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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.11.2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.A(MD).No.1306 of 2017
and
CMP(MD)No.9040 of 2017

- 1.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai-600 006.
- 2.The Inspector of Matriculation Schools,
Tirunelveli & District.

... Appellants/Respondents

Vs.

Lions Matriculation School,
Idaiyangudi Road,
Tisaiyanvilai-627 657,
Tirunelveli District,
Rep.by its Correspondent,
T.Suyamburajan

... Respondent/Writ Petitioner

PRAYER: Appeal filed under Clause 15 of Letter Patent, to set aside the order, dated 10.07.2017, in W.P(MD).No.12530 of 2017.

Prayer in WP(MD). 12530/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the Respondent to grant permission to the Petitioner's school for opening additional standards viz., 9th and 10th standards under the provisions of Matriculation Code based on the application submitted by the Petitioner school dated 20.02.2017, following the ratio laid down by this Honble Court in Contempt Petition in Cont.Petn (MD).No.1391 of 2015 dated 30.11.2015 and W.A (MD).No.279 of 2016 dated 22.02.2016, within a time frame to be fixed by this Hon'ble Court.



For Respondent : Mr.H.Mohammed Imran
for
M/s.Ajmal Associates

J U D G M E N T

[Judgment of the Court was delivered by M.VENUGOPAL, J.]
Heard both sides.

2.By consent, the main Writ Appeal itself is taken up for final disposal.

3.According to the Government Advocate for the Appellants/Respondents, the Learned Single Judge ought to have seen that the Appellants should have been provided with an opportunity to put forth their case by filing an appropriate counter affidavit. It is the stand of the Appellants that the orders passed in C.P(MD). No.1391 of 2015 or the Judgment in W.A.No.279 of 2015 are inapplicable to the present case on hand and it relate to a case of renewal of recognition. That apart, the stand of the Appellants is that it is a case of permission to upgrade a School and the judgements had not taken note of Section 47A of Tamil Nadu Town and Country Planning Act, 1971.

4.The Learned Government Advocate for the Appellants projects an argument that the Respondent/School being a public building as per the definition in Sub-Clause (i) of Rule 2 (g) of the Tamilnadu Panchayat Buildings Rules, 1997, is bound to obtain an approval from the competent authority, who shall grant approval for consulting Director of Town and Country Planning, as per Rule 25 of the TamilNadu Panchayat Building Rules, 1997.

5.The Appellants comes out with a plea that the Institutions seeking recognition from States, has to follow the prescribed syllabus and courses of study and other allied matters. The Learned Government Advocate for the Appellants submits that the Respondent/School had failed to obtain a building plan approval from the competent authority, as per G.O.Ms.No.270, School Education Department, dated 22.10.2012. The Learned Government Advocate for the Appellants brings it to the notice of this Court that the Code of Regulations for Matriculation Schools, Tamil Nadu vide Clause (iii) Recognition, A in Article 10 captioned under Recognition of new Matriculation Schools in Chapter-II inter alia states as under:-

"Regulation 10: Recognition of new Matriculation Schools:-

(iii) Recognition-The Educational Agency of a private Matriculation School shall apply in the form prescribed in Annexure-III for recognition of the School to the Director through the Inspector. The application shall be made within three months from the date of opening of School. Where a temporary recognition is accorded, application for continuance shall be made not later than three months prior to the date of expiry of the temporary recognition.



(iv) The following conditions shall be satisfied for the purpose of recognition.

(a) The Educational Agency shall produce.

(1) A license permitting the use of the School Building as Public Building Under the Tamil Nadu Buildings (Licensing) Act, 1965, (Tamil Nadu Act XIII of 1965).

(2) a structural stability certificate for the School building issued by the Executive Engineer of the Public Works Department or from the Chartered Engineer in the panel of qualified and Registered Engineers maintained by the District Collectors in accordance with the Tamil Nadu Public Building (Licensing) Act, 1965.

(3) a sanitary and Hygiene certificate issued by the Health officer of the locality; and

(4) a No objection Certificate obtained from the station officer, (Fire and Rescue) in the 8 area where the School is situated. (G.O.Ms.No.117, School Education Department, dated 07.09.2004).

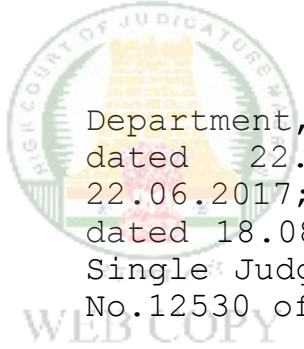
in fulfillment of the above stated requirement vide items (2) of sub-clause (iv) in clause (iii) under Rule 10, the Writ Petitioner School failed to submit evidence the Engineer certifying the building plan was a panel Engineer as certified by the District Collector."

6. The Learned Government Advocate for the Appellants proceeds to point out that the proposal seeking to grant permission to the Respondent/School was not granted by the Appellant for the reasons stated therein and the said order has passed in terms of the Power vested under Sub-Clause (i) of Clause 3 (iv) of Article 10 of the Code of Regulations for Matriculation Schools Tamil Nadu, which enjoins as under:-

"It shall be open to the competent authority to reject the application of a new School for recognition if he considers that any one of the conditions has not been satisfied."

7. The Learned Government Advocate for the Appellants contends that when the Law contemplates that a particular thing should be done in a certain manner, it should be done only in that particular manner and cannot be done in any other manner. It is the submission of the Learned Government Advocate for the Appellants that the local authority is to obtain prior concurrence of Director of Town and Country Planning, for the development of any land and the same has been emphasized by the Director of Town and Country planning, as per proceedings, in ROC.No.23152/11/GR, dated 12.10.2011.

8. Lastly, it is projected on the side of the Appellants that the Government Orders in (1).G.O.(2D).No.48, School Education Department, dated 21.07.2004; (2).G.O.(MS).No.143, School Education Department, dated 19.09.2011; (3).G.O.(MS).No.270, School Education Department, dated 22.10.2012; (4).G.O.(MS).No.33, School Education Department, dated 07.03.2013; (5).G.O.(MS).No.131, School Education Department, dated 10.08.2006; (6).G.O.(MS).No.73, School Education



Department, dated 22.04.2017; (7).G.O.(MS).No.110, HUD Department, dated 22.06.2017; (8)G.O.(MS).No.111, HUD Department, dated 22.06.2017; and (9)G.O.(MS).No.134, School Education Department, dated 18.08.2015, were not brought to the knowledge of the Learned Single Judge, at the time of passing the impugned order in W.P.(MD) No.12530 of 2017, dated 10.07.2017.

9.Per contra, it is the submission of the Learned counsel for the Respondent/School that the School had submitted an application for opening additional standards viz., 9th and 10th standards by referring to the requisite infrastructural and instructional facilities available in the School on 20.02.2017 and in fact, the application was submitted to the First Appellant/First Respondent through the Second Appellant/Second Respondent.

10.The grievance of the Respondent/School is that the application was not considered by the First Appellant/First Respondent on the premises that the School has to obtain plan approval from DTCP/LPA/CMDA notwithstanding the plan approval already granted by the Executive Authority of Village Panchayat.

11.Besides the above, it is the submission of the Learned counsel for the Respondent that the Respondent/School had complied with all the legal requirements with reference to Public Building Licence, Structural Stability Certificate, Sanitation Certificate from Local Body/Health Department etc. In fact, there is no deviation with reference to the Regulations under Matriculation Code, as contended on behalf of the Respondent/School.

12.The prime stand taken on behalf of the Respondent/School is that the Appellants/Respondents should have considered the application of the Respondent/School, dated 20.02.2017 for opening of additional standards viz., 9th and 10th standards without reference to DTCP and based on the planning approval granted by the Executive Authority of Appuvilai village panchayat. Hence, the Petitioner has filed the present Writ Petition.

13.At this stage, the Learned counsel for the Respondent/School cites the order dated 30.11.2015 in Contempt Petition (MD)No.1391 of 2015 between KAVIYAN SCHOOL, REP. BY ITS CORRESPONDENT C.DEENATHAYALA PANDIAN, INDIRA NAGAR, MALAYAKOUNDANPATTI, AMMAIYANAICKANUR, NILAKOTTAI, DINDIGUL DISTRICT v. R.PITCHAI, wherein at paragraph Nos.7 and 8, it is observed as under:-

"7.Once the panchayat has clarified that the permission was granted as per the said rule, it cannot be expected that the Petitioner should get further confirmation from the Directorate of Town and Country Planning.

8.Therefore, we clarify even while closing the contempt petition that unless and until the Directorate of Town and Country Planning particularly informs the Director of matriculation Schools that Rule 25 extracted above was not followed, the Respondent shall not deny the renewal of



recognition for the next year. Of Course, this will be subject to the compliance with the other conditions for the grant of renewal."

14. The Learned Counsel for the Respondent/School refers to the Judgment of this Court in W.A.(MD)No.279 of 2016 between THE DIRECTOR OF MATRICULATION School, DPI CAMPUS, COLLEGE ROAD, CHENNAI-6 AND ANTOHER v. ILM MATRICULATION School, NARIPPAIYUR POST, KADALADI, RAMANATHAPURAM DISTRICT, wherein at paragraph Nos.5 and 6, it is observed as follows:-

"5.It appears that the Directorate of Town and Country Planning was not responsive. Therefore, the Petitioner applied under the Right to Information Act. The question raised by the Petitioner to the Panchayat President and the reply given by the Panchayat President are of significance. In the Application, dated 17.10.2015, the question asked under the Right Information Act was as follows:

"1.whether you had granted approval to Kaviyan School Indira Nagar, Malayakoundanpatti, Ammayanaickanur, Kodai Road Post, Nilakottai Taluk, Dindigul District for the construction of a School building comprising ground + First floor measuring about 17,000 ft.2 per floor without consulting the concerned Joint Director or Deputy Director of Town and Country Planning?"

The reply given by the President of the Panchayat on 20.10.2015 is as follows:

"We hereby confirm that, we had granted approval to Kaviyan School Indira Nagar, Malayagoundanpatti, Ammayanaickanur, Kodai Road Post, Nilakottai Taluk, Dindigul District for the construction of a School building comprising ground + First floor + Second floor measuring about Seventeen Thousand Square Feet (17,000 Sq.ft) in each floor in accordance to Rule No: 25 of the Tamilnadu Panchayat Building Rules 1997."

6. There is no denial of the fact that the prior consultation with the Director of Town and Country Planning was made mandatory only under Rule 25 of the Tamil Nadu Panchayats Building Rules, which reads as follows:

"25.Multi-storeyed and public buildings.--Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920):



Provided that the executive authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director of Deputy Director of Town and Country Planning."

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15. It is to be borne in mind that the stand taken by the Respondent/School in the Writ Petition is in fact repudiated on behalf of the Appellants in the present Writ Appeal. In fact, the Appellants take an emphatic plea before this Court that the Learned Single Judge should have seen when the Law contemplates that a particular thing should be done in a particular manner, it should be done in that particular manner and cannot be done in any other manner. Moreover, it is the plea of the Appellants that the local authority viz., the Village Panchayat is to obtain prior concurrence of Director of Town and Country Planning for development of any land and this was emphasised by means of its proceedings, dated 12.10.2011 in Roc.No.23152/11/GR.

16. Be that as it may, this Court, without expressing any opinion on the merits and demerits of the Representation and other factual issues surrounding the matter and also not dwelling deep in the contention of the Representation, at this stage, simpliciter, directs the Respondent's Representation, dated 20.02.2017, addressed to the First Appellant/First Respondent is to be looked into by the First Appellant/First Respondent, in a fair, just, impartial, unbiased and dispassionate manner and to dispose of the same within a period of four weeks from the date of receipt of a copy of this order, after providing necessary opportunity to the Respondent/School and other authorities concerned by adhering to the principles of natural justice. It is open to the Respondent/Petitioner/School to raise all factual and legal pleas before the First Appellant/First Respondent, who shall take into account of both factual and legal aspects of the subject matter in issue and to pass a reasoned speaking order by answering/meeting out each and every point raised by the Respondent/Petitioner/School or other parties concerned.

17. With the aforesaid Direction(s) and Observation(s), the Writ Appeal is disposed of.

Sd/-

Assistant Registrar (ADII)

/True Copy/

Sub-Assistant Registrar

+One cc to M/s. Ajmal Associates, Advocate, SR.No.90420

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