

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 24262 of 2016

&

W.M.P. Nos. 20738 & 20739 of 2016

Bharani International Modern Nursery
& Primary School,
Kannandahalli Post, Mathur Union,
Pochampalli Taluk,
Krishnagiri District - 635 203.
rep. by its Correspondent,
K.S. Sekar

..Petitioner

Vs.

1. The Government of India,
rep. by its Secretary to Government,
Ministry of Human Resources
Development,
No. 302-C, Shastri Bhavan,
New Delhi.
2. The Central Board of Secondary Education,
Siksha Kendra, rep. by
Assistant Secretary (AFFL),
No.2, Community Centre,
Preeth Vihar,
New Delhi 110 301.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent in No. CBSE/AFF/SL-00608-1516/2015/973335 dated 24.11.2015 and to quash the same and consequently direct the respondents to pass orders for granting provisional affiliation for approval of Middle Class Syllabus in favour of the petitioner school without insisting No Objection Certificate from State Education Department within a time frame to be fixed by this Court.

For Petitioner :: Mr.G. Sankaran

For Respondents :: Mr.K. Raju,
Central Govt. Standing
Counsel for R1
Mr.G. Nagarajan
for R2

O R D E R

This writ petition is filed challenging the impugned proceedings issued by the 2nd respondent in No. CBSE/AFF/SL-00608-1516/2015/973335 dated 24.11.2015, quash the same and consequently direct the respondents to pass orders for granting provisional affiliation for approval of Middle Class Syllabus in favour of the petitioner school without insisting No Objection Certificate from State Education Department within a time frame to be fixed by this Court.

2. The petitioner school has been started in the year 2000 and the school has been granted recognition by the Department of Education of State of Tamil Nadu for standards I to V vide proceedings of Chief Educational Officer, Karur, dated 09.07.2013 and it is being periodically renewed and the date of last renewal was, as per the proceedings of District Elementary Educational Officer, Krishnagiri, dated 02.06.2016. While so, the Management of the petitioner school decided to adopt the syllabus of Central Board of Secondary Education and for availing an order of affiliation from the said Board, an application was submitted before the 2nd respondent seeking provisional affiliation upto Secondary Level on 27.11.2013. However, the application was returned by the 2nd respondent on 08.09.2014 by referring to certain deficiencies, one of them being that the application of the petitioner school could only be considered for approval of Middle Class Syllabus and for consideration of application for secondary level, the school is required to get recognition certificate upto VIII Class or submit a copy of NOC from State Education Division. It was thus made clear to the petitioner that their application could only be considered for approval of Middle Class Syllabus.

3. Pursuant to the same, the petitioner school, apart from complying with other requirements pointed out by the 2nd respondent, submitted a representation to the 2nd respondent on 12.09.2014 with clarification that the application may be treated as made for approval of Middle Class Syllabus. Consequent thereto, an Inspection Committee was constituted, which conducted

an inspection of the petitioner School on 17.02.2015 and submitted its report on 21.02.2015. Based on the inspection report, the 2nd respondent issued a communication dated 30.04.2015 by referring to deficiencies, which again included a condition that the petitioner school is required to submit valid recognition letter/NOC from State Education Department apart from other deficiencies. Thereupon, the petitioner school submitted a valid recognition letter upto V standard and complied with all other deficiencies on 30.05.2015. However, no orders were passed. Therefore, the petitioner school submitted another representation dated 27.06.2015 by referring to earlier communications and in furtherance of the same, the petitioner school was intimated through online that affiliation has been granted on 06.09.2015 without passing any formal orders. That being so, the petitioner school received another communication dated 01.09.2015 referring to three deficiencies including that the school is required to submit NOC from State Education Department, which, according to the petitioner, is not required as per Affiliation Bye-law, as the petitioner school has got recognition from State Government upto to V standard and the State Government has also been intimated about the petitioner school's endeavour to obtain affiliation from CBSE. Hence, the petitioner school submitted a detailed representation to the 2nd respondent Board on 12.10.2015 stating that when the Board has already informed that the petitioner school is eligible to apply for approval of Middle Class Syllabus as per the proceedings dated 08.09.2014; when the petitioner school has also submitted a representation to treat the application made by them as one for obtaining approval of Middle Class Syllabus for which recognition upto V standard is sufficient and when the school has been granted recognition by State Education Department upto V standard, there is no requirement to obtain NOC from State Education Department. Even thereafter, the 2nd respondent has issued the impugned communication dated 24.11.2015 stating as follows:

"The School is required to submit a copy of No Objection Certificate from the State Education Department

OR

The School is required to submit a copy of Recognition Letter upto class VIII along with an intimation letter to this effect that the applicant school had intimated to the concerned State Education Department about the application made to CBSE for seeking affiliation with the Board duly acknowledged in advance of 45 days. Therefore, it is again insisted to obtain NOC from State Government or recognition upto Class VIII from State Education Department."

Hence, the present writ petition.

4. Heard Mr.G. Sankaran, learned counsel for the petitioner, Mr.K. Raju, learned Central Government Standing Counsel for 1st respondent and Mr.G. Nagarajan, learned counsel for the 2nd respondent.

5. There is no dispute with regard to conducting of classes upto V Standard after getting recognition from the State Government. It is submitted that the petitioner, initially, applied for provisional affiliation upto Secondary Level to the 2nd respondent Board and by communication dated 08.09.2014, apart from pointing out other deficiencies, the 2nd respondent had informed the petitioner school that their application could be considered only for approval of Middle Class Syllabus level as they have got recognition certificate to conduct classes from I to V only and the school is running upto Class VI and for secondary level, the petitioner school is required to obtain recognition certificate upto VIII standard or submit a copy of NOC from the State Education Department. The relevant portion of communication dated 08.09.2014 is extracted as follows:

".....

1. The recognition letter submitted by the school is from Class 1 to V only and the school is running upto class VI at present. Hence, the school is informed that the application of the school could only be considered for approval of Middle Class Syllabus. For consideration of application for secondary level, the school is required to recognition certificate upto 8th class or submit a copy of NOC from State Education Division."

When it is evident from the above communication that the 2nd respondent had informed the petitioner school that their application could be considered only for approval of Middle Class Syllabus and the petitioner school has also subsequently requested to treat their application as one seeking approval of Middle Class Syllabus, for which recognition certificate upto V standard is sufficient and which the petitioner school is, admittedly, possessed with, this Court, without going into other details, deems it appropriate to direct the 2nd respondent to consider granting provisional affiliation for approval of Middle Class Syllabus in favour of the petitioner school as per its communication dated 08.09.2014, in accordance with the Rules, which were in existence at that point of time since, as on the date of the application of the petitioner as well as on the date of communication dated 08.09.2014, if recognition had already been given by the State Government, there was no necessity to produce NOC from the State Education Department. Therefore, the second respondent is directed to pass appropriate orders within 3 weeks from the date of receipt of a copy of this order, in the light of this order.

6. The writ petition is disposed of accordingly. No costs. Connected W.M.Ps are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Secretary to Government,
Ministry of Human Resources
Development,
No. 302-C, Shastri Bhavan,
New Delhi.
2. Assistant Secretary (AFFL),
The Central Board of Secondary Education,
Siksha Kendra, rep. by
No.2, Community Centre,
Preeth Vihar,
New Delhi 110 301.

+1cc to Mr.G.Nagarajan, Advocate SR.No.47421
+1cc to Mr.G.Sankara, Advocate SR.No.47993

W.P. No. 24262 of 2016

GN (22/08/2017)

सत्यमेव जयते

WEB COPY