



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.03.2021

Pronounced on : 17.04.2021

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P (MD) No.18093 of 2020

and

W.M.P. (MD) Nos.15101 of 2020 and 3041 of 2021

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K.Karpagam

... Petitioner

Vs

1. The Director of School Education,
O/o the Director of School Education,
DPI Compound,
College Road,
Chennai.

2. The Chief Educational Officer,
Office of the Chief Educational Office,
Thoothukudi,
Thoothukudi District.

3. The District Educational Officer,
O/o the District Educational Office,
Thoothukudi, Thoothukudi District.

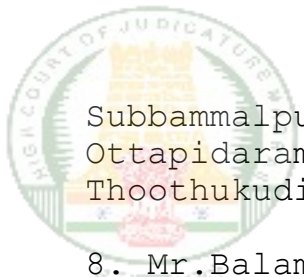
4. The Chairman,
Muthukaruppan Memorial Hr.Sec.School,
Subbammalpuram, Sillakulam (post),
Ottapidaram taluk,
Thoothukudi District.

5. R.Nirmala
Chairman,
Muthukaruppan Memorial Hr.Sec.School,
Subbammalpuram, Sillakulam (post),
Ottapidaram taluk,
Thoothukudi District.

6. The Correspondent,
Muthukaruppan Memorial Hr.Sec.School,
Subbammalpuram, Sillakulam (post),
Ottapidaram taluk,
Thoothukudi District.

7. Mrs.K.Saroja,
The Correspondent,
Muthukaruppan Memorial Hr.Sec.School,

<https://hcservices.ecourts.gov.in/hcservices/>



Subbammalpuram, Sillakulam (post),
Ottapidaram taluk,
Thoothukudi District.

8. Mr.Balamurugan,
Secretary,
The Correspondent,
Muthukaruppan Memorial Hr.Sec.School,
Subbammalpuram, Sillakulam (post),
Ottapidaram taluk,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings in Na.ka.No.904/A/2020 dated nil.05.2020 and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel
for Mr.A.Mohamed Imran

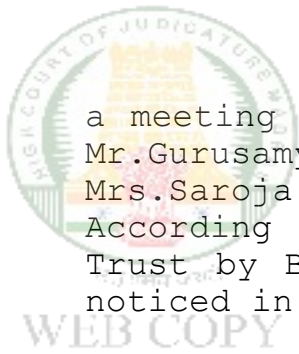
For R-1 to R-3 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

For R-5 : Mr.V.Panneer Selvam
For R-4 & R-7 : Mr.Isaac Mohanlal, SC for
Mr.G.Thalaimutharasu
For R8 : Mr.C.Mayilvahana Rajendiran
For R6 : No appearance

ORDER

This Writ Petition has been filed by the petitioner, seeking to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings in Na.ka.No.904/A/2020 dated nil.05.2020 and quash the same as illegal.

2. The petitioner is presently working as Headmistress in the 4th respondent school, having been appointed to the said postision on 01.06.2006. The 4th respondent school is an aided and a non-minority school up to 8th standard and thus governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules made thereunder. The school is run by Muthukarukppan Memorial Educational Trust, which is a registered Trust vide document No.521 of 1995 on the file of the Joint Sub Registrar, Vadachennai. The Chairman of the Trust died on 21.11.1999 and after his demise, the Trust document was amended and the Board of Trustees was appointed from 26.12.2004. One Mr.D.M.Karuppasamy, who was the Founder and Secretary of the Trust also died on 04.08.2015 and after his demise,



a meeting was convened on 06.8.2015 which was presided over by one Mr.Gurusamy. In the said meeting, one Mr.K.Balamurugan and one Mrs.Saroja were elected as Secretary and Treasurer respectively. According to the petitioner, after taking over the affairs of the Trust by Balamurugan and Saroja, there were several irregularities noticed in the management of the Trust.

3. While matters stood thus, a notice was issued for convening of a General Body Meeting which was scheduled to take place on 05.08.2019. The said General Body Meeting was conducted after issuing notices to all the Members of the Trust, but the said Mr.Balamurugan had refused to receive the notice. According to the petitioner, there were some discrepancies found in regard to Account Books and a decision was taken to change the Office Bearers and hence, the General Body Meeting was postponed and thereafter, no General Body Meeting was convened. According to the petitioner, the said Balamurugan has taken over the Trust by illegally amending the trust deed and there was also a case of criminal trespass registered in Crime No.147 of 2020 by the local police. The petitioner's mother Mrs.Ponnammal, who was at the helm of the School, died on 04.08.2019 and the said Balamurugan who happened to be the brother of the petitioner, claiming to be the Secretary of the School Committee, submitted a proposal to the 3rd respondent for approval of newly inducted School Committee members and the same was also approved by the 3rd respondent/District Educational Authority by proceedings dated nil.05.2020. Being aggrieved by the approval granted by the 3rd respondent, the petitioner is before this Court.

4. According to the petitioner, being the Headmistress of the school, as per Rule 12(3) of the Tamil Nadu Recognized Private School (Regulations) Rules, 1974, she has to become the Ex-officio member of the School Committee, but she was not shown as member of the School Committee when the 3rd respondent approved the proceedings of the School Committee containing new members. According to the petitioner, even otherwise, as per proviso to Rule 12(3)(i) of the Rules, the employees of the school shall not be nominated as members under the category of representative of the educational agency. In the newly formed School Committee, the Secretary, Mr.Balamurugan, was himself employed as a P.G.Assistant in the school and one Mrs.R.Nirmala who is the Treasurer, is a P.G.Assistant and one Mr.Raju, who is the Executive Member, is a Watchman of the school. Therefore, the composition of the present Committee is in contravention of proviso to Rule 12(3)(i) of the Rules, in which case, the approval of the Committee by the 3rd respondent has to be set aside as being illegal and void.

5. In the affidavit filed in support of the Writ Petition, it is also stated by the petitioner that she has been placed under suspension by the Committee on 07.10.2020 and a charge memo was also issued on the basis of allegations of misconduct against her. As



approached this Court in W.P.(MD) No.14283 of 2020 and this Court while entertaining the Writ Petition, granted interim stay of the suspension order on 28.10.2020. It is also averred in the affidavit that a comprehensive suit was also filed by the petitioner along with others in O.S.No.178 of 2020 before the Principal District Munsif Court, Kovilpatti, in regard to convening of the General Body Meeting and also the submission of Form-VII to the Registering Authority and the said suit is pending as on date.

6. Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioner would submit that since the very composition of the School Committee itself attracted the bar as contemplated under the proviso to Rule 12(3)(i) of the Rules, the approval granted vide impugned proceedings by the 3rd respondent is liable to be set aside on that short ground alone. The learned Senior Counsel would draw the attention of this Court to Rule 12 which provides for 'Constitution of the School Committee', which is extracted as under:

"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 renomination.

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

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



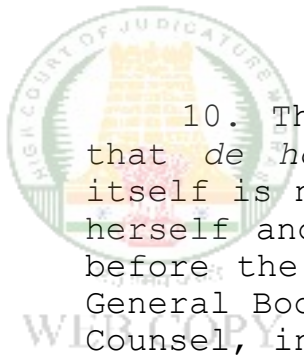
Explanation I.- Non-teaching staff shall; mean the ministerial staff belonging to group "C" and above.

Explanation II. - For the purpose of this rule the seniority shall be determined with reference to the total service rendered by teachers or non teaching staff as the case may be in, any recognised school or schools:"

7. The learned Senior Counsel would submit that the petitioner being the Headmistress of the School is not shown as one of the Members of the School Committee and therefore, the Committee as such cannot be stated to be validly constituted. The learned Senior Counsel pointed out that in column No.2 above, under nomination earmarked for educational agency, no employees of the school shall be nominated under the said category. In this case, admittedly, more than two employees of the school have been nominated. Therefore by the very the formation of the School Committee attracting the above bar, would render the approval of the 3rd respondent liable to be set aside as illegal. Therefore, the learned Senior Counsel would submit that the petitioner herein is entitled to succeed in terms of the mandatory rule position and implored this Court for its intervention.

8. Per contra, Mr.Isaac Mohanlal, learned Senior Counsel appearing for respondents 4 and 7, would submit as regards the first objection that the petitioner has not been shown as Ex-Officio member of the School Committee', is not factually correct and she had been factually inducted as Ex-officio member as being Headmistress of the school. As per the counter affidavit, the petitioner herself participated in the School Committee meeting held on 30.07.2020. The learned Senior Counsel, in this regard, would submit that being the Headmistress of the school, she becomes automatically Ex-officio of the School Committee and there is no need that her name should be shown specifically.

9. As regards the second objection regarding the nomination of employees of the School to the Committee by the Educational Agency, the learned Senior Counsel would submit that in the General Body Meeting held on 05.08.2019, the Educational Agency had elected new Office Bearers for the period 2019-2022 and thereafter, in the meeting held on 12.08.2019, the Educational Agency nominated the members of the School Committee for a period of three years, i.e. from 12.08.2019 to 11.08.2022. Thereafter, the District Registrar registered the Form VII on 26.08.2019. The learned Senior Counsel would also clarify that Mrs.C.Saroja, who was the Member of the Committee, is a retired Headmistress and therefore, she suffered no disqualification. Likewise, Mr.C.Ponnivalavan, was selected as PTA nominee.



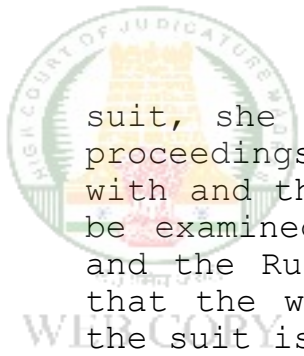
10. The learned Senior Counsel Mr. Isaac Mohanlal would submit that *de hors* the above submissions on merit, the Writ Petition itself is not maintainable for the simple reason that the petitioner herself and others have already filed a suit in O.S.No.178 of 2020 before the competent Civil Court, challenging the convening of the General Body Meeting on 05.08.2019. According to the learned Senior Counsel, in fact, an interlocutory application in I.A.No.377 of 2020 was filed in the said suit, praying to injunct the newly elected Educational Agency from functioning, till the disposal of the suit. In the said I.A., only notice was ordered and the petitioner having failed to obtain any interim order from the Civil Court, has approached this Court, challenging the approval of the School Committee granted by the 3rd respondent.

11. The learned Senior Counsel would in the circumstances submit that the Writ Petition is not maintainable for more than one reason. Firstly, the appointment of the members to the School Committee has not been put to challenge in this Writ Petition. Secondly, when a substantive suit has been laid in O.S.No.178 of 2020 before the competent Civil Court questioning the convening of the General Body Meeting which was held on 05.08.2019, the consequent appointment of the School Committee would also be the subject matter of the suit proceedings. Therefore, the present Writ Petition touching upon the same subject matter, is not maintainable. Thirdly, the petitioner has also filed I.A.No.377 of 2020 in the pending suit, praying to injunct the defendants therein from operating the newly elected Educational Agency, wherein, notice was ordered and in face of pending enquiry in the I.A., invoking the Writ jurisdiction of this Court, is an abusive of process of Court and on this ground also, it is liable to be rejected. Therefore, the learned Senior Counsel would submit that this Court may dismiss the Writ Petition on the ground of maintainability.

12. At this, Mr. Ajmal Khan, learned Senior Counsel appearing for the petitioner would submit that the challenge to the impugned proceedings of the 3rd respondent can be independently maintained, since the approval granted by the 3rd respondent is with reference to the statutory provisions of the Tamil Nadu Private Schools (Regulation) Act, 1973 and the Rules made thereunder. While testing the validity of the impugned proceedings of the 3rd respondent, the other issues touching upon the new Educational Agency being elected in the so-called General Body Meeting held on 05.08.2019 may not have any bearing at all.

13. The learned Senior Counsel would further elaborate that the Writ Petition can be independently maintained as the challenge is confined only to certain provisions of the Act and Rules and the area of adjudication by this Court is only limited to that extent and not further touching upon the issues that have to be adjudicated by the civil Court in the pending suit in O.S.No.178 of 2020.

<https://hccourtsonline.in/hccourtsonline> Petitioner though was one of the plaintiffs in the

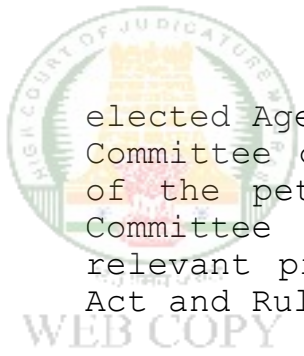


suit, she is not precluded from seeking to challenge the impugned proceedings of the 3rd respondent which can be independently dealt with and the validity of the nomination of the Committee Members can be examined with reference to the statutory provisions of the Act and the Rules. Therefore, the learned Senior Counsel would submit that the writ petition may not be rejected on the ground that the suit is pending before the Civil Court qua parties.

14. Heard Mr.Ajmal Khan, learned Senior counsel for the petitioner and Mr.Isaac Mohanlal, learned Senior counsel for the respondents 4 and 7 and Mr.J.Gunaseelan Muthiah, learned Addl.Govt.Pleader and other learned counsel who made their submissions respectively and perused the materials placed on record before this Court.

15. Although elaborate submissions have been made on merits and de-merits by the competent parties, in regard to the submissions as to the maintainability of the Writ Petition in view of the pendency of the suit in O.S.No.178 of 2020 filed by the petitioner along with others before the Principal District Munsif Court, Kovilpatti, this Court is of the opinion that maintainability issue ought to be taken first before proceeding to evaluate and examine the rival contentions of the parties on merit. In case this Court comes to a conclusion and holds that the Writ Petition is not maintainable, there is no necessity to deal with the contentions in regard to the merits of the petitioner's claim *vis-a-vis* the claim of the respondents.

16. According to the contesting respondents, a General Body Meeting was held on 05.08.2019 wherein, new Office Bearers were inducted to the society and subsequently in a meeting held on 12.08.2019, a new School Committee was formed. The newly formed School Committee was approved by the 3rd respondent vide impugned proceedings, which is the subject matter of challenge in the Writ Petition. The said fact would establish that the appointment of the very School Committee was a consequence of election of new Office Bearers in the General Body Meeting which was held on 05.08.2019. When the convening of the General Body Meeting on 05.08.2019 and its proceedings were subject matter of the suit proceedings in O.S.No.178 of 2020 before the Principal District Munsif Court, Kovilpatti and the same is pending, the consequential action of appointing the School Committee must also be deemed to have come under the purview of the suit proceedings pending before the Civil Court. In fact, as rightly contended by the learned Senior Counsel, Mr.Isaac Mohanlal, appearing for the respondents 4 and 7, that an interlocutory application in I.A.No.377 of 2020 was filed, praying for grant of interim injunction, restraining the newly elected Agency from functioning, wherein, only a notice was ordered and any decision in the I.A. is also binding on the parties. The scope of the I.A. if it were to be considered and the relief granted by the same would also cover any action taken by the newly



elected Agency including the formation and appointment of the School Committee on 12.08.2019. Therefore, it is preposterous on the part of the petitioner to contend that the appointment of the School Committee can be independently decided with reference to the relevant provisions of the Tamil Nadu Private Schools (Regulation) Act and Rules made thereunder.

17. Although the appointment of the School Committee and the composition of the same may have to be examined with reference to the Rules and Regulations as relied upon by the learned Senior Counsel if the constitution of the Committee has no nexus with the controversy relating to the convening of the General Body meeting held on 05.08.2019. But in this case, the very constitution of the School Committee is direct result of the election of the new educational agency in the said General Body meeting. Moreover, when the petitioner herself has chosen to approach the Civil Court, questioning the very convening of the General Body Meeting on 05.08.2019 and the constitution of the School Committee was a direct consequence of the proceedings of the General Body Meeting and the legality or illegality of the General Body Meeting being the *lis* before the Civil Court, this Court does not think the present challenge is maintainable. In such view of the matter, it is not proper for the petitioner to maintain parallel proceedings by invoking the writ jurisdiction of this Court and carve out a portion of her challenge questioning the approval of the School Committee by the 3rd respondent.

18. Even otherwise, this Court is of the considered view that it is not proper for the petitioner, after having approached the Civil Court with a comprehensive prayer and also having filed an interlocutory application (I.A.No.377 of 2020) for grant of interim injunction and having failed to obtain any interim injunction *ex parte*, to approach this Court with the present prayer. In fact, the learned Senior Counsel, Mr.Isaac Mohanlal argued that the Writ Petition is not maintainable for two other reasons, firstly, that the appointment of the School Committee dated 12.08.2019 was not put to challenge and what is challenged is the consequent proceedings of the 3rd respondent granting approval to the Committee. Secondly, while challenging 7 member School Committee, only 3 members of the Committee have been arrayed as respondents herein. The Writ Petition, is therefore, liable to be dismissed for non-joinder of necessary parties. However, without going into these legal objections, this Court can discountenance the case of the petitioner on the ground that once the suit is filed and pending, touching upon the entire issue of election of new office bearers of the Education Agency and its subsequent action which would include the appointment of the School Committee, the matter must rest therein and the petitioner is therefore, precluded from chiselling out a convenient portion of the deliberation of the General Body Meeting in the matter of constitution of the Committee and put the same to this Court. This Court is not only convinced of



impropriety in the action of the petitioner in challenging the appointment of the School Committee in writ proceedings when a comprehensive suit is pending, but also convinced that the remedy to the challenge lies before the Civil Court itself for the following reason also.

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19. The learned Senior counsel, Mr. Isaac Mohanlal in continuation of his submissions, has referred to a decision of a Division Bench of this Court rendered in W.A.(MD) No.615 of 2008 dated 29.11.2010 and would draw the attention of this Court to para 14 which is extracted hereunder:

"14. Having regard to the nature of dispute between the appellant and the fifth respondent and referring to the judgment reported in 2005 (10) SCC 51, the learned single Judge rightly held that any dispute as to the educational institution/educational agency is to be determined by a Civil Court having jurisdiction. The judgment of the Hon'ble Apex Court in Swamy Atmananda's Case [2005(10)SCC51] holds that Section 53-A of the Act carves out an exception to Section 53 thereof. In terms of Section 53-A, any dispute as to the educational institution is to be determined by a Civil Court having jurisdiction for its decision. 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. Therefore, 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. Therefore, the contention of the learned counsel appearing for the appellant that he has no other remedy before the Civil Court except to file the present writ petitions under Article 226 is not worthy of acceptance in view of Section 53-A. Therefore, we do not find any infirmity in the order passed by the learned Single Judge directing the appellant to approach the Civil Court."

20. Section 53(A) of the Tamil Nadu Private Schools (Regulation) Act, 1973 deals with 'Settlement of dispute as to educational agency, etc.', 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 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."

21. The above Section, is an exception to the general Section 53, which clearly mandates that the dispute of this nature is only referable to the Civil Court and the Civil Court alone has jurisdiction for settlement of the same. The above provision would clearly provide for settlement of the dispute relating to the Educational Agency as well as the constitution of the School Committee and the appointment of the Secretary of the School Committee, etc. The decision of the aforementioned Division Bench is very much binding on this Court.

22. In this case, it is more so that the petitioner has already chosen to approach the civil Court and laid the comprehensive suit for declaration and permanent injunction and once the suit has been laid, it is for the petitioner to work out her remedy in the pending suit and not by approaching this Court invoking the writ jurisdiction for serving her own ends. Therefore, this Court is of the clear view that the present Writ Petition is to be held as not maintainable.

23. In view of the above finding, this Court is not inclined to go into the other issues on merits as to whether the School Committee has been formed in conformity with the provisions of the Act and the Rules framed thereunder as any opinion if expressed by this Court, would have bearing on the issues to be tried by the civil Court in the pending suit or in the enquiry to be undertaken in the aforementioned I.A.

24. This Court is also of the view that even if this case is decided independently conceding to the submissions of the learned Senior Counsel Mr.Ajmal Khan for the petitioner, any views or comments expressed by this Court would certainly have an impact one way or the other on the pending suit proceedings and such scenario would not be a welcome result when competent civil Court is trying the issues placed before it and the Civil Court ought not to be influenced by any of the comments or views of this Court on issues in collateral proceedings that may be part of the main lis pending before it.



25. For the foregoing discussion, the Writ Petition stands dismissed as not maintainable. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

TO:

1. The Director of School Education,
O/o the Director of School Education,
DPI Compound,
College Road,
Chennai.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-16179[F] dated 17/04/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-16128[F] dated 17/04/2021)

Order made in
W.P (MD) No.18093 of 2020
17.04.2021

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(CO)

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