

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

REVIEW APPLICATION No. 681 of 2017

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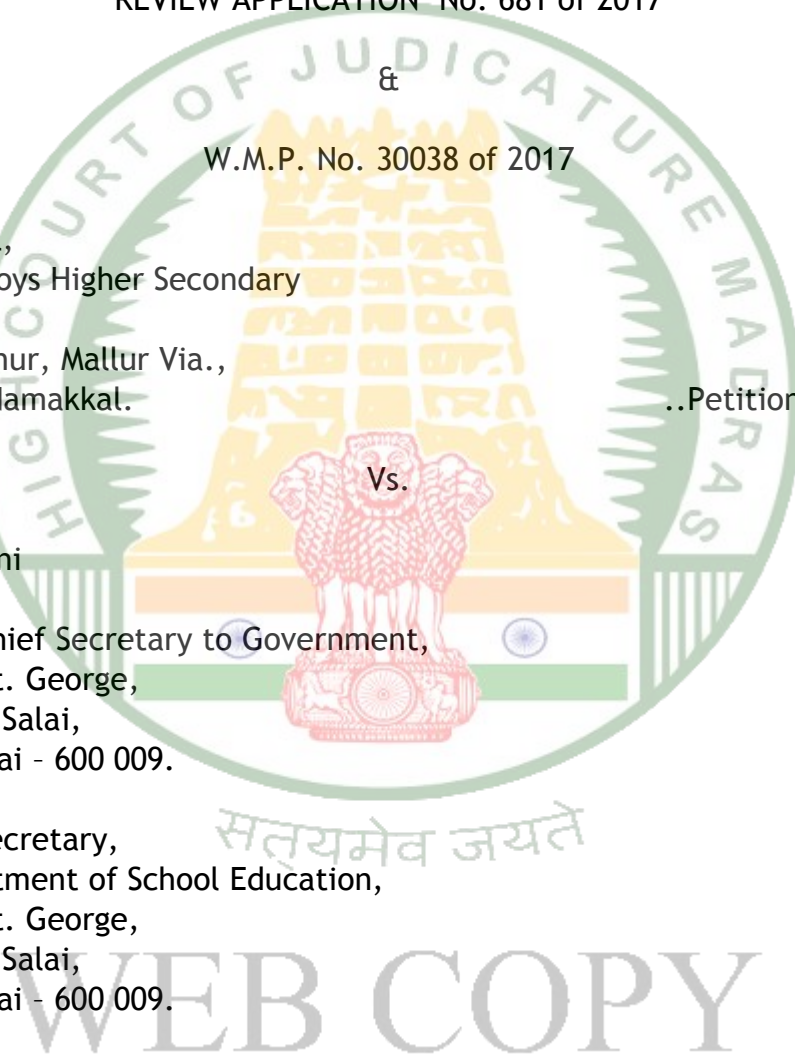
W.M.P. No. 30038 of 2017

The Principal,
Vetri Vikas Boys Higher Secondary
School,
NH47, Keeranur, Mallur Via.,
Rasipuram, Namakkal.

..Petitioner

Vs.

1. E. Mani
2. The Chief Secretary to Government,
Fort St. George,
Rajaji Salai,
Chennai - 600 009.
3. The Secretary,
Department of School Education,
Fort St. George,
Rajaji Salai,
Chennai - 600 009.
4. The Director of School Education,
Department of School Education,
Office of the Director of
School Education,
DPI Campus, College Road,
Chennai - 600 006.



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5. The Joint Director of School Education,
(Higher Education),
Office of the Joint Director of
School Education,
DPI Campus, College Road,
Chennai - 600 006.
6. The District Chief Education Officer,
Office of the District Chief Educational
Officer,
Mohanur Road, Namakkal.
7. The Tahsildar,
Rasipuram, Namakkal. ..Respondents

Prayer: Petition to review the order passed in W.P. No. 24573 of 2017
dated 09.10.2017.

For Petitioner :: Mr.G. Ethirajulu
For Respondents :: Mr.Sudhakaran for R1
Mr.T.M. Pappiah,
Special Govt. Pleader for
R2 to R7
O R D E R

The review application has been filed by the school, which suffered an order of this Court dated 09.10.2017 by which this Court directed the review petitioner to issue transfer certificate and other certificates to the original writ petitioner apart from awarding Rs. 1 lakh as compensation to be paid to the writ petitioner and another sum of Rs.1 lakh as cost for not responding to the Court's notice. The said order is sought to be reviewed.

2. The 1st respondent/original writ petitioner approached this Court contending that his son M. Karthik completed Plus Two course in the review petitioner school during the academic year 2016-2017 through English medium and he had completed the course by passing the examination in March, 2017. However, the review petitioner refused to issue transfer certificate and mark sheet to the writ petitioner's son compelling him to approach this Court.

3. When the matter was called on 09.10.2017, there was no appearance on behalf of the review petitioner. Therefore, examining the matter on merits, this Court allowed the writ petition. This Court took note of the fact that no due certificate was issued by the review petitioner on 28.02.2017 and also took note of the notice given by the writ petitioner on 28.07.2017 stating that the school has got no right to retain the certificates. Since the original writ petitioner's son lost one year of study because of non-issuance of transfer certificate, mark sheet and other connected certificates, this Court awarded a sum of Rs. 1 lakh to be paid by the review petitioner as compensation to the writ petitioner. Moreover, the review petitioner had not responded to the Court's notice and therefore, another sum of Rs. 1 lakh was imposed as cost to be paid to " AVVAI HOME", Adyar, Chennai - 20. The said order is the subject matter of this review application.

4. Mr.Ethirajulu, learned counsel appearing for the review petitioner, regarding non-appearance of the learned counsel for the review petitioner on 09.10.2017, would submit that the said counsel, who was entrusted to defend the case on behalf of the school met with an accident on 02.10.2017 and therefore, he could not file vakalath in time and appear in Court. Secondly, he would submit that the writ petitioner had not paid the entire amount payable by him for the course undergone by his son. Moreover, a different school's fee fixation was relied upon by the petitioner and an order had been obtained.

5. On the other hand, Mr.J. Sudhakaran, learned counsel appearing for the 1st respondent/original writ petitioner would submit that there is no proof to show that the counsel, who was to appear on behalf of the review petitioner, when the writ petition was disposed of, sustained injuries in the accident and because of that, he was prevented from appearing before the Court by filing vakalath. Secondly, he would submit that there were no dues payable by the petitioner. Even if there were dues payable, the review petitioner has got no right to retain the certificates of the petitioner's son. Eventhough notice was ordered in the writ petition to the review petitioner returnable by 03.10.2017, the matter was actually listed on 09.10.2017, by

which time the counsel could have defended the case by appearing before this Court or could have made alternate arrangement. However, nothing has been done.

6. Heard the learned counsel on either side.

7. At the outset, it has to be stated that irrespective of whether the original writ petitioner had furnished wrong information with regard to payment of school fees or not, the School has got no business to retain the transfer certificate and other documents including mark sheet to be given to the petitioner's son. This Court has already held so, in the judgment rendered in *Kesavan V. Director of Medical Education, Kilpauk, Chennai – 10* and *another* reported in (2011) 8 MLJ 454 and Paragraph No.10 of the said judgment is usefully extracted as follows:

“10. On a perusal of documents, it is seen that the respondents have not signed in the agreement/bond that was executed by the petitioner. The agreement is thus an invalid one. Therefore, the bond could not be enforced against the petitioner. Furthermore, as rightly contended by the learned counsel for the petitioner, there is no clause in the bond that the respondents could retain the certificates, until the payment is made. For not paying the amount, they could take at the most take recovery proceedings against the petitioner based on the

bond.

If really, the original writ petitioner had not paid the fee payable to the review petitioner or any amount is due, the proper course for the review petitioner is to proceed against the writ petitioner by filing appropriate proceedings. Non-payment of fees cannot be a ground to retain the certificates of the petitioner's son. On account of non-issuance of certificates and marksheet, the petitioner's son could not join any college or institution for further studies and one year has been wasted. One year in a student's life is very precious and therefore, this Court awarded Rs.1 lakh to be paid as compensation to the original writ petitioner by the review petitioner. Since the review petitioner was not present before this Court, this Court restricted the compensation to Rs.1 lakh. Otherwise, this Court would have granted at least Rs.5 lakhs as compensation. The absence of the review petitioner alone saved it from being slapped with compensation of Rs.5 lakhs. Therefore, the compensation of Rs.1 lakh awarded by this Court for non-issuance of certificates, which had cost the student, a year of his study, cannot be set aside.

8. Next, as regards the circumstance, which is said to have prevented the review petitioner from being represented before this Court, the same cannot be accepted. Though this Court is inclined to believe the representation of the learned counsel for the review petitioner, at the same

time, this Court expects some proof in regard thereto, especially, when the learned counsel for the original writ petitioner refutes the same. As rightly pointed out by Mr.J. Sudhakaran, learned counsel for the original writ petitioner, though the learned counsel, who was to appear for the review petitioner in the writ petition suffered an accident on 02.10.2017, the case was listed only on 09.10.2017 and not on 03.10.2017. Therefore, during the period from 03.10.2017 to 09.10.2017, some endeavour should have been made to find out whether the case was listed or not. Even vakalath had not been filed. Thereafter, the name of the review petitioner was printed in the cause list and the writ petition was disposed of. There is no occasion for this Court to review the order passed in the writ petition. Hence, the review application is dismissed. No costs. Connected W.M.P. is closed.

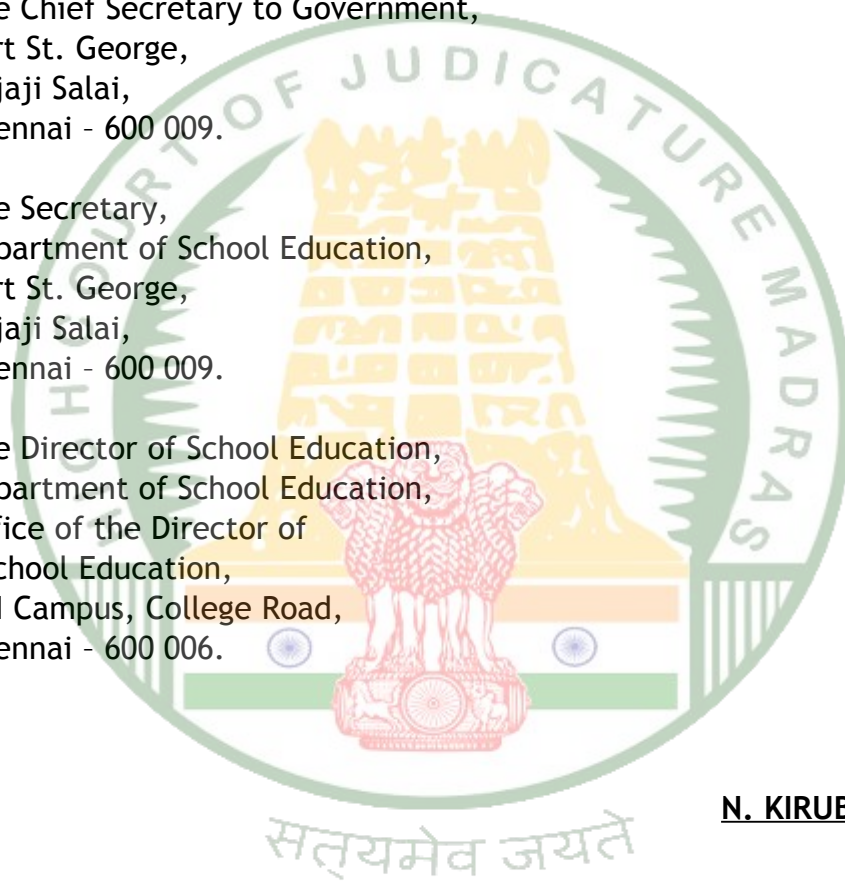
9. This Court, while awarding Rs.1 lakh as cost to be paid by the review petitioner to “AVVAI HOME”, Adyar, Chennai -20, for not responding to the Court's notice, had directed the Tahsildar concerned to auction any of the properties of the review petitioner school to recover the same, in the event, the said amount is not paid by the review petitioner. Therefore, if the cost of Rs.1 lakh is not yet paid, the Tahsildar, Rasipuram, Namakkal District, shall act in accordance with the directions given by this Court in the order dated 09.10.2017 and file compliance report before this Court.

16.11.2017

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To

1. The Chief Secretary to Government,
Fort St. George,
Rajaji Salai,
Chennai - 600 009.
2. The Secretary,
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Fort St. George,
Rajaji Salai,
Chennai - 600 009.
3. The Director of School Education,
Department of School Education,
Office of the Director of
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DPI Campus, College Road,
Chennai - 600 006.

**N. KIRUBAKARAN,J.**

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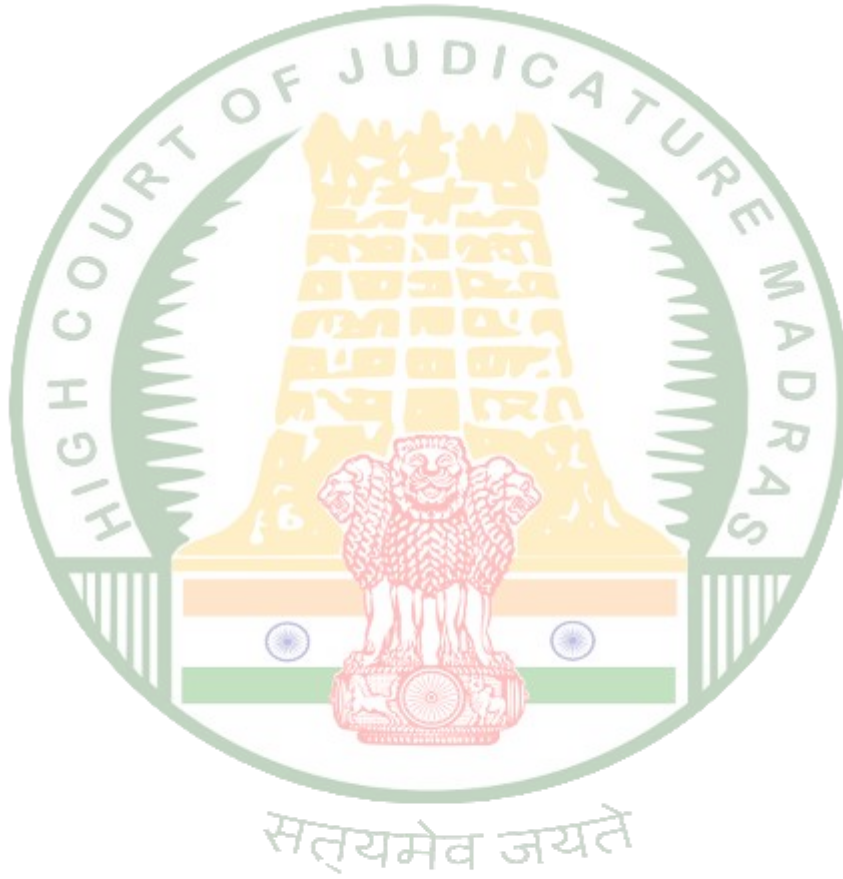
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Mohanur Road, Namakkal.

6. The Tahsildar,
Rasipuram, Namakkal.

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