

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 26.02.2016

Pronounced on : 07-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 9817 of 2015

Sri Kanchi Kamakoti Peetathipathi Jayendra
Saraswathy Sankara Matriculation School
represented by its Correspondent
Dr. K.R. Balasubramaniam
Door No.6/338, Thoppu Street
Gandhi Nagar, Pulivalam
Thiruvarur Taluk ... Petitioner

Versus

1. The State of Tamil Nadu
represented by its Secretary to
School Education Department
Fort St. George
Chennai - 600 009
2. The Directorate of School Education
State of Tamil Nadu
DPI Campus, Chennai
3. The Directorate of Matriculation Schools
State of Tamil Nadu
DPI Campus, Chennai
4. The Inspector of Matriculation Schools
Thanjavur, Tamil Nadu
5. The District Education Officer
Thiruvarur District
Tamil Nadu ... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Declaration declaring that GO (2D) No.48 dated 21.07.2004 issued by the first respondent is null and void as it is ultra vires the provisions of the Constitution of India.

For Petitioner : Mr. N.G.R. Prasad
for Mr. Suhrit Parthasarathy
For Respondents : Mr. P.H. Aravind Pandian
Additional Advocate General
assisted by Mr. P. Sanjay Gandhi
Additional Government Pleader for RR1

ORDER

The petitioner institution has come up with this writ petition questioning the validity of the order passed by the Government in GO (2D) No.48, School Education Department dated 21.07.2004 whereby the Government prescribed possession of minimum extent of land for running the Matriculation Schools as a condition precedent for grant of approval and/or recognition in their favour.

2. The facts which led to the institution of this writ petition can be stated in brief as follows:-

(i) The petitioner is a private primary school functioning under the Educational Agency called Sankara Vidyalaya Trust, Kancheepuram. The petitioner school is imparting education to 360 students from LKG to Standard V. The petitioner school has been recognised by the Director of School Education and it is situated in an area of land measuring 70 cents in Pulivalam Village Panchayat. The school has a staff strength of 14 and non-teaching staff of four. According to the petitioner, the school is presently functioning in a two-storeyed concrete building with 10 class rooms and a separate annexed building for K.G. classes. The petitioner school is recipient of Best School award conferred by the Education Department of the Government of Tamil Nadu and the school is successfully hosting various extra-curricular activities in the interest of the students at large.

(ii) According to the petitioner, in anticipation of grant of recognition for commencing classes for higher secondary course, under the Matriculation Curriculum, during 2013, the petitioner school has constructed a modern three-storeyed building with 12 class rooms in an area of 6500 square feet adjoining the present building. However, in the absence of any recognition, the newly constructed building is not put to optimum use. In fact, the applications submitted by the petitioner for grant of recognition during 2009, 2011 and 2013 has been rejected by citing the impugned Government Order which prescribes and mandates possession of land measuring 3 acres as a condition precedent for grant of such approval.

(iii) Even according to the petitioner, the impugned order of the Government was passed on the basis of the recommendations made by the committee constituted under the Chairmanship of Prof. Dr. S.V. Chittibabu, former Vice-Chancellor with regard to fee structure, minimum infrastructural facilities and salary scales for teachers of matriculation and matriculation higher secondary schools. According to the petitioner, prescription of such condition is arbitrary and uncalled for and it deprived their right to impart education to the students inspite of provision of modern three-storeyed building constructed within the premises. There is no rational nexus between the classifications made and the object sought to be achieved by virtue of the impugned order. According to the petitioner, by reason of refusal to accord recognition, the students of V Standard in their school could not continue further studies in their school and are taking admission in other schools. This according to the petitioner has adversely affected their right to impart education.

3. Mr. N.G.R. Prasad, learned counsel for the petitioner would vehemently contend that the criteria for upgradation to matriculation higher secondary status imposed in the impugned government order is arbitrary and illogical and it violates Article 14 of the Constitution of India. In the impugned order of the Government, a classification was made for possessing land to the extent of 3 acres in the case of those schools which are situate in rural areas. On the contrary, those schools which are running within the corporation limits are required to provide land measuring 6 grounds only. Such a classification made by the first respondent in the impugned Government Order is nothing short of arbitrariness and on that ground he seeks for setting aside the impugned order. By reason of the impugned order, the first respondent has treated unequals with equals and there was no uniform procedure followed by the respondent. The classification made by the first respondent in the impugned order is neither an intelligible differentia nor does the differentia made by it have any nexus with the purpose and object sought to be achieved. According to the learned counsel for the petitioner, if the first respondent fixed varied extent of land to different kinds of school on the basis of the strength of the student studying, it will be justified. On the contrary, in the impugned order, classification was made with respect to the place of the school which has no nexus to the object sought to be achieved. According to the counsel for the petitioner, right to administer educational institution is a recognised right envisaged under Article 19 (1) (g) of the Constitution of India and such right cannot be taken away by the government by resorting to impose varied and arbitrary conditions by making indifferent classifications. In such

circumstances, the learned counsel for the petitioner prayed for allowing the writ petition as prayed for.

4. On the contrary, Mr. P.H. Aravind Pandian, learned Additional Advocate General appearing for the respondents would contend that the proposal seeking permission to open a Matriculation in the name and style of Sri Kanchi Kamakoti Peetathipathi Jayendira Saraswathi Sankara Matriculation School received from the petitioner was returned by the fourth respondent on 02.01.2015 by pointing out various deficiencies that are listed in para No.4 of the counter affidavit of the third respondent. According to the learned Additional Advocate General appearing for the respondents, under Article 10 in Chapter II vide clauses (i) (ii) (iii) and (iv) of Code of Regulations for Matriculation School, Tamil Nadu, the competent authority under the Code, being the Director of Matriculation Schools, has the power to grant permission to open a private matriculation school or to upgrade an existing school subject to fulfilment of certain conditions. In exercise of such powers and having regard to the various inconsistencies in the functioning of the Matriculation Schools, including regulation of fee structure, a suggestion was made to the Government to constitute a sub-committee for analysing the existing system and to suggest ways and means. Accordingly, a committee was constituted under the Chairmanship of Dr. S.V. Chittibabu, former Vice Chancellor. The sub-committee collected comprehensive data from 3000 matriculation schools in Tamil Nadu and also received representations from school managements, parents, public and teachers. The sub-committee also visited other States and studied the functioning of the schools in those States. Thereafter, on the basis of the recommendations made by the committee, the Government issued G.O. (2D) No.48, School Education Department dated 21.07.2014 directing all the Matriculation Schools to provide minimum infrastructural facilities as a condition precedent for grant of recognition. However, the Government, considering the steep rise in the land costs has granted three or four years time for the management to satisfy the conditions with regard to land area. In spite of the same, the petitioner has not fulfilled the requirements as on date, rather, they have challenged the vires of the Government Order. In fact, the time granted to fulfil the land area requirement will cover only the existing schools and not to newly constructed schools. In the present case, even according to the petitioner, the school building was declared open on 03.11.2013 for which recognition is being sought for by the petitioner. Further, as on date, the petitioner has recognition only to impart education upto Standard V and such recognition is valid till December 2017. Such time limit granted to the existing schools has no application to the school re-opened by the petitioner and the recognition sought for imparting education from standard VI to XII in the Matriculation format.

As on today, the Matriculation Schools have been given time to comply with the land area requirement till 31.05.2016 in the larger interest of the students and therefore also, interference of this Court is not warranted.

(ii) As regards the classification made with regard to land area requirement, the learned Additional Advocate General appearing for the respondents would submit that the respondents has got the power to regulate the establishment of an educational institution by imposing necessary conditions inter alia to ensure minimum standard of education to be imparted to the students. In case of the Private educational institution, the respondents can certainly lay down conditions pertaining to academic and educational matters in the welfare of students and teachers. It is mainly contended by the learned Additional Advocate General appearing for the respondents that such time limit granted by the Government has application only to the existing schools and not to the newly established school as in the case of the petitioner. In such view of the matter, the learned Additional Advocate General appearing for the respondents prayed for dismissal of the writ petition.

5. The learned counsel appearing for the petitioner, in reply to the arguments advanced by the learned Additional Advocate General appearing for the respondents, would submit that the classification made in the impugned Government Order is not relatable to Primary School, Middle School, High School or Higher Secondary School on the basis of the strength of the students, but such classification has been arbitrarily made with reference to the location where the school is situate. Such classification would offend Article 14 and 16 of The Constitution of India besides it is arbitrary and unreasonable. In fact, encouraged by the Order passed in GO (D) No.54 dated 05.03.2013 of the Government, the petitioner has put up additional 3 storeyed building with 12 class rooms of an area of 6500 square feet and it was declared open on 03.11.2013. In effect, the petitioner school is situate in a sprawling 17 grounds of land. The learned counsel for the petitioner would contend that as per the counter affidavit of the third respondent, 746 schools are functioning without fulfilling the land area requirement stipulated in the impugned Government Order, while so, putting the same against the petitioner for imparting education to Standard V to XII is unreasonable, arbitrary and illegal.

6. I heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents. I had perused the material records placed. The petitioner school is a recognised Primary School which is imparting education to students upto Standard V. The recognition granted to the petitioner school for imparting

education to students upto standard V is valid till December 2017. The petitioner school is situated in Pulivalam Village in Tiruvarur District. As per the impugned order in GO (2D) No.48 dated 21.07.2004, the Government has fixed certain norms relating to possession of minimum extent of land area for running the schools. The Government has classified the extent of possession of lands based on the location where the schools are situate. For those schools which are situated within the Corporation limits, 6 grounds of land is essential for grant of recognition. Similarly for those schools which are within the District Head Quarters, 8 grounds of land is necessary. For those schools which are within the municipal limits, such schools should possess 10 grounds of land. The schools which are situated in Town Panchayat limits has to possess 1 acre of land. For those schools which are situate in Rural areas within Village Panchayat, 3 acres of land has to be essentially acquired as a condition precedent for grant of recognition. The petitioner comes within the category of Rural Village Panchayat and therefore, as per the impugned order passed by the Government, the petitioner has to possess 3 acres of land. Admittedly, the petitioner claims to have been in possession of 17 grounds of land, as against 3 acres.

7. It is seen from the records that before passing the order, which is impugned in this writ petition, the Government appointed a committee headed by a former Vice Chancellor as it's Chairman. It is further seen that on the basis of the inputs, suggestions and recommendaiton made by the committee, the Government thought it fit to issue the impugned Government Order in which certain conditions were prescribed with regard to infrastructural facilities, school buildings, salary of the teachers etc., In other words, by the impugned Government Order, the Government thought it fit to regulate the various procedures being adopted by different Matriculation Schools and to bring about an uniformity in their functioning. Further, the impugned Government Order was passed not only on the basis of the recommendations made by the committee constituted by the Government, but the Government has also taken note of the off quoted decision rendered by the Honourable Supreme Court in T.M.A. Pai Foundation Case. Thus, by virtue of the impugned Government Order, the Government has taken a policy decision to bring about an uniformity in the functioning of the Matriculation Schools by taking into consideration various factors. In fact, subsequent to the issuance of the impugned Government Order, the Government has given time to the management of the schools to fulfil the conditions prescribed therein by periodically extending the time for compliance. In fact, the Government also issued G.O. Ms. No.54, School Education Department dated 05.03.2013 on the basis of a proposal sent by the Director of Matriculation School on 23.03.2012. As per the proposal made by the Director of Matriculation Schools,

the difficulties confronted by the School Management with regard to possession of the lands as a condition precedent for grant of recognition was spelt out. In the said proposal several difficulties expressed by the school management have been spelt out and the Director of Matriculation School requested the Government to re-consider the requirement to possess minimum extent of lands, as has been prescribed in the impugned Government Order. Taking into consideration such a grievance expressed on behalf of the school management by the Director of Matriculation School, the Government has taken a policy decision to review the impugned order and to suggest modification, if any, by constituting a committee. Such committee was constituted under the Chairmanship of the Director of School Education with six other officials as its members, including the Director of Matriculation as one of the members. The committee was also requested by the Government to submit their report within three months. It is not known as to whether the committee constituted under GO Ms. No.54, dated 05.03.2013 has submitted its report or not. In any event, when the Government has constituted a committee to review the impugned order and to suggest ways and means, it is not for this Court to interfere with the same and to declare the impugned Government Order as ultra vires. This is more so that the impugned Government Order passed in the year 2004 has not been given effect to all these years and the Government is extending the time for compliance of the impugned Government Order from time to time. As mentioned above, lastly, by virtue of G.O. Ms. No.135 dated 18.08.2005, the Government has extended the time for giving effect to the impugned Government Order till 31.05.2016. In such circumstance, this Court is not inclined to interfere with the impugned order by allowing this writ petition.

8. As regards the non-compliance of or non-adherence to the impugned Government Order by various Schools in the State, it is stated by the learned counsel for the petitioner that when about 748 Matriculation Schools in the State has not so far complied with the land area requirement prescribed in the impugned Government, the petitioner alone cannot be insisted to comply with the same and it is arbitrary. Such an argument cannot be countenanced for more than one reason. First of all, the petitioner has not been given recognition at all for imparting education to students of Standard VI to XII and the recognition sought for by the petitioner is not in respect of an existing school for which recommendation was already granted by the respondents, rather, the petitioner wants to get recognition for imparting education to students from Standard V to XII in the Matriculation format. The existing school run by the petitioner is a Primary School and the petitioner wants recognition to impart education to students from Standard V to XII under Matriculation Curriculum in the building which was declared open by them on 03.11.2013. Secondly, the Government

issued G.O. Ms. No.135, School Education Department dated 18.08.2015 whereby it had taken note of the non-compliance of the conditions prescribed in the impugned order with regard to land area requirement. Therefore, by virtue of G.O. Ms. No.135 dated 18.08.2015, the Government has given an ultimatum to the 748 Matriculation Schools to comply with the conditions imposed in the impugned Government Order on or before 31.05.2016. Therefore, the argument of the learned counsel for the petitioner as though the Matriculation Schools which have not complied with the prescription of the conditions imposed in the impugned order have been allowed to function without any condition and the petitioner alone has been singled out cannot be countenanced.

9. It is seen from the records that the recognition sought for by the petitioner for running a Matriculation School, even according to the petitioner, has been rejected by the respondents when applications for recognition was submitted by the petitioner during 2009, 2011 and 2013. The petitioner has not subjected those orders of rejection to challenge. Now, the petitioner has come forward with a prayer to declare the impugned Government Order as ultra vires Article 14 of the Constitution of India. As mentioned above, when the Government has constituted a committee and had extended the time for implementation of the impugned Government Order, this Court cannot substitute its opinion by interfering with the policy decision taken by the Government to bring about uniformity in the functioning of the Matriculation Schools. Moreover, when the impugned Government Order is in force since 2004, the petitioner proceeded with the construction of three storied building, with an intention to run a Matriculation School and after completing the construction only, the petitioner had chosen to file the writ petition to challenge the impugned order, which act of the petitioner cannot be legally sustainable.

10. As regards the classification of the requirement to possess extent of land based on the location where the School is located, I find that there is a nexus with the object sought to be achieved. This Court can take judicial notice of the fact that in an urban area, having regard to the fact that the land value has sky-rocketed, the Government thought it fit to insist the school management within the Corporation limits to possess only 6 grounds of land as a condition precedent for grant of recognition. On the contrary, for those schools which are located within the District Head Quarters, possession of 8 grounds of land has been made mandatory for grant of recognition. In other words, the variation in extent of land prescribed in the impugned Government Order is with reference to the price of the land and availability of land. Here again, it is based on the recommendation made by the Committee constituted by the Government under the Chairmanship of the former Vice-

Chancellor Dr. Chittibabu. When that being so, it is not for this Court to say that the recommendations given by the committee shall not form the basis for the impugned Government Order or this Court can prescribe the minimum requirement or extent of land to be possessed by the Matriculation Schools as a condition precedent for grant of recognition. For all the reasons mentioned above, I find no reasons to interfere with the impugned order of the Government and consequently, the writ petition fails and it is liable to be dismissed.

11. Accordingly, the writ petition filed by the petitioner is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
The Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director,
Directorate of School Education,
State of Tamil Nadu,
DPI Campus, Chennai.
3. The Director,
Directorate of Matriculation Schools,
State of Tamil Nadu,
DPI Campus, Chennai.
4. The Inspector of Matriculation Schools,
Thanjavur, Tamil Nadu.
5. The District Education Officer,
Thiruvarur District,
Tamil Nadu.

+1cc to M/S.Suhrith Parthasarathy, Advocate Sr.14392

WP No. 9817 of 2015

sai(CO)
srg(08/03/2016)