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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

REVIEW APPLICATION(MD) NO.21 of 2015

in

W.P.(MD)No.14178 of 2014

T.N.Vidyanandan

... Petitioner / Petitioner

Vs.

1. The Secretary to Government,
Department of School Education,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of School Education,
College Road,
Chennai - 600 006.

... Respondents/Respondents

PRAYER: Review Application has been filed under Order 47 Rules 1 & 2 of CPC r/w Sec 114 of CPC, praying to review the order dated 09.02.2015 passed in W.P.(MD)No.14178 of 2014.

Prayer in WP(MD). 14178/ 2014 :

Writ Petition under Article 226 of the Constitution of India, praying this Court for issuance of a Writ of Certiorari calling for the records in G.O. No. 2080 dated 14.09.1977 issued by the 1st respondent and quash the same as illegal, arbitrary and discriminative and consequently declare the Minority Schools (Recognition and Payment) Rules 1977 as inoperative in the face of Article 30(1) of the constitution .



For Petitioner

: Mr.T.N.Vidyanandan
Party-in-person

For Respondents

: Mr.Aayiram K.Selvakumar
Special Government PleaderOrder reserved on : 15.09.2015
Pronounced on : 30.09.2015**ORDER**(Order of the Court was made by **V.S.RAVI.J.**)

This present Review Application has been filed by the petitioner / petitioner to review the order dated 09.02.2015 passed in W.P.(MD)No.14178 of 2014 and to pass such other further order as this Court may deem fit and proper in the circumstances of the case.

2. The Review Petitioner has stated in the petition that the Court has failed to consider, double standards and discrimination, displayed by the Department of School Education towards the aided schools in Tamil Nadu by enforcing the verdict of this Court dated 17.12.1975. Further, the petitioner has actually prayed, for quashing G.O.(Ms)No.2080 dated 14.09.1977 containing adhoc rules for recognition and payment of grant Rules 1977 in spite of their statutory prohibition of recognition under Section 11(1)(b) and payment of grant under Section 14 of the Tamil Nadu Act 29 of 1974 respectively in the order dated 17.12.1975. The ratio followed in the case seems to be that what is statutorily prohibited, cannot be implemented through non-statutory rules or departmental proceedings. If the ratio is applied to adhoc rules (non-statutory) in G.O.No.2080 dated 14.09.1977, the G.O.No.2080 dated 14.09.1977 may have to be quashed and the adhoc rules in "Tamil Nadu Minority Schools (Recognition and Payment of grant) Rules, 1977" may have to be declared as inoperative. There still exists discrimination between aided minority and non-minority schools. Hence, the impugned order needs to be reviewed and further order as this Court may deem fit in the facts and the circumstances may be passed.

3. The pertinent point that arises for consideration in the present Review Petition is, whether the Review Petition has to be allowed for the reasons stated in the Review Petition?

4. Mr.T.N.Vidyanandan, Party-in-person for the Review Petition, has repeatedly contended that the G.O.No.2080, Education (D3) Department, dated 14.09.1977, issued by the first respondent is illegal. Further, he has submitted that as per the common order of this Court, dated 17.12.1975, rendered in batch of Writ Petitions in W.P.No.4478 of 1974 etc., this Court has held that certain provisions of the Tamil Nadu Recognised Private Schools(Regulation) Rules, 1974, (herein after referred to as "the Rules"), have practically created problems to the minority educational



institutions and it cannot be disputed that minority could be either a religious minority or linguistic minority and their right is protected under Article 30(1) of the Constitution.

5. Already, this Court has considered all the materials on record and ultimately passed an elaborate order in W.P.(MD)No.14178 of 2014 dated 09.02.2015, and material portion of the said order reads as follows:-

"Though the review petition filed by the petitioner herein was disposed of along with other connected Writ Petitions by the Division Bench, specific direction was given to the respondents to maintain status-quo as on the date of the said common order of this Court, dated 17.12.1975, till the new comprehensive Act comes into force. It is not in dispute that the order passed on 10.10.2012 has reached its finality and therefore the Government has to pass a comprehensive Act and it cannot be expected to maintain status-quo indefinitely. However, the same would not create any new right in favour of the Writ Petitioner, who was the review petitioner pertaining to earlier Writ Petition.

Though the petitioner/party-in-person has stated that the Rules framed under the statute cannot over ride the statute, he has not specifically pointed out anything to struck down the Rules or the Government Order which overrides the statute as alleged by the petitioner and further when he was a party to the earlier proceeding even after the disposal of his review petition, which had reached finality, again cannot file another writ petition stating that earlier he had challenged only certain portions of the Rules and in the present writ petition challenging the entire Government Order and the Rules. It is well settled that a second round of litigation is not legally maintainable and the same cannot be encouraged. Therefore, having gone through the averments made in the accompanying affidavit and the material papers available and the decisions cited by both sides, we are of



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the considered view that the present writ petition has to be dismissed as not maintainable. However, having considered the fact that status-quo is being maintained by the respondents for decades together, without passing a comprehensive Act, to meet the ends of justice, we direct the first respondent, the Secretary to Government, School Education Department, to take steps in order to pass a comprehensive Act, in the manner known to law, within six months from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is dismissed. No order as to costs. Connected Miscellaneous Petition is closed."

Challenging the said order, the Review Petitioner is before this Court, with the present Review Petition.

6. It is a well settled principle that in review application, detailed enquiry cannot be conducted as in the case of appeal proceedings. In the Judgment of Hon'ble Supreme Court, in the case of **Union of India Vs. Sandur Manganese and Iron Ores Ltd., (2013) 8 SCC 337**, it is clinchingly observed as follows only:-

"... As long as the point is already dealt with and answered, parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under review jurisdiction."

Also, in the judgment of Hon'ble Supreme Court, in the case of **Inderchand Jain V. Motilal, (2009) 14 SCC 663**, it is specifically held as follows only:-

"Held, review is not appeal in disguise and Review Court cannot sit in appeal over its own order and rehearing of the matter is impermissible in law. Further, held, application for review under the provisions of Section 114 and Order 47, Rule 1 of C.P.C lies when: (I) order suffers from error apparent on the face of record and permitting the same would lead to failure of justice, (ii) discovery of new and important matter or evidence which despite exercise of due diligence was not within knowledge of



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applicant or could not be produced at the time when the order was made, (iii) order has been passed on account of some mistake, and lastly (iv) for any other sufficient reason. "

7. Further in the judgment of Hon'ble Supreme Court, in the case of **Lily Thomas V. Union of India, (2000) 6 SCC 224**, it is distinctly pointed out as follows:-

"... Errors requiring review are those which are patent and apparent from the face of the record and are errors of inadvertence and not those that need to be fished out. Review may be called for where new and important matter has been discovered, which after exercise of due diligence was not within the knowledge of petitioners at the time of the passing of the judgment under review."

Also, in the judgment of Hon'ble Supreme Court, in the case of **Thungabhadra Industries V. Govt. of A.P., AIR 1964 SC 1372 (V 51 C 180)**, it is detailedly observed as follows:-

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

Further, in the judgment of Hon'ble Supreme Court, in the case of **A.T.Sharma V. A.P.Sharma, AIR 1979 SC 1047**, it is precisely held as follows:-

"... But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal."

Furthermore, in the judgment of Hon'ble Supreme Court, in the case of **Avtar Singh V. Union of India, AIR 1980 SC 2041**, it is significantly held as follows:-

"A review is not a routine procedure. .. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice."



step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

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8. Further, in the judgment of Hon'ble Supreme Court, in the case of **Meera Bhanja V. Nirmala Kumari Choudhury, AIR 1995 SC 455**, it is expressly pointed out as follows:-

".. it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. .. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

..It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers."

Furthermore, in the judgment of Hon'ble Supreme Court, in the case of **Parsion Devi & others V. Sumitri Devi & others, 1998-I-L.W.106**, it is particularly held as follows:-

"... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error."

9. Further, it is pertinent to mention that all the material points raised by the Review Petitioner has been already dealt with and also a detailed order has been passed in the said Writ Petition, filed by the Review Petitioner herein. Further, already in the said Writ Petition, a decision has been expressly passed, accompanied by reasons and also on a conscious consideration of the various points raised by the Review Petitioner herein. Further, it is seen that the Review Petitioner has already raised the relevant points, in the said Writ Petition and also appropriate order, in accordance with law, has been passed, on merits and the matter has already been fully argued by the Review Petitioner and also decided, and therefore, the Review Petitioner cannot be allowed to challenge the impugned order passed in the said Writ Petition in the guise of the present Review Application, for the submissions made by the Review Petitioner herein. Such an attempt has to be expressly avoided, as the material points have been already taken



into consideration and discussed and also analysed and finding has been recorded, based upon the materials on record.

10. Further, on a careful perusal of the entire materials on record and also in the light of the above mentioned citations, it is found that the submissions made by the Review petitioner is superficial in nature, without any material proof therefor. Further, it is seen that the averments made in the review application are baseless both in terms of ground reality and also, as per the material records available in the matter. Already impugned order has been passed, on merits, and also after giving due opportunity to both sides. Further, the submission made in the review application is general in nature and not very specific. Further, on a careful reading of the impugned order, it is seen that the submission of the review petitioner is not correct and the averment made in the Review Application is also not correct as per the records. Further, the impugned order has been passed, after covering all the material points and the said fact is also well known to the Review Petitioner. But, now again the very same contentions have been raised to prove as if the present review petition is having more weight and gravity. Hence, there is no merits in the submissions made in the review application.

11. **In the result**, the Review Application is dismissed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Department of School Education,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of School Education,
College Road, Chennai - 600 006.

+1cc to Mr.T.N.VIDYANANTHAN,PARTY IN PERSON, Sr.No. 57416

PMU

AA/AAL-MPA/16.10.2015/7p-4c

Order made in
REVIEW APPLICATION NO.21 of 2015 in
W.P. (MD) No.14178 of 2014

30.09.2015