



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE **M.VENUGOPAL****W.P. (MD)No.100 of 2011 and
M.P. (MD) .No.2 of 2011**

1. The Correspondent,
Infant Jesus Middle School,
Ponmeni 625 010,
Madurai District.
2. The President,
Parent Teachers Association,
Infant Jesus Middle School,
Ponmeni,
Madurai District.
(deleted as per the Court order
dated 21.12.2010 by VDPJ)

... Petitioners

Vs.

1. The State Government
represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
2. The Director of Elementary Educational Officer,
College Road,
Chennai 600 006.
3. The District Elementary Educational Officer,
R.M.S.Road,
Madurai,
Madurai District.
4. The Assistant Elementary Educational Officer,
Thiruparankuntram 625 006,
Madurai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceeding issued by the respondent Director of Elementary Education in Na.Ka.No.25383/L2/2010 dated 10.08.2010 and quash the same and



further direct the respondents to sanction and release forthwith the grant-in-aid towards staff salary for the teaching and non-teaching posts in the petitioner school.

For Petitioners : Mr.S.Xavier Rajini

For Respondents : Mr.V.Muruganandam
Additional Govt. Pleader

O R D E R

The petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the impugned proceedings issued by the second respondent/Director of Elementary Education in Na.Ka.No.25383/L2/2010 dated 10.08.2010 and to quash the same. Further, he has sought for passing of an order by this Court in directing the respondents to sanction and release forthwith the Grant-in-Aid towards staff salary for the teaching and non-teaching posts in the petitioner school.

2. According to the petitioner, the Infant Jesus Middle School, Ponmeni, Madurai District is one among the numerous educational institutions owned and administered by the Congregation of the Sisters of St. Annes, Trichy, Maria Provincilate. The school is a recognised minority educational institution, which was initially established as a Primary School in the year 1987 and later, was upgraded as a Middle School in the year 1997.

3. The stand of the petitioner is that the petitioner school is a self financed one and neither any grant nor any other financial assistance whatsoever is extended by the Government.

4. It comes to be known that the Chief Educational Officer, Madurai, as per proceedings dated 21.04.1993, granted recognition for standards I to V with a condition that the petitioner school was not entitled for Grant-in-Aid towards staff salary. In fact, the second respondent/Director of Elementary Education through proceedings dated 16.08.2001, granted recognition for VI standard with condition that the respondents would not give Grant-in-Aid towards staff salary. Later, the third respondent/District Elementary Education Officer, Madurai through proceedings dated 15.09.2002, granted recognition for standards I to VIII and periodically the recognition is renewed.

5. The categorical case of the petitioner is that he submitted a representation before the respondents on 18.12.2008, requesting them to sanction Grant-in-Aid to the petitioner school towards staff salary and the first respondent/State Government instructed the Director of School Education to take necessary action on the representation. The Director in turn forwarded the



representation to the second respondent/Director of Elementary Education as per proceedings dated 05.01.2009. The second respondent had not passed orders. The petitioner once again submitted a representation to the respondents on 17.04.2009. Even then, there was no response in the subject matter in issue. The petitioner filed W.P.(MD).No.13348 of 2009 praying for issuance of 'Writ of Mandamus' directing the respondents 1 and 2 to consider and pass orders forthwith, on his representation dated 18.12.2008 along with the reminder dated 17.04.2009. Indeed, on 16.12.2009, this Court was pleased to direct the respondents 1 and 2 to consider the petitioner's representation dated 18.12.2008 (along with the reminder dated 17.04.2009) within a period of six weeks from the date of receipt of a copy of this order. In fact, a copy of the order passed in the Writ Petition was communicated to the respondents 1 and 2. Even then, they had not passed any orders and the petitioner was professed to project a Contempt Petition (MD). No.439 of 2010 and the same was closed consequent to the compliance of the order passed in the writ petition.

6. The grievance of the petitioner is that the second respondent/Director of Elementary Education issued impugned proceedings in Na.Ka.No.25383/L2/2010 dated 10.08.2010, rejecting the petitioner's claim of Grant in Aid to the petitioner school, because of the reason that the school management had already given an undertaking that the school would not claim Grant in Aid in future and the posts cannot be granted with grant in aid, in view of Section 14(A) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

7. The learned counsel for the petitioner urges before this Court that the ingredients of Section 14(A) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, indicates that the Grant in Aid towards staff salary would not be granted to the schools which were established on or after the commencement of the academic year 1991-1992. In this regard, the stand projected on behalf of the petitioner is that the petitioner's school was initially established as a primary school during the year 1987 and subsequently, it was upgraded as a middle school during the year 1997 and that the petitioner's school is entitled to get Grant in Aid towards staff salary. Also, it is represented on behalf of the petitioner that the undertaking furnished by the School at the time of granting recognition has no legal sanction.

8. At this stage, the learned counsel for the petitioner school seeks in aid of the Division Bench decision of this Court **G.Sahadevan Nair vs. Government of Tamil Nadu and others** reported in (2008) 4 MLJ 289 at special Page 300, whereby and whereunder at paragraph 15, it is observed as under:

<https://hcservices.ecourts.gov.in/Hcservices/> 15. In view of several decisions of the Supreme Court, there can be no longer any doubt that even though



there is a fundamental right to establish a minority institution by a religious or linguistic minority, such minority institution cannot claim grant in aid either as a fundamental right or even as a statutory right, in the absence of any specific provision to that extent. However, under Article 30(2) of the Constitution, it has the protection of not being discriminated against. If there is no provision for grant in aid to any institution, obviously there cannot be any discrimination because the minority institutions and the non-minority institutions are treated alike. It is in the above context, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 incorporated by way of amending Act 11 of 1999 has been upheld by the Division Bench Maria Grace Rural Middle School, represented by its Correspondent v. Government of Tamil Nadu, represented by its Secretary Education, Science and Technology Department and others (supra). However, in the present case, we are not called upon to determine the rights of the parties on that footing. In the present case, the questions are confined to the institutions which had been in existence before the cut off date. Some of the institutions were receiving aid and the question relating to those institutions is regarding their right to claim aid in respect of additional posts. In respect of other institutions, the question is whether they were entitled to claim grant in aid. If any minority institution was entitled to receive such aid, but was denied such aid on account of any erroneous order, such order is obviously to be corrected and such institution established before the cut off date can have the continued right of receiving such aid and the amended provision contained in Section 14-A cannot be put against such right merely on account of the fact that such institution had not received aid before the cut-off date."

9. Also, in the aforesaid decision, at page 303 at paragraph 29, the following directions were issued.

"(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant in aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.



(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher-pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

10. The learned counsel for the petitioner relies on the decision of this Court **C.Manonmony v. State of Tamil Nadu** reported in (2006) 3 M.L.J. 242 at special Page 249 and 250, wherein in paragraph -14, it is observed as follows:

"14. The right to get aid by minority managements which were forced to give an undertaking while getting recognition that the schools will not claim aid forever was also considered by this Court in series of decisions.

A learned single Judge of this Court in W.P.No.6592 of 1993 **Arokia Annai Middle School, Palayam, kanyakumari District** and another v. State of Tamil Nadu and two others dated 11.10.1993 (K.S.Bakthavatchalam,J.) held that even if the management has given an undertaking that it will not claim aid from the Government that undertaking has no value and a direction was issued to sanction post to the said school. The respondents filed W.A.No.1040 of 1997 against the said order of the learned single Judge and the same was dismissed by a Division Bench of this Court on 11.08.1997. The SLP filed against the said decision of the Division Bench was also dismissed on 17.08.1998 and finally the Government sanctioned posts to the said School."

11. In response, the learned Additional Government Pleader submits that the Chief Educational Officer, Madurai granted recognition to the petitioner school on 21.09.1993 with specific conditions. One of the conditions was that the school is not entitled for any Grant-in-Aid towards staff salary. In a similar fashion, when the school was



upgraded as per proceedings of the Director of School Education dated 16.08.2001. The recognition for standard VI was granted with a specific condition that the petitioner school would not be granted any Grant-in-Aid towards staff salary.

12. The learned Additional Government Pleader brings it to the notice of this Court that the petitioner school gave an undertaking that it would not claim for any grant at any time in future and that was the agreement entered into between the Government and the petitioner school.

13. Continuing further, it is represented on behalf of the respondents that contrary to the agreed conditions, the petitioner school has filed the present writ petition and in short, if the request of the petitioner school is acceded, then it will impose a heavy financial burden and loss to the Government.

14. It is to be noted that Section 14 of Tamil Nadu Recognised Private Schools (Regulation) Rules, 1973 speaks of '**Payment of grant**'. Section 14(A) of the Act, 1973 enjoins as under:

14-A. Grant not payable to new private schools and new class and course of instruction.- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to,-

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

© any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation.- For the purpose of this section, private school includes a minority school.

15. At this stage, this Court, on going through the <https://hcservices.ecourt.gov.in/hcservices/> decision of this Court in **G.Sahadevan Nair vs. Government of Tamil Nadu and others** reported in (2008) 4 MLJ 289,



is of the considered view that the said decision squarely applies to the facts and circumstances of the present case. Applying the principles of the said decision to the facts of the present case on hand, this Court comes to an inescapable and inevitable conclusion that the impugned order in Na.Ka.No.25383/L2/2010 dated 10.08.2010, rejecting the request of the petitioner in regard to the Grant-in-Aid towards staff salary for the teaching and non-teaching post in the petitioner school is not valid in the eye of law. As such, this Court, to prevent an aberration of justice and to advance the cause of justice, sets aside the impugned order dated 10.08.2010 passed by the second respondent/Director of Elementary Education, dated 10.08.2010. Consequently, the Writ Petition succeeds.

16. In fine, the Writ Petition is allowed leaving the parties to bear their own cost. Resultantly, the impugned order dated 10.08.2010 passed by the second respondent/Director of Elementary Education is set aside by this Court for the reasons assigned in this Writ Petition. As a logical corollary the Respondents 1 and 2 are directed to pass necessary orders in sanctioning and releasing the Grant-in-Aid towards staff salary for teaching and non-teaching post in the petitioner's school (based on its representation dated 18.12.2008) from the year 1987 within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
2. The Director of Elementary Educational Officer,
College Road,
Chennai 600 006.
3. The District Elementary Educational Officer,
R.M.S.Road,
Madurai,
Madurai District.



4. The Assistant Elementary Educational Officer,
Thiruparankuntram 625 006,
Madurai District.

+1cc to M/s.Xavier Rajini, Advocate SR.No.31078/16

+1cc to special Government Pleader Sr.No.30835/16

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W.P. (MD) No.100 of 2011
15.06.2016