



W.P.(MD) No.26719 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD) No.26719 of 2022

and

W.M.P.(MD) Nos.20925 & 20926 of 2022

1.Captain D.V.R.Foundation for HRD
No.9, Alagar Kovil Road
Madurai-625 002
rep.by its Chairman

2.Madurai Institute of Social Sciences
No.9, Alagar Kovil Road
Madurai-625 002
rep.by its Secretary

... Petitioners

-vs-

1.The Government of Tamil Nadu
rep.by its Principal Secretary to Government
Higher Education Department
Secretariat
Fort St.George
Chennai-600 009



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- 2.The Director of Collegiate Education
Office of the Collegiate Education
Chennai-600 015
- 3.The Joint Director of Collegiate Education
Madurai Region
Madurai-02
- 4.M.Narayanasamy
- 5.Madurai Kamaraj,
Manonmaniam Sundaranar,
Mother Teresa & Alagappa University
Teachers Association
rep.by the General Secretary
6.Kakathoppu Street
Madurai-625 001
[R4 is impleaded *vide* Court Order
dated 26.04.2023 in W.M.P.(MD) No.
2397 of 2023 and R5 is impleaded
vide Court Order dated 14.06.2023
in W.M.P.(MD) No.2982 of 2023]

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the proceedings of the first respondent dated 19.10.2022 in G.O.(Ms) No.221, Higher Education (D2) Department and also the consequential communication of the second respondent in Na.Ka.No.22963/G2/2021 and quash the same



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For Petitioners : Mr.N.Dilip Kumar

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader for R1 to R3
Mr.E.V.N.Siva for R4
Mr.T.Lajapathi Roy, Senior Counsel
for M/s.T.Lajapathi Roy Associates for R5

ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

The order under challenge in this writ petition is one passed under Section 14-A of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (for brevity, “the Act”), taking over the management of the College in question.

2. A show cause notice was issued by the Government, on 09.06.2022, referring to certain complaints made against the management of the petitioner – Institution and asking them to explain as to why a Special Officer should not be appointed under Section 14-A of the Act to manage the Institution by superseding the educational agency. A reply was sent on 21.06.2022 along with several voluminous documents. Thereafter, the impugned order came to be passed.



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3. The main contention of Mr.N.Dilip Kumar, learned counsel appearing for the petitioners, is that the impugned order does not comply with the mandate of Section 14-A of the Act.

4. Section 14-A of the Act reads as follows:

“14-A. Appointment of special officer in certain cases.- (1)(a) *Where the Government, on receipt of a report from the Director of Collegiate Education or otherwise, are satisfied that the management of any private college-*

(i) is responsible, whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools (Regulation) and Private Colleges (Regulation) Amendment Act, 1982, for the maladministration, lapses or irregularities of such private college; or

(ii) has neglected whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools (Regulation) and Private Colleges (Regulation) Amendment Act, 1982 to discharge any of the duties imposed on, or to perform any of the functions entrusted to such management by or under this Act, or any rule or order made or direction issued thereunder, the Government may, after giving to such management an opportunity to make



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representation and for reasons to be recorded in writing, by an order, suspend the management and appoint a special officer for a period not exceeding one year or till the reconstitution of the management (*in accordance with the law applicable to the reconstitution of such management*), *whichever is later:*” (emphasis supplied)

5. Relying heavily upon Clause (ii) of Sub-Section (1) of Section 14-A of the Act, which is extracted above, Mr.N.Dilip Kumar, learned counsel for the petitioners, would contend that it is incumbent on the Government to consider the explanation and record its reasons in writing for rejecting the same before ever appointing a special officer.

6. Drawing our attention to the order impugned, particularly Paragraph Nos.4 & 5, Mr.N.Dilip Kumar, learned counsel, would submit that the Government had not considered the petitioners' explanation independently, but, has gone by the recommendations of the Director of Collegiate Education and appointed a special officer.

7. A reading of the order impugned leads us to agree with the above submissions of Mr.N.Dilip Kumar, learned counsel for the petitioners.



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8. Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents 1 to 3, would, however, submit that the Government has got unbridled powers and if the Government is satisfied on receipt of a report from the Director of Collegiate Education or otherwise, it can straightaway appoint a special officer.

9. We are unable to agree with the above contentions of the learned Additional Government Pleader, because, his contentions overlook the provisions of Clause (ii) of Sub-Section (1) of Section 14-A of the Act. An order passed under Section 14-A of the Act has very serious civil consequence. It dislodges a person from the management of the educational institution. The principles of natural justice, which are enshrined in Clause (ii) of Sub-Section (1) of Section 14-A of the Act, are completely overlooked by the learned Additional Government Pleader, when he makes such a submission. The Government is burdened with the duty of giving an opportunity to the Management of the Institution to make a representation and to record its reasons for coming to the conclusion. The said requirement has not been complied with by the Government, while passing the impugned order.



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10. Even though Mr.D.Sadiq Raja, learned Additional Government Pleader, would contend that the statement in Paragraph No.6, that the explanation offered by the Secretary to the educational agency and the recommendation of the Director of Collegiate Education have been examined with particular attention, itself would be in sufficient compliance with the requirement of Clause (ii) of Sub-Section (1) of Section 14-A of the Act, we are unable to agree.

11. It is settled law that when an order of quasi judicial authority visits a person with serious civil consequence, the quasi judicial authority is required under law to examine the materials by itself and give its own reasons. It cannot rely upon the recommendation of another officer and reject the explanation offered by the Society. We find that voluminous documents have been produced by the educational agency in support of its contention and none of them have been adverted to by the Authority. We cannot affix our seal of approval to such an action of the Government, particularly when it is entrusted with a quasi judicial power. It is not just and proper to sweep all the documents and materials under the carpet, which is termed as “கவனமுடன் பரிசீலனை செய்து” in the impugned order and dispossess the Management of its right to be in management of the College.



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12. Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the fifth respondent – Teachers Association, would, however, draw our attention to certain subsequent orders passed by this Court and complaints made against the Management by a disgruntled teacher, who was removed from service, to justify the action of the Government.

13. Sitting under Article 226 of the Constitution of India, when we find that the quasi judicial power has been improperly exercised, we will have to necessarily interfere. The consequences of such interference, in our opinion, are immaterial. We cannot protect the possession of a trespasser, merely because he is doing something good, after having trespassed into another man's property. Similar is the case on hand. If the petitioners have been dispossessed or denied the right to manage by an illegal order, we cannot protect the status of the person, who had taken over the management by such order. Once we find that the order does not comply with the statutory requirements of the provision, namely, Section 14-A of the Act, such an order will have to necessarily go.



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14. One another submission of Mr.D.Sadiq Raja, learned Additional Government Pleader, which has to be answered is that availability of appeal remedy.

15. No doubt, an order passed under Section 14-A of the Act has been specifically made appealable to a Tribunal to be constituted by the Honourable Chief Justice, which consists of a Bench of two Judges of the High Court. We cannot brush aside the settled position of law that availability of alternative appeal remedy is not the absolute bar to the exercise of writ jurisdiction. Once we find that the impugned order is in excess of the power conferred or it has been passed without following the procedure contemplated under law, the availability of alternative appeal remedy would not operate as a bar or a fetter on our power to interfere.

16. In view of the above, this writ petition is allowed and the impugned order dated 19.10.2022 in G.O.(Ms) No.221, Higher Education (D2) Department, passed by the first respondent and the consequential communication of the second respondent, dated 21.10.2022, is set aside. The special officer appointed is discharged. The educational agency of the



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petitioners would be entitled to be in management of the college. It is, however, open to the Government to pass orders afresh, which should be in strict compliance of the requirement of Section 14-A of the Act. It is open to the management to submit any additional representation, if they are so advised. In the circumstances of the case, we desist from passing any orders regarding costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

14.06.2023

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

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To:

- 1.The Principal Secretary to Government,
Higher Education Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Director of Collegiate Education,
Office of the Collegiate Education,
Chennai-600 015.
- 3.The Joint Director of Collegiate Education,
Madurai Region,
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