



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2017

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

W.A(MD)No.436 of 2017

and

C.M.P(MD)No.4057 and 4058 of 2017

Rahmania Higher Secondary School,
Represented by its Manager and Correspondent,
S.S.Hassan Aboobacker,
Melapalayam,
Tirunelveli District.

: Appellant/Writ Petitioner

Vs.

1.The Joint Director of School Education,
(Higher Secondary Education)
Chennai-6.

2.The Joint Director of School Education,
(Secondary Education)
Chennai-6.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

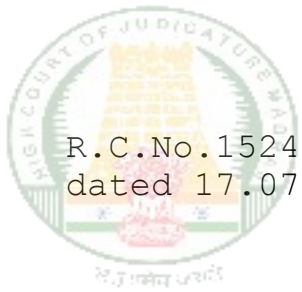
4.The District Educational Officer,
Tirunelveli,
Tirunelveli District.

: Respondents/Respondents

Prayer:This Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 03.03.2017 passed by this Court in W.P. (MD)No.4935 of 2013 and W.M.P(MD)No.5416 of 2016.

Prayer in WP(MD). 4935/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ of Mandamus, directing the respondents 1 and 2 grant recognition to the petitioners school for both High School and Higher Secondary School for a period between 01.06.2010 and 31.05.2013 without insisting to produce the Building License Certificate in the light of the proceedings issued by the Director of School Education in



R.C.No.1524/G2/75 dated 17.04.1976, by considering the proposals dated 17.07.2010 sent by the petitioner within the period.

For Appellant : Mr.C.Venkatesh Kumar
For Respondents : Mr.V.Muruganantham,
Additional Govt. Pleader

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JUDGMENT

(Judgment of the Court was made by **T.S.SIVAGNANAM**)

Heard the learned counsel for the petitioner and the learned Additional Government Pleader who accepts notice for the respondents.

2. By consent, this Writ Appeal is taken up for final disposal at the admission stage itself.

3. The appellant is a minority higher secondary school which was established in the year 1920 initially as elementary school and upgraded as Middle School in the year 1960 and further upgraded as High School in the year 1978 and as Higher Secondary School in the year 1985. The appellant claims that in the High School there are 561 students and in the Higher Secondary School there are 189 students and totally there are 750 students studying from 6th to 12th standard. The appellant was granted temporary recognition which was periodically renewed once in three years. The last of such renewal was for a period from 01.06.2007 to 31.05.2010 vide proceedings of the second respondent, dated 16.11.2011 and 30.11.2011.

4. The appellant submitted a proposal for extension of temporary recognition for the period from 01.06.2010 to 31.05.2013 on 17.07.2010. Based on such proposal, the third respondent by his proceedings dated 31.12.2010 forwarded the application through the fourth respondent for necessary action. In turn, the fourth respondent, by his proceedings dated 29.01.2011 directed the appellant to produce the Building License Certificate and Building Plan Approval issued by the Municipal Corporation.

5. The appellant sent a reply to the third respondent stating that the production of Building License Certificate to use the building as public building will not be applicable to minority Institution and produced the Building Stability Certificate given by the Tirunelveli Corporation.

6. Pursuant to which, a show cause notice dated 19.07.2011 was issued to appellant by the first respondent calling for explanation as to why the recognition should not be cancelled for non-submission of proposal for the temporary recognition.

7. The appellant submitted their reply dated 29.08.2011 to the first respondent stating that the Rule 9(2)(a) of the TamilNadu



Recognised Private Schools (Regulation) Rules, 1974 will not be applicable for the Minority Institution and they referred and relied upon the proceedings of the Director of School Education in R.C.No.1524/G2/75, dated 17.04.1976.

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8. With these facts, the appellant/writ petitioner approached the Writ Court to direct the respondents to grant recognition for both the High School and Higher Secondary School for a period between 01.06.2010 to 31.05.2013 without insisting upon production of the Building License Certificate in the light of the direction issued by the Director of School Education, by his proceedings dated 17.04.1996.

9. The writ petition was filed in the year 2013. Though no interim order was granted, the School continued to be administered by the appellant and the students were permitted to take the examination. By the impugned order, the writ petition has been dismissed directing the petitioner to comply with Rule 9(2)(a) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. The appellant is before this Court contending that the Writ Court did not decide the legal issue as regards the applicability of the Rule 9(2)(a) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

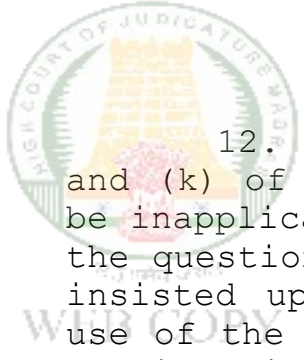
10. In this regard, we heard the learned counsel appearing on either side and carefully perused the materials placed on record.

11. Pursuant to the decision of the Division Bench of this Court, certain provisions of the Tamil Nadu Recognized Private Schools(Regulation) Act and Rules framed thereunder were held to be not applicable to minority institutions. By way of implementation of the said judgment, the Director of School Education issued proceedings dated 17.04.1976 by modifying the earlier instructions dated 17.04.1976. The relevant portion of the instructions pertaining to the various provisions of the Act which would be applicable/not-applicable is as follows:

"1. MINORITY SCHOOLS

The High Court of Judicature at Madras has disposed of all the writ petitions filed by the managements of aided private schools challenging the validity of certain provisions contained in the Tamil Nadu Recognised Private Schools (Regulation) Act and the rules framed thereunder. While disposing of the above writ petitions, the High Court of Judicature at Madras has held that the following sections and the rules thereunder are inapplicable in the case of minority institutions.

Section:- 8(1) (a), 11 (1) (b), 12 (1), 14 to 18, 21 (2), 22 to 26, 31 to 33, 39 (4), 41 to 45
Rules :- 7 9 except clauses (e) and (k) of sub-rules (2), 10 to 14, 16 to 18 and 22 to 24."



12. In terms of the above clarification except Rule 9 (2) (e) and (k) of the said Rules, the other sub Rules in Rule 9(2) would be inapplicable to the minority schools. In such circumstances, the question would be as to whether the third respondent could have insisted upon the petitioner to produce a licence permitting the use of the school building as public building under the Tamil Nadu Public Buildings (Licensing) Act, 1965 (Tamil Nadu Act 13 of 1965) and to produce structural stability certificate from the Engineers of Public Works Department / Chartered Engineers in accordance with the said Act. The answer to the question would be that if the provisions of Sub Rule 9(2) (e) (k) alone can be made applicable to the minority institutions, then obviously the Authorities cannot insist upon the appellant to comply with the provisions of Sub Rule 9(2) (a) of the Act. This does not mean that the appellant can be left free and they need not get any approval from the appropriate authority to show that the building is structurally stable to run an educational institution. This position has been taken care of by framing special Rule for Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. In terms of Rule 4 (4), the recognition of such minority institution under sub Rule (2), sub rule(3) and sub rule (4) shall be granted by the authority concerned within a period of two months from the date of receipt of application for such recognition, only after the requirement mentioned in Clause (i) to (v) are complied with. For the purpose of the case on hand, Clauses (i), (ii) and (iii) would be applicable, which are quoted herein:

"(4) (a) Recognition under sub-rule (2) or sub-rule (3) shall be granted by the authority concerned within a period of two months from the date of receipt of the application for such recognition, only if the following requirements are satisfied by the management, namely:-

(i) the amenities to Teachers and pupils should be adequate ;

(ii) the equipments, buildings, laboratory, library and playground and other facilities for imparting instruction are adequate ;

(iii) a structural stability certificate of the school building issued by the Executive Engineer of the Public Works Department and the sanitary certificate issued by the Health Officer of the locality should be enclosed with the application for recognition ;

(iv) the management should not appoint any Teacher whose certificate has been suspended or cancelled or who has been declared unfit to be a Teacher in recognised schools or who has been convicted for offences involving moral turpitude ;

(v) there should be economic strength prescribed by the Educational Department in all the standards ;"



13. According to the appellant, they have complied with the above requirements in terms of Rule 4(4)(a) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. In the light of the legal position, the Authority viz., the third respondent is required to consider the application made by the petitioner by applying the above referred Rule which is applicable to the Minority Institutions. Therefore, we are inclined to dispose of this appeal by issuing necessary directions.

14. In the light of the above discussion, the Writ Appeal is allowed and the impugned order passed in the Writ Petition is set aside and consequently there will be a direction to the third respondent to consider the appellant's application for grant of permission both for Higher School and Higher Secondary School by examining such application as to whether they fulfill the requirements prescribed under the provisions of Rule 4(4) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 and pass appropriate orders on merit and in accordance with law. The officers so nominated by the respondents are entitled to inspect the School and satisfy themselves as to whether it has complied with the statutory requirements, before taking decision on the said application. The competent Authority is directed to offer an opportunity of personal hearing to the Manager/Correspondent of the appellant School. The above directions shall be complied with by the respondents 3 and 4 within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-I)

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Sub Assistant Registrar

To

1. The Joint Director of School Education,
(Higher Secondary Education)
Chennai-6.

2. The Joint Director of School Education,
(Secondary Education)

Chennai-6.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.



4.The District Educational Officer,
Tirunelveli,
Tirunelveli District.

+1cc to SPECIAL GOVERNMENT PLEADER, SR NO:54098

+1 cc to M/S.AJMAL ASSOCIATES, SR.NO:53762

W.A (MD) No.436 of 2017
25.04.2017

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