

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 06-07-2017****CORAM****THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA****W.P.No.2560 of 2017
and W.M.P.No.2523 of 2017**

A.G.Syed Mohideen
S/o.Abdul Gani Maricar
Correspondent
A.G.M.Nursery and Primary School
No.77, Sonagar Street,
Cuddalore O.T

... Petitioner

-Vs-

1. The Director of Elementary Education,
College Road,
Nungambakkam, Chennai 6
 2. The Joint Director of Elementary Education,
College Road,
Nungambakkam,
Chennai 6
 3. The Chief Educational Officer,
Cuddalore District,
Cuddalore
 4. The District Elementary Educational Officer,
Cuddalore District,
Cuddalore
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings in Na.Ka.No.5561/F1/2016 dated 04.05.2016 and the third respondent in O.Mu.No.10896/A3/2015 dated 09.05.2016 and quash the same and thereby direct the respondents to grant

recognition to the School run by the petitioner for upgrading the same from Nursery and Primary School to Middle School.

For Petitioner :Mr.N.Suresh

For Respondents :Mr.V.Anandhamurthy
Add

ORDER

The petitioner has filed the above writ petition praying for issuance of Writ of Certiorarified Mandamus to call for the proceedings of the first respondent in his proceedings in Na.Ka.No.5561/F1/2016 dated 04.05.2016 and the third respondent in O.Mu.No.10896/A3/2015 dated 09.05.2016 and quash the same and to direct the respondents to grant recognition to the School run by the petitioner for upgrading the same from Nursery and Primary School to Middle School.

2. The petitioner is the Correspondent of A.G.M.Nursery and Primary School. The said School is being run by a Trust and it is a minority institution. The said School was started in the year 2011 and the recognition had been granted for every three years. The last recognition was granted on 06.02.2015 by the 4th respondent and is granted from 10.06.2014 to 09.06.2017. It is stated that there are about 140 students in the School studying from L.K.G to 5th standard, though the sanctioned strength of the School is 500. The School has got all infrastructural facilities

including play ground. The School was desirous of upgrading the existing nursery and primary School to one of middle school for catering education to the students upto 8th standard. Accordingly, the School had applied for upgradation along with the required fees under Rule 4 of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974. As there are adequate facilities for pupils, teachers, sufficient equipments and buildings including play ground, the petitioner had applied for upgradation and also produced the Sanitary Certificate from the local authority and no objection certificate from the Fire Department. However, the first respondent passed the impugned order rejecting the approval, which is under challenge by the petitioner in this Writ Petition.

3. The third respondent, who is the Chief Educational Officer, has filed counter affidavit contending that there is no provision in the Code of Regulation for approved Nursery and Primary Schools for upgradation of Nursery and Primary School into Middle School. Further, it is stated that in accordance with the provisions of Code of Recognised Nursery and Primary Schools, the School can continue only as a Nursery and Primary Schools with L.K.G to V Standard and the same cannot be upgraded.

4. The fourth respondent, who is the District Elementary Educational Officer, had filed separate counter affidavit reiterating that the Rules in the Tamil Nadu Recognised Private Schools (Regulations), Rules 1974 does not apply in the case of Nursery and Primary Schools. Therefore, the petitioner's request to upgrade the Nursery and Primary School into a Middle School with Tamil Nadu Recognised Private Schools (Regulation) Rules, cannot be complied with.

5. Heard both sides and perused the materials available on record.

6. It is contended by the learned counsel appearing for the petitioner that the impugned order is passed without application of mind as Rule 4 of the Tamil Nadu Recognised Private Schools (Regulations) Rules clearly provides for power to grant permission for upgradation. After the impugned order was passed, the Inspection Report of the Assistant Elementary Educational Officer was filed, according to which, Building Licence Certificate and Structural Stability Certificate are in force. No objection Certificate from the Fire Department and Sanitary Certificate from the Health Department had to be renewed. The students admission of 25% followed. Hence, the Assistant Elementary Educational

Officer had recommended for upgradation of the School. The Tamil Nadu Recognised Private Schools (Regulation) Act came into force in the year 1974, which exclusively deals with private schools including Pre-Primary School, Primary School, Middle School, Teachers' Training Institute, High School and Higher Secondary School. Any Private School including Pre-Primary School has to be established only under the statutory enactment. Without the permission of the competent authority, no person is allowed to start any School.

7. The learned Additional Government Pleader contended that the petitioner's School is governed only by the Code of Regulation for approved Nursery and Primary Schools of the State. He also contended that the School is not governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As the said Code does not specify about the upgradation, the petitioner's School cannot be allowed to upgrade the School from Primary School to Middle School. The said Code defines 'Educational Agency' as any person or body of person which has established and is administering or proposes to establish and administer such Nursery and Primary Schools. The only special feature of the Nursery and Primary School is that Tamil or mother tongue is compulsory in the Nursery Classes and Standard 1 to 5. As the

upgradation is not contemplated under the Code, the learned Additional Government Pleader opposed for grant of any upgradation for the petitioner's School.

8. Per contra, the learned counsel for the petitioner contended that as per Section 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, "Private School" means a pre-primary, primary, middle or high school or higher secondary school or teacher training institution imparting education or training, whether receiving grant from the Government or not, established and administered or maintained by any person or body of persons and recognised by the competent authority under this Act, but does not include a School or an institution. As per the said Act, the "minority School" means a private school of its choice established and administered by any such minority, whether based on religion or language as has the right to do so under clause(1) of Article 30 of the Constitution of India. Rule 3 of the Tamil Nadu Recognised Private Schools (Regulation) Rules prescribes the stages of education. Rule 4 defines the power to grant permission. As per Rule 4, the competent authorities shall grant permission to open a private School or to upgrade an existing School to open higher standards or additional Sections in an existing School established in the following, namely, Pre-Primary, Primary and Middle Schools-

Chief Educational Officer.

9. On a perusal of the above provisions, it is evident that none of the private person or management can establish any Private School without the permission of the competent authority. For establishing and administering a School, Pre-Primary, Primary, Middle Schools, High Schools or Higher Secondary Schools, permission from the competent authorities is bound to be obtained under Section 4 of the Tamil Nadu Recognised Private Schools (Regulation) Act. If the School is already established, upgradation is done only by the competent authorities as per Rule 4 therein. The petitioner also has asked for upgradation and sent his application dated 24.02.2016. In response to the same, the fourth respondent had negated the same by stating that there is no provision under the Code of Regulation for approved Nursery and Primary School, whereas on 22.04.2016, the Chief Educational Officer has sent a letter, which is impugned in the Writ Petition stating that there were certain deficiencies, which are to be complied with, after which, an inspection was also conducted and the deficiencies pointed out as per the inspection report were also complied with by the petitioner. The petitioner also had produced the No Objection Certificate from the Fire Department and the Sanitary Certificate from the Cuddalore Municipality. The

Tahsildar, Cuddalore has given a valid licence for the said School, the validity of which is from 10.06.2017 to 09.06.2020. As the petitioner has submitted all the necessary certificates mandated by the relevant Rule including infrastructural facilities available, description of the building etc., to the satisfaction of the competent authority, the competent authority is required to grant permission.

10. For the foregoing reasoning, this Court is of the view that the petitioner has made out a case for upgrading the existing School from Primary School to Elementary level. Therefore, the impugned Orders passed by the first and third respondents dated 04.05.2016 and 09.05.2016 are quashed and the Writ Petition is allowed. The respondents 3 and 4 are directed to consider the representation of the petitioner along with necessary annexures enclosed or to be produced later and pass appropriate orders for upgradation of the existing Nursery and Primary School into Middle School. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2017

srn

To

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Nungambakkam, Chennai 6

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