

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.Nos.13767 and 13768 of 2015 and
M.P.Nos.1 and 2 in both W.Ps.

Vidyavanam
(A Unit of Bhuvana Foundation
A Registered Public Charitable Trust)
having Office at
Thoovaipath Road,
Annaikatty,
Coimbatore-641 108
rep. by its Director Mrs.Prema Rangachary ... Petitioner in both W.Ps.

vs.

1. The Director of School Education,
DPI Campus, Chennai-6.
2. Chief Educational Officer,
Town Hall,
Coimbatore-641 001.
3. State of Tamil Nadu
rep. by its Educational Secretary,
School Education Department,
Fort St. George, Chennai-9. ... Respondents in both W.Ps.

PRAYER in W.P.No.13767/2015: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent bearing Impugned Order Na.Ka.No.15519/G1/E1/2014 dated 07.04.2015 and quash the same and direct the 1st respondent to consider the petitioner's Application dated 15.11.2010 afresh under due procedure of Law.

PRAYER in W.P.No.13768/2015: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent bearing Impugned Order Na.Ka.No.15519/G1/E1/2014 dated 07.04.2015 and quash the same and direct the 1st respondent to consider the petitioner's Application dated 28.10.2014 afresh under due procedure of Law.

For Petitioner : Mr.K.Harishankar

For Respondents : Mr.S.T.S.Moorthy,
Additional Advocate General
assisted by Mr.A.Rajaperumal,AGP

COMMON ORDER

The Writ Petitions are filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order dated 07.04.2015 passed by the first respondent and further to direct the first respondent to consider the petitioner's applications dated 15.11.2010 and 28.10.2014 afresh under due process of law. The petitioner is a Trust. It has established a school for the welfare of tribal and under-privileged children in Anaikatty, a tribal area.

2.By the impugned order dated 07.04.2015, the application submitted by the petitioner for getting a No Objection Certificate was rejected on the ground that the school has not obtained Building Plan permission and Plan Approval from the Local Planning Authority and that as per G.O.Ms.No.131 dated 10.08.2006, the

school should have compound wall and that "No Objection Certificate" could not be issued unless the compound wall is constructed surrounding the school.

3.From the events narrated in the affidavit, it can be seen that under one pretext or other, the petitioner Trust was not given No Objection Certificate by the competent authority for more than four years despite the fact that the school was established with all infrastructural and institutional facilities to cater to the need of Tribal and underprivileged children in Anaikatty and neighbouring villages. It is stated that the school has been set up by a group of philanthropists with the aim and object of providing standard education to the tribal and underprivileged children in Anaikatty and neighbouring villages. It is stated that at present, there are 350 students and nearly 50% of the students belong to Adi Dravidar and Adivasi Community.

4.It is the case of the petitioner that the petitioner does not charge any fees from the students belonging to Adi Dravidar and Adivasi Community. Even in respect of remaining students, it is stated that the petitioner's school collects the nominal fee of Rs.200/- p.m. It is therefore submitted that free education is provided to the students out of contribution by philanthropists and people who want to support the objectives of the petitioner's organisation. The photos which have been produced before this Court would show that the school has been

constructed in a pucca building and the entire school is surrounded by a compound wall. The school has obtained permission to operate under the Open Schooling System up to March, 2017. Originally, the petitioner was running English Medium School up to VIII Standard with Accreditation by National Institute of Open Schooling. As per the by-laws of CBSE, before granting affiliation by CBSE, No Objection Certificate should be obtained from the State Government for starting a school affiliated to CBSE. Pursuant to the same, an application was submitted on 15.11.2010 to the first respondent for issuance of "No Objection Certificate" for running and operating a school affiliated to the CBSE. A representation was also addressed to the second respondent requesting for recommendation for issuance of "No Objection Certificate".

5. However, it is seen that under one pretext or the other, the "No Objection Certificate" for running and operating the school affiliated to CBSE was not considered. The petitioner has earlier filed W.P.No.4526/2014 before this Court for direction, directing the respondents to consider and dispose of the petitioner's application dated 15.11.2010 for grant of "No Objection Certificate". It is to be noted that prior to the filing of the writ petition, the application of the petitioner was not favourably considered for valid reasons. This Court allowed the W.P.No.4526/2014 by order dated 21.02.2014 and directed the respondents to process the application and grant "No Objection Certificate" within a period of

eight weeks from the date of receipt of a copy of the order. The respondents have preferred an appeal against the order in W.P.No.4526/2014 and a Division Bench of this Court disposed of the appeal by directing the respondents to consider and dispose of the application for "No Objection Certificate" within a period of three months from the date of receipt of a copy of the order. The functioning of school for more than eight years is not disputed. The fact that the school has been constructed in a tribal area is also not disputed.

6. Thereafter, the application for no objection certificate was rejected by the first respondent by the impugned order. In the same order, recognition required from the State Government was also refused on the ground that the school has not obtained planning permission and approval from local planning authority and that there is no compound wall for the school.

7. It is not in dispute that petitioner has applied for affiliation to the CBSE stream of education and that a no objection certificate is required from the State Government for affiliation from CBSE Council. Even in the impugned order, it is stated that as per amended Affiliation Bye-laws for Central Board of Secondary Education, any school seeking affiliation from CBSE should get recognition from the concerned State. The first respondent is the competent authority to give a certificate of recognition. In this case, Section 18 and 19 of Right of Children to

Free and Compulsory Education Act and the Schedule are relevant and hence, they are extracted for ready reference.

“18 No school to be established without obtaining certificate of recognition.

(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under Section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition: Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. Norms and standards for school.

(1) No school shall be established, or recognised, under Section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of Section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

THE SCHEDULE

(See Sections 19 and 25)

NORMS AND STANDARDS FOR A SCHOOL

Sl. No.	Item	Norms and Standards	
1	Number of teachers	Admitted Children	Number of teachers
	(a) For first class to fifth class	Upto Sixty Between sixty-one to ninety Between ninety-one to one hundred and twenty Between one hundred and twenty-one to two hundred Above One hundred and fifty children Above Two hundred children	Two Three Four Five Five plus one Head Teacher Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.
	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for - (i) Science and Mathematics; (ii) Social studies; (iii) Languages. (2) At least one teacher for every thirty-five children.	

		(3) Where admission of children is above one hundred - (i) a full time head-teacher; (ii) part time instructors for - (A) Art Education; (B) Health and Physical Education; (C) Work Education.
2.	Building	All-weather building consisting of- (i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid-day meal is cooked in the school; (vi) Playground; (vii) arrangements for securing the school building by boundary wall or fencing.
3.	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth to eighth class.
4.	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours.
5.	Teaching learning equipment	Shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7.	Play material, games and sports equipment	Shall be provided to each class as required.

8. It is not the case of the respondents that the school does not have the required number of teachers or the required number of class rooms and other infrastructures as per the schedule. The main reason stated in the impugned order is want of planning permission and approval from local planning authority. The

petitioner has obtained licence in respect of the school building by the Tahsildar concerned under Section 6 of the Tamil Nadu Public Buildings (Licensing) Act, 1965. The petitioner has produced the certificate from competent Engineer regarding structural stability. The petitioner has produced before this Court all particulars required to satisfy authorities to confirm that the school established by the petitioner is in accordance with the minimum standard prescribed under Right of Children to Free and Compulsory Education Act.

9. It is now admitted before this Court that compound wall has been constructed. It is further stated that local planning authority will grant planning permission and plan approval only if No Objection Certificate is obtained from forest department. It is submitted by petitioner that the school which was constructed prior to 2011 has also obtained building plan approval from local body. Learned Counsel appearing for the petitioner submitted that this Court has in similar cases directed the authorities to consider the school's application for recognition without insisting DTCP approval. Since the construction in this case is in hill area nearly forest area, no objection certificate from forest department was required by local planning authority when application was submitted for conversion of land use. From the facts and events narrated, the petitioner is waiting for more than eight years to get No Objection Certificate from State and recognition as contemplated under Right of Children to Free and Compulsory

Education Act. The only reason that is now projected is that the building plan has not been approved by local planning authority. The requirement of planning approval by local planning authority for considering the application for recognition under Right of Children to Free and Compulsory Education Act is not established. In such circumstances, the impugned order dated 07.04.2015 is quashed. The first respondent is directed to grant recognition to the petitioner school under Right of Children to Free and Compulsory Education Act and the State Government or an authority authorised by the State Government is directed to grant No Objection Certificate to the petitioner to enable the petitioner to get permanent affiliation from CBSE. The respective respondents are directed to do the exercise within eight weeks from the date of receipt of a copy of this order. However, the petitioner is directed to get planning permission and approval from local planning authority within a period of one year from today.

10. With the above directions, the Writ Petition is disposed of.

Speaking/Non-speaking order

Index: Yes/No

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01.11.2018

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To

1. The Director of School Education,
DPI Campus, Chennai-6.
2. Chief Educational Officer,
Town Hall,
Coimbatore-641 001.
3. The Educational Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.



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S.S.SUNDAR, J.

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