



W.P.(MD) No.1853 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.1853 of 2020

and

W.MP(MD).Nos.1563 and 1565 of 2020

A.Arulanandam

... Petitioner

Vs.

1.The District Educational Officer,
Dindigul.

2.Punitha Anthoniyar Uthaviperum
Thodakka Palli Kallathupatti Pallyin Kalvi Kuzhu,
(St.Antony's Aided Primary School,
Kallathupatti School Education Committee),
Kallathupatti,
Thamaraipadi Post,
Dindigul District-624 005,
Rep by its Corrospndent A.Alexis

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in Mu.Mu.No.3447/A4/2018 dated 24.07.2019 and quash the same as illegal and consequently, direct the first respondent to recognize the



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petitioner as the Educational Agency of St.Antony's Aided Primary School, Kallathupatti, Dindigul District, for future periods.

For Petitioner : Mr.M.Jerin Mathew
For R1 : Mr.M.Ramesh
Government Advocate Counsel
For R2 : Mr.V.Panneerselvam

ORDER

The petitioner has approached this Court for the issuance of writ of certiorarified mandamus to quash the order of the first respondent as illegal and direct the first respondent to recognize the petitioner as the educational agency of St.Antony's Aided Primary School, Kallthupatti, Dindigul District, for further periods.

2. It is the case of the petitioner that the school in question had been established by his father as early as in the year 1949 and after the enactment of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (hereinafter referred to as "Private Schools Act") and the Rules framed thereunder, his father had become the educational agency as well



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as the Secretary of the School Committee. As the petitioner's father had become old, he had surrendered the charge and transferred the educational agency in the name of one G.Innasi Muthu. This transfer was recognized and accepted by the first respondent vide its proceedings dated 22.01.2009 and thereafter, G.Innasi Muthu, in turn, had transferred the educational agency in the name of the petitioner by resolution, dated 01.01.2012. Since then, the school was being managed by the petitioner. The change in the educational agency was also accepted by the first respondent, vide its proceedings, dated 26.04.2013. The education agency was being recognized by the first respondent periodically as also the School Committee. In fact, the last of the approvals of the first respondent was dated 23.02.2017 for the period from 01.08.2016 to 06.12.2017.

3. Since the tenure of the School Committee was expiring in the year 2017, the petitioner had submitted a proposal dated 04.12.2017 to the first respondent with all relevant enclosures for approving the new School Committee for the period of three years from 07.12.2017.



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However, this request was not acted upon, since W.P(MD)No.4648 of 2018, which was filed by the second respondent seeking approval of their School Committee was pending. Since there were rival claims, the first respondent by proceedings, dated 05.07.2018, had brought the school under direct management without any application of mind, that too, when the proceeding that was pending before the first respondent was the approval of the School Committee. Aggrieved by this action, the petitioner had filed WP(MD)No.16647 of 2018, seeking to quash the impugned proceedings, dated 05.07.2018 and for a direction to approve the proposal for his School Committee submitted by the petitioner, dated 05.05.2018. Meanwhile, the second respondent, who is none else than the brother of the petitioner had filed another writ petition in WP(MD)No.17951 of 2018 seeking to quash the order dated 05.07.2018. The writ petition filed by the petitioner's brother was under the name and style of M/s.St.Anotny Elementary School, Kallathupatti School Education Committee, by its Secretary. All the three writ petitions were taken up together and by order, dated 31.08.2018, this Court had dismissed all the writ petitions directing the parties to approach the civil



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Court to establish their rival claims against each other. Aggrieved by this order, the petitioner had filed WA(MD)No.1573 of 2018 and his brother had filed WA(MD) No.1533 of 2018, both against WP(MD)No.16647 of 2018.

4. The second respondent had not challenged the order passed in WP(MD) No.4648 of 2018, which was a writ filed by the second respondent seeking approval of his School Committee. The Hon'ble Division Bench of this Court by order, dated 26.11.2018, was pleased to dismiss the writ appeal filed by the petitioner herein once again reiterating the order of the learned Single Judge that the parties have to workout the remedy to establish their right to act the school educational agency by moving the Civil Court. The writ appeal filed by the second respondent was disposed of by order dated 01.11.2018 with a direction to the second respondent to consider the claim of the writ petitioner in terms of Form-VII that is approved and to pass orders within a period of four weeks. Therefore, there are two sets of orders by two different Benches. Aggrieved by the order in WA(MD)No.1533 of 2018 (Appeal



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filed by the second respondent), the petitioner herein filed a Miscellaneous petition in CMP(MD) No.7629 of 2019 to recall the said order in WA(MD) No.1533 of 2018. The petitioner had also filed a review against the order in WA(MD) No.1573 of 2018 filed by him. It is in this back drop that the impugned order dated 24.7.2019 has been passed by the first respondent approving the second respondent and others as Educational agency. Hence, the present writ petition.

5. The counter affidavits have been filed by the first respondent as well as the second respondent. The first respondent has filed counter *inter alia* contending that the petitioner's request to consider Form-VII submitted by him has been rejected vide orders in WA(MD) No.1573 of 2018, as against which, no appeal has been filed. Further, in the writ appeal filed by the second respondent, this Court had directed the first respondent to consider the claim of the second respondent in terms of Form-VII and to complete the exercise within a period of two weeks. They further stated that the petition to recall this order has been dismissed by the Division Bench and while dismissing the petition the



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Bench had observed that the first respondent had approved the Form-VII submitted by the second respondent and reiterated that the petitioner should move the civil Court. In the light of the above, the first respondent would submit that the order passed by the first respondent cannot be challenged. More or less, similar counter has been filed by the second respondent as well, who would add that that despite the orders of this Court, the petitioner has not deemed it fit to approach the Civil Court.

6. Heard the learned counsel appearing on either side.

7. From the narration of facts, it is clear that the writ filed by the petitioner to approve the Form-VII submitted by him has been dismissed with an observation that since there are rival claims, the petitioner should approach the civil Court. To-date, admittedly, the petitioner has not moved the civil Court. On the other hand, the writ filed by the second respondent herein to recognize and approve the Form-VII submitted by him, has been disposed of by the Division Bench by its order, dated



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01.11.2018, directing the second respondent to consider the claim of the writ petitioner in terms of the Form-VII that is approved and to complete the exercise within a period of four weeks from the date of receipt of this order. The order was sought to be recalled by the petitioner by filing CMP(MD)No.7629 of 2019. The Division Bench, by its order, dated 28.02.2020, had dismissed the said petition. The dismissal was not a one line order. On the contrary, while dismissing the petition, the Division Bench had observed that the petitioner had not approached the Civil Court and obtained any interim order against the first respondent. The Division Bench had further observed as follows:-

"7.Having found that there is no interim order operating against the parties, this Court recording the submission of the learned counsel for the first respondent herein/appellant in W.A(MD)No.1533 of 2019 that the Form-VII."

8. Ultimately, the application was dismissed as follows:-

8....Thus, the petitioner cannot take umbrage



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under the observations made by the Division Bench in the order dated 26.11.2018 and also cannot say that there are rival orders. on the other hand, from the above narration, it is clear that there are no rival orders, passed by this Court, as claimed by the learned counsel for the petitioner.

9. In the result, the petitioner has not made out any ground warranting this Court to recall the order dated 01.11.2018. Accordingly, this miscellaneous petition is dismissed as devoid of merits. No costs. It is open to the petitioner to take any action in the manner known to law, if he is so advised."

9.It is pertinent to note that this order of dismissal has been passed after the impugned order has been passed. In the light of the fact that the petitioner has not challenged the order passed by the Division Bench in WA(MD)No.1573 of 2018, which is an appeal filed challenging the dismissal of the petitioner's application to have himself recognized as a



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Secretary and considering the fact that the petitioner's request to revisit the order in W.A(MD)No1533 of 2018 has been rejected, I see no reason to set aside the impugned order, particularly, by its order in WA(MD)No. 1533 of 2018, this Court has directed the second respondent to pass orders upon a Form-VII that has been approved. Therefore, this Writ Petition is dismissed. It is needless to state the petitioner can workout his remedies in the Civil Court as directed by the Division Bench. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The District Educational Officer,
Dindigul.



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P.T.ASHA, J.

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