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S.A(MD)No.576 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.576 of 2005

C.Vamadevan Nair ... Appellant/1st Appellant/1st Plaintiff

Vs.

1.Raju,
Auditor in Nutritious Meal Programme,
District Collector's Office,
Nagercoil, Kanyakumari District.

2.The Deputy Inspector of Schools,
Kuzhithurai,
Vilavancode Taluk,
Kanyakumari District.

3.The District Educational Officer,
Kuzhithurai,
At Marthandam,
Kanyakumari District.

4.Saraswathy Amma ... Respondents/
Respondent 1 to 3 & 3rd appellant/
Defendants 1 to 3 and Nil

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 28.11.2003 passed in A.S.No.146 of 1998 on the file of the Sub Court, Kuzhithururai, confirming the judgment and decree dated 14.09.1998 passed in O.S.No.520 of 1989 on the file of the II Additional District Munsif Court, Kuzhithurai.



WEB COPY

S.A(MD)No.576 of 20



For Appellant : Mr.K.N.Thambi
For RR 2 & 3 : Mr.R.Ragavendran
Government Advocate

JUDGMENT

The Judgments and decrees passed in O.S.No.520 of 1989 on the file of the II Additional District Munsif Court, Kuzhithurai and in A.S.No.146 of 1998 on the file of the Sub Court, Kuzhithururai, are being challenged in the present Second Appeal.

2.The appellant herein as first plaintiff along with one T.Sekhara Pillai instituted a suit in O.S.No.520 of 1989 on the file of the trial Court for the relief of declaration that the claims and prohibitions in the notice dated 18.07.1989 of the defendants 2 and 3 respectively as illegal and unjust and for restraining the defendants 2 and 3 by injunction from enforcing the claims and prohibitions in the aforesaid notice and constraining them to maintain the status quo.



S.A(MD)No.576 of 20

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.

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4.The case of the plaintiffs, in a nutshell, is as follows:

The second plaintiff was the proprietor and Manager of the Linguistic Minority Higher Secondary School, Arumana, within the jurisdiction of defendants 2 and 3, who were the Deputy Inspector of the Schools and the District Educational Officer. The first plaintiff (present appellant) was the organizer of the Chief Minister's Nutritious Meal Programme in the school for providing food to children as an incentive for increased attendance in the school and for promoting health, as per G.O.Ms.No.1222, dated 26.07.1984. The second plaintiff was the ex-officio President of the Committee and the Headmaster was the ex-officio Secretary. The first plaintiff was the organizer approved by the District Collector. The materials for the food were supplied by the Civil Supplies Corporation and the payment was made by the Government. The total strength of those fed in the previous academic year was 455, which increased to 505 in the academic year of the suit in tune with the admissions in the school. The conduct of the above



said programme was being regularly and periodically audited and checked by Auditors appointed for the purpose. The first defendant, who was one such Auditor visited the school on 24.02.1988 in the forenoon session when the revision test was being held. With a *mala fide* and colourable exercise of his authority, he reduced the feeding strength to 292 arbitrarily without any data to support the same and contrary to actual facts and showed a huge loss to the Government. By notice dated 18.07.1989, the second defendant called for rectifications by the first plaintiff within 15 days for the alleged loss of Rs.16,570.28 allegedly incurred by the Government. Even before the expiry of the said period of 15 days, the third defendant by his notice dated 20.07.1989 demanded the first plaintiff to refund Rs.1,03,202/- and prohibited him henceforth from feeding more than 297 students. The above steps were taken by defendants 2 and 3 with a *mala fide* and colourable exercise of their authority without any enquiry, and the same jeopardized the very conduct of the programme and also of the school, thereby unduly favouring a nearby school. They are discriminatory violations of the fundamental rights guaranteed to linguistic minority institutions. Further, they are without even the concurrence of the Government, quite against the previous Audit Report and supplies and illegal and unjust. Repeated requests in the



matter proved futile. Hence, the plaintiffs have filed the suit for the abovestated relief.

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5.The first defendant had filed a written statement and contested the suit and denied the allegation that the qualified students for nutritious meals increased to 505. The qualified students is only 292. The plaintiffs have no right to question the approval of the Collector, who was the authorized officer, who has not been made as a party in the suit and the trial Court has no jurisdiction to question the validity of the order of the Collector and Audit Report. The programme of providing nutritious noon meals to the School children was not a constitutional or statutory scheme of the Government, but a special scheme introduced by the Government of Tamil Nadu and implemented with reference to executive instructions issued by the Government then and there. The first defendant was the competent person and he had no *mala fide* intention or enmity towards the plaintiffs. The noon meal scheme was implemented in the aided Higher Secondary School, Arumanai for the standards VI to X with effect from 01.06.1985. The Government have directed the examiner for Local Fund Accounts, Madras, to fix the feeding strength by deputing three departmental staff to the feeding centres on two or three different dates at the time



of feeding and counting the actual number of children fed. The organizers should strictly observe the strength fixed by the Audit Department. The strength so fixed has to be sent to the Collector who has to approve the same, which percolates downward to the organizer, who should strictly observe the same fixed by the Audit Department. One Tmt.Florence Vasantha Ruby, Assistant Inspector of Local Fund Accounts, visited the centre on 22.02.1998 and found that 306 students of standards VI to X were actually fed on that date, which was recorded in the visitors' notebook maintained at the centre and also reported to the Assistant Examiner of Local Fund Accounts, Nagercoil. On 24.02.1988, the first defendant visited the centre, counted the number of students fed on that date in the presence of the first plaintiff and found the same to be 277, which was recorded in the visitor's book, wherein the signature of the organizer was also obtained. As per Government instructions, the second defendant has arrived at the average of students actually fed on 22.02.1988 and 24.02.1988 as 292 which was also recorded in the visitor's book and the organizer has signed in the same at the time of counting, the first defendant has signed in the same at the time of counting, the first defendant saw the servants serving meals to the children of unrecognized primary standards with the consent of Headmaster which is not permissible.



S.A(MD)No.576 of 20

Notices sent by the competent persons are perfectly correct. If the plaintiffs really felt that the fixation was not in order, the Collector who approved the strength also should have been included in the suit and stated that the claim made by the plaintiffs had to be rejected.

6.The defendants 2 and 3 filed a written statement and contested the suit and stated that the second plaintiff and the Headmaster were incompetent persons to become members of the committee. The trial Court has no jurisdiction to proceed. The allegation that the organizer was appointed by the second plaintiff was quite against the facts. The first plaintiff was appointed by the Collector of Kanyakumari at Nagercoil. The allegations that the qualified students for nutritious meals increased to 505 were denied. They are only 292. It has come to his notice that the management of the school was conducting primary classes from standards I to V without recognition by the department. As per Rules, unrecognized school children should not be fed under the Tamil Nadu Government Noon Meal Scheme. The organizer did not follow the rules.



7.Before the trial Court, on the side of the plaintiffs, they themselves were examined as P.W.1 and P.W.2 and Exs.A1 to A3 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B.1 to B.5 were marked.

8.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

9.Aggrieved by the Judgment and decree passed by the trial Court, the plaintiffs herein as appellants, had filed an Appeal Suit in A.S.No.146 of 1996 on the file of the first Appellate Court.

10.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.



WEB COPY

S.A(MD)No.576 of 20



11.Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the first plaintiff as appellant.

12.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'a) Whether the dismissal of the appellant's suit by the Courts below is correct, since the proceedings impugned therein are violative of the cardinal principle of natural justice of giving reasonable opportunity of being heard in sofaras no opportunity, much less reasonable opportunity, was given to the appellant before the issue of the proceedings?

B) Whether the Courts below are correct in dismissing the appellant's suit, without giving the appellant any opportunity to implead the District Collector as a defendant in the suit?'



WEB COPY

S.A(MD)No.576 of 20



13.The learned counsel appearing for the appellant/first plaintiff would submit that the judgments and decrees of the Courts below are against law and unsustainable; the Courts below have failed to appreciate in their proper perspective all materials on record in the case and this has resulted in grave miscarriage of justice; the Courts below ought to have declared that the proceedings impugned in the suit are illegal, unjust, arbitrary and unsustainable; the Courts below ought to have decreed the suit on the ground that the recovery notice is violative of principles of natural justice, *inter alia*, of audi alteram partem, insofar as the first plaintiff had been given no opportunity, much less any reasonable opportunity of being heard in the matter before the issue of the recovery notice; the Courts below ought to have found that the audit report and the consequential recovery notice are in clear violation of fundamental rights, enshrined in the Constitution of India; the Courts below have failed to see that the proceedings of the defendants, challenged in the suit, ought to have been preceded by elaborate and detailed enquiries; the Courts below have failed to note that the beneficial scheme, namely, the Chief Minister's Nutritious Noon Meal Programme, was started with an object and provide noon meal to poor children as incentive for increased attendance in Schools and



hence, the impugned audit report reducing the feeding strength was against the object of scheme, bad and illegal and unsustainable; the Courts below ought to have held that the action of the appellant was laudable in any event and allowed the case of the appellant on that ground; in the absence of any specific rule governing the Chief Minister's Nutritious Noon Meal Programme, with regard to the fixation of the strength of the children to be fed, the Courts below ought to have allowed the case of the plaintiffs; the Courts below ought to have held that the impugned notices and consequential recovery proceedings are without jurisdiction and hence bad, illegal and unsustainable; the Courts below ought to have found that the alleged computation of actual loss and notional loss by auditors unilaterally is bad and unsustainable; the Courts below have failed to see that the entire proceedings impugned in the suit were mala fide, vindictive and with ulterior motives, inter alia, of reducing the strength of the concerned School; the Courts below ought to have held that the assessment and computation of money in the proceedings impugned in the suit are grossly incorrect and the amount of the said money is highly exorbitant.



WEB COPY

S.A(MD)No.576 of 20



14.The learned counsel appearing for the appellant/first plaintiff would further submit that though both the plaintiffs have been examined in the suit, but the defendants who are the officers of the Government have not examined proper witnesses or produced relevant documents in the case. For instance, Tmt.Florence Vasantha Ruby, referred to above has not been examined, nor her report was filed in the case. He would further submit that before slapping huge fault and penalty on the present appellant, who is only a servant in a very low echelon, the defendants had failed to state or substantiate how he is liable for the alleged loss. It is noteworthy in this connection that the defendants have no case that the first plaintiff has enriched himself by the alleged loss. Also, as pointed out above, when the plaintiffs had examined both the plaintiffs as P.Ws.1 and 2 in the case and produced all the limited documents in their possession, the defendants, who were in possession of all the official documents, failed to produce vital documents which are relevant for a just and correct decision of the matter. In this connection, the defendants are relying on the inspection report of the aforesaid Tmt.Florence Vasantha Ruby, a Government officer and Auditor, without examining and even without producing her inspection report. Thus the defendants are relying on an alleged report



by the said Auditor without any proof whatsoever for the same and the Courts below have failed to take due note of the above, while dismissing the suit and prayed for allowing the Second Appeal.

15.The learned Government Advocate appearing for the respondents 2 and 3/defendants 2 and 3 reiterated the averments made in the plaint and the appeal and submitted that the Courts below had rightly dismissed the same.

16.Heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for the respondents 2 and 3 and also perused the records carefully.

17.According to the plaintiffs, the second plaintiff was the proprietor and Manager of the Linguistic Minority Higher Secondary School, Arumana, within the jurisdiction of defendants 2 and 3, who were the Deputy Inspector of the Schools and the District Educational Officer. The first plaintiff (present appellant) was the organizer of the Chief Minister's Nutritious Meal Programme in the school for providing



food to children as an incentive for increased attendance in the school and for promoting health, as per G.O.Ms.No.1222, dated 26.07.1984.

The second plaintiff was the ex-officio President of the Committee and the Headmaster was the ex-officio Secretary. The first plaintiff was the organizer approved by the District Collector. The materials for the food were supplied by the Civil Supplies Corporation and the payment was made by the Government. The total strength of those fed in the previous academic year was 455, which increased to 505 in the academic year of the suit in tune with the admissions in the school. The conduct of the above said programme was being regularly and periodically audited and checked by Auditors appointed for the purpose. The first defendant, who was one such Auditor visited the school on 24.02.1988 in the forenoon session when the revision test was being held. With a *mala fide* and colourable exercise of his authority, he reduced the feeding strength to 292 arbitrarily without any data to support the same and contrary to actual facts and showed a huge loss to the Government. By notice dated 18.07.1989, the second defendant called for rectifications by the first plaintiff within 15 days for the alleged loss of Rs.16,570.28/- allegedly incurred by the Government. Even before the expiry of the said period of 15 days, the third defendant by his notice dated 20.07.1989 demanded the first



plaintiff to refund Rs.1,03,202/- prohibiting him henceforth from feeding more than 297 students. The above steps were taken by defendants 2 and 3 with a *mala fide* and colourable exercise of their authority without any enquiry, and the same jeopardized the very conduct of the programme and also of the school, thereby unduly favouring a nearby school.

18. According to the first defendant, he denied the allegation that the qualified students for nutritious meals increased to 505. The qualified students are only 292. The plaintiffs have no right to question the approval of the Collector, who was the authorized officer, who has not been made as a party in the suit and the trial Court has no jurisdiction to question the validity of the order of the Collector and Audit Report. The programme of providing nutritious noon meals to the School children was not a constitutional or statutory scheme of the Government, but a special scheme introduced by the Government of Tamil Nadu and implemented with reference to executive instructions issued by the Government then and there. The first defendant was a competent person and he had no *mala fide* intention or enmity towards the plaintiffs. The noon meal scheme was implemented in the aided Higher Secondary School, Arumanai for the standards VI to X with

15/23



effect from 01.06.1985. The Government have directed the examiner of Local Fund Accounts, Madras, to fix the feeding strength by deputing the departmental staff to the feeding centres on two or three different dates at the time of feeding and counting the actual number of children fed. The organizers should strictly observe the strength fixed by the Audit Department. The strength so fixed has to be sent to the Collector who has to approve the same, which percolates downward to the organizer, who should strictly observe the same fixed by the Audit Department. One Tmt. Florence Vasantha Ruby, Assistant Inspector of Local Fund Accounts, visited the centre on 22.02.1998 and found that 306 students of standards VI to X were actually fed on that date, which was recorded in the visitors' notebook maintained at the centre and also reported to the Assistant Examiner of Local Fund Accounts, Nagercoil. On 24.02.1988, the first defendant visited the centre, counted the number of students fed on that date in the presence of the first plaintiff and found the same to be 277, which was recorded in the visitor's book, wherein the signature of the organizer was also obtained. As per Government instructions, the second defendant has arrived at the average of students actually fed on 22.02.1988 and 24.02.1988 as 292 which was also recorded in the visitor's book and the organizer has signed in the same at the time of counting, the first



defendant has signed in the same at the time of counting, the first defendant saw the servants serving meals to the children of unrecognized primary standards with the consent of Headmaster which is not permissible. Notices sent by the competent persons are perfectly correct. If the plaintiff really felt that the fixation was not in order, the Collector who approved the strength also should have been included in the suit.

19. According to the defendants 2 and 3, the second plaintiff and the Headmaster are incompetent persons to become members of the committee. The trial Court has no jurisdiction to proceed. The allegation that the organizer was appointed by the second plaintiff was quite against the facts. The first plaintiff was appointed by the Collector of Kanyakumari at Nagercoil. The allegations that the qualified students for nutritious meals increased to 505 were denied. They are only 292. It has come to his notice that the management of the school was conducting primary classes from standards I to V without recognition by the department. As per Rules, unrecognized school children should not be fed under the Tamil Nadu Government Noon Meal Scheme. The organizer did not follow the rules.



WEB COPY

S.A(MD)No.576 of 20



20. On a perusal of the materials available on record, it is seen that it is undisputed that the order impugned in the suit has not been preceded by any notice to show cause. Hence the same is violative of the cardinal principle of natural justice of audi alteram partem insofar as no opportunity of being heard was given prior to the issue of the drastic order impugned in the suit and no materials had been produced by the defendants to prove the same. Hence the first substantial question of law framed in the second appeal is answered in favour of the appellant.

21. Further, it is seen that the District Collector is neither a necessary party nor a proper party to the suit. No relief is claimed against him in the suit and no allegation so as to make him as a party to the suit is made against him in the suit. However, if the Courts below felt that he has to be impleaded in the suit, the appellant ought to have been given an opportunity to implead him in the suit, before dismissal of his suit for not impleading the District Collector. Insofar as the appellant's suit has been dismissed by the Courts below without giving an opportunity to him to implead the District Collector as a



defendant in the suit, the judgments and decrees of the Courts below are unsustainable and liable to be set aside. Hence, the second substantial question of law framed in the second appeal deserves to be answered in favour of the appellant.

22.Further, the appellant, who is now aged about eighty years, sick and in the very fag end of his life, was only a servant in the matter of the suit. The school was owned and managed by the second plaintiff. The appellant did not derive any monetary or other benefit from the alleged transactions in the suit. The second plaintiff in the suit, who was the Proprietor and Manager of the school and the beneficiary of activities in the school, passed away. Hence, the proceeding against the present appellant/first plaintiff in the peculiar circumstances of the case it is quite hard and unjust. Further, the transaction alleged in the suit took place in the year 1989, that is, more than 35 years ago and the stand of the learned Government Advocate appearing for the respondents 2 and 3 in the second appeal that they are at present not possessed any of the records pertaining to the transaction alleged in the case is worth mentioning in this context.



S.A(MD)No.576 of 20

23.It is seen from the records and the evidence that the plaintiff has not been given a reasonable opportunity to give an explanation or to defend himself by issuing a show-cause notice. When such being the case, no opportunity was given to him to defend himself, this Court is of the view that the trial Court as well as the Appellate Court's decision of dismissing the suit is not correct as there is a violation of principles of natural justice. The third defendant/the District Educational Officer issued a notice on 20.07.1989 demanding the first plaintiff to refund a sum of Rs.1,03,202/- and prohibited him from feeding more than 297 students without an enquiry being conducted and the order was issued by the third defendant/the District Educational Officer, who has no authority to do so and the first plaintiff has been appointed by the District Collector. That being the case, any action to be taken is to be informed to the District Collector. Further, no opportunity was given to him to implead the parties.

24.The present Government is implementing the scheme to provide food for the Government aided Schools in the morning and afternoon. That being the situation, the stand taken by the defendants that Primary School children were eating in the School which is not recognized and punishing an employee of the School is unfortunate.

20/23



S.A(MD)No.576 of 20

Hence, this Court is of the view that the Government shall not proceed against the plaintiff any further, who was obeying the orders of the Government.

25. Such being the position, this Court is of the view that the Judgment and Decree of the Courts below are liable to be interfered with and the same have to be set aside. Accordingly, the substantial questions of law are answered in favour of the first plaintiff.

26. In the result, this Second Appeal is allowed and the Judgment and Decree in O.S.No.520 of 1989, dated 14.09.1998 on the file of the II Additional District Munsif Court, Kuzhithurai, is set aside and the suit is decreed declaring that the claims and prohibitions in the notice, dated 18.07.1989 of the defendants 2 and 3 as illegal and restraining the defendants 2 and 3 from enforcing the claims and prohibitions in the aforesaid notice and constrained to maintain status quo. No costs.

16.10.2024

Index : Yes/No
Internet : Yes/No
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21/23



S.A(MD)No.576 of 20

To

WEB COPY

- 1.The Sub Court,
Kuzhithurai.
- 2.The II Additional District Munsif Court,
Kuzhithurai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



S.A(MD)No.576 of 20

V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.576 of 2005

16.10.2024