

M. Ayyasamy Vs. the District Educational Officer, (Elementary Education), District Education Officer and anr.

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Court : Chennai

Decided On : Sep-27-1995

Reported in : (1996)2MLJ391

Appellant : M. Ayyasamy

Respondent : The District Educational Officer, (Elementary Education), District Education Officer and anr.

Judgement :

Raju, J.

1. above writ appeal has been filed against the order of the learned single Judge dated 23.8.1995 in W.P. No. 8856 of 1995, whereunder the learned Judge while allowing the writ petition filed by the third respondent herein has quashed the order of the first respondent in 3731/AG/95, dated 5.6.1995 and consequently, directed the State Government to nominate an Officer and pass appropriate orders as an interim, measure, according to Section 53-A(2) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as the Act).

2. To appreciate the nature of the disputes as also the grievance of the parties in the proceedings before us, it becomes necessary to advert to certain earlier factual details. There is no controversy over the position that the Sukangalpatti

Nadar Uravinmurai Hindu Nadar Middle School Educational Society is an Association duly registered under the Tamil Nadu Societies' Registration Act with Registration No. 55 of 1984 and the school in question is established and administered by the said Association. The members of the Committee have to be periodically elected and registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. It appears that the school was originally started even 100 years ago and it is only in the year 1984 the community people gathered together and elected the School Committee and administered the Association as noticed supra on the file of the District Registrar, Periyakulam, Madurai District. It is also seen that the periodical election is to take place every three years to elect the body to administer and maintain the school. In view of certain conflicting claims and counterclaims by different groups of persons claiming control over the Association and the Committee, the Inspector General of Registration, by his proceedings dated 6.9.1991 has directed the District Registrar, Periyakulam, to be present at the election to be made by the General Body of a Committee and a direction also appears to have been issued to the Association. It is not at this stage necessary to advert to the claim of removal of some of the members and the claims in opposition thereto for the purpose of this writ appeal. The fact remains that on 7.1.1995 a General Body meeting was held at the Society's school building under the Presidentship of the appellant herein in which apart from the election of the appellant as the President, one M. Manoharan has been elected as the Secretary and N. Murugesan as the Treasurer in addition to the election of about four Executive Body Members. It is also seen that the District Registrar, Periyakulam was also present at the time of the said General Body Meeting as per the directions of the Inspector General of Registration noticed earlier and on the filing of a Form-7 application, the same was also registered by the District Registrar. The office bearers so elected was said to be for the period between 7.1.1995 and 31.12.1987. Thereafter, the proceedings appear to have been sent to the second respondent herein, who it is claimed, has approved the same. But on securing legal opinion from the local Government Pleader, the first respondent has finally approved the elected Committee under the impugned proceedings dated 5.6.1995. Thereupon, the second respondent also appears to have handed over the charge held by him of the school as temporary Secretary under the orders

of the Chief Educational Officer dated 15.10.1992 to the new Secretary M. Manoharan. While matters, stood thus, the third respondent herein has filed the above Writ Petition No. 8856 of 1995 seeking for a writ of certiorari to call for and quash the proceedings of the first respondent dated 5.6.1995 and consequently direct the first respondent to permit the second respondent to continue to discharge duties of the Secretary of the Petitioner-school till the disposal of O.S. No. 91 of 1995 on the file of the District Munsif's Court, Uthamapalayam. It is appropriate to notice at this stage the said suit has been filed by one Mariappa Nadar for a declaration that the election of the plaintiff Mariappa Nadar and six other members as office bearers and members of the School Committed on 4.12.1994 in the General Body election was valid and for a further declaration that the election of defendants 1 to 7 in the suit to the School Committee in the presence of the 8th defendant, who is the District Registrar of Periyakulam on 7.1.1995 as invalid and not binding on the plaintiff in the suit and the other members of the School Committee. Obviously, the plaintiff in the suit not only claims that there had been an earlier election and that election was valid, but the petitioner in the writ petition the third respondent herein has also subscribed to the said election, since the claim of the third respondent herein is that he has been elected as the Secretary of the School Committee.

3. The appellant herein has filed a counter-affidavit and after hearing of parties, the learned single Judge by his order under appeal came to the conclusion that in the teeth of conflicting claims and the dispute raised for adjudication of the same in O.S. No. 91 of 1995 on the file of the District Munsif, Uthamapalayam, there is justification to invoke the provisions of Section 53-A of the Act. It was also the conclusion of the learned single Judge that pending disposal of the suit or interim orders of the Civil Court, it is the Government which has to nominate an Officer to discharge the functions of the Educational Agency, School Committee or the Secretary, as the case may be, and the passing of an order, dated 5.6.1995 impugned in the writ petition without acting in accordance with Section 53-A of the Act, cannot be sustained. The learned Judge also made it clear that it is open to the Government to pass appropriate orders under Section 53-A(2) of the Act to nominate an Officer to discharge the functions of the Educational Agency or the School Committee or the Secretary, as the case may be. The learned Judge also

noticed the fact that prior to the passing of the impugned order, the second respondent was discharging the functions of the Secretary. A further direction has also been issued to the court before whom the civil suit is pending to disposal of the same as expeditiously as possible. Aggrieved, the third respondent in the writ petition has come by way of this appeal.

4. Mr. Gandhi, learned Senior Counsel appearing for the appellant contended that there is no scope, warrant or justification for having recourse to the provisions contained in Section 53-A of the Act in the peculiar facts and circumstances of the case wherein a proper and valid election has been duly conducted by the General Body in the immediate presence of the District Registrar and that the same was also duly registered under Section 15(2) of the Tamil Nadu Societies' Registration Act, 1975. It is also the contention of the learned Counsel for the appellant that merely because of a claim made by a group does not by itself give room for a genuine or real dispute justifying recourse to Section 53-A of the Act and that at any rate so far as the facts of the case are concerned, it is a matter of record that the District Registrar after enquiry into the matter by his proceedings dated 16.3.1995 has ordered of taking appropriate criminal action against the counter group for having prepared and submitted false record in respect of a General Body Meeting alleged to have been conducted. Consequently, it was contended that not only the Committee elected on 7.1.1995 has been duly registered and recognised by the District Registrar under the Tamil Nadu Societies' Registration Act, but was also recognised and approved by the first respondent-the District Educational Officer under the provisions of the Act and the Rules made thereunder and that, therefore, there is no scope for contending that there was any real or genuine dispute warranting the application of the provisions of Section 53-A of the Act. It was therefore contended for the appellant that the order of the learned single Judge requires to be set aside and no interference is called for with the administration of the school by the Committee registered and approved under the impugned proceedings.

5. Per contra, Mr. R. Suresh Kumar, learned Counsel for the third respondent while reiterating the conflicting claims on behalf of the Committee claimed to have been elected in the election said to have been held on 4.12.1994 vehemently

contended by placing reliance upon the decision of a Division Bench of this Court reported in *Karupiah Pillai and three Ors. v. The District Educational Officer, Tenkasi and five Ors.* (1994) 1 L. W. 506, to which one of us was a party that there was every justification to apply the provisions contained in Section 53-A of the Act to the case on hand, particularly, having regard to the fact that a suit has been filed before the competent Civil Court for a declaration that the Committee elected on 4.12.1994 is a valid one and the Committee said to have been elected on 7.1.1995 was not a valid one and the said suit is pending. According to the learned Counsel for the third respondent, the dispute between parties is a real and genuine dispute and it is only to meet such a contingency that the provisions of Section 53-A have been enacted and that no exception could be taken to the order of the learned Judge directing the Government to take action under Section 53-A of the Act. It was also contended that the order of the learned single Judge would meet the ends of justice and the appellant will not be in any manner prejudiced by an Authority of the Educational Department like the second respondent administering the school as its Secretary pending adjudication of the dispute by the competent Civil Court.

6. Mr. D. Murugesan, learned Special Government Pleader (Education) assisted the court by drawing our attention to the various proceedings and the relevant provisions of law and also submitted that in the teeth of such problems and questions arising often before courts it would be desirable and appropriate to set out and lay down the necessary principles for the guidance of the Department and that the laying down of such guidelines would very much help the authorities in the proper administration of the provisions of the Act.

7. We have carefully considered the submissions of the learned Counsel on either side. From the facts stated supra, regarding the conflicting claims from both the groups trying to assert their rights, the following facts emerge and these facts may be taken to have been borne out by public records and documents. Even as early as on 6.9.1991 the Inspector General of Registration at Madras issued a direction to the School Committee, after inviting its attention to the regular activities and claims, that the entire members of the General Body of the Association, which stands registered as a Society under the Tamil Nadu Societies Registration Act

and the Rules made thereunder, must meet on a call made therefor, in the presence of the District Registrar at Periyakulam, and hold the election and elect the members of the Committee so that they can take charge and if the members of the Association are not agreeable for the same, they may have recourse to the competent civil court. Thereafter the writ petitioner 3rd respondent in the appeal filed Writ Petition No. 5388 of 1992 to stall the election but the said writ petition came to be dismissed on 10.4.1993. Even thereafter, yet another person filed: O.S. No. 336 of 1992 on the file of the District Munsif Court, Uthamapalayam and though no interim orders could be obtained by the said person, the said group was able to prevail to see that the District Educational Officer pass an order dated 15.10.1992 nominating the second respondent to discharge the duties of the Secretary of the school and attend to the day to day administration. While matters stood thus, on 7.1.1995 the General Body of the Association met in the presence of the District Registrar, Periyakulam as directed by the Inspector General of Registration, and in the election held on that day the office bearers of the Committee was elected and on the filing of the prescribed Forms before the District Registrar, the same as duly registered on 12.1.1995 as Serial No. 3/95. Thereupon, the Committee appears to have moved the first respondent, who also accorded his approval to the Committee elected on 7.1.1995 and passed the impugned order dated 5.6.1995 recording the position that Mr. Manoharan shall be the Secretary for the period from 7.1.1995 to 31.12.1997, after obtaining legal opinion from the Local Government Pleader and consequently, the second respondent also handed over charge to Mr. M. Manoharan of the office of the Secretary on 7.6.1995. The facts further disclosed are that writ petitioner also claimed to have been elected on 4.12.1994 and having regard to the pendency of a suit filed in O.S. No. 91 of 1995 challenging the election said to have been held on 7.1.1995 to be illegal and the election on 4.12.1994 to be valid, approached this Court to quash the proceedings of the first respondent dated 5.6.1995 and for a direction to enable the second respondent to continue as the Secretary pending disposal of O.S. No. 91 of 1995 referred to supra, in the light of Section 53-A(2) of the Act. The question for consideration would be whether the provisions of Section 53-A would be attracted to the case on hand, as held by the learned single Judge.

8. Since strong reliance has been placed on behalf of the writ petitioner/third respondent on Section 53-A of the Act and the decision reported in Karuppiyah Pillai's case, (1994) 1 L.W. 506, it would be useful to refer to the provisions as also the ratio of the decision of the Division Bench. Section 53-A of the Act reads as follows:

Section 53-A, 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 Secretary of the school committee, arises, such dispute may be referred by the persons 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 working 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.

9. In Karuppiyah Pillai's case, (1994) 1 L. W. 506, the Division Bench held as follows:

We are now concerned with Sub-section (2) of Section 53-A. It is not disputed that there is a dispute relating to the constitution of educational agency, pending before the civil court. As per Sub-section (2) of Section 53-A, the State Government is entitled to exercise the power and nominate an officer to discharge the functions of the educational agency, pending the decision of the civil court on a dispute referred to it under Sub-section (1) or making an interim order by the civil court for the running of a private school. Sub-section (1) enables a person interested in the educational institution to refer the dispute to a civil court having jurisdiction over the institution relating 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 Secretary of the School Committee. In the instant case, the dispute

relates to constitution of educational agency in respect of which the suit has been filed. It is no doubt true that in the context in which the expression 'may' in Sub-section (2) of Section 53-A of the Act, it is coupled with duty and it has to be exercised when there is a dispute relating to the matters touching the very administration of a private school, which dispute, if allowed to continue, would seriously affect the very teaching in the school and thereby the interest of the students will suffer and more so, when there is no likelihood of the civil court deciding the suit early or making an interim arrangement for running the private school pending the suit, it becomes obligatory for the State Government to nominate an officer to discharge the functions of the educational agency, the School Committee and the Secretary, as the case may be. It is to ensure that during the interregnum, viz., pending decision in the suit or making an arrangement by the civil court for running the school, the Legislature has thought it fit to empower the State Government to nominate an officer to discharge the function of an educational agency, the School Committee or the Secretary as the case may be in relation to the private school concerned pending decision of the civil court, when a dispute is referred to it or pending making an interim arrangement by the civil court for the running of the private school. Of course, it may depend upon the facts and circumstances of each case whether the State Government should immediately exercise the power or to await the decision of the civil court or interim arrangement to be made by the civil court for running the school. If there is going to be an undue delay, it would cause damage to the educational institution affecting the teaching and thereby the interests of the students will be affected, the State Government should act and exercise the power and pass an order nominating an officer to discharge the functions of educational agency. Of course nomination of such officer would come to an end once the suit is decided or an interim arrangement is made by the civil court for running the school.

It may be seen from the above decision that it is not merely the pendency of the suit that was responsible for the directions issued to have recourse to Section 53-A of the Act, but the further fact that there was no dispute that there existed a dispute relating to the constitution of the Educational Agency pending before the civil court. It is not clear from the reported decision as to whether there was in that

case also a duly elected and registered Committee, in accordance with law, as in this case. Under the Tamil Nadu Societies Registration Act, it is not the mere conduct of election or a claim or counterclaim made of any election that gives person a right and status of the Committee but after such election, the necessary form has to be filed before the District Registrar duly furnishing the required materials and thereupon, the District Registrar shall, if he is satisfied of the legality and regularity of the claim made, register the Committee under the Act and issue a certificate thereof. All these have been done in this case and as a matter of fact after registration and the obtaining of a certificate of Registration, the appellant has moved the first respondent and not only had the same duly approved, but also got the charge held by the second respondent of the school handed over to him when there had been a statutorily recognised and duly registered election and elected office bearers or Committee in accordance with law, merely because another person purports to challenge the same, before the Competent Authority, it does not have the effect of rendering the said Committee which was duly registered under and in accordance with law, either nebulous or totally non-existent, unless the civil court has granted any prohibiting orders. If the mere challenge by one or by a particular group to a factually existing committee or the filing of a suit, without obtaining any further prohibiting orders of such court in the said suit, however vexatious or frivolous such challenge or the suit may be, is to be held sufficient in law to render the Committee extinct or treat it as wholly non-existent, it will lead to starting results and throwing overboard the legality and regularity to be attached to a properly recorded and registered proceedings by a competent authority under the Tamil Nadu Societies Registration Act. On a careful consideration of the peculiar facts and circumstances of the present case and the decision of the Division Bench, we are of the view that the said decision will have no application to the case on hand. Recourse to Section 53-A(3) of the Act mechanically and invariably, as a matter of course, would have the consequence of depriving the legitimate rights of a duly elected committee of its term or tenure of office since there is no scope for recouping their term if ultimately the suit is dismissed. That is why certain amount of discretion must be allowed to vest with the Government or the competent authorities exercising jurisdiction under the Act to act reasonably and with great care, caution and circumspection and on certain well settled

principles.

10. We are of the view that the following principles and norms, if applied, in invoking the powers under Section 53-A(2) of the Act, may help to avoid arbitrariness:

(1) Wherever there is a properly and validly elected Educational Agency or School Committees duly registered and certified by the Competent Authority under the provisions of the Tamil Nadu Societies Registration Act and the Rules made thereunder, the same should be allowed to function and not stultified.

(2) Whenever any competent court or Statutory Authority vested with such powers under the Act stays or suspends the operation of the proceedings recorded under the said Act by the grant of any order of stay or injunction, the fate of the Committee shall abide by such orders and the Authorities under the Act must give due weight and implement these orders;

(3) If there is no impediment in recognising or approving the elected Committee by any order as noticed in (2) above, the Authorities exercising jurisdiction under the Act shall be at liberty to recognise and approve the same so as to enable the Committee to function effectively, subject to the result of any judgment/decreed of any court or the orders of any of the Statutory Authorities legally entitled to interfere with the said position:

(4) If the authorities of the Educational Department themselves entertain any reasonable doubt about the legality and propriety of the claims made by anyone, it shall always be open to such authorities or members of the society to take action under Section 53-A (1) of the Act followed by separate action under Section 53-A of the Act:

(5) If the authorities of the Educational Department are satisfied with the claims made which are duly certified by the Competent Authority under the provisions of the Tamil Nadu Societies Registration Act, 1975 and the Rules made thereunder, such authorities shall be at liberty to recognise or approve of the same under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973

and there is no necessity to have recourse to Section 53-A(2) of the Act and such recognition or approval shall of course, be subject to the orders of any court interim or final, or competent statutory authority in exercise of its powers under the Statute.

11. Judging the case on hand in the light of the above principles, we are of the view that the learned single Judge was not justified in directing action under Section 53-A of the Act, which has the effect of rendering dormant the Committee duly elected and registered with the competent authorities. We are also of the view that the first respondent cannot be held to be lacking jurisdiction or authority to approve the Committee duly elected or change effected due to subsequent elections. On that view, we are unable to agree with the view taken by the learned single Judge to quash the proceedings of the first respondent dated 5.6.1995.

12. During the course of the hearing of the appeal the learned Counsel for the third respondent also contended that under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder, there is no scope, or jurisdiction or powers in the Officers of the Education Department to accord approval to the School Committee or the Secretary of the Educational, elected or appointed, by the school agency and on that ground also, the impugned order is liable to be quashed and there is no need to interfere with the order of the learned single Judge. It is necessary to advert to some of the provisions of the Act and the Rules made thereunder to appreciate the tenability or otherwise of the above claim on behalf of the 3rd respondent. Section 2(3) of the Act defines an education agency in relation to any Private School to mean any person or body of persons permitted or deemed to be permitted under the Act to establish and maintain such school. Section 8(1) provides that whenever there is any change in the constitution of the educational agency, that agency shall apply to the Competent Authority for approval of such change. Sub-section (3) of Section 8 provides that on receipt of an application for the change, the Competent Authority shall after making such enquiry as it deems fit that the educational agency will continue to maintain and manage the private school in accordance with the provisions of the Act and the Rules, approve the change subject to such conditions as it may impose. Rule 7 of the Rules stipulate that the competent

authorities empowered to approve a change in the Constitution of the Educational Agency. It may be noticed at this stage whenever a general or large body of persons or members forming an Association claims to have established the Private School concerned, there is every need for such body to elect its own office body, who can represent the body while dealing with outsiders, be it individuals or bodies or statutory authorities. The periodical change in the said representative body will amount to change in the constitution of the educational agency, for the purposes of the Act and the Rules made thereunder.

13. The provisions of Section 15 of the Act provides mandatorily for the constitution of a School Committee for every School and Section 10 provides for having a Secretary, who can exercise such powers and perform such functions as may be prescribed. Section 18 of the Act enumerates the functions of the School Committee and the responsibilities of the School Agency and specifically provides that the Educational Agency shall be bound by anything done by the School Committee and for the purposes of the Act any decision or action taken by the School Committee in the discharge of its functions shall be deemed to be the decision or action taken by the Educational Agency. It could be seen from Section 18 of the Act that the School Committee shall carry on the general administration of the Private School, excluding the properties and funds of the school appoint and take disciplinary action against teaching and non-teaching staff and also define the duties and the conditions of their service. Rule 18 of the Rules enumerates the procedure, the composition, tenure etc., of the School Committee and its members and enables the Educational agency to nominate six members as its representatives in the School Committee. Sub-Rule (4) of Rule 12 stipulates that if the Educational agency intends a change of the President within a period of three years, it could be done only with the prior approval of the District Educational Officer and that similar provisions have been made in Rule 13 in respect of the Secretary. The School Committee shall communicate the minutes of its meetings to the Deputy Inspector of Schools, who functions under the control of the District Educational Officer. The copies of the agreement executed by all staff also shall be forwarded by the School Committee to the District Educational Officer. The Competent Authority to accord prior approval for dismissal, removal or reduction in rank of the Teaching and non-teaching staff is designated as District Educational

Officer in respect of the school in question, under Rule 17 of the Rules. The list of properties of the school has also to be sent on or before 1st January of each year to the District Educational Officer concerned. Rule 27 constitutes the District Educational Officer as the Competent Authority to cause an inspection or inquiry in respect of any Private Middle School. Rule 11 of the Rules provides for the payment of grants from State funds subject to Government Orders and instructions issued from time to time and specifies the District Educational Officer as the authority competent to sanction such grant. The above provisions, among other things will indicate beyond controversy the position that the Educational Agency as also the School Committee have to, in respect of a Middle School, periodically and regularly deal with the District Educational Officer, for almost all administrative matters, except a few, of great importance and grave concern too both for the institution as also for the Educational Department. While that be the position the District Educational Officer, so far as the Middle School is concerned, is entitled to verify about the credentials or credibility of any claim made to him before as persons who are entitled to carry on the general administration or exercise any of the powers conferred upon the Educational Agency, School Committee, President and Secretary of the said School Committee. The power to make such verification and accord approval would inhere and necessarily be implied in the various powers conferred upon the District Educational Officer, in respect of a Middle School in respect of monitoring the general administration, disbursements, grants, according approval to disciplinary action taken by the School Committee against the staff and the powers of Inspection and Inquiry. To effectively carry out those powers and to deal with the School Committee, the District Educational Officer must be satisfied as to who, in law and according to the said authority, would all constitute the School Committee or the Secretary with whom the said Authority or its subordinates must deal with. It is not with any one, who assert or claim to be the Committee or School Agency or the Secretary the District Educational Officer can deal with.

Consequently, there can be nothing illegal or constitutes want of jurisdiction in the District Educational Officer, purporting to accord approval to the School Committee constituted by the Educational Agency as its representatives in such School Committee and the contentions to the contrary are devoid of merit. It is not as

though there is any prohibition in any of the provisions of the Act or the Rules restraining the District Educational Officer from passing such an order or exercising such powers even in the absence of any specific mention thereof in the Act or the Rules made thereunder. It is a well accepted principle of construction or interpretation of statutes that wherever the statute or the statutory Rules confer upon a particular authority to perform an act or do a thing, all such essential, necessary and incidental powers, to make the exercise of powers expressly conferred more effective and fruitful must also be implied in such conferment of power and we are not in any manner persuaded to agree with the submission on behalf of the third respondent on the question of the alleged lack of power in the first respondent to accord approval to the Committee constituted.

14. In the above circumstances and for all the reasons stated above, we set aside the order of the learned single Judge by allowing this writ appeal and consequently, the writ petition shall stand dismissed. We make it clear that as and when the civil court passes any judgment, order or decree in the suit, the rights of parties shall abide by such declaration and orders also. No costs.