

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.15334 of 2017

The Kaavery Educational Trust,
Rep.by its Secretary M.Kalipatti,
Mecheri - 636 453,
Mettur Taluk, Salem District.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep.by its Principal Secretary,
Higher Education Department,
Fort St. George, Chennai - 600 009.

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

... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents, relating to the order passed by the 2nd respondent in letter Na.Ka.No.11006/R4/2017, dated 06.06.2017 and quash the same insofar as insistence of approval of Department of Town and Country Planning for the existing building of the petitioner and consequently direct the respondents to grant necessary approval/permission to the petitioner herein to start the Kavary Arts and Science College for Women at M.Kalipatti Village, Mettur Taluk, Salem District from the academic year 2017-18 by accepting th planning permission for the building granted by M.Kalipatti Village Panchayat, dated 12.01.2010 in the light of the order in W.P.No.2573/2017.

For Petitioner : Mr.Kandhanduraisami

For Respondents : Mr.A.Kumar
Special Government Pleader

O R D E R

The petitioner/Educational Trust is aggrieved against the proceedings of the second respondent dated 06.06.2017, calling upon the petitioner to produce six certificates / documents for the purpose of considering their application seeking permission to start the Arts and Science College for Women.

2. Heard Mr.Kandhanduraisami, learned counsel appearing for the petitioner and Mr.A.Kumar, learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner, in short, is as follows :

3.1. The petitioner/Educational Trust was established in the year 1997 with the object to provide education to the downtrodden people. It started a teacher training institution in the name of The Kaveri Teacher Training Institute for Women, after obtaining necessary recognition from the National Council for Teacher Education, from the academic session 2006-2007. Permanent super structures were built up later, measuring about 74,000 sq.ft, after obtaining building plan permission from the Executive Authority, viz., the President, M.Kalipatti Panchayat vide proceedings BL/2009-2010/10, dated 12.01.2010. The property was assessed to house tax. However, due to gradual reduction of admission into the Teacher Training Institute, the petitioner closed the teacher training institute from the academic year 2014-2015 onwards and the recognition granted by the NCTE was also withdrawn from the said academic year.

3.2. Thereafter, the petitioner, in the existing building, wanted to start the Arts and Science College for Women and consequently made an application on 03.03.2017 before the respondents by enclosing a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as the application fees prescribed for the purpose. The petitioner obtained all the necessary certificates such as Land Use & Land Contiguous Certificate, Sanitary Certificate, Fit for Occupation Certificate, Fire and Rescue Services Department Certificate, Insurance Certificate, Electricity Certificate, Stability Certificate etc., However, the second respondent issued the impugned proceedings calling upon the petitioner to furnish various certificates including building plan permission from the Department of Town and Country Planning. Since the petitioner has already obtained building plan approval from the competent Executive Authority, viz., the President, M.Kalipatti Panchayat, as early as on 12.01.2010, the respondent cannot insist upon the petitioner to produce the building planning permission from the Department of Town and Country Planning, by citing the introduction of Section 47(A)

in the Tamil Nadu Town and Country Planning Act 1971, which admittedly came into effect only from 01.01.2011.

4. Counter affidavit is filed by the second respondent, wherein, apart from reiterating the requirements of the documents referred to in the impugned proceedings, it is further stated that the petitioner has not submitted the Stability Certificate, Pollution Certificate from the Pollution Control Board and other documents as stated in the impugned proceedings.

5. Mr.Kandhanduraisami, learned counsel appearing for the petitioner, after inviting this Court's attention to an order passed in W.P.Nos.20890 and 20891 of 2016, dated 31.08.2016, submitted that in view of the above said order passed in a case arising out of similar circumstances, the respondents are not justified in insisting upon the production of building plan approval from the Director of Town and Country Planning. He further submitted that though the petitioner has already produced all other required certificates, they would certainly produce once again those certificates, if they are not available on the records of the respondents.

6. On the other hand, the learned Special Government Pleader, submitted that once the certificates as sought for in the impugned proceedings are produced, the petitioner's application for seeking approval or permission to start the Arts and Science College will be considered and appropriate orders will be passed.

7. Heard both sides.

8. Though this writ petition is filed challenging the proceedings of the second respondent, wherein, the petitioner was called upon to produce six certificates, the learned counsel for the petitioner submitted that their grievance is only against insistence for production of building plan certificate from the Department of Town and Country Planning. Hence it has to be seen as to whether the petitioner has to comply with such requirement. As rightly pointed out by the learned counsel for the petitioner the very same issue was considered by this Court in W.P.Nos.20890 and 20891 of 2016, dated 31.08.2016, wherein, it was specifically found that the application of section 47(A) of the Tamil Nadu Town and Country Planning Act 1971, is prospective in nature and takes effect only from 01.01.2011. Therefore, when the petitioner herein has already got the approval from the local body viz., M.Kalipatti Panchayat, as early as on 12.01.2010, there is no necessity for the petitioner to get the building plan approval from the Town and Country Planning Authority, as required under Section 47(A) of the said Act, which is not applicable to the case of the petitioner.

9. Therefore, by following the above said order passed by this Court in W.P.Nos.20890 and 20891 of 2016, dated 31.08.2016, which infact, followed by another learned Judge in W.P.No.9219 of 2017, dated 17.4.2017, this writ petition is disposed of, with a direction to the respondents to consider the application filed by the petitioner seeking for approval / permission to start the Arts and Science College for Women, without insisting upon the production of approval of the building plan by the Department of Town and Country Planing. In all other aspects, the petitioner shall satisfy the authorities viz., the respondents, if the certificates already produced by them are not sufficient enough insofar as those aspects are concerned. The respondents shall consider the application of the petitioner and pass appropriate orders within a period of four weeks from the date of production of certificates. The petitioner shall produce the other required certificates before the authorities within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk/ms

To

1. The Principal Secretary,
Government of Tamilnadu,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.

+1cc to M/s.Muthumani Doraisami, Advocate, S.R.No.46308

+1cc to the Government Pleader, S.R.No.46596

W.P.No.15334 of 2017

CS IV

CA(06/07/2017)