

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.09.2019	17.10.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.935 of 2019

and

C.M.P. (MD) No.8408 of 2019

Ganeshamurthy

... Appellant/5th Respondent

-vs-

1.R.Krishnammal

2.K.G.K.Kothainayagi

3.The Principal Secretary
Elementary School
Educational Department
St.George Fort, Chennai

4.The Director of Elementary Education
Directorate Office
Elementary School
Educational Department
Chennai

5.The Joint Director
(School Elementary Education)
Tamilnadu School Elementary
Education Department
Chennai

6.The District Elementary
Educational Officer
Opposite to Rathna Theater
Tirunelveli-627 002

7.The Headmaster
Ganesamoorthy Middle School
Kurichi
Palayamkottai
Tirunelveli

... Respondents



Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 16.07.2019, passed in W.P.(MD) No.22863 of 2018, on the file of this Court.

Prayer in WP(MD). 22863/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st & 2nd Respondent herein to invoke the powers under Section 53-A of Tamil Nadu Recognized Private Schools Regulation Act, 1973 and to appoint a Special Officer to administer the Ganesamoorthy Middle School at Kurichi, Palayamkottai, Tirunelveli District by considering our Representation dated 20.10.2018.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.M.Vallinayagam, Senior Counsel
for Mr.D.Nallathambi for R1 & R2

Mrs.S.Srimathy
Special Government Pleader for R3 to R6

J U D G M E N T

[Judgment of this Court was made by T.S.SIVAGNANAM, J.]

The fifth respondent in W.P.(MD) No.22863 of 2018 is the appellant herein and the respondents 1 and 2 herein were the writ petitioners.

2. The prayer before the Writ Court was to direct the official respondents to invoke the powers under Section 53-A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short "the Act") and to appoint a Special Officer to administer Ganesamoorthy Middle School at Kurichi, Palayamkottai, Tirunelveli District (hereinafter, referred to as "the School"), by considering the representation dated 20.10.2018.

3. The learned Single Bench, by order dated 16.07.2019, disposed of the writ petition by directing the official respondents to appoint a Special Officer as an interim administrator to discharge the functions of the educational agency of the School, by exercising the power under Section 53-A(2) of the Act; with further direction to the interim administrator to take in-charge of the administration of the School, but he cannot take any major decision with regard to the appointment of teaching and non-teaching staff in the School without the permission of the Court. Further, the Court directed that the said arrangement is made pursuant to the final decree to be passed by the First Appellate Court or any interim or final order is passed by this Court in S.A.(MD) No.275 of 2018. This order is impugned in this writ appeal.



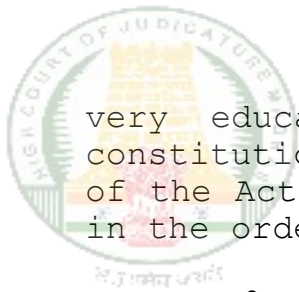
4. Mr.Prabhu Rajadurai, learned counsel appearing for the appellant, elaborately set out the factual matrix as to how the appellant's great-grandfather had established the School and the documents based on which, the appellant claims his right as an educational agency of the School. Further, with regard to the civil litigation between the parties, it is submitted that though in the first round of litigation, the appellant had not succeeded, subsequently, on remand, the Judgment was reversed by the First Appellate Court in favour of the appellant and the second appeal filed by the respondents 1 and 2 was dismissed and subsequently, in review application, the second appeal was allowed and the matter was remanded to the First Appellate Court, where the first appeal was partly allowed by the First Appellate Court and the suit filed by the respondents 1 and 2 was decreed and as against the said Judgment and Decree, the appellant has filed the second appeal, which is pending before this Court.

5. It is submitted that the language of Section 53-A of the Act is very clear in the sense the expression used is "may", which shows that there is a discretion and what is required to be considered is whether circumstances warrant an officer to be appointed. In this regard, the learned counsel for the appellant has drawn the attention of this Court to Paragraph No.12 of the impugned order and submitted that the Court has not recorded under what circumstances there was a need to appoint an officer by way of an interim arrangement and the direction issued by the learned Writ Court is a direct conflict with the provisions of the Act.

6. Further, it is submitted that even assuming the appellant fails in the second appeal, then the right to manage the Institution would fall on rotation basis. Further, there is no allegation made against the appellant for all these years and the School being under the direct payment, no prejudice would be caused if the appellant is permitted to continue to function as educational agency subject to, of course, the ultimate decision in the pending second appeal.

7. Further, it is submitted that there are host of activities, as many as 35, which can be performed only if the appellant continues as the educational agency. In this regard, the learned counsel for the appellant handed over a list of activities, which according to the appellant, were being performed in the capacity of the educational agency and Secretary of the Institution. Hence, it is submitted that the order and direction issued by the Writ Court calls for interference.

8. Per contra, Mr.M.Vallinayagam, learned Senior Counsel assisted by Mr.D.Nallathambi, learned counsel on record for the respondents 1 and 2, sought to sustain the order passed by the learned Writ Court and submitted that the right to manage the Institution vests with the educational agency and the appellant, by



very educational agency and as the dispute touches upon the constitution of the educational agency, the power under Section 53-A of the Act was rightly directed to be invoked and there is no error in the order passed by the learned Single Bench.

9. We have heard Mrs.S.Srimathy, learned Special Government Pleader, appearing for the official respondents.

10. Section 53-A of the Act deals with settlement of dispute as to the educational agency and matters connected therewith. The said provision commences with a non obstante clause "notwithstanding anything contained in Section 53 of the Act". Section 53 of the Act bars the jurisdiction of the Civil Court to decide or deal with any question, which is by or under the Act, required to be decided or dealt with by any authority or officer mentioned in the Act. Thus, an exception has been carved out under Section 53-A of the Act. The circumstances for exercising such power is whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, or as to the constitution of the School Committee or as to the appointment of Secretary of the School Committee and in such contingencies, the dispute may be referred by the persons interested or by the competent authority to the Civil Court having jurisdiction, for its decision. Therefore, a person interested can seek to invoke Section 53-A of the Act for reference to the Civil Court, if such a dispute arises out of the contingencies mentioned above. Powers are conferred on the competent authority to refer such disputes to the Civil Court.

11. In the instant case, the respondents 1 and 2 have set the law in motion, submitted representations to the authorities and thereafter, approached the Writ Court. There are very many disputes raised by the respondents 1 and 2 and these disputes have been denied by the appellant by making further allegations. These, clearly establish that there is a dispute between the parties. But, can such a dispute lead to a reference of such disputes to the Court by exercising the power under Section 53-A of the Act. As pointed out, four circumstances have been mentioned in Sub-Section (1) of Section 53-A of the Act. If the case falls within anyone of those four circumstances, the authority is entitled to refer such a dispute to the Civil Court and the persons interested will be justified in asking the authority to make such reference.

12. Sub-Section (2) of Section 53-A of the Act speaks about interim arrangement, which is required to be done in the event a dispute is referred to the Civil Court. This provision has been inserted bearing in mind that because of the internal dispute, the students of the School should not suffer and the Teachers should not be put to peril. In Sub-Section (2) of Section 53-A of the Act, two contingencies are mentioned. One is the order to be passed by the



Private School and the Government may nominate an officer to discharge the functions of the educational agency, the School Committee or the Secretary, as the case may be, in relation to the Private School concerned. The respondents 1 and 2 / writ petitioners have, thus far, been successful in the civil proceedings. The appellant has filed S.A.(MD) No.275 of 2018 and the same is pending and there is no interim order. During the pendency of the suit, there was no interim arrangement made by the Civil Court. However, the Department has brought the School under the direct payment of salary to the teaching and non-teaching staff of the School.

13. The question now to be decided is whether the nature of dispute between the parties would fall within anyone or more of the contingencies specified in Sub-Section (1) of Section 53-A of the Act i.e. whether any dispute is there as to the constitution of any educational agency; whether any person or body of persons is an educational agency; whether there is a dispute relating to constitution of the School Committee or whether there is a dispute as to the appointment of the Secretary of the School Committee. If the dispute falls within one or more of above mentioned contingencies, we need to sustain the order passed by the the learned Single Bench. The appellant claims himself to be the sole educational agency as well as the Secretary of the Institution. The respondents 1 and 2 have succeeded in the civil proceedings, by which, they would be entitled to be part of the Management. How the Management has to be done whether by rotation or otherwise has to be decided in the final decree proceedings by the Civil Court. The respondents 1 and 2 claim that the educational agency needs to be constituted in terms of the decree and it cannot be exclusive to the appellant alone. Therefore, it is clear that there is a dispute as to the constitution of the educational agency as well as a dispute as to whether the appellant is the sole educational agency as well as whether the appellant is entitled to claim that he alone shall be the Secretary of the School Committee. That apart, mere pendency of the civil dispute questioning the exclusivity claimed by the appellant and the denial by the appellant reiterating this stand is sufficient to hold that there is a dispute as referred to under Section 53-A of the Act. Therefore, we find no error in the order passed by the learned Single Judge.

14. In the result, the writ appeal fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



To:

- 1.The Principal Secretary,
Elementary School
Educational Department,
St.George Fort, Chennai.
- 2.The Director of Elementary Education,
Directorate Office,
Elementary School
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Chennai.
- 3.The Joint Director
(School Elementary Education),
Tamilnadu School Elementary
Education Department,
Chennai.
- 4.The District Elementary
Educational Officer,
Opposite to Rathna Theater,
Tirunelveli-627 002.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-92833[F] dated
18/10/2019)

+2 CC to M/s.D.NALLATHAMBI, Advocate (SR-92854[F] dated
18/10/2019)

JUDGMENT

IN

W.A. (MD) No.935 of 2019

and

C.M.P. (MD) No.8408 of 2019

17.10.2019

JMN(23.10.2019) 6P : 8C