

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P. Nos.18815, 19679, 9917 and 18192 of 2017

W.P. No.18815 of 2017

King of Kings Matriculation School,
Mangalapuram,
Kadayanallur Taluk,
Tirunelveli District.
Rep. by its Correspondent,
Dr.M.Edward Rajan,
S/o.P.Muthiah ... Petitioner

Vs.

- 1.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The Inspector of Matriculation Schools,
Tirunelveli and District. ... Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent to grant renewal of recognition to the petitioner school and consequently to grant permission to the petitioner school for opening additional standards viz., 9th and 10th standards under the provisions of Matriculation Code based on the application submitted by the petitioner school dated 12.09.2016, following the ratio laid down by this Court in Contempt Petition in Cont.Petn[MD] No.1391 of 2015 dated 30.11.2015 and W.A.[MD]No.279 of 2016 dated 22.02.2016, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.C.Munusamy
Special Government Pleader [Education]

W.P. No.19679 of 2017

Selva Matric Higher Secondary School,
Chennai Bye-pass Road,
BRG Madhepalli-Post,
Barugur - 635 104
Krishnagiri District.
Rep. by its Correspondent,
G.Selvaraj,
S/o.A.C.Govindha Chetty

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006. .. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to pass appropriate orders for granting permission to start Tamil Medium Sections for Standards 6 to 10 from the academic year 2017-18 for the petitioner school based on the application dated 15.03.2017 and resubmitted application dated 24.07.2017, in the light of the orders passed in W.P.[MD] No.20329 of 2014 dated 06.04.2015 and the orders passed in the Contempt Petition in Cont.Petn[MD] No.1391 of 2015 dated 30.11.2015 as well as the proceedings of 2nd respondent in Na.Ka.No.2004/A4/2016 dated 08.05.2017, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.C.Munusamy

Special Government Pleader [Education]

W.P. No.9917 of 2017

T.Anand,
S/o.R.Thandapani,
Correspondent,
Sir Issac Newton Matriculation School,
Pappakoil Village,
Nagapattinam District.

.. Petitioner

Vs.

1.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.

2.The Inspector of Matriculation Schools,
Thanjavur District. .. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to grant opening permission to the petitioner school for starting Matriculation School with LKG to 8th Standard from the academic year 2017-2018 under the provisions of Matriculation Code based on the application submitted by the petitioner School dated 17.02.2017, without insisting for approval from Town & Country Planning Authorities, following the ratio laid down by this Court in Contempt Petition in Cont.Petn [MD] No.1391 of 2015 dated 30.11.2015 and W.A.[MD]No.279 of 2016 dated 22.02.2016, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.C.Munusamy

Special Government Pleader [Education]

W.P. No.18192 of 2017

CSI Public Matric School,
CSI Church Compound,
Alagiyamandapam,
Mulagamoodu Post,
Kanyakumari District - 629 167.
Rep. by its President,
Rev.S.John Milton,
A/o.A.Sundarraaj

.. Petitioner

Vs.

1.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.

2.The Inspector of Matriculation Schools,
Tirunelveli, Tirunelveli District. .. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to pass orders for granting opening permission for XI and XII standard based on the application submitted by the petitioner School dated 09.09.2016 based on the plan approval granted by Vilavoor Town Panchayat without insisting for plan approval from DTCP, in the light of the orders passed in W.P.

[MD]No.13152 of 2015 dated 28.07.2015 confirmed in the orders passed in W.A.[MD]No.1139 of 2015 dated 02.12.2015, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.C.Munusamy
Special Government Pleader [Education]

C O M M O N O R D E R

Since the issue involved in all the Writ Petitions are one and the same, a common order is being passed to dispose of these Writ Petitions.

2. The case of the petitioners is that the petitioners in W.P.Nos.18815, 19679 and 18192 of 2017 are running Matriculation Schools and they preferred applications on 12.09.2016, 24.07.2017 and 09.09.2016, seeking permission to upgrade their Schools. The petitioner in W.P.No.9917 of 2017 preferred application dated 17.02.2017 seeking permission to start Matriculation School with LKG to 8th Standards. But, the respondents 1 and 2 issued the impugned communications, dated 23.01.2017, 10.07.2017 and 27.02.2017 respectively, by pointing out that the approval from the Director of Town and Country Planning was not obtained, thereby rejecting the request of the petitioners.

3. According to the petitioners, the petitioners are running Matriculation Schools and the Schools are having building plan approval from the Village Panchayats. Therefore, the petitioners are before this Court with the aforesaid prayer.

4. The learned counsel appearing for the petitioners submitted that since the petitioners obtained planning permissions from the local panchayats, 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 - 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, 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.

5. The learned counsel appearing for the petitioners 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."

6. The learned counsel for the petitioners also drew the attention of this Court to the provisions of section 114 of the Indian Evidence Act and 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, it is the contention of the learned counsel for the petitioners that since the competent authority in terms of the provisions stated supra, is the President of the Panchayat, who has duly granted approvals in these cases, the petitioners school have not violated any of the laws of the land.

7. The learned Special Government Pleader appearing for the respondents, on the other hand, submitted that approval from the Director of Town and Country Planning is essential for considering the applications for upgradation of Matriculation Schools. The learned Special Government Pleader further submitted that in terms of the Rule 25, which has been referred to above by the petitioners, 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 petitioners, in absence of such consultation, is erroneous and the relief sought for by the petitioners 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 school buildings 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.

8. This Court has considered the submissions made by the learned counsel appearing for both sides and perused the materials available on record.

9. 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 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 petitioners schools have 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.

10. Admittedly, no action has been initiated against the said Panchayat Presidents, on account of their competency under the Rules to grant such approvals. That apart, the petitioners are Matriculation schools, being run within the Kadayanallur, Barugur, Pappakoil and Mulagamoodu Districts 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 Presidents have approved the building plans, the act of the petitioners cannot be faulted with in any manner, more particularly, it cannot be said that it is against the provisions of law.

11. Further, the petitioners have 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.

12. In view of the above and following the decisions referred to supra, the impugned communications, dated

23.01.2017, 10.07.2017 and 27.02.2017, issued by the respondents 1 and 2 respectively, are set aside and the matters are remitted back to the respondents 1 and 2 and the petitioners are directed to file their representations, seeking upgradation of School and starting LKG to 8th standards to the respondents 1 and 2, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents 1 and 2, after getting clarification from the concerned Panchayats or from the Town and Country Planning Authorities, whether building plan approval has been granted to the petitioners School, as required under law, shall inform about the status to the petitioners School by a letter, within a period of two weeks thereafter and the petitioners School shall comply with the same within a period of four weeks thereafter. In case the respondents find any violation in the construction of the School buildings, the same can be brought to the notice of the petitioners, either to modify or change the structure / superstructure of the school buildings.

13. On receipt of the reply, the respondents 1 and 2 shall consider the petitioners' representation seeking to upgrade the schools to Higher Secondary Level and starting LKG to 8th standards 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.

14. The Writ Petitions are allowed on the above terms. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

WEB COPY

2.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.

3.The Inspector of Matriculation Schools,
Tirunelveli, Tirunelveli District.

4.The Inspector of Matriculation Schools,
Thanjavur District.

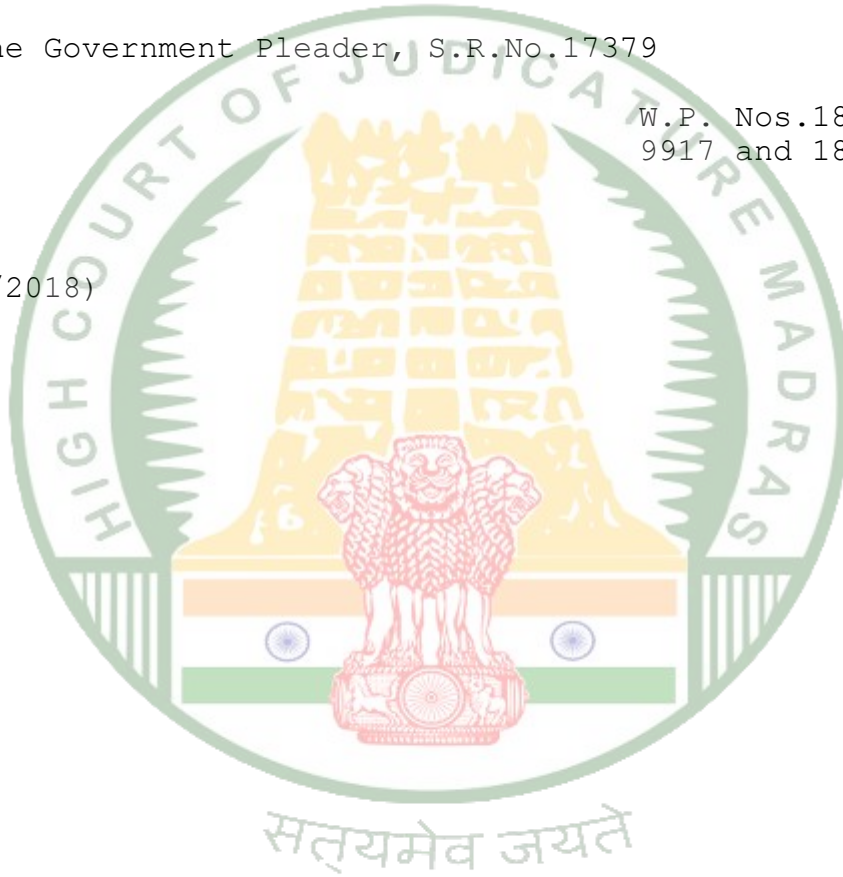
+4cc to Mr.G.Sankaran, Advocate, S.R.No.16860 to 16863

+1cc to the Government Pleader, S.R.No.17379

W.P. Nos.18815, 19679,
9917 and 18192 of 2017

VGII(CO)

RRK(16/04/2018)



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