



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM:

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.(MD) No.4453 of 2015 and
M.P(MD).No. 1 of 2015

M. Ali Akbar : Petitioner

Vs.

1. State represented by its Secretary,
School Education Department,
Secretariat, Fort St. George,
Chennai.
2. The District Collector,
Collectorate, Thirunelveli.
3. The Chief Educational Officer,
CEO Office,
Thirunelveli
4. The District Elementary Educational Officer,
DEEO Office, Thirunelveli.
5. The Assistant Elementary Educational Officer,
Nursery Schools, DEEO Office,
Thirunelveli.

: Respondents

Prayer: This Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents 3 to 5 to grant approval to the petitioner's school by considering his resubmitted application dated 10.03.2015.

For Petitioner : Mrs.M.A. Jinnah

For Respondents : Mr. A. Muthukaruppan

Additional Government Pleader

O R D E R

The petitioner seeks for a mandamus directing the respondents 3 to 5 to grant approval to the petitioner's school by considering his application, dated 10.03.2015.



2. The grievance of the petitioner is that the respondents 3 to 5 are insisting upon the petitioner to produce No Objection Certificate from the existing nearby schools for granting No Objection Certificate to the petitioner to run the Nursery and Primary Schools.

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3. A counter affidavit is filed by the fourth respondent reiterating the fact that they insisted for production of No Objection Certificate from the nearby schools, which the petitioner failed to produce.

4. The learned counsel appearing for the petitioner submitted that the production of such certificate is not at all warranted and such issue has already been considered by this Court and decided against the official respondents. He has also produced the copy of the order made in W.P(MD).No.8266 of 2014 dated 25.06.2014, wherein the very same issue was considered by this Court at Paragraph Nos. 5 to 8 it has been observed as follows:-

"5. The petitioner is running a school and seeking for approval from the first respondent. The issue involved in this case is as to whether a No Objection Certificate is required from the fourth respondent School, for granting approval to the petitioner's school. The said issue is no more integra in view of the earlier decisions made by this Court reported in 2006(4) MLJ 1337 (In M. Andiappan Vs. State of Tamil Nadu rep. by its Secretary, Education Department, Chennai and Others) and 2008 Vol 1 MJ 188 (In Mangaiyarkarasi Aided Middle School rep by its Manager and Correspondent, Sundaresapuram, Perambalur District Vs. Director of School Education, Chennai and Others).

6. In 2006 (4) MLJ 1337, the learned single Judge of this court has considered the very same issue and found at paragraph Nos. 12 to 14 as follows:

"12. As rightly argued by the learned counsel appearing for the 7th respondent, the 7th respondent School being a minority school, no permission need be obtained, which is made clear in Section 9 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Act 29 of 1974), which reads thus:

Minority school to be established without permission-Any minority whether based on religion or language may establish and administer any private



school without permission under section 6"

Further, the recognition of minority schools are governed by the Tamil Nadu Minority Schools (Recognition & payment of Grant) Rules, 1977. Particularly as per Rule 4(4), the Department is bound to grant recognition as per the order of this Court dated 20.10.1981 made in W.P.NO.4284 of 1979 (Roman Catholic Diocese of Palayamkottai V. Director of School Education, Madras and Another), as confirmed by the Division Bench in W.A.No.81 of 1982 by judgment dated 08.09.1988.

13. The Honourable Supreme Court in the decision in Mark Netto Vs. Government of Kerala AIR 1979 SC 83 : 1979(1) SCC 23 held that getting prior permission from the Department for starting a minority school is not required and any order passed to that effect shall be bad and invalid and must be quashed.

14. The right of the minorities to establish and administer educational institutions of their choice is fully protected under Article 30(1) of the Constitution of India. The writ petitioner, who is running rival school cannot maintain this writ petition both on the ground of locus standi and that he has no legal right to pray for mandamus seeking directions to the respondents 1 to 6 not to grant permission to the 7th respondent for shifting his school."

7. In 2008 Vol 1 MLJ 188 (In Mangaiyarkarasi Aided Middle School rep by its Manger and Correspondent, Sundaresapuram, Perambalur District Vs. Director of School Education, Chennai and Others) it has been held as follows:

"Even according to the petitioner, the proposal of the fifth respondent has been returned by the respondents 1 to 4 and the fundamental right of the fifth respondent, i.e. to establish its school and run the same, has to be considered by the authorities concerned in the light of the provisions of the Act and Rules. A competitor in the business cannot prevent the Correspondent of a particular school from exercising his right to carry on business merely on the ground that there will be some likelihood of some disturbance to him."

<https://hcservices.ecourts.gov.in/hcservices/> 8. Therefore, there is no necessity for the petitioner to get No Objection Certificate from the fourth respondent school in view of the categorical



pronouncements made by this Court in 2006 (4) MLJ 1337 and 2008 Vol 1 MLJ 188 in respect of the vert same issue as extracted supra."

5. This Court finds that the issue involved in this case is squarely covered by the above said decision in favour of the petitioner. Following the above said decision, this Writ Petition is allowed and the respondents are directed to consider the representation of the petitioner seeking for approval without insisting upon No Objection Certificate from nearby school. Such exercise shall be done by the respondents 3 to 5 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1. State represented by its Secretary,
School Education Department,
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Thirunelveli.

+1 cc to MR.S.M.A.JINNAH, Advocate SR.No.676
+1 cc to Special Government Pleader SR.No.842

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