



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)No.1515 of 2018

and

C.M.P(MD)No.10798 of 2019

against

WP(MD)No.5768 of 2011

G.Subramanian

... Appellant/5th Respondent

Vs.

1.Usilampatty Nattathi Nadargal

Uravinmuraikku Pathiyamana

Nadar Saraswathy Higher Secondary School and

Primary School Paribalana Sabai, Usilampatty,

(Regn.No35/1961), rep. by its Secretary,

B.Jeyarajan, having its Office at

TB Road, Usilampatty - 625532.

... 1st Respondent/
Writ PETitioner

2.Ms.D.Sabeetha IAS.,

The Secretary-Department of School Education,

Govt. of Tamil Nadu, St. George Fort,

Chennai - 600 009.

3.The Director of Matriculation,

DPI Compound, Chennai - 600006.

4.The Inspector of Matriculation Schools,

Tallakulam, Madurai - 625 002.

5.The Chief Educational Officer,

Tallakulam, Madurai - 625 002.

... Respondents 2 to 5/
Respondents 1 to 4

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 10.02.2017 in Writ Petition (MD)No.5768 of 2011.

Prayer in WP(MD). 5768/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the Inspector of Matriculation, Madurai, Madurai District 625 002, in her proceedings in Na.Ka.No.224/Aa/2011 dated 23.05.2011 and quash the same, as illegal besides ultra vires.



For Appellant : Mr.EVN.Siva
For Respondents : Mr.S.Meenakshisundaram
Senior Counsel for
Mr.R.Senthilkumar (for R1)
No appearance for R2 to R5

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JUDGMENT**K.RAVICHANDRABAABU, J.**

This writ appeal is directed against the final order passed in W.P(MD)No.5768 of 2011, dated 10.02.2017.

2.The appellant is the fifth respondent before the Writ Court. The above writ petition was filed challenging the order of the Inspector of Matriculation, Madurai, dated 23.05.2011, wherein and whereby an order already granted in favour of the writ petitioner recognising him as Secretary/Correspondent of Usilampatti Nadar Saraswathy Matric Higher Secondary School was temporarily stayed. The reason stated for temporarily staying such recognition is with reference to the interim orders passed by the I Additional Sub-Court, Madurai in O.S.No.103 of 2011 and O.S.No.451 of 2010 dated 31.03.2011. The Writ Court, after hearing both parties, disposed the writ petition by observing that the writ petitioner is entitled to act as Secretary as per the prior approval. Though the Writ Court has not specifically set aside the order impugned in the writ petition, in effect, it has done so, by permitting the writ petitioner to act as Secretary as per the prior approval.

3.The learned Counsel for the appellant Mr.EVN.Siva submitted as follows:-

(a) In respect of the Management, two groups are fighting with each other and in a batch of cases decided by this Court in W.P(MD) No.13037 of 2011 etc., dated 19.03.2013, the Writ Court on an earlier occasion, has specifically directed the two groups to approach the Civil Court for final determination of their rights with regard to the management and with a further direction to the educational authorities to make direct payment of the grant until the Civil Court pronounces the final judgment.

(b) the said order of the Writ Court was confirmed in W.A(MD) No.439 of 2013 dated 30.04.2013.

(c) further challenge before the Apex Court in Special Leave Petition Nos.18097-18099 of 2013 though is pending, stay therein was granted only against the direction issued at para 77(ii) of the order passed in the Writ Court. Therefore, in respect of other directions issued by the Writ Court, no stay is granted and thus, the parties are bound by those directions and consequently, the Writ Court is not justified in permitting the writ petitioner to continue as Secretary.

(d) the Writ Court has taken note of the order passed in the Civil Court only in respect of the interim applications filed by the appellant and not in respect of the order passed in the interim



application filed by the writ petitioner, where the Civil Court has found that he is not entitled for injunction.

4.The learned Senior Counsel appearing for the first respondent/writ petitioner submitted that though the earlier writ petitions were disposed of by this Court on 19.03.2013 by issuing various directions, since the matter is pending before the Apex Court, the School cannot be run without a person to manage the same and therefore, the writ petitioner can be permitted to continue as Secretary, especially, when the Education Department has already recognized him as the Secretary/Correspondent.

5.We heard both sides and perused materials placed before this Court.

6.There is no dispute to the fact that in respect of the management of the subject matter educational agency, two groups are claiming right over the same. Already several writ petitions were filed before this Court and they were taken up together and decided by the Writ Court on 19.03.2013 in W.P(MD)No.13037 of 2011 etc. The following observations made by the Writ Court at paragraphs 54, 55, 56 and 77 would show that the rival claim made by the respective parties were already considered and a common order is passed in the said batch of cases directing the parties to approach the Civil Court and get their right finally determined. Paragraphs 54 to 57 read as follows:-

"54. Suffice it to point out that two Societies registered in the year1991, one called Peravai and another called Uravinmurai, with registration Nos.98/91 and 442/91, are now fighting to take control of the originallyformed Society with Registration No.35/1961. Peravai (98/91) was always represented by B.Jeyarajan and Uravinmurai (442/91) was represented by G.Subramanian.

55. In the judgment delivered by this Court in W.P.Nos.913 and 5186 of 1998 dated 24.9.1998, this Court restrained Uravinmurai (442/91) from claiming any right over the original Society. Similarly, in para 19, this Court made it clear that Peravai (98/91) represented by B.Jeyarajan is not the Educational Agency and hence, the relief of Mandamus sought by them could not be granted.

56. But unfortunately, by repeatedly litigating before various Courts, including the Civil Courts and Writ Court and by repeatedly filing Forms and inviting orders from the District Registrar as well as the Inspector General of Registration, the two groups, one led by B.Jeyarajan and another led by G. Subramanian, have created an illusion as though they represent the original Society also. This became possible only by making the District Registrar accepting or rejecting the Forms filed by one or the other. This is why, 2 out of the above 3 writ petitions are filed by B.Jeyarajan, claiming to represent the original Society (35/61) and the third writ

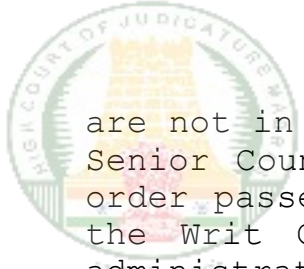


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petition is filed by G.Subramanian claiming to represent the very same Society. But both are not entitled to do so, unless two things happen, viz., (i) the actual membership of the original Society (35/61) is determined by a Civil Court, after oral and documentary evidence and (ii) a proper election is held from among the members of the General Body of the original Society. Till these two things happen (i) neither Peravai nor Uravinmurai and (ii) neither B.Jeyarajan nor G.Subramanian could stake any claim to be the original Society or the representatives of the original Society.

57. In the absence of a final determination (not an interim order) by a competent Civil Court, as to who are the members of the General Body of the original Society (35/61) and without a proper election being conducted for the said Society only from among such members, neither B.Jeyarajan nor G.Subramanian can file any writ petition, as though they represent the original Society. In fact, when W.P.No.913 and 5186 of 1998 were decided, B.Jeyarajan was only representing the Peravai (98/91) and the claim set up by them was in conflict with the claim of the original Society (35/61), which happened to be the actual Educational Agency. Therefore, I am surprised that both parties who had a conflict of interest against the original Society, can now file writ petitions in the names of the original Society itself. Hence, on this short ground, these 3 writ petitions are liable to be dismissed."

7.It is to be noted at this juncture that the Writ Court disposed those writ petitions by specifically upholding the orders issued by the educational authorities for direct payment until the Civil Court pronounces the final judgment (not an interim order) as to who are members of the original society with registration No.35/1961 and as to who are its elected members eligible to be recognised as the educational agency. It is to be noted at this juncture that this direction/observation of the Writ Court, namely, paragraph 77(i) has not been stayed by the Apex Court in the pending SLP. At paragraph 77(iii), the Writ Court also pointed out that warring groups are at liberty to approach the Civil Court for a final determination as to who are the members of the original society with Registration No.35/1961 as on date and as to who are its elected members as on date, "eligible to be recognised as the Educational Agency" . Likewise, at paragraph No.77(iv), the Writ Court observed that till the Civil Court decides the question of membership as well as the question of office bearership of the original society, the District Registrar need not accept any Form filed by any of the groups. When such being the order passed by the Writ Court and the said order having been confirmed by the Division Bench and not stayed by the Apex Court except paragraphs 77 (ii) (with which we are not presently consent in this writ appeal), we



are not in a position to accept the contention raised by the learned Senior Counsel appearing for the writ petitioner in support of the order passed by the Writ Court. In fact, the findings rendered by the Writ Court that in the absence of the Special Officer, the administration of the school has to be managed by the individual, itself would in effect, go contra to the findings already rendered by the Writ Court as stated supra. It is to be noted at this juncture that the reasonings for issuing the direction at paragraph 77(i) have been clearly spelt out at paragraphs 54 to 56 as stated supra.

8.As rightly pointed out by the learned counsel for the appellant, the Writ Court has taken note of the interim orders passed by the Civil Court in O.S.No.103 of 2011 which was set aside by the High Court in C.R.P(PD)(MD)No.1274 of 2011, without considering the fact that the interim application in I.A.No.108 of 2011 filed by the writ petitioner himself in O.S.No.441 of 2010 was rejected by the Civil Court and against which, no challenge was made by the writ petitioner further. In any event, as the very same issue has already been considered by the Writ Court in the earlier batch of cases, wherein the parties were directed to approach the Civil Court and get their rights determined finally and when such finding is not stayed by the Apex Court, we find that the order passed by the Writ Court cannot be sustained and thus is liable to be interfered with. Accordingly, the Writ Appeal is allowed and the order of the Writ Court is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The Secretary-Department of School Education,
Govt. of Tamil Nadu, St. George Fort,
Chennai - 600 009.
2. The Director of Matriculation,
DPI Compound, Chennai - 600006.
3. The Inspector of Matriculation Schools,
Tallakulam, Madurai - 625 002.
4. The Chief Educational Officer,
Tallakulam, Madurai - 625 002.



+1 CC to Mr.E.V.N.SIVA, Advocate (SR-80534[F] dated 08/08/2019)
+1 CC to Mr.R.SENTHIL KUMAR, Advocate (SR-80655[F] dated
08/08/2019)

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Judgment made in
W.A (MD) No.1515 of 2018
and
C.M.P (MD) No.10798 of 2019
07.08.2019

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