



W.P(MD)Nos.1289 of 2011, 9873 & 13354 of 2014 & 4459 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)Nos.1289 of 2011, 9873 & 13354 of 2014 & 4459 of 2015
and
M.P(MD)Nos.1 of 2011, 2 of 2014, 1 & 2 of 2015, 2 of 2014, 3 of
2015**

1.W.P(MD)No.1289 of 2011:

Saraswathi Primary School,
Represented by its Secretary,
S.Subbulakshmi,
208, Kalyanasundara Vinayagar Koil Street,
Muthusamypuram,
Mugavoor,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner

vs.

1.The District Elementary Educational Officer,
Virudhunagar.

2.The Assistant Elementary Educational Officer,
Rajapalayam,
Virudhunagar District.

3.K.Soundarajan

... Respondents

[R – 3 impleaded as party respondent vide order
dated 08.02.2011 in M.P(MD)No.2 of 2011]

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W.P(MD)Nos.1289 of 2011, 9873 & 13354 of 2014 & 4459 of 2015

WEB C **PRAYER :** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in his proceedings Na.Ka.No.5260/A2/2010, dated 21.01.2011 and quash the same.

For Petitioner	: Mr.C.Mayil Vahana Rajendran
For Respondent Nos.1 & 2	: Mr.D.Sadiq Raja Additional Government Pleader
For Respondent No.3	: Mr.E.V.N.Siva

2.W.P(MD)No.9873 of 2014:

Saraswathi Primary School,
By its Educational Agency,
S.Subbulakshmi,
208, Kalyanasundara Vinayagar Koil Street,
Muthusampuram,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner

vs.

- 1.The District Elementary Educational Officer,
Virudhunagar.
- 2.The Assistant Elementary Educational Officer,
Rajapalayam,
Virudhunagar District.
- 3.K.Soundararajan

... Respondents



W.P(MD)Nos.1289 of 2011, 9873 & 13354 of 2014 & 4459 of 2015

WEB C **PRAYER :** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records in connected with the impugned order passed by the first respondent by his proceedings in Na.Ka.No.5260/A2/2010, dated 21.01.2011 approving the third respondent as Educational agency for Saraswathy Primary School, Muthusamypuram, Mugavoor, Rajapalayam Taluk, Virudhunagar District and quash the same and directing the first respondent to approve the petitioner as educational agency of the petitioner School.

For Petitioner	: Mr.M.Chinnadurai
For Respondent Nos.1 & 2	: Mr.D.Sadiq Raja Additional Government Pleader
For Respondent No.3	: Mr.E.V.N.Siva

3.W.P(MD)No.13354 of 2014:

Saraswathi Primary School,
By its Educational Agency,
S.Subbulakshmi,
208, Kalyanasundara Vinayagar Koil Street,
Muthusamypuram,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner

vs.

- 1.The District Elementary Educational Officer,
Virudhunagar.
- 2.The Assistant Elementary Educational Officer,
Rajapalayam,
Virudhunagar District.



WEB CTS 3.K.Soundararajan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records in connected with the impugned order passed by the first respondent by his proceedings in Na.Ka.No.1477/A2/2012, dated 15.06.2014 regarding shifting of the petitioner School Saraswathy Primary School, Muthusampuram, Mugavoor, Rajapalayam Taluk, Virudhunagar District and quash the same.

For Petitioner : Mr.M.Chinnadurai

For Respondent Nos.1 & 2 : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent No.3 : Mr.E.V.N.Siva

4.W.P(MD)No.4459 of 2015:

S.Anitha

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai – 9.
- 2.The District Elementary Education Officer,
Office of the District Elementary Education Officer,
Virudhunagar.



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3.The Assistant Elementary Education Officer,
Office of the Assistant Elementary Education Officer,
Rajapalayam,
Virudhunagar District.

4.K.Soundararajan

5.S.Subbulakshmi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the second respondent by his proceedings in Na.Ka.No.5260/A2/2010, dated 21.01.2011 approving the fourth respondent as Educational agency for Saraswathy Primary School, Muthusampuram, Mugavoor, Rajapalayam Taluk, Virudhunagar District and quash the same and directing the second respondent to approve the petitioner as Educational Agency of the petitioner School.

For Petitioner : Mr.A.John Vincent

For Respondent Nos.1 to 3 : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent No.4 : Mr.E.V.N.Siva



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COMMON ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

Since the issues involved in the Writ Petitions are one and the same, they are taken up together and are being disposed of, by this common order.

2.One S.Subbulakshmi, Secretary of the petitioner/Saraswathi Primary School has filed W.P(MD)No.1289 of 2011 challenging the order dated 21.01.2011 passed by the first respondent/District Elementary Education Officer in Na.Ka.No.5260/A2/2010, whereby and whereunder the Secretaryship granted in her favour for the petitioner School has been cancelled.

3.The said S.Subbulakshmi, in the capacity of Educational Agency, has filed W.P(MD)No.9873 of 2014 challenging the order dated 21.01.2011 passed by the first respondent/District Elementary Education Officer in Na.Ka.No.5260/A2/2010, whereby and whereunder the Secretaryship and Educational Agency granted in favour of the third respondent/Soundararajan has been approved.

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4.The said S.Subbulakshmi, in the capacity of Educational Agency, has also filed W.P(MD)No.13354 of 2014 challenging the order dated 15.06.2014 passed by the first respondent/District Elementary Education Officer in Na.Ka.No.1477/A2/2012, whereby and whereunder certain documents have been called for to consider the request made by the third respondent/Soundararajan to shift the petitioner School.

5.One S.Anitha has filed W.P(MD)No.4459 of 2015 challenging the order dated 21.01.2011 passed by the first respondent/District Elementary Education Officer in Na.Ka.No.5260/A2/2010, whereby and whereunder the Secretaryship and Educational Agency granted in favour of the third respondent/Soundararajan has been approved.

6.The brief facts of the case in W.P(MD)Nos.1289 of 2011, 9873 of 2014 and 13354 of 2014 are as follows:

6.1.The petitioner/S.Subbulakshmi is the Educational agency and Secretary of Saraswathy Primary School, Rajapalayam Taluk, Virudhunagar District. The said School was started in the year 1919 by one Sundaram Pillai. In the beginning, the said School was running at a rental



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building which belongs to one Marimuthu Moopanar. The said Marimuthu Moopanar, after constructing a concrete building, handed over the same to the School as gift on 30.09.1950. From the beginning till the year 1968, the said School was managed by Sundaram Pillai. Thereafter, it was managed by his son viz., Subramanian Pillai. While he was discharging his duty as the President, he created a Society under the name and style of 'Sundaram Pillai Memorial Educational Society' and the same was duly registered under the Societies Registration Act on 13.10.1995. As per the by-law, the said Subramanian Pillai was acting as Secretary of the Society and the School committee. In the said circumstances, the abovesaid Subramanian Pillai executed a Will bequeathing the Secretaryship of the Society and the School committee in favour of his grandson Muthuvel. According to the petitioner, the abovesaid Subramanian Pillai did not have any right over the School Building and the Committee and he has no right to execute such a Will. The said Subramanian Pillai died on 29.10.1997. After his death, one Sundararaman was duly elected as Secretary of the Society and the School committee. The abovesaid Sundaraman's tenure came to an end in the year 2020. As the Society failed to elect the next Secretary, the Assistant Elementary Educational Officer took over the Management of the Society. In the said circumstances, the abovesaid Sundararaman executed a deed in



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favour of one Soundararajan transferring the Secretaryship of the Educational Agency. Further according to the petitioner, the abovesaid Soundararajan has no right to hold the post of the Educational Agency as well as the Secretary. As per the by-laws, the person, who is holding the post of Secretary of the Society, may entitle to hold the post of Secretary of the School. Hence the abovesaid Soundararajan cannot act as the Secretary of the School, as he does not hold any post in the Society.

6.2.In the said circumstances, the petitioner/S.Subbulakshmi has been duly elected as Secretary of the Society on 28.06.2003 and again on 05.07.2006. Further, on 18.01.2007, she was elected as Secretary of the School by a resolution and thereby, she is holding the post of the Secretary of the School. Hence, the petitioner made a representation dated 20.01.2007 to the respondents 1 and 2 along with a copy of the resolution seeking to approve her Secretaryship of the School. Since the said representation was not considered, the petitioner filed a Writ Petition in W.P(MD)No.9104 of 2007 before this Court. This Court, by order dated 07.11.2007 directed the first respondent to consider her representation. Pursuant to the direction issued by this Court, the first respondent made direct payment to the petitioner by proceedings dated 10.12.2007.



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Challenging the said proceedings, dated 10.12.2007, the third respondent filed a Writ Petition in W.P(MD)No.1262 of 2008. Subsequently, the first respondent cancelled the approval of educational agency granted in favour of the abovesaid Soundararajan. Aggrieved by the said order, the third respondent filed W.P(MD)No.2078 of 2008. In the meantime, the second respondent approved the petitioner as Secretary of the School by proceedings dated 13.03.2008. Aggrieved by the said order, the third respondent filed a Writ Petition in W.P(MD)No.2965 of 2008. The abovesaid Soundararajan has also filed a Contempt Petition in Cont.P(MD)No.519 of 2008. The abovesaid Writ Petitions and Contempt Petition were heard together and this Court, by a common order, dated 08.10.2009, remanded the matter back to the first respondent for fresh consideration.

6.3.The first respondent conducted an enquiry. The petitioner and third respondent appeared for the enquiry. Considering the submissions made by the petitioner and the third respondent, the first respondent vide order dated 03.08.2010, directed the petitioner and the third respondent to approach the civil Court for appropriate remedy. In the said circumstances, the first respondent has passed the impugned orders cancelling the Secretaryship of the petitioner and approving the educational agency for the



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third respondent. Challenging the cancellation of the Secretaryship of the petitioner, she filed W.P(MD)No.1289 of 2011. Challenging the order approving the Educational agency of the third respondent, the petitioner filed W.P(MD)No.9873 of 2014.

6.4.While being so, the third respondent approached the first respondent for shifting of the School. But the first respondent refused to grant permission for shifting the School by proceedings, dated 24.05.2011. Challenging the same, the third respondent filed a Writ Petition in W.P(MD)No.16408 of 2018 and this Court by order dated 04.10.2013, dismissed the Writ Petition. Aggrieved over the same, the third respondent preferred an appeal in W.A(MD)No.1243 of 2013. This Court, by a Judgment dated 04.04.2014, allowed the Writ Petition. The petitioner also filed a review petition in Review Petition No.106 of 2014. In the said circumstances, the first respondent has issued a proceedings to the second respondent, dated 15.06.2014, calling for certain documents with regard to the shifting of the School. Challenging the same, the petitioner has filed W.P(MD)No.13354 of 2014.



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7.One S.Anitha claiming to be the legal heir of the deceased S.Sundaraman, has filed W.P(MD)No.4459 of 2015 challenging the order, dated 21.01.2011 passed by the second respondent/District Elementary Education Officer granting approval to the respondent-Soundararajan for the educational agency.

8.The learned Government Advocate submitted that there is no proper infra structure facilities to run the School and now, only nine students are studying in the said School and one Teacher is available for nine students and therefore, now the authorities concerned are taking steps to close the School and transfer the students studying in the said School to the nearby Schools at their choice.

10.Heard the learned counsel appearing on either side and carefully perused the materials available on record.

11.A careful perusal of the materials available on record shows that there is a dispute between S.Subbulakshmi, her daughter S.Anitha and K.Soundararajan in holding the post of Secretaryship for the Educational Agency. It is seen that several Writ Petitions were filed before this Court on

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the earlier occasions and this Court had also issued directions in their Writ Petitions. However, the dispute between them does not come an end. In fact, it is to be noted that such a dispute cannot be decided under Article 226 of the Constitution of India and it can be decided only based on the oral and documentary evidence produced by the parties concerned. Therefore, we are of the view that it would be appropriate to relegate the parties concerned to the competent civil Court for redressal of their grievance in the manner known to law, for which, the parties have also agreed to approach the civil Court.

12.It is seen that the authority concerned is taking steps to close the School on account of shortfall in the students strength. However, though K.Soundararajan has no objection for the same, but the said S.Subbulakshmi and her daughter Anitha have raised objection for closure of the School. Further, the parents of the students have also objected for the same and to that effect, they have given a representation to the District Collector, Virudhunagar during the grievance day held on 29.01.2024.



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13.In this regard, we are of the view that it is for the authority concerned to decide for closure of the School. However, closure of the School in the midst of the Academic Year would definitely affect the students education. Therefore, the School shall not be closed till this Academic Year 2023-2024. Thereafter, the parents shall give their options to the authority concerned to shift the students to the nearby Schools. On such event, the authority concerned shall consider the same positively and shift the students to the nearby Schools at the choice of the parents.

14.With the above observations and directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
05.02.2024

NCC : Yes / No
Index : Yes / No
ps



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To

- 1.The Secretary,
Department of School Education,
Fort St. George,
Chennai – 9.
- 2.The District Elementary Education Officer,
Office of the District Elementary Education Officer,
Virudhunagar.
- 3.The Assistant Elementary Education Officer,
Office of the Assistant Elementary Education Officer,
Rajapalayam,
Virudhunagar District.



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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)Nos.1289 of 2011, 9873 &
13354 of 2014 & 4459 of 2015

DATED : 05.02.2024