



C.R.P. (PD) .No. 3608 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3608 of 2024

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C.M.P.No. 19609 of 2024

M/s. Asan Memorial Association
a registered Society,
Rep. by its General Secretary,
Mrs.Shyamala Jayaprakash,
No.1, Cochin House,
Anderson Road,
Chennai – 600 006.

...Petitioner

Vs.

1.Dhanasekaran.S

2.D.Varna

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 01.08.2024 passed in I.A.No.3 of 2023 in O.S.No.8084 of 2021 on the file of the III Assistant City Civil Court,



Chennai.



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For Petitioner : Mr. A.R.Karunakaran

For Respondents : Mr. M.Purushothaman.

ORDER

This Civil Revision Petition arises against the order of the learned III Assistant City Civil Judge, Chennai, in I.A.No.3 of 2023 in O.S.No. 8084 of 2021. The civil revision petitioner is the plaintiff in the suit. The civil revision petitioner is a society running an Educational Institution under the name and style of “*Asan Memorial Senior Secondary School*”. The said institution is affiliated to the Central Board for Secondary Education since the year 1966.

2. The cause of action for the filing of the suit is that the 1st defendant had enrolled the 2nd defendant in the said school but



defaulted in payment of school fees from the academic years 2018 – 2019 till 2020 – 2021. This resulted in accumulation of outstanding of Rs.76,275/-, which the school demanded by way of present suit, calculating interest at the rate of 12% per annum.

3. The defendants filed a detailed written statement placing reliance upon the Tamil Nadu Schools (Regulation of Calculation of Fee) Act, 2009. According to the defendant, the fee that is collected by the school is in excess of the rate fixed by the Fee Fixation Committee created under the Act and they would plead that the school is not entitled to the claim as sought for.

4. Pending the suit, an application was taken out in I.A.No.3 of 2023, under Order XXVI Rule 11 and 12 of the Code of Civil Procedure, for a direction to the Tamil Nadu Private Schools Fee Determination Committee, to perform its duties in terms of the aforesaid Act.



5. A detailed counter was filed by the plaintiff resisting the said application. According to the plaintiff, in terms of the order passed by the Supreme Court in S.L.P.(Civil).No.16 of 2013 dated 28.01.2016, Fee Fixation Committee cannot submit a report contrary to the Act.

6. The learned Trial Judge after perusal of the affidavit and petition came to the conclusion that unless and until the report is obtained from the committee, he cannot proceed further with the suit. Therefore, he allowed the application. Hence, the revision.

7. Heard Mr.A.R.Karunakaran and Mr.M.Purushothaman for the respective parties.

8. Mr.A.R.Karunakaran would primarily attack the order on the ground that the order is bereft of details and it is an attempt by the defendant to gather evidence in support of his plea.



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9. Mr.M.Purushothaman would draw my attention to the order passed by the Supreme Court and would point out that the Supreme Court had not stayed the entire Act but had limited the regulatory mechanism of the Fee Fixation Committee to the one contemplated under Section 7 (3) of the Act. He would state in terms of Section 7 (3) (1), the Fee Fixation Committee has power to verify whether the fee collected by the school is commensurate with the facilities provided by the said school. He pleads that the order passed by the learned Trial Judge is in line with the order passed by the Supreme Court and does not require any interference.

10. Mr.M.Purushothaman would also rely upon the Judgement of the Supreme Court in *N.C.Dhondial Vs. Union of India and others – 2004 (2) SCC 579*. He would plead that the Supreme Court had held that in cases like these has held though there might be a bar for a statutory authority to act in that capacity, it certainly can aid the



Court as an expert body.

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11. In addition, Mr.M.Purushothaman submits that as per the calculation given by the Fee Fixation Committee as per order dated 16.04.2013, 10% increase is to be given. He adds, if that mode of calculation is adopted the defendant is liable to pay a sum of Rs.50,000/- to the institution and not a sum of Rs.76,275/-, as claimed by the plaintiff.

12. I have carefully considered the arguments of both the sides.

13. The State of Tamil Nadu brought out the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. This legislation provides for regulation for calculation of fees by schools in the State of Tamil Nadu, irrespective of the fact whether they are matriculation schools, private schools aided by the State of Tamil Nadu or schools administered and maintained in terms of CBSE regulations.



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14. Section 7 (3) of the said legislation empowers the committee created under Section 5, to verify whether the fee collected by the school affiliated is commensurate with the facilities provided by the school. If an excess fee is charged by the school and complaint is lodged, then the committee has a power to enquire into the same. In case, it comes to conclusion that excess fees has been collected by the institution, then it can recommend to the CBSE that the school be dis-affiliated for charging excess fees.

15. Aggrieved by this legislation, batch of Writ Petitions came to be filed before this Court. The same were disposed of by an order dated W.P.No.21310 of 2011 (*batch*) dated 21.09.2012. The association of private schools and other institutions preferred SLP's against this order to the Supreme Court in S.L.P.(Civil).No.16 of 2016 etc., batch. The Supreme Court on 28.01.2016 granted leave to file an appeal in the said proceedings. With respect to the interim relief



granted to the parties, the Court passed the following order:

“We direct that for ICSE and CBSE schools, the regulatory mechanism of the Fee Committee shall be limited during the pendency, of the present controversy, to the one contemplated under Section 7 (3) of the Tamil Nadu Schools (Regulation of Collection of Fees) Act, 2009”.

16. A perusal of the order makes it clear that the Supreme Court had kept in abeyance the other portion of the Act save Section 7 (3). Section 7 (3) (i) empowers the Fee Fixation Committee to verify *whether the fee demanded by the institution is excessive or whether it is commensurate with the facilities provided by the said institution.*

17. Here I should take into consideration the submission that has been made by Mr.A.R.Karunakaran. He states that the Fee Fixation Committee has taken a view that it will not enquire into any



proceedings with respect to ICSE and CBSE schools pending disposal of S.L.P.(Civil).No.16 of 2023. When the Supreme Court has kept in abeyance the other provisions save Section 7 (3), I am not in a position to accept the said submission of Mr.A.R.Karunakaran.

18. Section 7 (3) of the Act, empowers the statutory body to look into the fees charged as against the facilities provided. The case of the defendant is that the fee charged is excessive. In case, the Court had directed a commissioner to be appointed and to calculate the fees vis-a-vis the facilities, then the submission of Mr.A.R.Karunakaran would be valid. In the sense, a commissioner so appointed will be gathering evidence to support the case of the defendant. However, this proposition which normally applies to appointment of Advocate Commissioner cannot be extended to a statutory body performing a duty imposed on it by a legislation. It is nobody's case nor can it be pleaded before the Court that the Fee Fixation Committee does not have power for fixation. When the Supreme Court has permitted the



Fee Fixation Committee to go into the records and to verify the same, then all that the learned Trial Judge done is directing the statutory body to perform its statutory duty. Such a power is certainly available to the City Civil Court, in terms of Section 94 of the Code of Civil Procedure.

19. With respect to the second aspect that the order is bereft of details and therefore it cannot be sustained, a reading of the order prima facie supports the said view. However, the conclusion part of the order points out that the learned Trial Judge applied his mind to the facts presented before him and has come to a conclusion that unless the application is allowed and a report is received from statutory body, the main suit cannot be decided on merits. In addition, the learned Trial Judge has taken into consideration the order passed by the Supreme Court and has come to the conclusion that since the said order was passed by the Supreme Court in the appeal filed by the private schools, no prejudice would be caused to the respondent /



institution, if the committee were to look into the same.

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20. The error that I am able to see is that the learned Trial Judge has not fixed the limit for which the enquiry has to be conducted. When the suit itself for the academic period from 2018 – 2019 to 2020 - 2021, allowing the application without fixing years for which enquiry should be conducted is erroneous. However, for the said purpose, the entirety of the order need not be set aside as this Court has powers to modify the order passed by the Trial Court.

21. Therefore, sustaining portion of the order directing the Fee Fixation Committee to verify the calculation of fees, it is made clear that Fee Fixation Committee shall look into the fees that has been fixed by the institution as provided under Section 7 (3) only for the academic years 2018 – 2019 and 2020 – 2021.

22. With the above modification, the civil revision petition is



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disposed off.

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23. At this stage, Mr.A.R.Karunakaran would point out that Mr.M.Purushothaman had undertaken to pay a sum of Rs.50,000/- which even according to the defendant is due and payable to the institution. Mr.M.Purushothaman has undertaken to pay this amount i.e., Rs.50,000/- by 18.10.2024. The payment as well as receipt thereof by the School is without prejudice to the contention of the respective parties in the main suit. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

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To

The III Assistant City Civil Judge,
Chennai.



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V.LAKSHMINARAYANAN, J.

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