



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.03.2021

PRONOUNCED ON : 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P. (MD)Nos.15375, 16120 and 18189 of 2020

and

W.M.P. (MD)Nos.12915, 12916, 13499, 13500 and 15168 of 2020

W.P. (MD)No.15375 of 2020

Mariappan : Petitioner

Vs.

1.The Inspector General of Registration,
Department of Registration,
Santhom High Road,
Chennai - 9.

2.The Deputy Inspector General of Registration,
Tirunelveli Range,
Tirunelveli.

3.The District Registrar of Societies,
District Registrar Office,
Tenkasi.

4.T.N.Pudukudi Hindu Nadar
Uravinmurai Mahamai Committee
Rep. By its Secretary,
T.N. Pudukudi,
Puliankudi, Tenkasi.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents to take appropriate action against the fourth respondent based on the representation dated 10.10.2020.

For Petitioner : Mr.S.Kumar
for M/s.M.Manikandan

For Respondents : Mr.K.Sathiya Singh
Additional Government Pleader
for R.1 to R.3

Mr.B.Prahalad Ravi
for R.4



W.P. (MD) No.16120 of 2020

Sankara Pandian

: Petitioner

Vs.

WEB COPY

- 1.The Inspector General of Registration,
Department of Registration,
Santhom High Road,
Chennai - 9.
- 2.The Deputy Inspector General of Registration,
Tirunelveli Range,
Tirunelveli.
- 3.The Chief Educational Officer,
Tenkasi District,
Tenkasi.
- 4.The District Educational Officer,
Sankarankovil,
Tenkasi District.
- 5.The District Registrar of Societies,
District Registrar Office,
Tenkasi.
- 6.T.N. Pudukudi Hindu Nadar
Uravinmurai Mahamai Committee
Rep. By its Secretary,
T.N. Pudukudi,
Puliankudi, Tenkasi.

7.R.Manickam

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus to call for the records in respect of the impugned Form-VII dated 23.05.2020 passed by the fifth respondent and quash the same as illegal and consequently direct the fourth respondent not to accord approval for the application with regard to transfer of management effected in T.N.Puthukudi Hindu Nadar Uravinmurai Higher Secondary School based on proposals submitted by seventh respondent.

For Petitioner : Mr.K.K.Senthil
for M/s.M.Manikandan



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For Respondents : Mr.K.Sathiya Singh
Additional Government Pleader
for R.1, 2 & R.5
Mr.J.Gunaseelan Muthiah,
Additional Government Pleader
for R.3 and 4
Mr.B.Prahalad Ravi
for R.6
Mr.T.Lajapathi Roy
for Mr.M.Suriyan Baghavan Dass
for R.7

W.P. (MD) No.18189 of 2020

R.Manickam : Petitioner

Vs.

1.The District Educational Officer,
O/o. The District Educational Officer,
Sankarankovil,
Tenkasi District.

2.M.Sankara Pandian : Respondents

(R2 is impleaded vide Court Order dated 16.02.2021 in W.M.P. (MD) No.2140 of 2021 in W.P. (MD) No.18189 of 2020)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings Na.Ka.No.1734/Aa4/2020, dated ...11.2020 (signed on 13.11.2020) issued by the Respondent and quash the same as illegal and consequently, to direct the Respondent to approve the Secretaryship for the School Committee for 2020-2023.

For Petitioner : Mr.T.Lajapathi Roy
for M/s.V.Rajiv Rufus

For Respondent 1 : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

For Respondent 2 : Mr.K.K.Senthil
for M/s.M.Manikandan



COMMON ORDER

The short facts and circumstances which gave rise to the filing of these three Writ Petitions are stated hereunder:

1.1.The T.N.Pudukkudi Hindu Nadar Uravinmurai Mahamai Committee is an unregistered body having both movable and immovable properties. The Committee was founded by the Nadar community residing at T.N.Pudhukudi Village with an object of providing quality education to help financial assistance to his members and their wards. The Committee though unregistered had purchased immovable properties in and around Puliyangudi. Many properties were gifted and purchased among the Nadar community people residing in T.N.Pudhukudi in the name of the Mahamai Committee.

1.2.After purchasing of various properties, in furtherance of its objectives, the Committee has constructed a school at T.N.Pudhukudi and the school was also recognised and governed under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The Committee also constructed shopping complexes and also a Kalai Arangam (Community Hall) and the same was meant for the use of Nadar community people at concessional rate. Apart from this, the Committee has also managing and owning two temples in the village.

1.3.In terms of the Regulations of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the management of the school, namely, Educational Agency, had to be a registered body. Therefore, in fulfilment of the requirement of compulsory registration for administrating the School, one Chella Durai, the then Secretary of the Mahamai Committee was appointed as a Secretary in the newly formed T.N.Pudhukudi Hindu Nadar Uravinmurai Palli Kalvi Committee and registered the Committee in the office of the Deputy Inspector General of Registration, Tirunelveli. The registered Kalvi Committee was authorised to be the managing committee of the school which is only an extended arm of the unregistered Mahamai Committee.

1.4.There are above 1600 members as on date paying subscription to the unregistered Mahamai Committee, the respondent herein. There was a dispute in 2008 in regard to the conduct of the election to both the Mahamai Committee and the Kalvi Committee and one set of office bearers submitted Form-VII and the same was registered and accepted by the third respondent District Registrar. Over a period of time, there appears to be series of disputes among the members in regard to the filing of Form VII and acceptance of the same and also the appointment of the Secretary to the School Committee. These disputes are governed under the present three Writ Petitions which are taken up together for common disposal.



2. One of the Writ Petitions viz., W.P.(MD)No.18189 of 2020 is challenging the proceedings of the District Educational Officer, rejecting the claim of the petitioner therein to approve the Secretaryship on the ground that this Court has held that the dispute in regard to educational agency has to be settled only by approaching the civil Court having jurisdiction under Section 53A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The second Writ Petition viz., W.P.(MD) No.15653 of 2020 is seeking Mandamus to take action against Mahamai Committee by a member questioning certain irregularities in the functioning of the society and its mismanagement. The third Writ Petition viz., W.P.(MD) No.16120 of 2020 is questioning the Form-VII filed before the District Registrar of Societies, Tenkasi, by another member one R.Manickam who is the petitioner in W.P.(MD) No.18189 of 2020.

3. These disputes from the facts could be stated to be overlapping each other in regard to the functioning of the Mahamai Committee and the related activities of the committee with reference to the management of the school run by the unregistered body.

4. When the matters are taken up for hearing, the lead Counsel Mr.T.Lajapathi Roy would submit that in view of the specific provisions incorporated in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 that for settlement of dispute as to the educational agency, etc., such dispute may have to be decided by the Civil Court having jurisdiction. The learned Counsel fairly conceded that let the parties be directed to approach the Civil Court regardless of the nature of dispute, as this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India would not be in a position to adjudicate the matters. According to the learned Counsel, the adjudication of the controversies quo parties herein could involve extensive investigation of competing claims in the realm of factual appreciation which investigation cannot be undertaken by this Court in Writ jurisdiction.

5. The learned Counsel would then refer to Section 53A which was in fact inserted by the Tamil Nadu Act, 1987 which reads as under:

"53-A. Settlement of dispute as to Educational Agency, etc. -

(1) Notwithstanding anything contained in section 53, 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 whether agency, in relation to any private school, or as the appointment of secretary of the school committee, arises such dispute may be referred by the persons interested or by the competent authority to the civil court having jurisdiction, for its decision.



(2) Pending the decision of the civil court on a dispute referred to it under sub-section (1), or the making of an interim arrangement by the civil court for the running of the private school, 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."

6.The learned Counsel would also submit that under Sub clause (2), the Government may nominate any Officer to discharge the functioning of the Educational Institutions as an interim arrangement, pending any order from the jurisdictional Civil Court.

7.Although this Court finds that there were objections from some Counsels appearing for some parties in these Writ Petitions, however, ultimately every party represented by respective Counsels realized that these disputes cannot be decided by this Court in a Writ jurisdiction and ultimately, the Civil Court has to take a call in settlement of the *lis quo* parties, with a view to find a lasting solution to the ongoing rift among its members.

8.While making his submission, the learned Counsel Mr.T.Lajapathi Roy, would also attract the attention of this Court to Section 41 wherein an appeal is provided against the orders of the competent authority under Chapter VIII of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. In this regard, he would submit that whether the order which is under challenge in W.P.(MD)No.18189 of 2020 is an appealable order which was passed under Section 53A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 is not clear in the Act.

9.The learned Counsel would also submit that the law on the aspect that Civil Courts alone have jurisdiction in election dispute of societies, is well settled. The learned Counsel would rely upon a decision by a Full Bench of this Court in the case of **C.M.S.Evangelical Suvi Davi .. vs .. The District Registrar and others** reported in **2005 (2) CTC 160**. Particularly, he would refer to paragraph 20 of the judgment which reads as under:

"20. As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form VII, the provision of Sub-Section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry under Section 36 is not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working and financial condition, and hence the power of

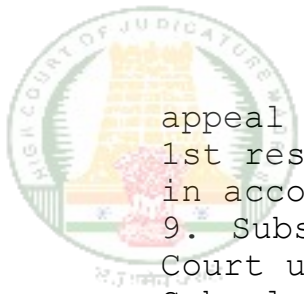


the Registrar to issue such direction under Sub-section (9) of Section 36 of the Act, in regard to the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it under Section 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to the power under Section 37 to cancel the registration. Hence, the power under Sub-Section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the civil Court for appropriate orders and thereafter shall act as per the orders of the civil Court. Accordingly, the issue is answered. Post the Writ Appeals for disposal accordingly."

10. The learned Counsel also referred to an order of Single Judge of this Court rendered in W.P. Nos.8246 and 13465 of 2001, dated 26.09.2011 wherein a learned Judge of this Court by a detailed order in consideration of Section 53A of the Schools Act has clearly held that the dispute which covered under the said Section will have to be considered only by the Civil Court. He referred to paragraphs 9 and 10 which read as under:

"9. In fact, the Supreme Court has held that the Writ Petition is not appropriate remedy in such cases vide its judgment in *Swamy Atmananda vs. Swami Bodhananda* and others reported in (2005) 3 SCC 734. In paragraph 2, it was held as follows:

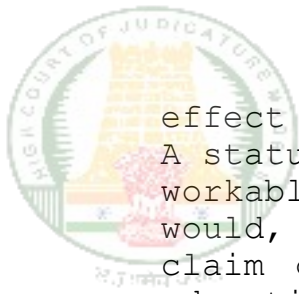
"2. A decree passed by the civil court must be passed in terms of the provisions contained in the Code of Civil Procedure. The Writ Petition is not the appropriate remedy therefor. In that view of the matter, the impugned judgment is sustained, which is set aside accordingly. The



appeal is allowed. It, however, goes without saying that the 1st respondent herein shall be entitled to execute the decree in accordance with law."

9. Subsequently, the dispute was raised before the Supreme Court under Section 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act and the dispute will have to be referred by the educational authorities for consideration by the civil courts and the internal management of the society cannot be decided, was also considered. The Supreme Court while considering the scope of Section 53 and Section 54 of the Tamil Nadu Recognised Private Schools (Regulation) Act vide its judgment in Swamy Atmananda and others vs. Sri Ramakrishnan Tapovanam and others reported in (2005) 10 SCC 51 in paragraph 49, held as follows:

"49. A dispute as to who is the real educational agency in relation to a private school is not a matter which in terms of the provisions of the said Act would be determined by an authority under the provisions of the said Act. Section 53-A of the Act carves out an exception to Section 53 thereof. In terms of the said provision, any dispute as to the educational institution is to be determined by a civil court having jurisdiction for its decision. The submission of Mr Sukumaran, however, is that the jurisdiction of the civil court is required to be invoked in such matters specified therein by way of reference by the persons interested or by the competent authority. Mr Sukumaran would contend that such a reference would be akin to a dispute pending under the Industrial Disputes Act. We cannot accept the said contention. A party to a dispute may not join the other in referring the same to the civil court. The party may agree or may not agree therefor. A person having a grievance as against another must have a remedy. The maxim ubi jus, ibi remedium is not an empty formality. The jurisdiction of the civil court exemplifies the said doctrine. The jurisdiction of the civil court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute. In terms of Section 53-A of the Act, a dispute as to educational agency is concededly required to be decided by a civil court. How the jurisdiction of the civil court is required to be invoked is a matter to be examined by the civil court. Unlike a private tribunal or a statutory tribunal which would not derive a jurisdiction unless a reference in terms of the provisions of the Act is made to it, the civil court enjoys a plenary jurisdiction. Furthermore, if and when a dispute arises before the competent authority as regards entitlement of an educational agency in relation to educational institutions, the same must also be referred to the civil court. Statutory authority in terms of Section 5 of the Act cannot be said to have any jurisdiction to determine such a dispute. A statute, as is



effect to the provisions thereof. It must be read reasonably. A statute must be construed in such a manner so as to make it workable. The wording referred by the persons interested would, thus, mean a person who has a grievance as regards claim of other side relating to educational agency of the educational institutions. It can be done by filing a suit before the civil court. The term persons, which is plural, has been used having regard to the fact that educational agency need not be a person alone but would also include a society registered under the Societies Registration Act or a body corporate in terms of the Companies Act. In any event, if such a dispute within the contemplation of Section 53-A has to be decided by a civil court, it will not attract the bar under Section 53 which applies only to a question which is required to be dealt with or decided by any authority or officer mentioned in the Act."

10. In the light of these legal authorities, even the 2nd respondent's right to hold the office of Secretary cum Correspondent also will have to be resolved by an appropriate civil court and a Writ Petition will not lie. In the light of the judgment referred to above, the second Writ Petition is misconceived and the same is dismissed."

11. In the above decision, the learned Judge has also held that right to hold the office of Secretary/Correspondent will also have to be resolved by the Civil Court and the Writ Petition will not lie. In fact, the question raised by the learned Counsel Mr. T. Lajapathy Roy as to whether the order of the authority prescribed under Section 53A of the Private Schools Act, 1973 would find an answer in the Section itself. The issue of whether the order passed under Section 53A is appealable or not is though not pressed into service in these proceedings, however, this Court *prima facie* is of the view that any decision taken under Section 53A of the Act cannot be considered as an order which can be appealed against under Section 41 of the Act and it is merely a reference which can be resorted to by the authority himself or by any person interested. Therefore, it is upto the Civil Court to take a call whether the dispute would come within the ambit of Section 53A of the Act or not.

12. In any event, the sum and substance of the case herein that these matters are to be disposed of by directing the parties to approach the Civil Court for appropriate reliefs and in that view of the matter, all these Writ Petitions are disposed of. The dispute regarding functioning of the unregistered body or the election to the registered society if to be agitated, the same shall have to be before the competent Civil Court and not before a Writ Court.

13. As stated above, Clause 53(2) provides for a latitude for the Government to put in interim arrangement till the Civil Court takes a decision on any interlocutory application or final decision



as the case may be, while disposing of these Writ Petitions the following directions are also issued:

1. The competent authorities/respondents are directed to approach the Government for passing appropriate orders to nominate an Officer to discharge the function as Educational Agency/School Committee of the subject school as the case may be, expeditiously but not later than 4 weeks from the date of receipt of a copy of this order, till any direction or order is obtained from a competent Civil Court by the parties to the dispute in terms of Sub Clause (ii) of Section 53A for the purpose of streamlining the functioning of the school.

2. The authorities may also invoke the power envisaged in the Societies Registration Act for nomination of Special Officer, till election dispute is resolved.

3. The parties are at liberty to approach the Civil Court for enforcing their competing claims as against each other and these Writ Petitions cannot be kept pending on the file of this Court any further in view of the law laid down by this Court and also with reference to Section 53A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1873.

14. All these Writ Petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To

1.The Inspector General of Registration,
Department of Registration,
Santhom High Road,
Chennai - 9.

2.The Deputy Inspector General of Registration,
Tirunelveli Range,
Tirunelveli.



3.The District Registrar of Societies,
District Registrar Office,
Tenkasi.

4.The Chief Educational Officer,
Tenkasi District,
Tenkasi.

5.The District Educational Officer,
Sankarankovil,
Tenkasi District.

+1 CC to M/s.Addl. GP (SR-17717 & 17718[F] dated 27/04/2021)

+1 CC to M/s.SGP (SR-17712 & 17713[F] dated 27/04/2021)

Order made in
W.P. (MD)Nos.15375, 16120 and 18189 of 2020
26.04.2021

NSM(CO)
TR(17.05.2021) 11P 8C