



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.1817 of 2021

and

W.M.P. (MD) No.1548 of 2021

WEB COPY

Sujatha Bharathi Dasan .. Petitioner

Vs

1.Bharathi Dasan

2.Marudhupandian

3.M.Vijaya

4.The Registrar,
Bharathidasan University,
Palkalai Perur,
Thiruchirapalli 620 024.

.. Respondents

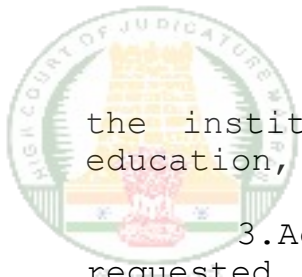
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 4th respondent to consider the communications of the 1st respondent dated 18.11.2020, 10.12.2020 and 30.12.2020.

For Petitioner : M/s.Ananda Gomathy

ORDER

The petitioner is a Principal of Madudhupandiar College of Arts and Science, Thanjavur. According to her, the Trust, by name, Athivetty Karumuthuvalli Educational and Charitable Trust, was originally established on 18.04.1995 and subsequently, an amendment was made in the Trust in the month of March 2001 and the name of the Trust was also changed as Athivetty Karumuthuvalli Educational and Charitable Trust. The name of the petitioner institution was also changed simultaneously as described in the cause title of the affidavit filed in support of this writ petition. The Trust was recognized by the State Government.

2.The 2nd respondent, who was the Managing Trustee for some time, had run into deep debts and therefore insolvency proceedings were initiated against him in O.A.No.9025/2003, which was subsequently renumbered as O.A.No.158/2007 and in view of the insolvency proceedings being faced by the 2nd respondent, he became disqualified for holding any trusteeship and therefore, he resigned from the trusteeship rightly during the time, when the insolvency proceedings were pending against him. According to the petitioner, there are 14 criminal cases as against the 2nd respondent as on date. The petitioner along with the remaining trustees has been running



the institution successfully and has been providing the quality education, in a disciplined and peaceful atmosphere.

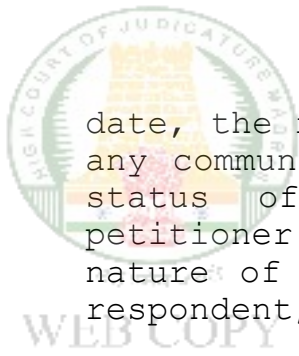
3. According to the petitioner, the 2nd respondent recently requested her to accommodate him with some position of responsibility in the college. In response to the request, the petitioner asked the 2nd respondent to supervise the college and manage the affairs of the college.

4. According to the petitioner, the college was closed due to the present pandemic lock-down from 3rd week of March, 2020. The 2nd respondent allegedly took advantage of the lock-down and fabricated several documents, as if the original trustees including the petitioner had resigned from the Trust and the 2nd respondent, his wife and his daughter were alone the Trustees and also circulated the instructions to the staff, directing them not to deal with the petitioner and other Trustees. The 2nd respondent claims to have been made as Trustee by resolution No.71, dated 20.10.2020. The resolution was also communicated to the college and the 2nd respondent has taken into his custody illegally of all books of accounts and other documents pertaining to the affairs of the Trust.

5. The petitioner claims to have been the Principal of the College from 09.06.2016 to 29.05.2019 and was also a senate member of the University from 2015 to 2018. Subsequently, the petitioner was duly appointed on 16.10.2020 as Principal by the Board of Trustees. In regard to the above dispute, the 1st respondent has submitted a detailed representation on 18.11.2020 and 10.12.2020 followed by legal notice dated 30.12.2020. In the meanwhile, the petitioner along with the other Trustees has also approached the civil Court, namely, Sub Court, Thanjavur, in O.S.No.252 of 2020 seeking declaration that the 1st respondent and the petitioner are the Board of Trustees and for declaration that the 2nd respondent and his nominees were not connected with the Trust.

6. In the interregnum, it appears that the notification has been issued by the 4th respondent on 17.12.2020, wherein, election has been announced on 23.01.2021 and voting would be exercised by the Principal of the affiliated Colleges. Ultimately, the petitioner is before this Court seeking a direction to the 4th respondent to consider her representations dated 18.11.2020 and 10.12.2020 and the legal notice dated 30.12.2020.

7. The learned counsel appearing for the petitioner would vehemently submit that the 2nd respondent illegally had visited the office of the Principal and taken over the Trusteeship, which was not recognized by the 4th respondent / University. According to the learned counsel, the 4th respondent / University, is under obligation to take a decision in regard to the representations submitted on behalf of the original Trustees and the petitioner. However, till



date, the representations have not evoked any response, nor is there any communication of the 4th respondent to the petitioner as to the status of the representations. The learned counsel for the petitioner would also make an attempt to highlight the various nature of disputes and in the absence of any decision of the 4th respondent, the petitioner's right is being seriously affected.

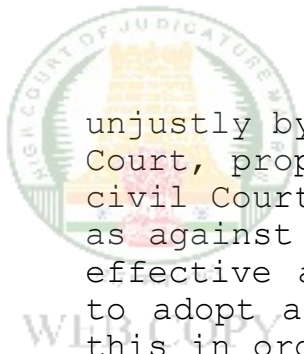
8.From the above factual narrative, it could be seen that there are several issues need to be adjudicated on the basis of the factual appreciation by entering into the areas of innumerable controversies. Even according to the petitioner, a comprehensive suit has been filed in O.S.No.252 of 2020 before the competent civil Court for declaration and in which event nothing prevented the petitioner and the other Trustees on her side from obtaining any directions from the civil Court, protecting their interest against the alleged illegal action of the 2nd respondent and his supporters in regard to the office of the Trusteeship and also the position of the Principal of the College. Without approaching the competent Court in the pending civil suit or filing a separate proceedings, in a dispute of this nature, it is not open to the petitioner to approach this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

9.This Court is of the view that in the guise of seeking a seemingly innocuous prayer of issuance of writ of mandamus to the 4th respondent University, the petitioner and others on her side are attempting to settle their personal disputes against the 2nd respondent in securing the affairs of the Trust for themselves.

10.Firstly, as between the petitioner and the 2nd respondent disputes revolve around factual claims and counter claims, which cannot be a subject matter of adjudication of this Court in a writ jurisdiction. The issue as to whether the appointment as Principal or Trustee was valid or not? and whether the appointment of the 2nd respondent and his supporters in the Trusteeship was valid or not?, cannot be gone into by this Court and come to any conclusion either in favour of the petitioner or against the petitioner as that would involve extensive factual investigation.

11.Secondly, the petitioner, without challenging any of the purported actions of the 2nd respondent, cannot seek a mere issuance of writ of mandamus in order to solve the factual disputes qua parties. A writ of mandamus cannot be a panacea for all the discord between the warring Trustees.

12.In the circumstances of the case, this Court is not inclined to issue any direction to the 4th respondent / University in a dispute like this. However, the right of the petitioner is certainly not lost, in case, she feels right to continue as Principal or the Trustee is sought to be taken away illegally and



unjustly by the 2nd respondent or his parties. In the opinion of this Court, proper course for the petitioner is to approach the competent civil Court by letting in sufficient evidence to establish her claim as against the claim of the other parties. Without resorting to such effective and right legal remedy, it is not open to the petitioner to adopt a contrived route through the constitutional remedy like this in order to achieve a collateral purpose by seeking an issuance of writ of mandamus. In the considered opinion of this Court, such remedy is not to be made available to the petitioner before this Court, particularly, in a dispute of this nature that has been projected in this writ petition.

13. For the aforesaid reasons, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

+1 CC to M/s.ANADA GOMATHY, Advocate (SR-3114[F] dated 03/02/2021

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NA (CO)
KB (07.04.2021) 4P 2C