the committee shall be three years. Members of the committee shall be eligible for re-nomination.

(3) The committee shall consist of -

(a) representatives of the educational agency, who shall be nominated by such educational agency: Provided that no employee of the college shall

be nominated under this category;

(b)Principal of the college; and

(c)Two senior-most Professors.

Explanation 1.-

Explanation 2.-.....

(d)One member nominated by the University concerned.

(4)When a vacancy in category (c)in sub-rule (3) arises, the next senior-most professor or Assistant Professor/lecturer, as the case may be, shall be nominated to the committee.

(5)The educational agency shall nominate one of its representatives in the committee as the President

(6)No person shall be eligible to become a member of the committee, if he is -

(a)a minor ; or

(b)a mentally unsound person ; or

(c)a person convicted for criminal offence involving moral turpitude;

(d)an insolvent; or

(e)a person found responsible for any serious irregularity as a result of enquiry, by the University or the Department of Education, Science and Technology.

9.Secretary of the committee.-(1)*The educational agency shall nominate one of its*

representatives as Secretary of the committee:

Provided that it shall be open to the educational agency to nominate the Principal as Secretary of the Committee.

(2)The term of office of the Secretary shall ordinarily be three years. However, he/she shall be eligible for renomination for subsequent terms. If the educational agency intends to change the Secretary within the period of three years, it shall do so only with the prior approval of the Director. Application for approval of change in the Secretaryship shall be made to the Director in Form 6.

(3)The Secretary shall function for, and on behalf of, the committee and educational agency.

(4)The Secretary shall act according to the resolutions passed at the meeting of the committee.

(5)The Secretary shall not interfere in the internal administration of the college such as admission, examination, promotion of student and other academic matters as also the administration of the special fee funds, which shall be made the exclusive responsibility of the Principal.

(6)The Secretary shall be responsible for the maintenance of proper and accurate accounts and the administration of college funds except special fee funds."

24. Having abreast of their bye-laws and the provisions of the Tamil Nadu Private Colleges (Regulation) Act and Rules, the petitioner has rightly sought for the recognition of his nomination as Secretary. The respondents also in turn had considered the request and after taking into consideration the pendency of the civil litigation touching upon the very election of the office bearers who have nominated the petitioner as Secretary through their resolution dated 01/10/2016, a restricted order has been passed by the respondents for limited period. While the 3rd respondent has issued the proceedings dated 26/06/2019 in the process of considering the petitioner request to accept his nomination as Secretary, the 2nd respondent has issued proceedings based on the power conferred on him under G.O.Ms.No.1021, and on prevailing dispute within the members of the educational agency leading to delay in conducting the election.

25. Admittedly, the petitioner college is under the S.S.Jain Educational Society. The said society is a registered Society. As per Rule 17 (2) of the Tamil Nadu Societies Registration Rules, 1978, any change among the members of the society or the committee shall be filed in Form VII, within 3 months from the date of such change. Till date, the petitioner has not produced the copy of form VII containing the list of members.

26. In this connection, the reason put forth by the petitioner are two fold. First, there is no change in the membership so, there is no need to produce Form VII. Second, being minority institution, the question of producing Form VII does not arise. The contention is that, there is no change in the membership cannot be correct when the petitioner himself admit that there was election for the Executive Committee members on 12/10/2014 and he was nominated as Secretary through a resolution by Managing Committee and again he was re-nominated pursuant to a resolution of the managing committee on 01/10/2016. In this context, bye-laws of the society relevant for this case to understand how the society and the institutions under the Society are to be administrated are extracted below:-

"Clause 15:

The affairs of the Society shall be managed by an Executive Committee consisting of hereditary patron members and elected members. The elected members shall be twice the number of hereditary patron members. From the members of the so constituted Executive Committee shall be elected President, Vice-President, Secretary General, Joint Secretary and Treasurer. The Secretary general and the Treasurer, shall be stankwasi Jains only. Not less than three-fourths of the members of the Executive Committee shall be elected from among the

members belonging to the Stankwasi Jain Community.

Clause 18

18.ELECTION

a)The members of the Committee shall be elected once in two years from among the members of the Society.

b)Election for the Committee shall be conducted on or before the 30th September.

c)The term of office of the elected members shall commence immediately after the election.

d)Members seeking election to the Committee shall have their membership current for atleast three years prior to the date of the election.

e)All Hereditary Patron members shall be elected as members of the Executive Committee as provided in Bye law 33 infra.

f)Members who have their membership current for atleast two years prior to the date of election shall alone have the right to vote.

g)(i)Procedure:Nominations shall have to be filled in the prescribed form available at the Society's office. The proposer and seconder shall have their membership current at least two years prior to the

date of election.

(ii) The last date for receipt of nominations shall be 10 days prior to the date of election.

(iii) 5 days time shall be allowed for withdrawal of nominations.

(iv) Notice regarding date of election shall be given to the members atleast 21 days in advance.

(v) All elections shall be conducted by secret ballot only.

(vi) The Committee shall appoint an Election Officer for conducting the election of the members of the Executive Committee.

h) Where any necessity arises for formulating more detailed rules of election procedure, the same may be done by the General Meeting.

19.(a) The Committee shall, at the commencement of its term, elect from amongst its members the President, Vice-President, Secretary General, Joint Secretary and Treasurer as provided in Bye-law 15 supra. These office-bearers of the Committee shall propose the names of the office-bearers and members of the sub-committees for all the society's institutions within 21 days. However, if any members proposes the name of any other person for any office or membership of any sub-committee, then the committee may proceed to elect

any person or persons from among its members in lieu of the same.

(b) The election shall be determined by majority of votes of members present.

(c) Members who seek election for the post of President and Secretary General shall be members of the Society for atleast 5 years prior to the date of election and they must have served at least two terms as member of the Committee.

20(a) The office-bearers of the Society and Secretaries of the Society's institutions shall continue in office till their successors are elected and take charge of their respective offices.

(b) The office-bearers of the Society and its institutions shall be responsible for any irregularity committed by them during their tenure of office. All the office-bearers and members of the Sub-Committees shall serve at the pleasure of the Committee.

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32. The entire management of the affairs of the Society and all its branches of activity shall be vested in the Executive Committee who in addition to the powers vested in them may exercise all such powers and do all such acts and things as may be

exercised by or done by the Society.

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POWERS OF THE COMMITTEE

45. Without prejudice to the generality of the provisions of Bye-law 32 supra, the Committee will have the following powers:

a) To frame rules for the conduct of the business of the Society for prescribing the duties of the several office-bearers, for the management of the properties and funds of the Society, for the management of the Society's institutions, for admission of members, for preparation of budgets, for raising funds, for investing the monies of the Society in approved securities as permitted by law, for purchase of properties, for the safe custody of documents and for other things incidental or conducive to the working of these bye-laws.

b) To purchase, take on lease, hire or otherwise acquire movable or immovable property and any rights or privileges which it considers necessary for the attainment or furtherance of the Society's objects.

c) To manage, lease, construct or alter any buildings or works necessary for the purposes of the Society.

d) To reimburse the Secretary General, the

Joint Secretary, and any office bearer, any conveyance or other incidental expenses actually incurred by them, for the purposes of the Society.

e)To incur other expenses incidental to the carrying out of the objects of the Society.

f)To spend not more than 25% over the budgeted figure of each of its institutions.

g)To appoint any member or members to wait in deputation on any officer of Government or any other body or the members of the Legislature or other distinguished persons, in order to submit representation on behalf of the Society in connection with any proposals or legislative measures likely to affect the objects of the Society.

h)To consult and appoint legal counsel for the purpose of advising the Committee on any important matter connected with the Society and to authorize any member or members in addition to or in lieu of the Secretary General or the Joint Secretary to represent the Committee in any special case in a duly constituted Court of law, either as Plaintiff or as Defendant and before any officers of Government and to sanction and authorize payment of the relative legal bills.

i)To appoint any members of the Committee as a sub-committee for any specific purpose connected with the work of the society.

i)To frame guidelines relating to all aspects of

the administration of its institutions and the working of its sub-committees.

k)To appoint, suspend or dismiss Heads of institutions managed by the Society.

l)To vest in the Secretary General full powers of control over the office of the society.

m)To take steps for collection of subscriptions, if any, donations or other things for carrying out the objects of the Society.

n)To remove a member from the membership of the Society, if he is adjudged insolvent or convicted by a court for any offence involving moral turpitude or is in the opinion of the Committee guilty of any misconduct likely to reflect detrimentally on the Society or that his continuance as member is likely to be prejudicial to the interests of the Society; provided that no member shall be removed without being given an opportunity of being heard and further provided that the motion for removal of a member must be approved by not less than 2/3 members of the Committee present and voting.

o)Any proposal either to establish institutions or to rename any of the institutions shall be placed by the Executive Committee before the General Body Meeting for its approval except the existing institutions duly named after individuals.

p)To name any building, hall, block or to have any plaque bearing any name affixed to any such

property.

q)(i) To constitute Sub-Committees for all Society's institutions as provided in Bye-law 19(a) above. Each Sub-Committee will ordinarily consist of seven members including its Correspondent and Secretary, (excluding Secretary General Ex-officio and Headmaster/Principal).

(ii) If deemed necessary to dissolve the Sub-Committee of any institution and reconstitute it at any time.

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46. The Sub-Committees appointed for all the institutions shall be subject to the control and supervision of the Executive Committee. Every institution shall send quarterly statements of receipts and payments duly approved by the concerned Sub-Committee to the Registered Office of the Society. It shall submit to the Committee its budget not later than 31st May and annual accounts not later than 30th June. It shall regularly send the agenda for the meetings and the minutes of the meetings to the Secretary General for placing them before the Committee. It shall also communicate to the Secretary General the academic results pertaining to the annual examinations including University and Board examinations taken by the students of the

institutions.

The Secretary of each institution shall, with the approval of the Committee, take such steps as are expedient to make good and deficit, if any, in its working. The offices of the Secretaries of the Society's institutions shall function at the premises of the respective institutions or at the Registered Office of the Society or at any other place approved by the Committee."

The Sub-Committee appointed for all the institutions shall be subject to the control and supervision of the Executive Committee.

27.The scrutiny of the resolution of the Managing Committee dated 01/10/2016 passed few days before the expiry of their tenure indicates that, they have resolved to nominate the petitioner as Secretary of the A.M. Jain College for a period of 3 years. This resolution is by the Managing Committee of the College and not by the Executive Committee of the Society which is the Educational Agency.

28.The next contention of the petitioner is that, being a minority institution, order of direct payment cannot be passed. G.O.Ms.No.1021 is not applicable to minority institutions and it cannot be enforced on it. In this

context, this Court is forced to re-iterate the principle laid by the Hon'ble Supreme court in **All Saints College -vs- Government of Andhra Pradesh** (AIR 1980 SC 1042), a minority institute has right to administer but not to mal-administer. The protection under Article 30(1) of the constitution of India is unfettered only to the extent of establishing and administering it. If it fails to administer in accordance with law of the land or bye-law of its own society, then the State which give financial assistance to it as grant-in-aid can interfere. In such circumstances, the Court has to ascertain 'whether the law of the State is to ensure educational standards, sanitation, competence of teachers, maintenance of discipline and the like or it is a colourable exercise of power by the State to interfere the affairs of the minority institution'.

29.As far as the facts of the case in hand, it is well demonstrated that the S.S. Jain Educational Society has not conducted the election for its Executive Committee for the past 5 years. The last election conducted on 12/10/2014 was subjected to challenge on the ground of mal practise. The learned counsel for the petitioner states that the reason for the not conducting the election within a reasonable time is attributable only to the pendency of C.R.P.No.2440 of 2017 and W.P.No.29899 of 2018. If dispute between the members is the reason for delay, then, the action of the 2nd

respondent ordering direct payment invoking G.O.Ms.No.1021 is perfectly legal. If that is not the reason for not conducting the election, then also the action of the 2nd respondent cannot be faulted since, the bye-laws envisages election once in two years and it should be concluded before 30th of September. When the bye-laws of the society envisages election once in two years, there is no reason for the existing members to delay the election process. Thus, the mal-administration of the institution is obviously seen. Taking cover under clause 20(a) of the bye-laws and not conducting election for nearly 5 years also an indication of mal-administration.

30.G.O.Ms.No.1021 clearly say that once the dispute in the management gets resolved, the authorities should hand over the power of payment, back to the lawful Secretary. Therefore, viewed from any angle, the proceedings of the 2nd respondent dated 28/06/2019 ordering direct payment and same being communicated to the Principal of the College is neither tainted with malafide nor lack of authority.

31.For the aforesaid reasons, writ petition in W.P.No.18777 of 2019 is dismissed.

(i) In view of the dismissal of W.P.No.18777 of 2019, upholding the proceedings of the Director of Collegiate Education dated 28/06/2019 ordering direct payment, the relief sought in W.P.No.32322 of 2017 no longer survives. Hence W.P.No.32322 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

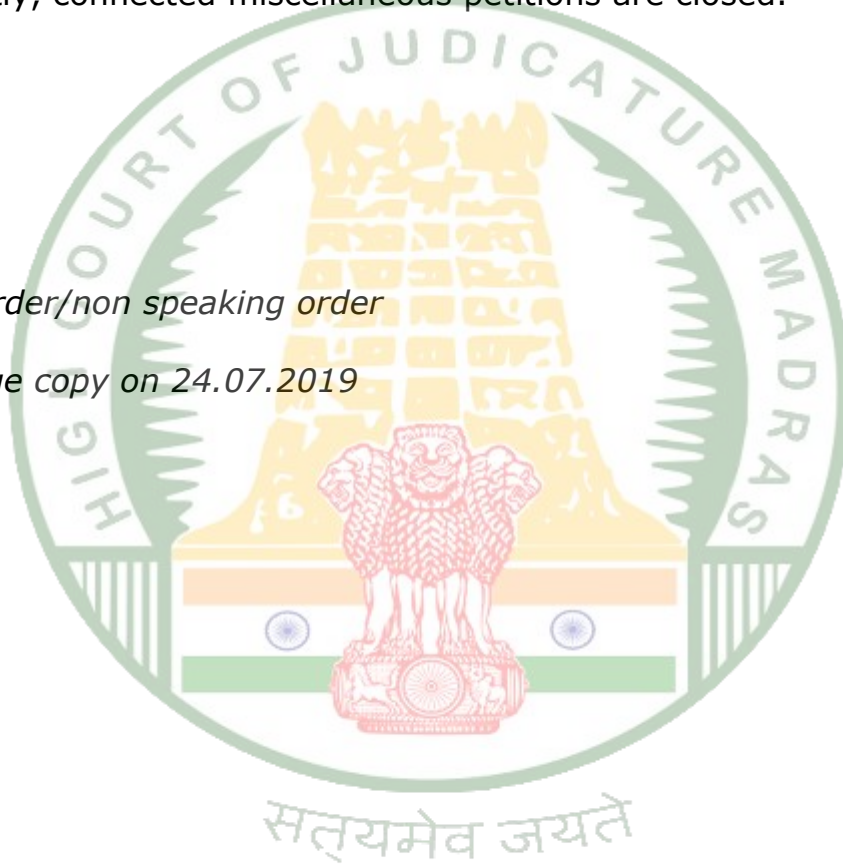
jbm

Index: Yes

Speaking order/non speaking order

Note:- Issue copy on 24.07.2019

24.07.2019



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To

1.The Principal Secretary,
Higher Education Department,
Secretariat,
Chennai – 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai – 600 006.

3.The Joint Director of Collegiate Education,
Chennai Region,
Chennai – 600 015.



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G.JAYACHANDRAN.J.,

jbm



Pre Delivery Common Order in
W.P.Nos.32322 of 2017 and 18777 of 2019

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24.07.2019