

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.3.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.532 of 2018
and
C.M.P.No.5046 of 2018

- 1 The Director of Elementary Education
College Road Nungambakkam
Chennai 600 006
 - 2 The Joint Director of Elementary Education
College Road Nungambakkam
Chennai 600 006
 - 3 The Chief Educational Officer
Cuddalore District Cuddalore.
 - 4 The District Elementary
Educational Officer
Cuddalore District Cuddalore.
- Appellants/Respondents

Versus

A.G.Syed Mohideen Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 6.7.2017 passed in W.P.No.2560 of 2017 on the file of this court.

WP.No.2560 of 2017:Petition filed under article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceedings in Na.Ka.No.5561/ F1/2016 dated 4.5.2016 and the 3rd respondent in O.Mu.No. 10896/A3/2015 dated 9.5.2016 and quash the same and thereby direct the respondents to grant recognition to the school run by the petitioner for upgrading the same from Nursery and Primary School to Middle School

For appellants : Mrs.V.Annalakshmi,
Government Advocate

For respondent : Mr.N.Suresh

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Government Advocate appearing for the appellants and Mr.N.Suresh, learned counsel, who takes notice on behalf of the respondent.

2. The writ appeal has been filed by the Education Department challenging the order passed by the learned Single Judge allowing the writ petition and thereby directing the appellants to consider the representation of the respondent herein with regard to upgradation of the existing Nursery and Primary School into Middle School.

3. In para 9 of the order passed by the learned Single Judge it has been observed as under:-

"9. On a perusal of the above provisions, it is evident that none of the private person or management can establish any Private School without the permission of the competent authority. For establishing and administering a School, Pre-Primary, Primary, Middle Schools, High Schools or Higher Secondary Schools, permission from the competent authorities is bound to be obtained under Section 4 of the Tamil Nadu Recognised Private Schools (Regulation) Act. If the School is already established, upgradation is done only by the competent authorities as per Rule 4 therein. The petitioner also has asked for upgradation and sent his application dated 24.02.2016. In response to the same, the fourth respondent had negatived the same by stating that there is no provision under the Code of Regulation for approved Nursery and Primary School, whereas on 22.04.2016, the Chief Educational Officer has sent a letter, which is impugned in the Writ Petition stating that there were certain deficiencies, which are to be complied with, after which, an inspection was also conducted and the deficiencies pointed out as per the inspection report were also complied with by the petitioner. The petitioner also had produced the No Objection Certificate from

the Fire Department and the Sanitary Certificate from the Cuddalore Municipality. The Tahsildar, Cuddalore has given a valid licence for the said School, the validity of which is from 10.06.2017 to 09.06.2020. As the petitioner has submitted all the necessary certificates mandated by the relevant Rule including infrastructural facilities available, description of the building etc., to the satisfaction of the competent authority, the competent authority is required to grant permission."

4. On going through the above reasoning assigned by the learned Single Judge on the submission made by the parties, it is evident that upto VIII Standard, it is deemed as Middle School and the school concerned is presently imparting education from L.K.G. to VI standard, and upgradation is sought for VI standard to VIII standard and the learned Single Judge, on appreciating the facts and circumstances in the light of the provisions viz., section 4 of the Tamil Nadu Recognized Private Schools (Regulation) Act, directed for consideration of the representation of the respondent herein for upgradation of the School for imparting education from VI standard to VIII standard.

5. The learned Government Advocate appearing for the appellants mainly contended on one hand that certain deficiencies were pointed out by the authorities with regard to the infrastructure and the condition of the building and on the other hand, the upgradation sought for by the appellant being one for conducting classes for VI standard to VIII standard, the appellants, against whom direction is issued, are not the authority vested with the power for granting upgradation and it is only the Director of School Education, who is vested with such powers.

6. If so, then similar representation may be submitted by the respondent herein to the Director or Joint Director of School Education and in such event, there cannot be any impediment for the authority concerned to consider the same and grant the required upgradation especially, when there is already clearance and report at the level Tahsildar concerned and the inspecting authority in favour of the respondent herein.

7. So far as the issue of lack of infrastructure and the condition of the building is concerned, we find from the photographs produced by way of typed set of papers that the School is run in a tiled construction, which appears to be in good condition and it is contended that the School has been run in such building for more than ten years without any issues and of course, the students had to sit on floor because of lack of furnitures, but, it appears that in no way it causes

inconvenience to the students. It is for the authority concerned to insist for such infrastructural facilities, if it is mandatory one or otherwise, it shall not be insisted upon.

8. In view of the above, we do not find any illegality or infirmity in the order passed by the learned Single Judge. Accordingly, the writ appeal filed by the Department is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

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+1 cc to the Govt Pleader sr 18823
+1 cc to Mr.N.Suresh Advocate sr 18762

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