

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1377 of 2017

and CMP No.18874 of 2017

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Education Department, Fort St.George,
Chennai - 600 009.
2. The Joint Director of School Education,
(Higher Secondary), College Road,
Chennai - 6.
3. The Chief Educational Officer,
Palani Salai, Dindigul - 10.
4. The District Education Officer,
Karur Salai, Dindigul. Appellants

versus

The Secretary and Correspondent,
Dr.Zahir Hussain Memorial Minority High School,
Tmt. A.M.Sikkandhar Bevi School Campus,
Pillaiyarnatham, Pithalaipatti Post,
Dindigul - 2.

... Respondent

Appeal filed against the order passed by this Court dated 22.09.2017 passed in W.P.No.22009 of 2017.

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified mandamus, calling for the entire records connected with the impugned order passed by the 2nd respondent in Na. Ka. No. 029680W4/E2/2017 dt 3.8.2017 and quash the same and consequently direct the respondents to upgrade the petitioners High School as Higher Secondary School.

For appellants : Mr.K.Karthikeyan
Government Advocate

For Respondent : Mr.S.N.Ravichandran

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Aggrieved by the positive direction issued by this Court in WP No.22009 of 2017, directing the Authorities to pass appropriate orders to upgrade the petitioner School (respondent herein) as Higher Secondary School for the academic year 2017-2018, the State is on appeal.

2. The facts that led to the filing of the Writ Petition are as follows:

The petitioner (respondent herein) School was originally established as a primary school in the year 1971, thereafter, it was upgraded as a middle school and High School in the year 1987-1988. After upgradation of the High School, the School was bifurcated as Elementary School and High School. The petitioner (respondent herein) had applied for upgradation of the High School as Higher Secondary School as early as in the year 2005, it appears that the proposal was returned on 17.06.2006 and again on 31.10.2007.

3. It is claimed that the petitioner School has got all infrastructure facilities required for upgradation as Higher Secondary School. The proposal to upgrade the School was rejected and the said rejection was challenged by the petitioner/respondent herein School in WP No.21223 of 2011. By an order dated 13.06.2012, this Court had disposed of the said Writ Petition with a direction to the petitioner/respondent herein to take steps for construction of two additional class rooms and further direction was also issued to the Official respondents to inspect the School and pass appropriate orders.

4. Pursuant to the said order dated 13.06.2012, the inspection was carried on 03.07.2012 and on 24.07.2012 the Authorities rejected the proposal stating that additional building have not been constructed and 5 more class rooms were required, apart from establishment of Lab facilities. The said order dated 24.07.2012 was challenged by way of a Writ Petition in WP No.22099 of 2012 and this court by an order dated 19.04.2017, directed the Director of School Education to

consider the recommendation of the District Educational Officer with regard to the upgradation of the School. Pursuant there to, the 4th respondent in the Writ Petition, viz. The District Educational Officer, Dindigul, had recommended for upgradation.

The proposal for upgradation dated 15.06.2017 was forwarded to the second respondent. The second respondent, however, by an order dated 03.08.2017 rejected the proposal stating that the approved plan was not available and there was lack of drinking water facility in the School. Challenging the rejection dated 03.08.2017, the Writ Petition in WP No.22009 of 2017 came to be filed.

5. Upon hearing the counsel for the parties, the learned single Judge, by an order dated 22.09.2017 issued a positive direction, directing the authorities to pass appropriate orders to upgrade the petitioner/respondent herein School as Higher Secondary School for the academic year 2017-2018. Hence the present appeal.

6. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants and Mr.S.N.Ravichandran, learned counsel appearing for the respondent.

7. Since certain factual doubts regarding the availability of the Class Rooms etc. were raised by the appellants at the request of the respondent, we had appointed Mrs.D.Geetha, Advocate as a Commissioner to inspect the School along with the Chief Educational Officer, Dindigul, Junior Engineer of PWD, Ottanchathiram and others. The learned Advocate Commissioner has also filed a report detailing the infrastructure facilities available in the School premises.

8. At the outset, it should be stated that even while seeking upgradation the respondent School has only sought for introduction of one group in Higher Secondary, viz Commerce Group. The reasons that are given for rejection of the request for upgradation by the Joint Director of Higher Secondary Education, Chennai 6, are that the buildings are not complete and basic facilities of drinking water are not fully available. It is also stated that the building consisting of asbestos roof has not converted into RCC roof though the same is not made a ground for rejection of the request for upgradation.

9. From the Report of the Advocate Commissioner, it is seen that seven Class Rooms with RCC roof are available. Apart from

the seven Class rooms, rooms with RCC roof are also available for Sewing class, Kitchen, Staff Room and Office Room. A Store Room with RCC roof is also available. A building with RCC roof consisting of two more Class rooms with measurement of 6.4 into 6.24 metres and 6.35 into 6.24 metres is under construction and plastering work was going on at the time of visit. She also recorded the availability of the required number of lavatories and two borewells with adequate drinking water facilities. The learned Advocate Commissioner has also extracted the statutory requirements for upgradation. A perusal of the said Report of the Commissioner shows that the required infrastructure facilities are available as on date in the School. Therefore, the reasons or the grounds on which the request of the respondent School for upgradation by rejected do not survive any longer.

10. Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants would contend that the learned Single Judge was not right in issuing a positive direction, on the other hand, according to him this Court could have directed the Authorities to consider the availability of the infrastructure facilities and pass appropriate orders. Now that the Commissioner has been appointed and the Commissioner's Report demonstrates the availability of required infrastructure facilities for upgradation and we do not think that the appellants were justified in rejecting the request for upgradation.

11. Mr.K.Karthikeyan, learned Government Advocate would however contend that when upgradation is sought for there should be a minimum of two groups in Higher Secondary, according to him, only when there are minimum of two groups the School should be sanctioned two language Post Graduate Teachers for teaching English and Tamil. The said requirement would apply only if it is an Aided School, Mr.S.N.Ravichandran, learned counsel appearing for the respondent School would submit that he is not seeking aid for the Higher Secondary and it is to be run on a self-financing basis. Hence, the said objection of the Mr.K.Karthikeyan also cannot be countenanced. Therefore, we deem it fit that it will be in the interest of justice, to issue a direction to the Authorities to consider the available infrastructure facilities on the basis of the Report of the Commissioner and grant upgradation of the respondent School as Higher Secondary School from the Academic year 2018-2019. It is also brought to our notice that the Authority to grant upgradation as on today is the Chief Educational Officer of the concerned District and not the Joint Director of School Education.

12. For the foregoing reasons, the Writ Appeal is disposed of with the following directions. The 3rd respondent, viz. the Chief Educational Officer, Dindigul is directed to consider the request for upgradation of the respondent School as Higher Secondary School from the Academic year 2018-2019, based on the application that has been filed by the respondent School as well as the report of the Advocate Commissioner filed in this Writ Appeal and pass suitable orders. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, we direct the parties to bear their own costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Secretary to Government,
State of Tamil Nadu,
Education Department, Fort St.George,
Chennai - 600 009.
2. The Joint Director of School Education,
(Higher Secondary), College Road,
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+1cc to the Government Pleader Sr.35010
+1cc to Mr.S.N.Ravichandran, Advocate Sr.34748

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srg 12/06/2018