

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.2603 of 2013
and M.P.No.1 of 2014

Loyola Matriculation Higher Secondary School
rep. by its Correspondent

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Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by the Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of Matriculation Schools,
DPI Campus,
College Road, Chennai-600 006.
3. The Inspector of Matriculation School,
DPI Campus,
College Road,
Chennai - 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 31.12.2012 in Na.Ka.No.5724/A1/2012 on the file of the second respondent and quash the same.

For Petitioner : Dr.Fr.A.Xavier Arulraj, SC
for Mr.A.Arul Mary
For R1 to R3 : Mr.V.Annalakshmi, GA

ORDER

This writ petition is directed against the order dated 31.12.2012 passed by the second respondent, whereby, the permanent recognition granted to the petitioner school was cancelled.

2.The case of the petitioner as averred in the affidavit filed in support of this writ petition, is as under:

2.1 The petitioner school is established and administered by the Archdiocese of Madras-Mylapore. It is a minority institution governed under Article 30(1) of the Constitution of India. Initially, it was granted recognition for the standards from I to VI during the year 1983-84, which was extended upto 10th standard from 01.01.1989 to 31.12.1991. Thereafter, by proceedings in R.Dis.No.26640/E1/2000 dated 15.05.2000 passed by the Director of School Education, Chennai, the petitioner school was granted permanent recognition for the standards from I to X with effect from 01.01.2001. At the same time, it was granted temporary recognition for LKG, UKG, XI and XII standards.

2.2 While so, the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 was implemented, as per which, the fee structure for the petitioner school was determined vide proceedings dated 03.06.2011. According to the petitioner, the Committee, apart from determining the fee structure, permitted the petitioner school to collect the actual expenditure on smart class, note books and uniform of the students etc.

2.3 When the things stood so, one of the parents viz., John Chandrasekar along with two others, lodged a complaint with the Fee-structure Committee alleging that the petitioner school was collecting fee in excess of the amount determined by the Committee. Based on the same, the Committee issued a notice dated 01.11.2011, calling upon the petitioner to appear for enquiry and submit all the relevant documents in respect of the fee collection. After conducting enquiry, the Committee sent its report to the second respondent recommending to initiate action against the petitioner school. Pursuant to the same, the second respondent issued a notice dated 28.11.2011, calling upon the petitioner school to show cause as to why recognition should not be withdrawn. On receipt of the same, the petitioner duly sent its explanation on 08.12.2011. After a period of one year, the second respondent conducted inspection in November, 2012. Following the same, the second respondent issued a show cause notice dated 21.12.2012, to which, the petitioner duly submitted its explanation on 27.12.2012. However, not satisfying the explanation offered by the petitioner school, the second respondent issued the impugned proceedings dated 31.12.2012, cancelling the permanent recognition with effect from 31.05.2013 for violating Section 18(3) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter shortly referred to as 'the 2009 Act'). Hence, this writ petition.

3.The learned Senior Counsel appearing for the petitioner submitted that no excess fee was collected by the petitioner as

alleged in the complaint and the collection of fee, apart from the fee determined by the Committee, is only for stationary materials and other facilities provided by the petitioner School, which cannot be termed as collection of excess fee. The learned Senior Counsel further submitted that without conducting proper enquiry and without affording an opportunity of personal hearing to the petitioner, the second respondent has passed the impugned order, cancelling the permanent recognition granted to the petitioner school. The learned Senior Counsel also submitted that the petitioner school is an unaided minority institution and the provision under Section 18(3) of the 2009 Act has no application, insofar as the petitioner school is concerned and hence, the impugned order passed by the second respondent is arbitrary, illegal, unconstitutional and contrary to the decision of the Larger Bench of the Hon'ble Supreme Court in [Pramati Educational and Cultural Trust and others vs. Union of India and others](#) [2014 (4) MLJ 486 (SC)].

4. Denying the statements made in the writ petition, the second respondent filed a detailed counter affidavit, stating that the explanation submitted by the petitioner school to the show cause notice dated 28.11.2011, was not accepted by the second respondent on the following grounds:

(i) The excess fee collected by the petitioner school has not been refunded to the students.

(ii) The students, who had not paid the excess fee, were segregated and were psychologically harassed.

(iii) The conditions for permanent recognition have been violated.

Hence, an inspection was conducted and found that the allegations (i) and (ii) were found to be true. Pursuant to the same, second show cause notice was issued, to which, explanation was submitted by the petitioner school. Since the said explanation was not satisfactory, the second respondent issued the proceedings dated 31.12.2012 cancelling the permanent recognition with effect from 31.05.2013.

5. Reiterating the averments made in the counter affidavit, the learned Government Advocate appearing for the respondents submitted that based on the recommendation of the Fee-structure Committee, proper enquiry was conducted in the manner known to law, based on which, the second respondent passed the order, cancelling the permanent recognition granted to the petitioner school, which is perfectly correct.

6. This Court paid its anxious consideration to the submissions made by the learned counsel for the parties and perused the materials placed before me.

7.It could be seen from the records that based on the complaint lodged by one of the parents of the petitioner school, with regard to the alleged collection of excess fee, the Fee-structure Committee conducted enquiry and ultimately, recommended to the second respondent to initiate action against the petitioner school. Pursuant to the said recommendation, the second respondent, after following due procedure, passed the impugned order, cancelling the permanent recognition of the petitioner school with effect from 31.05.2013, on the grounds that the excess fee collected by the petitioner school has not been refunded to the students and the students, who had not paid the excess fee, were segregated and were psychologically harassed.

8.Stoutly denying the allegations so made against the petitioner, the learned Senior Counsel appearing for the petitioner submitted that the collection of fee, apart from the fee determined by the Fee-structure Committee, is only for supply of stationery materials and other facilities provided by the petitioner school, which cannot be treated as excess fee. The learned Senior Counsel further submitted that as the petitioner school is an unaided minority institution, the provisions of the 2009 Act do not apply to the same. Therefore, the impugned order, referring to Section 18(3) of the 2009 Act, is illegal and contrary to the dictum laid down by the Hon'ble Supreme Court in Pramati Educational and Cultural Trust case (cited supra), whereas, the learned Government Advocate appearing for the respondents made her submission supporting the order impugned in this writ petition.

9.As rightly pointed out by the learned Senior Counsel for the petitioner, the 2009 Act does not apply to the petitioner school as it is an unaided minority institution, in the light of the decision of the Larger Bench of the Hon'ble Supreme Court in Pramati Educational and Cultural Trust case (cited supra), wherein, it has been held that "the 2009 Act, insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution".

10.That apart, it is the specific plea of the petitioner that the second respondent, without considering the explanation offered and documents produced by the petitioner in proper perspective and without affording an opportunity of personal hearing to the petitioner, has passed the impugned order, cancelling the permanent recognition granted to the petitioner, which, in my opinion, finds some bona fide. Further, there was an inordinate delay of one year between the two notices issued by the second respondent to the petitioner.

11.Thus, for the reasons stated above, this Court, in the interest of justice, is inclined to grant an opportunity to the petitioner to substantiate their claim before the second respondent by adducing sufficient documentary evidence.

12.Accordingly, the writ petition is allowed by setting aside the order dated 31.12.2012 passed by the second respondent and the matter is remitted to the second respondent for fresh consideration. The second respondent is directed to re-do the entire exercise, after permitting the petitioner to submit all the relevant documents and after affording an opportunity of personal hearing to them, and complete the same within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of Matriculation Schools,
DPI Campus, College Road, Chennai-600 006.
3. The Inspector of Matriculation School,
DPI Campus, College Road,
Chennai - 600 006.

+4ccs to Mr.A.Arul Mary, Advocate, S.R.No.7223 & 9246

+1cc to the Government Pleader, S.R.No.7476

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