



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.3094 of 2013

and

M.P(MD)Nos.1 and 2 of 2013

The Correspondent,
St., Joseph's Middle School,
Eraviputhanthurai, Thoothoor Post,
Kanyakumari District 629 176

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St., George, Chennai 600 009.

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

3.The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.

4.The Assistant Elementary Educational Officer,
Munchirai, Pudukkandai Post,
Kanyakumari District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 2nd respondent Director of Elementary Education vide Na.Ka.No. 90/H2/2012 dated 12.06.2012 quash the same and further direct the respondents herein to forthwith sanction and disburse grant in aid viz. teaching grant and maintenance grant to the upgraded Middle School Sections of the petitioner s school as per the Government Norms in vogue.

For Petitioner	: Mr.T.Cibi Chakraborty
For Respondents	: Mr.N.S.Karthikeyan, Additional Government Pleader.

ORDER

<https://hcservices.ecourts.gov.in/hcservices/>

Challenging the order passed by the Director of Elementary Education, dated 12.06.2012, rejecting the claiming of



the petitioner for grant in aid, the present writ petition has been filed.

2. Heard Mr.T.Cibi Chakraborty, learned counsel appearing for the petitioner and Mr.N.S.Karthikeyan, learned Additional Government Pleader for the respondents.

3. According to the petitioner, the petitioner school is a minority school which is administered by the Arch Diocese of Thiruvananthapuram and recognised as a religious minority. It is stated that the petitioner school is offering education from standards 1 to 8. It is further stated that earlier, the petitioner school was given aid up to 5th standard and the middle school remained unaided. It is further stated that there are 9 teachers working in the middle school viz., 2 secondary grade teachers, 6 B.T.Assistants and 1 sewing mistress and the petitioner submitted proposal to the second respondent seeking for grant of recognition and sanction of grant in aid to the upgraded middle school section. It is further stated that owing to the compulsion of the authorities, the petitioner school was constrained to give an undertaking to the Department that they will not ask for grant in aid. Subsequently, the second respondent granted recognition to the middle school sections from the academic year 1990-1991 vide proceedings dated 24.12.1992. But the second respondent did not sanction grant in aid to the middle school section mainly on the ground that the petitioner has already given undertaking that they will not insist for grant in aid. Thereafter, the petitioner has submitted several representations to the respondents. Considering the said representations, the second respondent by an order dated 12.06.2012, rejected the request of the petitioner school for grant in aid mainly on the ground that the petitioner school has already given undertaking that they will not ask for grant in aid and also as per Section 14(1) and 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, grant in aid cannot be granted to the private schools or sections or classes established from and after the academic year 1991-1992. Aggrieved over the same, the present writ petition has been filed.

4. The respondents filed counter affidavit stating that at the time of recognition the petitioner has given an undertaking that they will not claim grant in aid from the Government and based on the undertaking given by the petitioner, recognition was granted to the petitioner school. Hence, it is not open to the petitioner school to claim for grant in aid. Apart from that coming into force of the amended provision of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the petitioner school was not eligible to receive grant in aid from the year 1991-1992. Even though the petitioner school started middle school section in the year 1990, no grant in aid has been paid to the said section.



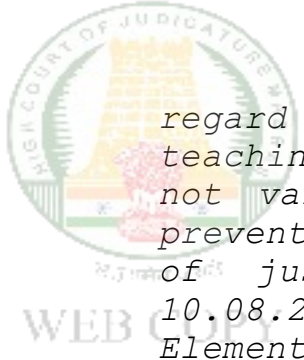
5. Learned counsel appearing for the petitioner would submit that the petitioner has given undertaking only on the compulsion of the authorities. Apart from that recognition was given in the year 1992 with retrospective effect from 1990 and therefore, Section 14-A of the Act is not applicable to the petitioner school. He would also rely upon the decision of this Court in *G.Sahadevan Nair Vs. Government of Tamil Nadu* reported in (2008) 4 MLJ 289 wherein the Division Bench of this Court has held as follows:

"24. The next contention is that many of the institutions had, at the time of seeking recognition, voluntarily waived their right to seek for aid from the Government.

It is true that such letters had been obtained from many of the institutions. It is also true that, as already adverted to, no minority institution has a fundamental right under Article 30(1) of the Constitution to claim aid as a matter of right. But as repeatedly observed by the Supreme Court, even though there is no such fundamental right to demand grant in aid as such, the inherent right of not being discriminated against is very much recognised in the shape of Article 30(2) as well as Article 14 of the Constitution. Where there is no provision relating to grant in aid, obviously there is no question of discrimination, but where there are provisions relating to grant in aid, the right to treat the minority institution at par with other educational institutions as envisaged under Article 14 and Article 30(2) come to the fore. If there is provision for grant of aid to other educational institutions, minority institutions cannot be denied of such right by obtaining a letter that no such aid will be claimed in future. Law is well settled that there cannot be any waiver of a fundamental right. Judged in the above angle, the very fact that most of the institutions had written letter indicating that they would not claim aid cannot be held against such institutions".

6. The said decision has been followed in W.P(MD)No.100 of 2011, dated 15.06.2016 wherein it has been held as follows:

"15. At this stage, this Court, on going through the Division Bench 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 is led 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.

7.The above decision relied upon by the learned counsel for the petitioner is squarely applicable to the facts of the present case. In the above circumstances, the impugned order passed by the second respondent is set aside and the respondents are directed to sanction grant in aid to the petitioner middle school.

8.The writ petition is accordingly allowed. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
Department of School Education
State of Tamil Nadu,
Fort St., George, Chennai 600 009.

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

3.The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.

4.The Assistant Elementary Educational Officer,
Munchirai, Pudukkadai Post,
Kanyakumari District.

+1 cc to MR.T.CIBI CHAKRABORTHY, Advocate SR.No.72543

+1 cc to Special Government Pleader SR.No.72679

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