



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2017

CORAM:

WEB COPY

**THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

W.A. (MD) No. 928 of 2017 and
C.M.P. (MD) No. 6254 of 2017

1. The State of Tamil Nadu
Rep by its Secretary
Department of School Education
St. Fort George, Chennai-600 009.
2. The Director of Elementary Education,
College Road,
Chennai 600 006.
3. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.
4. The Assistant Elementary Educational Officer,
Munchirai, Pudukkadam Post,
Kanyakumari District. : Appellants/Respondents

Vs.

The Correspondent,
St., Joseph's Middle School,
Eraviputhanthurai, Thoothoor post,
Kanyakumari District-629 176. : Respondent/Writ petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 24.11.2016 in W.P. (MD). No. 3094 of 2013.

Prayer in WP (MD). 3094/ 2013 :

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 records relating to the impugned order issued by the 2nd respondent Director of Elementary Education vide Na.Ka.No. 90/H2/2012 dated 12.06.2012, quash the same and further direct the respondents herein to forthwith sanction and disburse grant in aid viz., teaching grant and maintenance grant to the upgraded Middle School Sections of the petitioner's school as per the Government Norms in vogue.



For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader
For Respondent : Mr.K.Ragatheesh Kumar for
Mr.T.Cibi Chakraborty

WEB COPY

JUDGMENT

[Judgment of the Court was made by M.M.SUNDRESH, J.]

This Writ Appeal is directed against the learned Single Judge by which the impugned order passed by the second appellant is set aside with a direction to sanction grant-in-aid to the writ petitioner's middle school.

2.The learned Special Government Pleader appearing for the appellant would submit that in view of the judgment rendered in **TMA pai's case** reported in **2002 (8) SCC 481** and a judgment in **1999 (1) MLJ 635**, is not a fundamental right. Inasmuch as the respondent has given up his right and only on that condition, the recognition was granted and it is not open to it to contain to the contrary.

3.The learned counsel appearing for the respondent/writ petitioner would submit that though the position of law is correct, the judgment of the Division Bench is clear. So far as the violation of the Article 14 of the Constitution of India is concerned, inasmuch as the writ petitioner was discriminated as against the similarly placed minority institution. The order passed by the learned Single Judge does not warrant to interfere with.

4.Considering the submissions made by the learned counsel appearing for the respondent/writ petitioner, we permitted him to file an affidavit to that effect. Accordingly, an affidavit has been filed along with documents to show that other institutions similarly placed were given benefits.

5.We directed the learned Special Government Pleader would get instructions in this regard.

6.Today, when the matter is taken up for hearing, the learned counsel for the respondent/writ petitioner would submit that as per the Government Order passed in G.O.Ms.No13, School Education Department, dated 29.01.1998, certain institutions similarly placed like the respondent, being the minority one and having got the benefits in the year 1990-1991 and prior having been given the benefit. The learned counsel also submitted that even the respondent/writ petitioner shall also be given recognition for the academic year 1990-91. Therefore, the said benefits will be extended.

<https://hcservices.ecourts.gov.in/hcservices/>
7.The learned Special Government Pleader would submit that the said order passed, does not include the institution of the writ petitioner. The writ petitioner has not sought for benefit from the



year 1990 onwards. It is for the Government to consider the request and therefore, the appeal will not be allowed.

8. The appeal is filed by the Government along with other appellants. The fact that the respondent/writ petitioner herein similarly placed like that of the other institutions referred in the Government Order, dated 29.01.1998 passed in G.O.Ms.No.13, School Education Department, is not disputed. That is why the factual situation, the respondent cannot be denied with the benefit. Article 14 of the Constitution of India is both positive in nature. When the benefit is extended to the similarly placed person, the same cannot be denied to another and there is no dispute with respect to the classification made.

9. In such view of the matter, we do not find the ultimate decision arrived at by the learned Single Judge is wrong, though the principle on the right of the institution claimed grant-in-aid not withstanding the condition imposed may not be legally correct.

10. In such view of the matter, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
St.Fort George, Chennai-600 009.
 2. The Director of Elementary Education,
College Road, Chennai 600 006.
 3. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.
 4. The Assistant Elementary Educational Officer,
Munchirai, Pudukkadam Post,
Kanyakumari District.
- + 1 CC TO Mr.T.CIBI CHAKRABORTHY, ADVOCATE IN SR No. 75610

NS

TE/JC/SAR-II : 25/09/2017 : 3P/6C

JUDGMENT MADE IN
W.A. (MD) No.928 of 2017 and
C.M.P. (MD) No.6254 of 2017
30.08.2017