



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P.[MD].No.4374 of 2017

Kumari Maha Sabha,
Through its Secretary
Jeyakumar Thomas

: Petitioner

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Human Resources Development,
124-C, Shastri Bhawan,
New Delhi.
2. The Joint Secretary (SE-I),
Department of School Education and Literacy,
Ministry of Human Resources Development,
124-C, Shastri Bhawan,
New Delhi.
3. The Chairman,
Navodaya Vidyalaya Samiti,
Ministry of Human Resources Development,
Department of School Education and Literacy,
B-15, Institutional Area,
Section-62, Noida,
Gautam Budh Nagar-201 307, Uttar Pradesh.
4. The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Secretariat,
Fort St. George,
Chennai-9.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to establish Jawahar Navodaya Vidyalayas in each district of Tamil Nadu by considering the representation dated 16.08.2016 within a stipulated period as prescribed by this Court.



For Petitioner : Mr.S.M.Anantha Murugan
For Respondents 1to3 : Mr.R.Murugappan,
Senior Panel Counsel for Central Government
For Respondent No.4 : Mr.B.Pugalendhi,
Additional Advocate General,
Assisted by Mr.M.Govindan,
Special Government Pleader

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

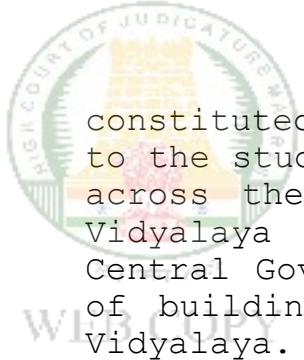
INTRODUCTORY:

The Government of Tamil Nadu, without making any attempt to ascertain as to whether Tamil is a compulsory subject upto VIII Standard in Jawahar Navodaya Vidyalayas, took a policy decision not to permit opening the Navodaya Schools across the State. Even after making the position very clear by the Central Government and the Navodaya Vidyalaya Samiti that Tamil would be taught upto VIII Standard as a compulsory subject and thereafter, it would be offered as an additional/optional subject, the State is still reluctant to lift the ban on the ground that it is a highly sensitive issue. The right of the students to choose the pattern of education is curtailed by the State by imposing a blanket ban on opening Navodaya Vidyalayas in the State. Since the policy decision taken by the State to ban the opening of Navodaya Vidyalayas in the State of Tamil Nadu would violate the right of the children to join the Educational Institution of their choice and the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011, this Court is constrained to examine the validity of the policy and more particularly, in the light of the medium of instruction, subject and the curriculum followed by the Navodaya Vidyalayas, giving primacy to the local Language.

THE FACTS:

2. The petitioner filed this Writ Petition in *pro bono publico* for issuance of a Writ in the nature of a Writ of Mandamus, directing the State of Tamil Nadu to permit establishment of Jawahar Navodaya Vidyalayas in all the Districts across the State of Tamil Nadu in larger public interest.

3. According to the petitioner, the Tamil Nadu Government is not permitting the establishment of Jawahar Navodaya Vidyalayas in the State on a mistaken impression that such Vidyalayas would impose Hindi and it would not be in the interest of the people of the State. It is the contention of the petitioner that in all other States, Jawahar Navodaya Vidyalayas were established with the funds provided by the Jawahar Navodaya Vidyalaya Samiti, which is a body



constituted by the Central Government for imparting better education to the students. Navodaya Vidyalayas are located in the rural areas across the country. The only condition for establishing Navodaya Vidyalaya is that the State must provide land free of cost. The Central Government would sanction necessary amount for construction of building and other infrastructure facilities for the Navodaya Vidyalaya. The petitioner further contended that on account of the indifferent attitude of the State of Tamil Nadu, Navodaya Vidyalayas are not established in the State.

4. The fourth respondent filed a counter-affidavit contending that there are sufficient Schools in the State of Tamil Nadu to cater to the needs of the children and as such, there is no need for establishment of Navodaya Vidyalayas in the State. The fourth respondent further contended that Navodaya Vidyalayas follow the three languages formula, namely regional language, English and Hindi. The medium of instructions in all the Navodaya Schools will be the mother tongue upto VII Standard and thereafter, the common medium of instruction will be Hindi language. According to the fourth respondent, the State of Tamil Nadu has been following the pattern of two languages formula namely, Tamil and English. It was further contended that the third language introduced under Part-IV of the Tamil Nadu Tamil Learning Act, 2006, is only optional and not compulsory. In short, it is the contention of the Government of Tamil Nadu that the Government has taken a policy decision to adopt two languages formula in all the Schools across the State consequent to the enactment of the Tamil Nadu Tamil Learning Act, 2006.

SUBMISSIONS:

5. The learned counsel for the petitioner contended that the Government of Tamil Nadu, without ascertaining the factual position that the medium of instructions from Classes VI to VIII in Navodaya Vidyalaya is the regional language of the district where the Vidyalaya is located, took a policy decision to ban the entry of Navodaya Vidyalayas in the State. The State banned the establishment of Navodaya Vidyalayas on a mistaken impression that the Hindi would be imposed on the local students. According to the learned counsel, Navodaya Vidyalayas would be established in rural areas and the same would promote the under-privileged children.

6. The learned Additional Advocate General opposed the Writ Petition primarily on the ground that in view of the adoption of two languages formula by the State and the related policy, it would not be possible to establish Navodaya Vidyalayas in the State.

DISCUSSION:

7. The only question that arises for consideration is as to whether the establishment of Jawahar Navodaya Vidyalaya across the State would violate the policy adopted by the Government and the provisions of the Tamil Nadu Tamil Learning Act, 2006.



8. The Government of Tamil Nadu enacted the Tamil Nadu Tamil Learning Act, 2006. The Act provides that the Tamil shall be taught as a subject in Standards I to X in all Schools in a phased manner commencing from the academic year 2006-2007. The pattern of education shall be as follows:

- "Part - I Tamil (Compulsory)**
Part - II English (Compulsory)
Part - III Other Subjects (Mathematics, Science, Social Science, etc.)
Part - IV Students who do not have either Tamil or English as their mother tongue can study their mother tongue as an optional subject."

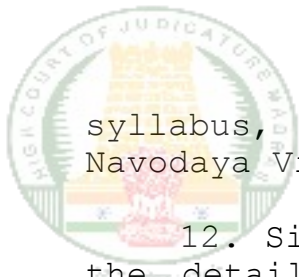
9. The Government of Tamil Nadu, in exercise of the power under Section 2 of the Tamil Nadu Tamil Learning Act, 2006, took a policy decision and issued an order in G.O.(Ms).No.145, School Education (ERT) Department, dated 18 September, 2014, to the effect that the Tamil shall be taught as a subject in Standards I to X in all Schools notified under Sub-Clause (iv) of Clause (e) of Section 2 of the Tamil Nadu Tamil Learning Act, 2006, in a phased manner commencing from the academic year 2015-2016 for Standard I, from the academic year 2016-2017 for Standards I and II and shall be extended upto Standard X in a like manner as indicated below:

From the Academic Year	For Standards
2015-2016	I
2016-2017	I & II
2017-2018	I, II & III
2018-2019	I, II, III & IV
2019-2020	I to V
2020-2021	I to VI
2021-2022	I to VII
2022-2023	I to VIII
2023-2024	I to IX
2024-2025	I to X

10. Though there was a public demand for establishment of Navodaya Vidyalayas across the State, the State was not prepared to accede to the demand on account of enacting the Tamil Nadu Tamil Learning Act, 2006 and the Government Order in G.O.(Ms).No.145, School Education (ERT) Department, dated 18 September, 2014.

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11. The State blindly opposed the establishment of Navodaya Vidyalayas in the State of Tamil Nadu without ascertaining the



syllabus, curriculums or medium of instruction followed by the Navodaya Vidyalaya Samiti.

12. Since there was no material before this Court, to ascertain the details of the curriculum, subject, medium of instructions, etc., followed by Navodaya Vidyalaya Samiti, we directed the learned Senior Panel Counsel appearing on behalf of the Central Government and Navodaya Vidyalaya Samiti to take instructions.

13. The Chairman, Navodaya Vidyalaya Samiti, pursuant to our order dated 03 August, 2017, deputed the Principal, Jawahar Navodaya Vidyalaya, Pondicherry, to appear before us and explain the syllabus followed by Navodaya Vidyalayas.

14. This Court, taking into account the submission made by the Principal, Jawahar Navodaya Vidyalaya and the Ministry of Human Resources Development, passed the following order on 29 August, 2017:

"The petitioner, Kumari Maha Sabha, Nagercoil, Kanyakumari District filed this writ petition in pro bono publico to direct the State of Tamilnadu to establish Jawahar Navothaya Vidyalayas in each district of Tamilnadu by considering the representation, dated 16.08.2016.

2. The plea made by the petitioner for establishing Navothaya Vidyalayas was opposed by the State on the ground that Section 3 of Tamilnadu Tamil Learning Act, 2006, provides that Tamil shall be taught as a subject in standards 1 to 10 in all schools, in a phased manner, commencing from the Academic year 2006- 2007. The State was under the impression that in the Navothaya Vidyalaya Schools, Tamil would not be taught in standards 1 to 10 and that appears to be the reason for opposing the prayer made by the petitioner for establishing Jawahar Navothaya Vidyalayas across the State.

3. Since the State took up a position that in view of the Tamilnadu Tamil Learning Act, 2006, it would not be possible for the establishment of Navothaya Vidyalayas in the State of Tamilnadu, we directed Mr.R.Murugappan, learned Senior Panel Counsel appearing for the respondents 1 to 3 to take instructions from the Ministry of Human Resources Development and the Chairman of Navothaya Vidhyalayas as to whether it would be possible to make Tamil as a compulsory subject, up to 10th Standard, taking into account the fact that up to 8th Standard as per the present syllabus followed by Navothaya Vidhyalayas, the students can take mother tongue as medium of instruction or regional language.



4. When the writ petition was taken up for hearing today, Mr.R.Murugappan, learned Senior Panel Counsel submitted that pursuant to the instructions given by the Chairman of Navodaya Vidyalaya Samiti, Human Resources Development, Mr.Venkateswaran, Principal, Jawahar Navodaya Vidyalaya, Puducherry is present in the Court today.

5. The Principal informed us by producing the copies of the mark lists of certain students, who have completed 10th Standard from Navothaya Vidhyalaya, Puducherry that Tamil is a compulsory subject in Navothaya Vidhyalayas up to 10th Standard and it is optional for 11th and 12th Standard. According to the Principal, the medium of instruction is Tamil up to 8th Standard taking in to account the local language.

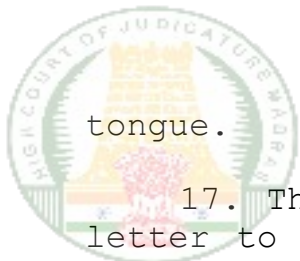
6. The information now furnished by the Principal on behalf of Navothaya Vidhyalaya Samithi indicates that the syllabus followed by the Navothaya Vidyalayas is in tune with Section 3 (1) of Tamilnadu Tamil Learning Act, 2006 and as such *prima facie*, there is no basis in the apprehension raised by the State.

7. The learned Additional Advocate General appearing for the State seeks time to take further instructions from the Government.

Post the writ petition on 04 September 2017, under the caption 'for orders'."

15. The State Government, even after furnishing the information by the Navodaya Vidyalaya Samiti and the Ministry of Human Resources Development that Tamil is compulsory subject in Navodaya Vidyalayas upto X Standard and it is optional for XI and XII, took no further action to submit its views. We adjourned this matter on several occasions, so as to enable the State to consider the feasibility of establishing Navodaya Vidyalayas, taking into account the information furnished by the Central Government and the Navodaya Vidyalaya Samiti that there would not be any attempt to impose Hindi.

16. The matter was periodically adjourned even after posting it for orders, so as to enable the State Government to take a decision in the matter. In the meantime, we directed the Department of School Education and the Ministry of Human Resources Development to file written response with regard to the medium of instruction and language offered in the Jawahar Navodaya Vidyalayas across the country and in particular, in the Jawahar Navodaya Vidyalays functioning in the State of Pondicherry, where Tamil is the mother



tongue.

17. The Under Secretary to the Government of India addressed a letter to the learned Senior Panel Counsel for Central Government, dated 06 September, 2017, containing the information required by this Court. The text of the letter would read thus:

"(i) In the Jawahar Navodaya Vidyalayas, the medium of instruction from classes VI to VIII is the Regional Language of the district where the Vidyalaya is located. Children in the JNVs also study Regional Language as First Language.

(ii) In classes IX to X, the children study the Regional Language as the 1st language, English as the 2nd language and the language linked with the migrated school as the 3rd language.

(iii) As per the migration policy followed in the Navodaya Vidyalayas 30% of IX class children from one linguistic area are migrated, for 1 year, to a school in another linguistic area. Normally the migration takes place between JNVs in Hindi speaking area to NJVs in Non Hindi speaking area. Therefore, all children study the language of the school of migration linkage as the third language.

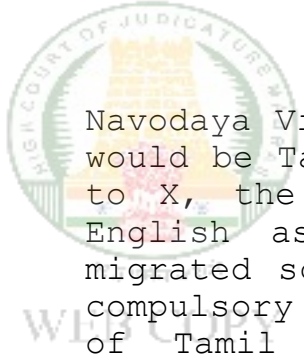
(iv) In classes XI and XII, English is the only compulsory language in the JNVs and Regional Language is offered as an additional/optional subject.

(v) Having regard to the above, the students of classes VI to VIII of JNV, Puducherry have Tamil as the medium of instruction. They also study Tamil as First language. In classes IX & X, the students learn Tamil as the 1st language, English as the 2nd language and Hindi as the 3rd language. For classes XI and XII, English is the only compulsory language in the JNV and Tamil is offered as an additional/optional subject."

18. The Tamil Nadu Tamil Learning Act, 2006 provides that the pattern of education shall be Tamil which is a compulsory subject. Part II which is English shall also be a compulsory subject. The other subjects, like Maths, Science, Social Science are also compulsory. Part-IV of the pattern permits the students, who do not have either Tamil or English as their mother tongue, to study their mother tongue as an optional subject. The Government Order in G.O. (Ms).No.145, School Education (ERT) Department, dated 18 September, 2014, also proceeds on the very same line. The primary reason for enacting the Act 13 of 2006 and the policy found in G.O.(Ms).No.145, School Education (ERT) Department, dated 18 September, 2014, is to make Tamil as a subject in Standards I to X in all the Schools across the State.

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19. The information furnished by the Ministry of Human Resources Development very clearly indicates that in the Jawahar



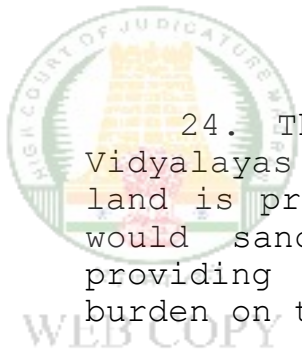
Navodaya Vidyalayas, medium of instructions from Classes VI to VIII would be Tamil in the State of Tamil Nadu. Similarly, in Classes IX to X, the children would study Tamil as the first language and English as the second language. The language linked with the migrated school would be the third language. The English is the compulsory language in Classes XI and XII and insofar as the State of Tamil Nadu is concerned, Tamil would be offered as an additional/optional subject being the regional language.

20. The Ministry of Human Resources Development referred to the pattern followed in the Navodaya Vidyalayas in Pondicherry and Karaikkal where the regional language is Tamil. In the Navodaya Vidyalaya at Pondicherry, students of Classes VI to VIII have Tamil as the medium of instruction. They also study Tamil as the first language. In Classes IX and X, students learn Tamil as the first language and English as the second language. Similarly, English is the only compulsory language in the Jawahar Navodaya Vidyalaya, Pondicherry, where Tamil is offered as an additional/optional subject.

21. The medium of instruction and languages prescribed by the Jawahar Navodaya Vidyalaya Samiti would not in any manner violate the provisions of the Tamil Nadu Tamil Learning Act, 2006 or the policy of the Government indicated in the Government Order in G.O. (Ms).No.145, School Education (ERT) Department, dated 18 September, 2014.

22. The Parliament enacted the Right of Children to Free and Compulsory Education (Amendment) Act, 2012, to recognize the right of children to free and compulsory education. The Parliament, by 86th Amendment to the Constitution of India, inserted Article 21-A providing free and compulsory education. The education is now a fundamental right for all the children in the age group of 6 to 14. This historic legislation came into force on 1st Day of April, 2010. The Act would help the students of backward, hilly and remote areas to avail free and compulsory education. The Act provides that no child should be denied admission in the Educational Institutions.

23. The Government of Tamil Nadu, in exercise of the powers conferred under Sub-Section (1) of Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, made the rules in the name and style of 'Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011'. The rule contain the steps to be taken by the State Government or the local authority for establishment of Schools, free transportation and residential facilities, in case it is not possible to establish the school within such areas. In view of the subsequent developments and more particularly, the enactment of the Right of Children to Free and Compulsory Education Act, 2009 and the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011, the State cannot be heard to say that the Schools of the choice by the students would not be opened in the State.



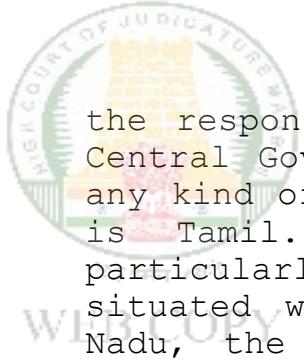
24. The Central Government would establish Jawahar Navodaya Vidyalayas across the State in each district, in case 30 Acres of land is provided by the State free of cost. The Central Government would sanction Rs.20 Crores for construction of building and providing other infrastructure facilities. There is no financial burden on the State on account of opening Navodaya Vidyalayas.

25. We are informed by the Principal, Jawahar Navodaya Vidyalaya, Puducherry, who is present in Court today that pursuant to the directions issued by this Court, that entrance examination for admission to the Course would be in the first week of January of the year proceeding the academic year. According to the Principal, there is no need for acquiring 30 Acres of land at the first instance and it would suffice if a temporary site and building to accommodate 240 children is provided by the State. The temporary accommodation can be used for a period of three years and the necessity to have a permanent structure along with the land would arise only from the fourth year onwards. In short, in case the State Government allots 30 Acres of land in each of the Districts, necessary infrastructure would be provided by the Central Government by sanctioning Rs.20 Crores per institution per District.

26. The State, by taking a policy decision not to establish Navodaya School across the State, virtually denied the students their right to join an Educational Institution of their choice, taking into account the syllabus and medium of instruction.

27. The policy decision taken by the State of Tamil Nadu to ban the establishment of Private Law Colleges in the State of Tamil Nadu came up for consideration before the First Bench of this Court in **Advocates' Forum for Social Justice v. State of Tamil Nadu [2016(6) CTC 113]**. The Division Bench presided over by His Lordship MR.JUSTICE SANJAY KISHAN KAUL [as His Lordship then was], quashed the policy. The Division Bench held that the direct and inevitable effect of the present legislation is the resultant prohibition of opening of any Law College for all period of future time, thus, directly impinging the rights conferred under Article 19(1)(g) of the Constitution of India. The Division Bench further held that the right to impart education and set up Educational Institutions is a fundamental right protected under Article 19(1)(g) of the Constitution of India, of course, subject to the check of any reasonable restriction as envisaged under Article 19(6) of the Constitution of India.

28. The State, by issuing the Government Order, prohibited the opening of Navodaya Vidyalayas even by providing infrastructure facilities by the Central Government. The requirement for establishing the Navodaya Vidyalaya is only 30 Acres of land. The land would be available only in the rural areas. Therefore, the ultimate beneficiaries would be the rural students. There is no need for payment of substantial fee for admission to the Navodaya Vidyalayas. The Central Government is providing the entire funds and



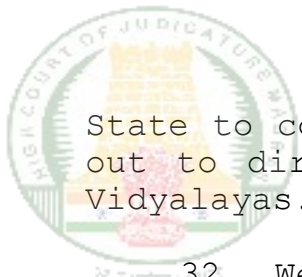
the responsibility of the State is only to provide the land. The Central Government has made it very clear that there would not be any kind of imposition of Hindi on the students whose mother tongue is Tamil. In the Union Territory of Pondicherry and more particularly, in the region of Pondicherry and Karaikkal, which is situated within the geographical division of the State of Tamil Nadu, the Tamil speaking students welcomed the establishment of Navodaya Vidyalayas. The Union Territory of Pondicherry provided the required land. The students whose mother tongue is Tamil are undergoing education by joining the Navodaya Vidyalayas. However, for the reasons best known, in spite of making the position very clear that the Tamil would be the compulsory subject upto VIII Standard and in IX to X, it would be offered as the first language and, thereafter, upto XII, it would be offered as an additional/optional subject, the State is not permitting the establishment of Navodaya Vidyalayas across the State. There is no rational in the decision taken by the State to oppose the establishment of Navodaya Vidyalayas. There is no point in prohibiting the establishment of the Schools which would be in a position to impart education to the students, so as to enable them to compete in the NEET and join the Professional Courses. In fact, the information furnished by the Navodaya Vidyalayas indicates that 14,183 Navodaya students appeared for NEET Examination and out of them, 11,875 students qualified for admission to the Professional Courses. We are informed that 7,000 students got admission for M.B.B.S. Course, during the first counselling itself.

29. The Principal, Jawahar Navodaya Vidyalaya, Pondicherry, in fact, informed us that in the district of Rewa in Madhya Pradesh, presence of mother tongue is Tamil and taking into account the presence of students whose mother tongue is Tamil, Navodaya Vidyalaya Samiti appointed Tamil teachers to give them education in Tamil. This clearly shows that Navodaya Vidyalaya Samiti has been taking every effort to promote the local language and particularly, Tamil. The spirit shown by the Navodaya Vidyalaya Samiti should inspire the State of Tamil Nadu to change its views in larger public interest. The State should come up with new ideas and should reconsider its decision taken earlier, in case it is subsequently made out that the revision in the policy would help the students, especially, the rural students of the State. In case this Vidyalaya is established in all the 32 Districts across the State, it would benefit the rural students and they would be in a position to compete in the entrance/professional examinations and more particularly, in NEET.

30. The materials available on record clearly indicates that the establishment of Navodaya Vidyalayas would not in anyway violate the provisions of the Tamil Nadu Tamil Learning Act, 2006 and the policy of the Government indicated in G.O.(Ms).No.145, School Education (ERT) Department, dated 18 September, 2014.

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31. The next question is as to whether we should direct the



State to consider the matter afresh or as to whether a case is made out to direct the State to permit the establishment of Navodaya Vidyalayas.

32. We have adjourned the matter time and again even after ascertaining the factual position from the Navodaya Vidyalaya Samiti that the Tamil shall be the compulsory subject upto VIII Standard and in IX to X, it would be offered as the first language and, thereafter, upto XII, it would be offered as an additional/optional subject. The Writ Petition was adjourned on several occasions by giving time to the State to take a decision. However, the State failed to take action presumably on the ground that certain political parties are against Navodaya Vidyalayas, as they apprehend that the establishment of such Vidyalayas would promote Hindi to the detriment of the language "Tamil". There is absolutely no basis in the said apprehension. In fact, Navodaya Vidyalayas would promote Tamil and the same would benefit the rural students and more particularly, the under-privileged and downtrodden children. We are, therefore, of the view that a direction should be given to the State to permit the establishment of Navodaya Vidyalayas in Tamil Nadu.

DIRECTION:

33. We, therefore, issue a Writ and more particularly, in the nature of a Writ of Mandamus, directing the State of Tamil Nadu to establish Jawahar Navodaya Vidyalayas in all the districts across the State. To begin with, the State should identify appropriate place and building for establishing Navodaya Vidyalayas. Thereafter, the State should allocate suitable land in every district for establishing the Navodaya Vidyalayas. The Central Government shall establish Navodaya Vidyalayas immediately thereafter. The Central Government shall sanction necessary funds for construction of building and providing other infrastructure facilities. Since the admission process would commence during the first week of January, 2018 for the academic year 2018-2019, we direct the State to provide a temporary site and building to accommodate 240 children in each of the Districts within a period of two months from the date of receipt of a copy of this order.

34. The Writ Petition is allowed as indicated above. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary,
The Union of India,
Ministry of Human Resources Development,
124-C, Shastri Bhawan,
New Delhi.
 2. The Joint Secretary (SE-I),
Department of School Education and Literacy,
Ministry of Human Resources Development,
124-C, Shastri Bhawan,
New Delhi.
 3. The Chairman,
Navodaya Vidyalaya Samiti,
Ministry of Human Resources Development,
Department of School Education and Literacy,
B-15, Institutional Area,
Section-62, Noida,
Gautam Budh Nagar-201 307, Uttar Pradesh.
 4. The Principal Secretary,
State of Tamil Nadu,
Department of School Education,
Secretariat,
Fort St. George,
Chennai-9.
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 78338
+ 1 CC TO Mr.S.M.ANANTHA MURUGAN, ADVOCATE IN SR No. 77901
+ 1 CC TO Mr.R.MURUGAPPAN, ADVOCATE IN SR No. 77871

SML

TE/KK/SAR-I : 05/10/2017 : 12P/8C

Order made in
W.P.[MD].No.4374 of 2017
Dated:11.09.2017