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W.P.(MD)NO.18788 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18788 of 2018 AND
W.M.P.(MD)No.16646 of 2018

The Correspondent,
Yettacode Higher Secondary School,
Yettacode, Veeyanoor(Post),
Thiruvattar – 629 177,
Kanyakumari District.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
Kanyakumari at Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Thiruvattar – 629 177,
Marthandam Post,
Kanyakumari District.
5. B.B.Kabeer Dhas
(R-5 is impleaded vide order dated 26.04.2019
in W.M.P.(MD)No.17113 of 2018)

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to grant forthwith the continuation of Correspondent-ship to the petitioner-school, namely, Yettacode Higher Secondary School, Yettacode, Kanyakumari District, in the name of the petitioner herein, namely, K.C.Mony Dhas, in the light of the representation submitted by the petitioner herein dated 30.07.2018.

For Petitioner : Mr.Isaac Mohanlal,
Senior counsel,
for M/s.Isaac Chambers.

For R-1 to R-4 : Mr.N.Satheesh Kumar,
Additional Government Pleader.

For R-5 : Mr.S.C.Herold Singh

* * *

ORDER

Heard the learned Senior counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the fifth respondent.

2. One Shri.K.C.Chelliah, grandfather of the fifth respondent founded Yettacode Higher Secondary School in the



year 1960. He passed away in the year 1985. He was survived by six sons, namely, Bakthadhas, Jeyadhas, Babudhas, Monydhas, Jeyachandradhas and Mohandhas. The second son K.C.Jeyadhas appeared to have taken charge of the affairs of the school. He acted as Correspondent and Secretary of the school till 2006. In the year 2006, trust deed was executed. In the meanwhile, one of the sons Bakthadhas had passed away. His son Selvakumar and the surviving five sons of K.V.Chellaiah executed the aforesaid deed dated 20.02.2006 and it was also registered as document No.28 of 2006 on the file of Joint II Sub Registrar, Marthandam. Clause 6 of the trust deed reads as follows:-

“ Office bearers of the Trust:-

The first office bearers of the trust is as follows:-

1. K.C.Jeyadhas, S/o.K.C.Chelliah, who is the present correspondent of the Yettacode Higher Secondary School, shall be the first Managing trustee cum chairman of the Trust.

2. K.C.Babudhas, S/o.K.C.Chelliah shall be the first Vice-Chairman of the trust.



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3. K.C.Monydhass, S/o.K.C.Chelliah shall be the first secretary cum Treasurer of the trust.

4. K.C.Jeyachandradhas, S/o.K.C.Chelliah shall be the trustee of the trust.

5. K.C.Mohandhas, S/o.K.C.Chelliah shall be the trustee of the Trust.

6. B.I.Selvakumar, S/o.K.C.Bhakthadhas shall be the Trustee of the Trust.”

3. As per the terms of the trust deed, K.C.Jeyadhas continued to function as the Correspondent. As per Clause 4(4) of the trust deed, the Managing Director of Trust shall be the Correspondent of the educational institutions run by the trust. Since K.C.Jeyadhas was designated as the first Managing Trustee-cum-Chairman of the trustee, he continued to be the Correspondent of Yettacode Higher Secondary school. Even though the trust deed stipulates the tenure of five years for the Managing trustee, it appears that K.C.Jeyadass refused to vacate. Babudhas, father of the fifth respondent should have been made as the Managing Trustee in the year 2011. But he was prevented from assuming office.



In my view, this was absolutely unfair on the part of K.C.Jeyadhas as well as the other trustees. That led to Babudhas to institute O.S.No.115 of 2014 on the file of the District Munsif, Padmanabhapuram to declare him as Managing Trustee. The suit is still pending. Babudhas had also passed away during the pendency of the suit. Babudhas was having two wives, namely, Nirmal Kumari and Barathi Bai. Kabeer Dhas, fifth respondent was born to Barathi Bai and Arulldhas who is contesting the rights of the fifth respondent herein was born to Nirmal Kumari. There is an *inter se* dispute among the family members of Babudhas. In this regard, a civil suit is still pending (O.S.No.82 of 2016 on the file of the District Munsif, Kuzhithurai).

4. Since Babudhas raised dispute regarding the management of the educational institution and statutory suit had also been filed, the department brought the school under direct payment system.

5. The school is under direct payment for the last nine years (23.04.2014). The trust passed resolution for appointing



Shri.K.C.Monydhas who is the son of the deceased founder K.C.Chellaiah, as the Correspondent of the school. Representation was submitted to the department for approving the same. This writ petition came to be filed for directing the department to approve the Correspondentship of Monydhas.

6. Clause 3(2) of the trust deed reads as follows:-

“3. Membership of the Trust:-

1. ...

2. If any vacancy arises in the membership of the Trust by reason of death or resignation of any member or by automatic cessation of membership on account of insanity or incapacity such vacancies shall be filled up selecting a male member from the respective family of the member on whose death, resignation etc. the vacancy arose. The selection shall be in the case of K.C.Jeyadhas from K.C.Jeyadhas and Lilly Thankam family, in the case of K.C.Babudhas from K.C.Babudhas and Bharathy Bai family, in the case of



K.C.Monydhas from K.C.Monydhas and Pappa Prema Kumari family, in the case of K.C.Jeyachandradhas from K.C.Jeyachandradhas and Vijaya Bai family, in the case of K.C.Mohandhas from K.C.Mohandhas and Edna Vimala Esebel family and in the case of B.I.Selvakumar from B.I.Selva Kumar and Mercy Bai family. If there are more male heirs than one in a family, that family can select any one of them to fill the vacancy. If there is no male heir in a family the female heir can be selected. If the person selected to fill the vacancy is a minor, he can be represented by guardian till he / she attains majority.”

7. The trust deed is very clear. If any dispute arises in the case of K.C.Babudhas family, selection will have to be from among the children born to K.C.Babudhas and Barathi Bai. There is no dispute between Kabeerdhas and his brother. The dispute is only between Kabeerdhas and brother Arulldhas. Arulldhas appears to be on the side of the other trustees.



8. However, on this ground in my view, the resolution of the chairman of the trust need not be disregarded. A reading of the trust deed shows that the sons born to K.C.Chellaiah will have to be the Correspondents by turns and only after they pass away, the turn of the next generation will come. When three sons of K.C.Chellaiah are still alive, it is not just and proper that the grandson of K.C.Chellaiah can be made Correspondent. Of course, I have already observed that Shri.Babudhas had been unfairly treated. But then, on that ground the fifth respondent herein cannot be given any precedence. More so, when the dispute among the members of the said family is yet to be resolved. My attention is drawn to the Will dated 19.12.2012 that was executed by K.C.Babudhas and the supplementary trust deed executed after the demise of K.C.Babudhas. In these circumstances, the department can very well be directed to act on the proposal of the trust and nominate Shri.K.C.Monydhas as the Correspondent of the school. Since the jurisdictional civil Court is seized of the issue, the rights of the parties will abide by the outcome of the same.



9. The third respondent is directed to approve the proposal of the trust nominating K.C.Monydhas as the Correspondent of the petitioner's school. Such proceedings will be issued without any delay. This writ petition stands allowed.

10. At this stage, the learned counsel for the fifth respondent submitted that all the other trustees at the instance of Shri.Arulldhas are conspiring to throw them out of employment. The learned Senior counsel on instruction states that there is absolutely no such intention and that the employment of the fifth respondent as well as that of Cibidhas and his wife will not be affected. No costs. Consequently, connected miscellaneous petition is closed.

31.08.2023

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

1. The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
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Kanyakumari District.
4. The District Educational Officer,
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G.R.SWAMINATHAN,J.

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