



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.05.2017

CORAM:

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THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**W.P.(MD)No. 9848 of 2017andW.M.P(MD)Nos.7546 to 7549 of 2017

The Correspondent,
Fathima Nursery and Primary School,
682/19, Deevu Street, Kayalpattinam,
Thoothukudi District.

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District.

2.The District Education Officer,
Thoothukudi District.

3.The District Elementary Education Officer,
Thoothukudi District.

4.Assistant Elementary Education Officer,
Nursery and Primary Schools,
Thoothukudi,
Thoothukudi District.

5.The Assistant Elementary Education Officer,
Thiruchendur,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the orders passed by the respondents 1 to 3 in NA.KA.No.853/A4/2014 dated 13.04.2015 and 06.04.2016 and quash the same as illegal and consequently directing the respondents 1 to 3 and consider the petitioner's representation dated 06.05.2017 for granting approval to the petitioner's school namely Fathima Nursery and Primary School, 682/19, Deevu Street, Kayalpattinam, Thoothukudi District.

For Petitioner

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

For Respondents

: Mr. Sankara Subbu

for Mr.M.Seeni Sulthan

: Mr. T.R.Janarthanan,
Additional Government Pleader

**ORDER**

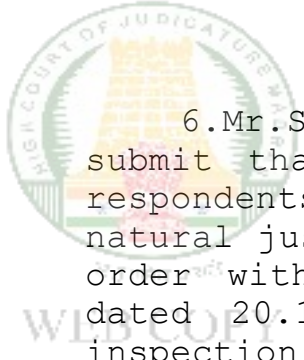
This writ petition has been filed by the petitioner challenging the impugned order passed by the respondents 1 to 3 in NA.KA.No.853/A4/2014 dated 13.04.2015 and 06.04.2016 and seeking the consequential direction to the respondents 1 to 3 to consider the petitioner's representation dated 06.05.2017 for granting approval to the petitioner's school, namely, Fathima Nursery and Primary School, 682/19, Deevu Street, Kayalpattinam, Thoothukudi District.

2.I heard Mr.Sankara Subbu, learned counsel appearing for the petitioner and Mr.T.R.Janarthanam, learned Additional Government Pleader takes notice for the respondents. By consent, this writ petition is taken up for final disposal.

3.The case of the petitioner is that the petitioner school was started and run by the elder brother of their father, namely, A.K.Sahul Hameed in the year 1975 and after his demise the school was run by the petitioner's father, namely, A.K.Syed Ahamed till 1996 and thereafter, the school has been run by the petitioner with the help of his kiths and kinds.

4.It is the further case of the petitioner that the building of the school was constructed in the year 1964 with ground floor and first floor. There are totally twenty class rooms and each ten rooms in the ground floor and first floor. In the year 1964, three class room in the ground floor alone were rented out for running Thiruchendur Panchayat Union School. At present the said panchayat Union school is running in the three class rooms in the ground floor of the petitioner's school and the remaining 17 class rooms are used for the purpose of running the petitioner's school, namely, Fathima Nursery and Primary School.

5.In such circumstances, the fifth respondent inspected the petitioner's school on 11.08.2014 and instructed to get approval. But the same was not complied with as the petitioner was under Medical Treatment. In such circumstances, all of sudden the respondents 1 to 3 passed an order dated 13.04.2015 whereby refused for approval to run the school and also to close down the same on certain reasons. Immediately, the petitioner rectified the defects and sent a representation to the respondents 3 and 4 on 20.10.2015. However, without considering the said representation, the respondents 1 to 3 passed a common order dated 06.04.2016 to close down and seal the petitioner's school. Thereafter, the petitioner has made a representation to the first respondent on 11.04.2016 and 06.05.2017 for grant of approval. <https://hcservices.courts.gov.in/hcservices/> Application has been taken. Therefore, the petitioner has come before this Court with the relief cited supra.



6.Mr.Sankarasubbu, learned counsel for the petitioner would submit that the impugned order dated 06.04.2016 passed by the respondents 1 to 3 is illegal and violation of principles of natural justice. The respondents mechanically passed the impugned order without considering the representation of the petitioner dated 20.10.2015 and also without conducting any enquiry and inspection, therefore, the impugned order is liable to be set aside. Further, the learned counsel submits that the respondents failed to consider that the petitioner's school is a minority institution and the same is protected by the Article 30(I) of Constitution of India. The respondents failed to consider that after the impugned order dated 13.04.2015, the petitioner set right all the defects as alleged by the respondents 1 to 3 and the petitioner shifted the L.K.G, U.K.G and First Standard classes to ground floor and facilitated seven toilet rooms for the use of students and staff and earmarked two bits of lands measuring about 1100 sq.ft and 900 sq.ft. for play grounds of students. Therefore, the impugned order has to be set aside.

7.The learned Additional Government Pleader appearing for the respondents would submit that the representation of the petitioner dated 11.04.2016 and 06.05.2017 are still pending before the first respondent and it will be considered on merits and in accordance with law.

8.It is seen from the records that after the impugned order dated 13.04.2015, the petitioner set right all the defects as alleged by the respondents 1 to 3 and thereafter, the petitioner sent representations to the first respondent on 11.04.2016 and 06.05.2017 for grant of approval. But till date the first respondent has not passed any order.

9.Considering the facts and circumstances of the case that the petitioner after the impugned order dated 13.04.2015 has rectified the defects and the impugned order is liable to be set aside.

10.In the result:

(a) this writ petition is allowed and the impugned order in NA.KA.No.853/A4/2014 dated 13.04.2015 and 06.04.2016, is set aside;

(b) the matter is remanded back to the first respondent / District Collector to pass fresh orders, by giving personal opportunity to the petitioner;

(c) the said exercise shall be completed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order;

At all such time, the respondents are directed to permit the petitioner to run the school.



11. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Thoothukudi District.
2. The District Education Officer,
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3. The District Elementary Education Officer,
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4. Assistant Elementary Education Officer,
Nursery and Primary Schools,
Thoothukudi,
Thoothukudi District.
5. The Assistant Elementary Education Officer,
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Thoothukudi District.

+1cc to M/S.M.Seeni Sulthan, Advocate SR.No. 57482
+1cc to Special Government Pleader, SR.No. 57924

W.P. (MD) No. 9848 of 2017
and
W.M.P (MD) Nos. 7546 to 7549 of 2017
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