



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.165 of 2017

and

C.M.P. (MD) Nos.1842 & 1843 of 2017

1.R.Venkataswamy
2.G.Mariyammal
3.S.Shanmuganathan
4.C.Krishnaveni
5.P.Arivuchudar
6.V.Sivanandam
7.R.Pandian
8.G.Karthikeyan

... APPELLANTS/PETITIONERS

1,2,3,5,6,8,11,14

-vs-

1.The Government of India
By its Secretary
Ministry of Defence, New Delhi

2.The Heavy Alloy Penetrator Project
Government of India
By its Senior General Manager
Heavy Alloy Penetrator Project
Ministry of Defence, Trichy-25

3.Sri Ramakrishna Tapovanam
Tiruparaithurai, By its President
Sri Ramakrishna Tapovanam
Tiruparaithurai, Tiruchirappalli District

4.The Director of School Education
College Road, Chennai-34

5.P.Saroja

K.Malarvizhi (died)

6.R.Puduraja

7.L.Mahalakshmi

8.V.Jeyasudha

9.E.Ponniah



Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 05.01.2017, made in W.P.(MD) No.12110 of 2009.

Prayer in WP(MD). 12110/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the proceedings of the First respondent no. 11123/admn/HAPP dated 04/06/2007 and quashes the same as illegal an directing the first respondent to take over the H.A.P.F.Paramahamsa Matriculation school, by the ordnance factory board and absorb the present staff of the school with all facilities enjoyed by the ordnance factory board school .

For Appellants : Mr.S.Muthukrishnan

For Respondents : Mr.G.R.Swaminathan for R1 & R2
Mr.D.Nallathambi for R3
Mr.V.Muruganantham, A.G.P., for R4
No appearance for R5 to R9

J U D G M E N T

[Judgment of the Court by **T.S.SIVAGNANAM, J.**]

Heard Mr.S.Muthukrishnan, learned counsel appearing for the appellants, Mr.G.R.Swaminathan, learned counsel appearing for the respondents 1 and 2, Mr.D.Nallathambi, learned counsel appearing for the third respondent and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the fourth respondent and carefully perused the materials placed on record.

2. None appeared on behalf of the respondents 5 to 9.

3. This writ appeal by the writ petitioners 1, 2, 3, 5, 6, 8, 11 and 14 is directed against the order, dated 05.01.2017, made in W.P.(MD) No.12110 of 2009.

4. The appellants and others filed a writ petition, in W.P. (MD) No.12110 of 2009, challenging the order, dated 04.06.2007, passed by the first respondent and for a consequential direction to the first respondent to take over H.A.P.F.Paramahamsa Matriculation School by the Ordnance Factory Board and absorb the staff / writ petitioners with all facilities enjoyed by the Ordnance Factory Board School.

5. The proceedings, which was impugned in the writ petition was in fact a tender enquiry to run one English Medium School in the township of HAPP. By the said notification, applications were invited from reputed, well established educational societies /



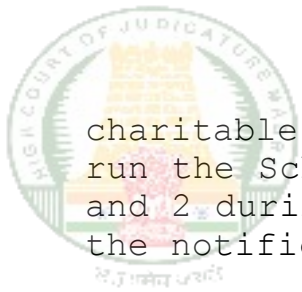
institutions, running recognized schools with good results to run one English Medium School (Affiliated to Tamilnadu Matriculation Board) in the township of the HAPP. The said notification states that the strength of the School would be approximately 400 from Class-I to X and the facilities such as buildings with existing infrastructure, water and electricity etc., would be provided on payment. The interested parties might communicate their interest along with the details called for in the said notification.

6. Apart from submitting the details, the applicants were required to give an oral presentation before the Committee to be constituted by the Senior General Manager within one week's time of opening of first bid and as per the recommendations of the Committee, formal tender forms would be issued to the parties selected in the presentation for submitting their financial bid. The last date for submitting such applications was fixed as 06.07.2007. Thus, it appears that there was a two tier process, by which the first respondent proposed to give the tender for running the English Medium School, which is situated in the township of HAPP.

7. Pursuant to the agreement, dated 30.06.1988, entered into between the respondents 1 and 3, the third respondent was running the School subject to the terms and conditions as contained in the said Agreement. The said agreement provided for various conditions and the initial period of agreement was valid till 30.06.1998 and subsequently, by a fresh agreement, dated 21.03.2001, the period stood extended till 30.06.2008 and thereafter, there had been no further extension of the agreement. Prior to expiry of the second agreement, the impugned notification, dated 04.06.2007, was issued by the first respondent. Both the agreements provided that the agreements were terminable by either parties on giving three months prior notice before ending of the academic year.

8. The grievance of the appellants is that all that they have been working in the School in question for years together and some of the teachers are said to be in employment for more than 25 years and the respondents 1 and 2 being Government of India Organizations should be model employers and all of a sudden they should not take a stand that they would not pay money for the salary and other expenditures in respect of administering the School and therefore, they sought for a relief, which virtually would mean that they should be taken as if they are part of the second respondent establishment.

9. The third respondent, who was hitherto running the School, has clearly indicated in their letter, dated 20.02.2017, that they are not interested in running the School on self-financing scheme as mentioned in the letter of the second respondent, dated 09.02.2017. It appears that the third respondent, which is a



charitable organization has clearly stated that they are unable to run the School and this decision was conveyed to the respondents 1 and 2 during 2007. This appears to have been a reason for issuing the notification, dated 04.06.2007, impugned in the writ petition.

10. The learned Single Judge elaborately considered the case of the parties and held that the Court cannot direct the Government to create posts and compel the Government to change its policy involving expenditure. Further, the question of absorbing the writ petitioners as staff of the second respondent establishment or to bring on them to the role of the Government of India was held to be not tenable in the light of the decision of the Honourable Supreme Court in *Uma Devi's* case as it would be termed as a back door entry.

11. We have carefully perused the reasons assigned by the learned Single Judge and we are in full agreement with the view expressed by the learned Single Judge that the appellants cannot compel the first respondent to take over the School and absorb them as if they are Central Government employees. Therefore, the net result would be to reject this writ appeal preferred by the writ petitioners. However, one fact, which we are concerned is about the teachers and other staff, who have been working in the School in question for quite a long number of years. It is no doubt that the employment of the writ petitioners is based on the agreement between themselves and the third respondent and the second respondent is not a privy to the said agreement. Equally so, the appellants are not parties to the agreement between the respondents 2 and 3. Therefore, the appellants cannot seek any relief on the strength of the agreement entered into between the respondents 2 and 3. In any event, the agreement between the appellants and the third respondent was subject to the tenure of the agreement between the respondents 2 and 3. It is clear that the writ petitioners were fully aware of the same and there was a specific clause to that effect in the said agreement, which was signed by them. The appellants' interest can be protected, if they are permitted to respond to the tender notification issued by the second respondent, dated 03.04.2017. By the said notification, which has been widely published in the newspapers, expression of interest to run one English Medium School in the Township of HAPP has been called for and applications have been invited from reputed, well established educational societies / charitable institutions etc., for running the school in question.

12. It may be true that the appellants herein are not an Educational Society / Charitable Institution. Nevertheless, they are teachers, who are working in the School for several years and some of them are said to have completed more than two decades of service. Therefore, while confirming the order passed in the writ petition, we permit the appellants to collectively form Society or



Association of persons to submit application in response to the notification issued by the second respondent, dated 03.04.2017.

13. The learned counsel appearing for the respondents 1 and 2 does not have any serious objection for such course of action being adopted and it is upto the appellants to compete with the other applicants, who are running the School.

14. Since the last date for submitting the application as per the notification, dated 03.04.2017 is fixed as 26.04.2017 and this Judgment has been passed today, we grant time to the appellants to submit their application by forming themselves into a Society or Association of Persons, till 11.05.2017.

15. With the above observations and liberty, the writ appeal stands dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary,
Government of India,
Ministry of Defence,
New Delhi.
- 2.The Senior General Manager
Heavy Alloy Penetrator Project,
Government of India,
Heavy Alloy Penetrator Project
Ministry of Defence, Trichy-25
- 3.The Director of School Education,
College Road, Chennai-34.

+1cc to Mr.S.Muthukrishnan,Advocate,SR.53344

+1cc to Mr.G.R.Swaminathan,Advocate,SR.53404

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.No.53649

W.A. (MD) No.165 of 2017
and

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KRK/SKM

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