

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 5287 and 14137 of 2015

COMMON ORDER:

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W.P.No.5287 of 2015 came to be filed by Moses High School, rep. by its Correspondent Soheli Safi Ismail, seeking issuance of writ of mandamus declaring the action of respondents in issuing Rc.No.1701/DyIOS/SBMI/2015, dated 23.02.2015 as illegal, arbitrary, without jurisdiction and violative of Articles 14, 19 (1) (g) of Constitution of India and Right to Education Act, 2009 and consequently to direct the respondents not to interfere with the administration and activities of the petitioner school.

W.P.No.14137 of 2015 came to be filed by showing Moses High School as first petitioner and its correspondent Soheli Safi Ismail as second petitioner, seeking issuance of writ of mandamus declaring the proceedings Rc.No.7013/(D1) D4/2011, dated 22.04.2015 issued by the District Educational Officer (fourth respondent) for closure of the first petitioner school as illegal, arbitrary, unconstitutional, without jurisdiction and violative of Articles 14, 19 (1) (g) of Constitution of India and Right to Education Act, 2009 and consequently to direct the respondents not to

interfere with the administration and activities of the first petitioner school.

Since both the writ petitions are inter-connected the same are being disposed of by this common order.

The factual matrix of the case is as under:

The mother of the second petitioner by name Mrs. Meherunnisa Begum @ Durdana Begum formed a society and registered the same under the Societies Registration Act, 1350 F in the name and style of "Ruby Educational Society". In the year 1981, the mother of the second petitioner started a pre-primary and primary school in the name and style of "St. Mose's School" under the management of "Ruby Educational Society" in the premises bearing No.17-1-304/B, Edi Bazar, Near Water Tank, Santosh Nagar, Hyderabad. After securing a job as a Government Teacher, she left the management and control of the school to the second petitioner. It is stated that the petitioner is running the school without any hindrance from any quarters. Thereafter, the mother of the petitioner is said to have executed a gift settlement deed bearing document No.676 of 2006, dated 15.02.2006 in the name of the second petitioner. Pursuant to which, the second petitioner got his name mutated in the revenue records apart from paying the property tax. It is stated that the

sister of the second petitioner by name Sameera Ismail got the gift deed cancelled unilaterally without informing the second petitioner. The second petitioner herein filed O.S.No.523 of 2010 questioning the cancellation of gift deed and also for other reliefs including injunction. On 17.03.2010, the learned III Additional Chief Judge, City Civil Court, Hyderabad, granted injunction which according to the second petitioner is still in force. Due to disputes between the family members, St. Moses High School become defunct from the academic year 2010-2011 as such the entire record of the school was submitted to the District Educational Officer, Hyderabad. Though St. Moses High School has become defunct, the second petitioner is said to be in occupation of the premises in view of the gift deed and is running the school in the name and style of "Moses School" under the management of "Mount Educational Society", which was registered in the year 2010. While things stood thus, the second petitioner made an application before the fourth respondent seeking temporary permission to re-open classes 1 to 7 in Moses School, Hyderabad. After careful consideration of the circulars and government orders, the fourth respondent vide order dated 03.07.2014 accorded temporary permission to open Moses School for opening classes 1 to 7 for the year 2014-2015 subject to certain conditions, which the management has to fulfil the same within a period of

three months.

On 29.09.2014, the first petitioner school submitted proposals for provisional admission to classes 1 to 7 for the years 2014-15 in respect of Moses School, Santosh Nagar, Hyderabad, enclosing the compliance of the conditions stipulated in the order dated 03.07.2014. But record shows that on 27.09.2014 itself the fourth respondent passed an order canceling the temporary permission given to the first petitioner School for opening classes 1 to 7 for the year 2014-2015.

It is to be noted that the petitioner was given three months time to fulfil the conditions imposed in the order dated 03.07.2014 and within the stipulated period the first petitioner made an application dated 29.09.2014 giving details, thereby fulfilling the conditions laid therein. Without considering the said application, the fourth respondent passed an order dated 27.09.2014 canceling the temporary permission. Thereafter, on 23.02.2015 the Deputy Inspector of Schools, Hyderabad, passed an order closing the school. The relevant portion of the order is as under:

“Even after issue of several notices and also conduct of special campaign for applications, Principal/Correspondent of Moses School have not submitted application and running school without permission/recognition. In view of the above, the

Principal/Correspondent, Moses School, Saidabad-1 is hereby instructed to close the school.”

Challenging the said proceedings dated 23.02.2015 W.P.No.5287 of 2015 came to be filed. By an order dated 04.03.2015, this Hon’ble Court stayed the impugned order.

On 22.04.2015 the District Educational Officer, while directing the closure of the school with immediate effect, ordering the Deputy Educational Officer/Deputy Inspector of Schools, to take immediate necessary steps to admit the students of the un-recognized school ie. Moses School in to nearby Government/recognized school and submit compliance. Aggrieved by the order of closure of the school, W.P.No.14137 of 2015 came to be filed. It is further brought to the notice of the Court that the petitioners also filed W.P.No.32932 of 2015 seeking issuance of writ of mandamus declaring the action of the fourth respondent in issuing the proceedings for cancellation of the temporary permission to the petitioner school for opening classes from I to VII as illegal, unjust, arbitrary and violative of principles of natural justice; and consequently to direct the fourth respondent to accept the extension of temporary recognition proposal for the classes I to VII to the petitioner school, but however no interim order was passed in view of the objection raised by the respondents counsel.

Earlier the mother of the petitioner filed W.P.No.10753 of 2011 seeking suspension of the registration of the society namely "Mount Educational Society" which was registered on 31.03.2010. By an order dated 19.04.2011 this Court suspended the registration.

The main ground urged by Sri Mahadeva Kantrigala, the learned counsel for the petitioners is that the petitioners made a representation on 29.09.2014 showing fulfillment of the conditions laid down while granting temporary permission dated 03.07.2014, but very strangely the authorities passed an order without even waiting for the reply from the petitioners. He further submits that the order canceling the temporary permission is not served and as such he was forced to file W.P.No.32932 of 2015 at a belated stage. He submits that the second petitioner is managing the educational institution since last 25 years and great prejudice would be caused to the students if the permission to run the school is cancelled.

On the otherhand, Sri P.Chidambaram, learned counsel appearing for un-official respondent would submit that the gift deed, on the basis of which the second petitioner is running the institution, was suspended by this Court in W.P.M.P.No.13225 of 2011 in

W.P.No.10753 of 2011, dated 19.04.2011. In view of the above, he states that the petitioners are running the institution without having any authority to do so. Apart from that, he submits that once the temporary permission to run the school is cancelled and closure orders are passed, the petitioners are not entitled to run the institution. Even otherwise, he submits that the temporary permission is granted for the academic year 2014-2015 only. It is urged that the period for which the temporary licence was granted has already lapsed and as there is no extension, the petitioners cannot run the school. He submits that realizing the anomaly, the petitioners filed W.P.No.32932 of 2015 questioning the order passed in the month of September, 2014 alleging that the order canceling temporary permission was not served, but according to respondent counsel in the month of March itself, the first petitioner was informed about the order of closure in the documents filed along with the counter in W.P.No.10753 of 2011. He further submits that the petitioners have played fraud by obtaining temporary permission showing as if the society is still in existence though the registration of the society was suspended in the year 2011 itself. Under those circumstances he submits that there are no merits in the writ petition and the same is liable to be dismissed.

The Government Pleader for Education supports

the argument advanced by the learned counsel appearing for un-official respondents stating that when once the permission to run the school is cancelled, the question of petitioners running the school by virtue of interim order would definitely cause great injustice to the students and the parents. She submits that though the counsel for the petitioners argued that the cyclostyle orders are passed but she submits that morethan 150 schools were closed in Hyderabad and in surrounding areas after verification of the same by the authorities.

When the matter is taken up for hearing, the Government Pleader for Education placed on record the proceedings Rc.No.8760/B2/2004, dated 20.11.2015 issued by the District Educational Officer, Hyderabad District, wherein and whereunder the temporary permission orders issued to Moses School, H.No.17-1-304/B, Edi Bazar, near Watertank, Santhosh Nagar, Hyderabad, for opening classes I to VII (E/M) for the year 2014-2015 was cancelled after considering the representation and explanation submitted by the petitioners. It is further informed that the proposals submitted for sanction of E.T.R. does not arise as the permission to run the school has been cancelled.

Therefore, the main ground urged by the learned counsel for the petitioners that without considering his reply to the notice issued, the impugned orders came to

be passed cannot be accepted. Apart from that the gift settlement deed bearing document No.676 of 2006, dated 15.02.2006, basing on which Mount Educational Society was registered, was suspended by this Court in W.P.M.P.No.13225 of 2011 in W.P.No.10753 of 2011, dated 19.04.2011. Even otherwise, it is to be seen that the temporary permission was granted for the year 2014-2015 only. The order granting said temporary permission does not anywhere indicate that the said permission to run the institution for the year 2014-2015 was subject to renewal from year to year, though the petitioners claims to be so.

As a last resort, the counsel for the petitioners puts the future of the children at stake, if school is closed now. This is the standard plea taken in all the cases of this nature. At the same time, it is also to be noted that future of children should be affected by allowing them to continue in schools which are run without permission.

For all the aforesaid reasons and in view of the orders passed by the District Educational Officer, Hyderabad on 20.11.2015, this Court is of the view that there are no merits in the writ petitions and the same are liable to be dismissed. Accordingly, both the writ petitions are dismissed. However, the Government Pleader for Education is directed to accommodate the students who are studying classes I to VII of Moses

School in good schools which are nearby to the school in which they are now studying and see that the academic year of the students is not affected.

There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand dismissed.

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JUSTICE C. PRAVEEN KUMAR

09.12.2015

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