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W.P.(MD)NO.19499 OF 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19499 of 2016 AND
W.M.P.(MD)No.14062 of 2016

T.Ramakrishnan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai.
2. The Director of Elementary Education,
Directorate of School Education Department,
College Road, Chennai – 6.
3. The District Elementary Educational Officer,
O/o.The District Elementary Educational Office,
Palani Road, Dindigul, Dindigul District.
4. The Assistant Elementary Educational Officer,
O/o.The Assistant Elementary Educational Office,
Palani Road, Dindigul Urban,
Dindigul District.
5. T.Namperumal
6. N.K.Sesharamakrishnan
7. N.Sesha Thiruvenkadam



8. The Namperumal Middle School,
Rep. by its Headmaster,
No.5, Railway Colony Road,
Round Road Pudur,
Dindigul.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the third respondent in his proceedings in Mu.Mu.No.2785/A3/2000 dated 09.06.2000 and quash the same as illegal.

For Petitioner : Mr.Mohamed Sohail,
for M/s.Ajmal Associates.

For R-1 to R-4 : Mr.M.Sidharthan,
Additional Government Pleader.

For R-5 to R-8 : Mr.N.Dilipkumar

* * *

ORDER

Heard both sides.

2. The petitioner and the fifth respondent are sons of Late.Thiruvenkadam. Their siblings are not before this Court. The petitioner challenges the proceedings dated 09.06.2000 issued by the District Elementary Educational Officer,



Dindigul recognising the fifth respondent as the educational agency of the petition-mentioned school. The learned counsel assailed the impugned proceedings primarily on two grounds: a) the proceedings have been issued by an incompetent authority and b) the claim of the fifth respondent has been recognised on the strength of a Will attributed to Late N.Thiruvankadam. The educational authority could not have passed an order without notice to all other legal heirs. The fifth respondent should have obtained declaration by duly propounding the Will dated 11.05.1998. Since it was not done, the impugned proceedings are liable to be set aside.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4. The learned Additional Government Pleader appearing for the respondents as well as the learned counsel appearing for the private respondents have filed separate counter



affidavits. The learned Additional Government Pleader as well as the learned counsel appearing for the private respondents took me through their contents. They submitted that the impugned order does not warrant any interference and they prayed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. Shri.N.Thiruvankadam founded the petition-mentioned school in the year 1939. it received both the affiliation and aid. It is governed by the provisions of Tamil Nadu Private Schools (Regulation) Act 1973 and Rules framed thereunder. Thiruvankadam was the Correspondent and Manager of the school till his demise. He passed away on 24.11.1999. Section 2(3)(b) of Tamil Nadu Private Schools (Regulation) Act defines "Educational Agency" in the following terms:-

“ (3) "**educational agency**" in relation to -

(a) any minority school, means any person who, or body of persons which, has established and



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is administering or proposes to establish and administer such minority school; and

(b) any other private school, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain such other private school; ”

Since Thiruvenkadam had founded the school, he was rightly recognised as the educational agency. The question that arose for consideration was who will be the educational agency after Thiruvenkadam's demise. Namperumal claims the status of educational agency on the basis of the Will said to have been executed by Shri.Thiruvenkadam who had specifically added that the eldest son of the Correspondent will have to be recognised as the educational agency. This was accepted by the District Elementary Educational Officer vide proceedings dated 09.06.2000 recognising Namperumal as the educational agency.

7. The first question that calls for consideration is whether the District Elementary Educational Officer can be considered as the competent authority. The District



Elementary Educational Officer has been designated as the competent authority for middle schools by the Government of Tamil Nadu vide G.O.(Ms). No.588 Education, Science and Technology Department dated 15.07.1994. Therefore, the impugned proceedings cannot be termed as one without jurisdiction. The first contention urged by the petitioner is rejected.

8. The other contention does have considerable force. When a claimant asserts a particular right on the strength of the Will, the official or the departmental authority cannot in normal circumstances straightaway act on the strength of the Will. The Will will have to be duly propounded and proved in the manner known to law before the jurisdictional civil Court. But then, if there is no opposition from others, then the authority will be justified in acting on the same.

9. In this case, the proceedings were issued way back in 2000. The petitioner Ramakrishnan is not a stranger or an alienee. He is very much a school teacher working in the petition-mentioned school. It is improbable that the petitioner



was unaware that the department had recognised his brother / the fifth respondent herein as the educational agency. The challenge has been mounted after a lapse of almost 16 years. It is for this reason, I decline to entertain the challenge in this writ petition.

10. That apart, the petitioner along with others had filed O.S.No.196 of 2017 on the file of the District Munsif, Dindigul.

11. Section 53-A of the Private Schools Regulation Act, 1973 reads as follows:-

“53A. 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, in relation to any private school, or as to the constitution of a School Committee, or as to the appointment of the Secretary of the School Committee arises, such dispute may be referred by the persons



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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.”

12. The aforesaid suit shall be treated as a statutory suit. It is true that in supersession of the 1973 of the Act, Tamil Nadu Recognised Private Schools (Regulation) Act, 2018 has been promulgated. Its validity was put to challenge in W.P.Nos. 10711 of 2023 etc. batch. Interim order of status quo has been granted. In the new Act also, there is a corresponding provision that is in *pari materia*. When there is a dispute with regard to constitution of an educational agency, it is the jurisdictional civil Court that has to decide the issue. Since the



impugned proceedings have been holding the field for close to 16 years, it will abide by the outcome of O.S.No.196 of 2017 on the file of the District Munsif, Dindigul. The learned District Munsif, Dindigul is directed to dispose of O.S.No.196 of 2017 on merits and in accordance with law within a period of eight months from the date of receipt of a copy of this order. I make it clear that I have not gone into the merits of the matter. This writ petition stands dismissed with the aforesaid direction. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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W.P.(MD)NO.19499 OF 2016

G.R.SWAMINATHAN,J.

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To:

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