



W.P.Nos.4249 and 6399 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.4249 and 6399 of 2020
and W.M.P.Nos.5017 to 5019 of 2020, 1118 & 1122 of 2020
7553 to 7555 of 2020 and W.M.P.Nos.23925 and 23926 of 2022

Ashish Gupta Petitioner in W.P.No.4249 of 2020

The Venkatapuram Cultural
Association. Rep.by its Secretary
Mr.Ashish Gupta, No.51/193, MTH
Road, Ambattur, Chennai 600 102. Petitioner in W.P.No.6399 of 2020

-Vs-

1.Secretary of the Government of Tamil
Nadu, School Education Department
Fort St.George, Chennai – 600 009.

2.The Director of Education
Directorate of Public Instruction
No.17, College Road, Nungambakkam
Chennai.

3.Joint Director of Education
DPI Complex, Nungambakkam
Chennai.

4.The Chief Educational Officer
Office of the Chief Educational Officer
Thiruvallur.

5.The District Educational Officer
Office of the District Educational Officer
Ambattur.



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6. The District Registrar (Admin)
Office of District Registrar,
North Chennai, Chennai 01.

7. Harish Gupta

8. Indu Gupta Respondents in both the W.Ps.

Prayer in W.P.No.4249/2020: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the impugned order passed by the 4th respondent in proceedings in No.9641/A5/2018 dated 10.02.2020 and quash the same.

Prayer in W.P.No.6399/2020: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the impugned order passed by the 4th respondent in proceedings in No.9641/A5/2018 dated 10.02.2020 and quash the same.

In Both W.Ps

For Petitioner : Mr.T.Mohan
for Mr.M.Habeeb Rahman

For Respondents : Mr.R.Kumaravel
Additional Government Pleader – for R1-R5
Mr.K.Tippu Sultan
Government Advocate – for R6
Ms.AL.Gandhimathi
-for RR 7 and 8

COMMON ORDER

Since the issue raised in both these writ petitions is one and the same, with the consent of the learned counsel on either side these writ petitions were heard together and disposed of by this common order.



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2. That the petitioner in W.P.No.6399 of 2020 is an educational agency ie., a Society which runs two Schools viz., P.J.Gupta Middle School and P.J.Gupta Primary School. Both are recognized schools and are partly aided. Insofar as the management of the school is concerned, as per the provisions of the Tamil Nadu Recognized Private Schools Regulations Act, 1974 (In short 'the Act') and the rules made thereunder, a School Committee must be constituted and the School Committee must be represented by a Secretary called School Committee Secretary. In this regard, the petitioner Association Secretary viz., Ashish Gupta had been acting as Secretary of the School for long years ie., from 2009 and he is the petitioner in W.P.No.4249 of 2020.

3. There has been some dispute in the meanwhile where, already there has been a litigation filed by the said Ashish Gupta in W.P.No.10430 of 2017, where the order passed by the District Educational Officer dated 31.03.2017 was challenged.

4. Having considered the said writ petition, a learned Judge while disposing of the writ petition by order dated 27.06.2018 has made the following order.



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" 18. In the case on hand, pursuant to the interim order of this Court and from taking over of the School from 2009, the petitioner is continuing as Secretary of the Association and there is no change in the constitution. Hence there is no need for fresh approval. If there is any change in the constitution, approval need to be obtained from the competent authority. But the competent authority viz., the Government is empowered to pass an order cancelling the approval order granted by the authority concerned, if there is any violation by the Secretary or any other person of the Association. In this case, as the order has been passed by the Joint Director of School Education, the impugned order dated 31.03.2017 passed by the 1st respondent is set aside. However, reference to the pendency of the suit and criminal proceedings in this order are only for the purpose of disposal of the present writ petition to be filed for setting aside the exparte judgment and decree and the criminal proceedings, that are initiated by the petitioner against the 4th respondent.

19. It is needless to mention that there is a representation made by the petitioner on 20.01.2017 with regard to the approval of renewal of extension from 2017 to 2020. The competent authority shall consider the said representation and pass appropriate orders after hearing the writ petitioner, the contesting 4th respondent and other persons, who are likely to be affected within a period of two (2) months from



the date of receipt of a copy of this order. Till a decision is taken by the competent authority, the present position is to continue.

The writ petition is allowed with the above direction and observations. No costs. Consequently, connected WMP Nos.11310, 16559 and 20328 of 2017 are closed."

5. Pursuant to the said order, if at all the respondent CEO has found any contravention on the part of the said Secretary in functioning as Secretary of the School, that could have been found out and a report to that effect could have been given to the authority concerned viz., State Government who is empowered to act upon under Section 34 of the Act to disapprove the approval given to the Secretary and to take over the Management of the petitioner School by providing direct payment to the teaching and non-teaching staff.

6. Though such a power is vested with the State Government under Section 34 of the Act, the respondent CEO having invoked the said power under Section 34, has passed the orders impugned in both the writ petitions, under which, in the first order the approval given to the Secretaryship of the petitioner Society represented by the Secretary Mr.Ashish Gupta has been cancelled or withdrawn and as a sequel, in the second order which is impugned in the second writ petition, the petitioner School has been brought under direct payment.



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Challenging these orders, when these writ petitions were filed, there has been interim order granted by this Court which is in operation till date.

7. When these writ petitions are taken up for hearing today, Mr.T.Mohan learned counsel for the petitioner has pointed out that under Rule 13 of the Rules made under the Act, if at all there is any change in the Constitution of the educational agency or School Committee or the Secretary of the School Committee concerned, then only prior approval is necessary, which should have been obtained from the Chief Educational Officer (CEO) concerned, however here there is no change in the constitution of the School Committee and hence the question of prior approval does not arise.

8. Moreover he would also submit that, insofar as the invocation of Section 34 is concerned, the power is vested with the State Government and such kind of power cannot be exercised by any other authority including the Chief Educational Officer, to whom no such delegation has been made. Even assuming if any such power is delegated to the CEO, that kind of delegation might not have been possible because if any particular act has to be done in a particular manner, it shall be done only in that particular manner and not otherwise, which is a settled proposition also. Therefore, the learned counsel for the petitioner would contend that both the orders impugned passed by the CEO



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invoking Section 34 of the Act is without jurisdiction and without any basis also.

Therefore, on that ground itself, these impugned orders are liable to be interfered with, he contended.

9. Heard Mr.R.Kumaravel, learned Additional Government Pleader appearing for the respondents who would submit that if there is any violation noticed on the part of the Secretary then corrective measures can be taken by the educational authorities, such as change in constitution or change in the secretaryship, for which prior approval since have to be obtained by the CEO it is necessary to obtain prior approval, if not under Section 34 of the Act, invoking the power under Rule 13 of the Rules. Therefore, mere quoting of wrong provision viz., Section 34 of the Act may not infirm the orders which are impugned herein, he contended.

10. Also heard Ms.AL.Gandhimathi, learned counsel appearing for the seventh respondent in both the cases, who would submit that both the impugned orders were passed by the respondent ie., CEO concerned, not merely invoking Section 34 of the Act, but on various other grounds. Those grounds arise only on the basis of the complaint given by the seventh respondent and having enquired the same, such a conclusion was arrived at by the CEO concerned. Therefore, merely on the ground of want of jurisdiction, the order



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passed by the CEO cannot be assailed successfully, she contended. The said contention of the learned counsel for the seventh respondent also is taken note of.

11. I have considered the rival submissions made by the learned counsel for the parties and have perused the materials placed on record.

12. In the first round of litigation itself, the learned Judge, after having considered all these aspects, has passed an order dated 26.06.2018 where in Para 18, as quoted herein above, he has specifically held that the petitioner was continuing as Secretary of the Association and there is no change in the constitution. Hence there is no need for a fresh approval and if there is any change in the constitution, approval need to be obtained from the competent authority as the competent authority ie., the State Government alone is empowered to pass orders if there is any violation by the Secretary or any of the persons in the Association.

13. Despite that has been already held by this Court by the learned Judge, of course in consonance with the provisions of the Act as well as the Rules, once again the same mistake has been committed by the CEO concerned by invoking the powers vested with the Government under Section 34 of the Act, who passed



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the impugned orders, one is withdrawal of the secretaryship and the second one is taking over the management by the Government directly or Department directly and also disbursement of salary by direct payment. These orders could have been passed by the Government of course on the basis of the recommendatory report, if any, to be made by the CEO concerned. Here in the case on hand, the CEO has directly acted upon by invoking Section 34 of the Act, which power is vested only with the Government. This Court feels that, the CEO cannot step into the shoes of the Government. Hence therefore the impugned orders cannot be sustained, as rightly pointed out by the learned counsel for the petitioner, for want of jurisdiction alone and the same are liable to be interfered with.

14. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.

- Both the impugned orders in these writ petitions dated 10.02.2020 passed by the fourth respondent are set aside.
- As a sequel the petitioner's secretaryship in the management of the educational agency / School Committee shall continue.



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- However, this will not prevent the respondents ie., the CEO from making an inspection at the School and if at all any specific complaint is received by the CEO concerned against the petitioner Secretary with regard to any violation, then it is open to the CEO to take any action, only as per the powers vested in him and not by invoking the powers exercisable by the State Government.
- If at all the CEO feels that the power exercisable by the Government is to be invoked, the CEO, at best can send a report to that effect to the State Government, who on receipt on the same can act upon on merits and in accordance with law, who, before taking any drastic action, shall give an opportunity of being heard to the petitioner.

15. With the above directions, this writ petition is disposed of. No costs.

Consequently connected miscellaneous petitions are closed.

12.10.2022

Index : Yes/No
Internet : Yes/No
KST

To

1.Secretary of the Government of Tamil



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Nadu, School Education Department
Fort St.George, Chennai – 600 009.

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R. SURESH KUMAR, J.

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