

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.28198 of 2017

Vivekanandha Pharmacy College for Women
administered by Rabintharanath Tagore
Educational Charitable Trust
rep. by its Principal Dr.P.Ashok Kumar ... Petitioner

Vs

- 1.The Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat,
Chennai - 600 009.
- 2.The Director,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to pass orders for grant of approval to the petitioner's Institution for conducting D.Pharm, Diploma Course from the Academic Year 2017-18 without insisting on the approved building plan from the Director of Town and Country Planning (DTCP) with an intake of 60 students.

For Petitioner : Mr.Prabhu Mukunth Arun Kumar

For Respondents : Mr.C.Munusamy, SGP (Edn)

ORDER

The prayer made in the writ petition is to issue a Mandamus to direct the respondents to grant approval to the petitioner's Institution for conducting D.Pharm Course from the Academic Year 2017-18 without insisting the building plan approval from the Director of Town and Country Planning (DTCP) with an intake of 60 students.

2.The case of the petitioner is that by the proceedings dated 26.07.2007 issued by the President, Alathur Panchayat,

Veerachipalayam, planning permission was granted to construct a building for Rabindranath Tagore College of Engineering for Women at Veerachipalayam, Salem District. Subsequently, the name of the College was changed to Vivekananda Engineering College for Women, which was closed down from the Academic Year 2015-16 onwards, after obtaining necessary orders from the authority concerned. Thereafter, the Government of Tamil Nadu, in its order in G.O.(Ms)No.286 dated 29.11.2016, granted permission to Rabindranath Tagore Educational Charitable Trust, Salem District to start two years D.Pharm course, with an annual intake of 60 students from the Academic year 2017-18, based on which, the petitioner submitted a detailed representation to the second respondent. On receipt of the same, the second respondent conducted inspection and issued a communication dated 11.09.2017 to the first respondent stating that the petitioner college should get approval for the building plan from the Directorate of Town and Country Planning (DTCP). Pursuant to the same, the respondents 1 and 2 have insisted the petitioner to get exemption from the DTCP. Feeling aggrieved over the same, the petitioner has come forward with this writ petition for the afore-stated relief.

3.The learned counsel for the petitioner submitted that since the petitioner obtained planning permission from the local panchayat, approval from the Director of Town and Country Planning is not mandatory and this Court in the case of Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai-5 v. Kaviyan School rep. by its Correspondent C.Deenathayalapandian, Indira Nagar, Malayakoundanpatti, Ammayanaickanur, Nilakottai, Dindigul District reported in 2015-5-LW.101, has held that the authority shall consider the application of the school, after getting clarification from the concerned Panchayat with regard to building plan approval.

4.The learned counsel for the petitioner also drew the attention of this Court to the Tamil Nadu Panchayats Buildings Rules, 1997 and the relevant provisions are extracted hereunder:

"2(e) "Executive authority" means the President of the Village Panchayat.

2(g) "Public building" means any building to which the public or any class or section of the public are granted access or any building which is open to the public or any class or section of the public and includes any building-

(a) used as a

(i) Educational institution including school or college...

25. Multi-storeyed and public buildings:-

Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public Building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920.

Provided that the Executive Authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director or Deputy Director of Town and Country Planning."

5. Relaying on the provisions of section 114 of the Indian Evidence Act, the learned counsel for the petitioner contended that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Therefore, the competent authority in terms of the provisions stated supra, is the President of the Panchayat, who has duly granted approvals in these cases and the petitioner has not violated any of the laws of the land.

6. On the contrary, the learned Special Government Pleader appearing for the respondents submitted that the building plan approval from the Director of Town and Country Planning is essential for any institution to start a new course. The learned Special Government Pleader further submitted that in terms of Rule 25, which has been referred to above by the petitioner, the competent authority is only the Joint Director or Deputy Director of Town and Country Planning; even assuming that no approval is required from the Joint Director or Deputy Director of Town and Country Planning, at least there should be a consultation by the authority with the concerned Joint Director or Deputy Director of Town and Country Planning and therefore, the act of the petitioner, in absence of such consultation, is erroneous and the relief sought for by the petitioner should not be granted. The Special Government Pleader also drew the attention of this Court to G.O.(Ms) No. 270 School Education (X2) Department, dated 22.10.2012, which clearly states that the buildings for the educational purpose, should be constructed only after obtaining building plan approval from the 'competent authority' as defined in Rule 2(e) of the Tamil Nadu Panchayats Building Rules, 1997.

7. This Court paid its anxious consideration to the submissions made by the learned counsel for the respective parties and perused the materials available on record.

8.It is trite in law that the Executive Authority under the Tamil Nadu Panchayats Buildings Rules, 1997, is the Village President, who is competent to grant approval for construction. Apart from the disputed facts, what is required is only a consultation with the concerned Joint Director or Deputy Director of Town and Country Planning, in which the petitioner college has no role to play, since it is an internal arrangement between the Panchayat President and the Joint Director or Deputy Director of Town and Country Planning.

9.Admittedly, no action has been initiated against the said Panchayat President, on account of his competency under the Rules to grant such approval. That apart, the petitioner college is running at Veerachipalayam, Sankari West, Salem District and G.O.(Ms) No. 270 School Education (X2) Department dated 22.10.2012 does not insist upon the building plan to be approved by the Joint Director or Deputy Director of Town and Country Planning. Since the Executive Authority, namely, Panchayat President has approved the building plan, the act of the petitioner cannot be faulted with in any manner, more particularly, it cannot be said that it is against the provisions of law.

10.Further, the petitioner has fulfilled all the requirements and the only issue raised by the respondents that prior approval of the Joint Director or Deputy Director of Town and Country Planning is mandatory, cannot be accepted, in view of the Rules envisaged in Tamil Nadu Panchayats Buildings Rules, 1997.

11.In view of the above and following the decision referred to supra, this Court directs the respondents to consider the application of the petitioner dated 18.08.2017 with regard to grant of permission, after getting clarification from the concerned Panchayats or from the Town and Country Planning Authorities, whether building plan approval has been granted to the petitioner college, as required under law, shall inform about the status to the petitioner by a letter, within a period of two weeks and the petitioner shall comply with the same within a period of four weeks thereafter. In case, the respondents find any violation in the construction of the building, the same can be brought to the notice of the petitioner, either to modify or change the structure/superstructure of the college building. On receipt of the reply, the respondents shall consider the petitioner's application seeking permission to start the course in question, and pass appropriate orders in line with the order of this Court in the case of Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai - 600 005 v. Kaviyan School rep. by its Correspondent C.Deenathayalapandian, Indira

Nagar, Malayakoundanpatti, Ammayanaickanur, Nilakottai, Dindigul District reported in 2015-5-L.W.101, as expeditiously as possible.

12.The Writ Petition is disposed of, as indicated above. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat,
Chennai - 600 009.

2.The Director,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010.

+1cc to Mr.D.Prabhu Mukunth Arun Kumar, Advocate, S.R.No.20363

+1cc to the Government Pleader, S.R.No.20914

W.P.No.28198 of 2017

RSK(CO)

RRK(21/03/2018)

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