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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WRIT PETITION NO.30459 OF 2018
& W.M.P.NOS.35530 OF 2018 & 11370 OF 2019

Mr.Ashish Gupta
Secretary/Correspondent
of P.J.Gupta's High School
51/193, MTH Road, Ambattur,
Chennai -53

...Petitioner

Vs

1. The Secretary of the Government,
School Education Department,
Fort St.George, Chennai-600 009.
2. The Director of Education,
Directorate of Public Instruction,
No.17, College Road,
Nungambakkam,
Chennai-600 008.
3. The Joint Director of Education,
Directorate of Public Instruction,
No.17, College Road,
Nungambakkam,
Chennai-600 008.
4. The Chief Educational Officer,
Office of the Chief Educational Office,
Thiruvallur District.
5. The District Educational Officer,
Office of the District Educational Office,
Ambattur, Chennai-53.
6. Harish Gupta,
★
6D, Uma Complex, No.39, Balfour Road,
Kilpauk, Chennai-10.

(R6 impleaded vide order dated 19.06.2019,
made in W.M.P.No.6911/19)

... Respondents



Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus to call for the records of proceedings of 5th respondent in Na.Ka.No.684/Aa1/2018 dated 26.09.2018 and the consequential letter No.Na.Ka.No.684/Aa1/2018 dated 08.11.2018 and to quash the same and consequentially forbear the respondents from seeking approval of Secretaryship or Correspondentship from P.J.Gupta High School every three years, unless the Secretary/Correspondentship is changed within a period of 3 years as per Rule 13 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

For petitioner : Mr.A.Edwin Prabakar
For R1 to R5 : Mrs.V.Annalakshmi
Government Advocate
For R6 : Mr.M.Mohan Raj

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents

2. The case of the petitioner herein is that the Venkatapuram Cultural Association a registered Association operating since 1939 and also running a school by name P.J.Gupta's High School, which is recognized by the Government of Tamil Nadu. One Mr.Harish Gupta was the Correspondent of the School from 2003 to 2009. Thereafter, the Executive committee of the Association has resolved and elect Ashish Gupta as Correspondent. Accordingly, he has assumed office as Secretary of the Education Agency and informed the same to the respondents vide letter dated 23.02.2009. The Education Department has also accepted the same and allowed him to function as Secretary of the petitioner's School from 22.02.2009.

3. While so, after assuming charge as Secretary, the petitioner has found that the Association has not submitted for nearly 30 years the annual returns and other requisite reports to the Registrar of Societies, a procedure which is contemplated under the Society Registration Act. Since for 30 years the petitioner Association has not submitted the returns, on advice the petitioner has registered a new Association under the same name in the year 2011, presuming that the earlier Association has become defunct due to non compliance of the statutory proceedings. Meanwhile, Harish Gupta, the *** former Correspondent of the Venkatapuram Cultural Association** was found guilty of misuse and misappropriation of fund, while he was in the Association Secretary. Therefore, the petitioner has given a police complaint.



4. In turn, Ashish Gupta the petitioner herein has given a representation to the School authorities alleging mismanagement. When the issue brewed further, it ended in filing of the writ petition in W.P.No.10430 of 2017. In the said writ petition, this Court held that the act of the Ashish Gupta registering the second Association in the same name under the impression that the earlier Association became defunct, does not take away the character of the Educational Agency. For all purpose, the Educational Agency by name the Venkatapuram Cultural Association registered in the year 1939 still in existence in that premise.

5. This Court has proceeded further and taking note of the representation given by the petitioner on 21.02.2017 seeking approval of his Correspondentship of the Educational Agency, which according to him to be renewed for a further period of 2017 to 2020. This Court has passed the following order:-

"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."

6. The contention of the learned counsel appearing for the petitioner is that, after the order passed by this Court in W.P.No.10430 of 2017, he has given a representation to the respondents not to proceed with the representation dated * **21.02.2017**, seeking approval of his Correspondentship/Secretary and therefore, notice issued by the fifth respondent/District Educational Officer, Ambattur is liable to be quashed.

7. The further contention of the petitioner is that Rule 13 of Tamil Nadu Private Schools (Regulation) Rules, 1974, contemplates approval from the authorities only when there is a change in Correspondent/Secretary post within a period of three years. Since the nomination to the Correspondent/Secretary in the year 2009 has not changed, there is no necessity for him to seek any approval under Rule 13.

8. This contention is opposed by the learned Government Advocate appearing for the respondents 1 to 5. According to the learned Government Advocate, any private School established in Tamil Nadu is governed by private School laws and is bound to



get approval of the Education Agency, the Secretary who represents the Educational Agency and the Correspondent of the Education Agency. Rule 13 of the Tamil Nadu Private Schools Regulation Rules, 1974 contemplates that every Educational Agency should get approval of its composition particularly, the Secretary and Correspondent. Normally, the tenure of Secretary is three years, which is renewable for a further period. In any event, every three years, they should inform about the details of the Secretary and Correspondent of the Institute to the Government, failing which the Government is entitled to resort to other provisions of the Act including direct payment to the staff or cancellation of recognition.

9. In this regard, since there is some misunderstanding in understanding of Rule 13, it is necessary to consider the scope and impact of Rule 13, which reads as under:-

"13. Secretary of the School Committee:- (1) The Educational Agency shall nominate one of its representatives as Secretary of the School Committee:

Provided that, it shall be open to the Educational Agency, to nominate the Headmaster as Secretary.

(2) The term of office of the Secretary shall, ordinarily, be three years. However, he shall be eligible for re-nomination as Secretary 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 permission of the District Educational Officer.

(3) The Secretary of the School Committee shall function for and on behalf of the School committee and the Educational Agency.

(4) The Secretary shall act on the basis of the resolution passed at the meetings of the School Committee.

(5) The Secretary shall not interfere in the internal administration of the school like admissions, examinations, promotions of pupils and other academic matters which shall be the exclusive responsibility of the Headmaster.

(6) The Secretary shall be responsible for the correct maintenance of accounts and proper administration of school accounts relating to special fees for which the Headmaster shall be responsible."

10. Under the Tamil Nadu Private Schools Regulation laws, no person without the permission of competent authority shall establish a private school within the jurisdiction of Tamil Nadu. The person who seeks permission to establish a school should be represented through the Educational Agency, which is defined under Section 3. Educational Agency of any private School should have the School Committee consisting of members



has envisaged under Rule 12, which is extracted below:-

"12. Constitution of the School Committee:- (1) The Educational Agency of every private school shall constitute a School Committee.

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

(3) The School Committee shall consider of not more than the following number of members:-

Members.

(i) Representatives of the Educational Agency who shall be nominated by such Educational Agency : ...6
Provided that the employees of the school shall not be nominated under this category.

(ii) Headmaster of the School (Ex-officio) ...1
[(iii) Senior-most Teachers of the School ...3]
(iv) Parent Teacher Association Nominee ...1
(v) Senior-most non-teaching staff (if available) ...

1"

11. As far as the Secretary of the School Committee is concerned, he is the person who represents the Educational Agency for all purposes, he shall function on behalf of the School Committee and the Educational Agency. Therefore, it is very clear from the statute that a Secretary of a School Committee has to play a very pivotal role in the administration of the Private School and he is the representative of the Educational Agency for all purposes. While so, the Rule 13 fix the office of the Secretaryship ordinarily to be three years with an eligibility of re-nomination for subsequent terms. What is required under law, particularly Rule 13 of the Tamil Nadu Private Schools Regulation Act is that the Educational Agency should inform the authorities about the Secretary who is going to represent them and such person shall ordinarily hold the post for a period of three years and if the Educational Agency decide to re-nominate the same person to the subsequent terms, it shall be informed to the authorities to ascertain that the authorities are dealing with the right person.

12. Clause 2 of Rule 13 is, in case of any contingency/ change of the Secretary within a period of three years, the Educational Agency is supposed to inform to the authorities about the change of the Secretary. Nowhere in this Rule there is implied or explicit provision to indicate once the Secretary is nominated and same is informed to the authorities, as long as he is holding the post of Secretaryship of the Educational Agency for any number of terms that shall not be intimated to the



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authorities and permission need not be obtained. No Educational Agency shall refuse to furnish information about the Secretary every three years. If there is going to change within three years due to various circumstances, same has to inform to the authorities and they have to seek permission from the authorities.

13. In such circumstances, the contention of the writ petitioner in this writ petition that he need not seek for approval is untenable. Hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

14. While dismissing the writ petition, this Court is also conscious of the fact that for running an Educational Institute in this State recognition of institute is necessary. For that purpose, the authorities should also identify the Secretary who represents the Educational Agency. Therefore, if the petitioner herein makes appropriate application to the authorities furnishing all the required details about nomination of Secretaryship, the same may be considered by the authorities and orders may be passed in accordance with law. Since there is also some rival claim and stake by the fourth respondent herein and this Court has already given permission for the * **Sixth** respondent to make his representation regarding the approval of the Secretaryship. The sixth respondent is also given liberty to make a representation in this regard and if any such representation is made, the School authorities shall consider his representation also before passing any order.

15. The petitioner herein is directed to make his representation within a period of 10 days from today. On receipt of the said representation and any representation from the sixth respondent herein enquiry may be conducted and orders may be passed within a period of eight weeks from that date. There shall be an order of status quo till then.

Sd/-

Assistant Registrar (CS III)

*** Amended as per the Order of
this court dated 22.08.2019 made in
Rev.Appln.(writ) No.152 of 2019**

06.08.2019

Sd/-

Assistant Registrar (CS III)

Dated 20.09.2019

//True Copy//

Sub Assistant Registrar

rpl



To

1. The Secretary of the Government,
School Education Department,
Fort St.George, Chennai-600 009.
2. The Director of Education,
Directorate of Public Instruction,
No.17, College Road,
Nungambakkam, Chennai-600 008.
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Directorate of Public Instruction,
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4. The Chief Educational Officer,
Office of the Chief Educational Office,
Thiruvallur District.
5. The District Educational Officer,
Office of the District Educational Office,
Ambattur, Chennai-53.

+1cc to Mr.Mohan Raj, Advocate, S.R.No.59080

+1cc to the Government Pleader, S.R.No.59209

+3ccs to Mr.A.Edwin Prabakar, S.R.No.72006

**To be Substituted
to the Order already
Despatched on
19.08.2019**

Writ Petition No.30459 of 2018
& W.M.P.Nos.35530 of 2018 & 11370 of 2019

MG(CO)
RRS(06/08/2019)
CS/22/10/2019