

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.10000 of 2017&
W.M.P.No.11001 of 2017

K.P.N.Durai President
All India Freedom Fighters-Successors
Welfare Movement No.11/12 Andal Amman Ngr
Sivan Koil Rd Thiruverkadu Chennai-600 027.Petitioner

Vs

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

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai- 600 006

3.The District Elementary
Educational Officer DPI Campus College
Road Chennai-600 006

4.The Assistant Elementary
Educational Officer Royapuram Range I
Chennai-600 001

5.The Correspondent
R.J.R.Middle School No.66 Thiyagappa
Street Korukkupet Chennai-600021

6.The Headmistress
R.J.R.Middle School No.66 Thiyagappa
Street Korukkupet Chennai-600 021.Respondents

Prayer:- Petition filed under Article 226 of the Constitution
of India praying for issuance of a writ of Mandamus directing

the official 1 to 4 Respondents to take appropriate legal action against the Management of 5th Respondent School for having misused/misutilized the class rooms and school building as godown and other commercial establishments in violation of provisions of Tamil Nadu Recognized Private School (Regulation) Act 1973 and the Rules 1974 made there under as well as the directions issued by the Department under the provisions of Section 18A of the Act by appointing Special Officer or by taking over the School by State Government u/s 34 of the Act based on the representation submitted by the Petitioner Association dated 24/02/2017.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.C.Munusamy
1 to 4 Special Government Pleader
R 1 ti R4

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The present writ petition styled as a Public Interest Litigation, is filed by One Mr. K.P.N.Durai, who claims to be the President of All India Freedom Fighters-Successors Welfare Movement. It is also registered as a Trust in Document No.47 of 2011 dated 27.01.2011 on the file of the Sub-Registrar, Kamudhi, Theni District and he would further claims that the said Association carrying on various welfare activities. The 5th respondent is a Government Aided School receiving grant-in-aid from the Government of Tamil Nadu and it is governed by the provisions of the Tamil Nadu Recognized Private School (Regulation) Act, 1973 and the Rules framed thereunder and as such, it is expected to comply with the relevant norms, Rules and regulations, which include infrastructural and instructional facilities for the purpose of grant / renewal of recognition under the provisions of the said Act. It is further stated by the petitioner that the 5th respondent is a Middle School and it is having two blocks and each block is having two floors (Ground and First Floor). After the demise of the Correspondent of the School, the situation got deteriorated and they were letting part of the school building for commercial purpose and despite the fact that the 6th respondent, as a Headmistress of the School, is incharge of the administration and proper upkeep and maintenance, she has failed to discharge his duties properly and effectively.

2. The learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that vide proceedings of the District

Elementary Education Officer, Chennai-6 dated 06.06.2015 in Na.Ka.No.1099/Aa2/2013, the above said School was brought under direct payment of salary category and in the said proceedings, five deficiencies had also been pointed out and as a result of which direct payment was ordered. It is also brought to the knowledge of this Court that in one of the building of the School, there was a fire accident on 08.11.2018 and it is also one more instance to prove and substantiate that there was no proper administration of the School and major disaster / tragedy has been averted otherwise tragedy of the School, as that of Kumbakonam fire Tragedy would also pointed out very many deficiencies and would pray that this Court may pass appropriate orders, by directing the official respondents to take legal action against the Management of the 5th respondent / School in terms of the provisions of the said Rules framed thereunder and also prayed for appointment of a Special Officer to take over or to monitor the affairs of the School or to take over the School itself by the State Government.

3. The learned Additional Advocate General appearing for the official respondents has invited the attention of this Court to the counter affidavit of the 4th respondent dated 13.07.2017 and would submit that direct payment has also been ordered and insofar as the prayer sought for by the petitioner for appointment of the Special Officer for taking over the School is concerned, there may be some practical difficulties and also invited the attention of this Court to Paragraph No.9 of the said affidavit.

4. The 5th respondent has filed a counter affidavit denying the averments and narrated the facts of inter se dispute and also put the blame on the 6th respondent as she was regular in coming to the School and not discharging the duties properly and effectively and also prayed for disposal of the appeal filed by the 1st respondent dated 30.06.2015 at an early date.

5. This Court has carefully considered the rival submission and also perused the materials placed before it.

6. It is not in serious dispute that, vide proceedings of the 3rd respondent dated 03.06.2015, direct payment was resorted to and during the pendency of the writ petition, the District Elementary Officer, Chennai East, Chennai-5 has sent a communication dated 08.11.2018 in Na.Ka.No.3593/A3/AA4/2018, wherein it was pointed out as to the fire accident which took place on 08.11.2018, and also pointed out seven deficiencies and also arrived at a conclusion that the instances quoted would prima facie indicate that the safety of the students as well as the surroundings are at starve and that apart, in the building

annexed to the School building, which was let out for commercial purpose, there was a fire accident and similar thing would have happened like that of Kumbakonam School fire tragedy and therefore called upon the Management of the School to submit their response within 15 days from the date of receipt of the notice, failing which, it has been indicated that further action would be taken as per the relevant rules.

7. A perusal of the affidavit and counter affidavit would prima facie indicate that there are some disputed question of facts and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot go into the same. The School is under direct payment and now the salary due and payable to the teaching and non-teaching staffs are being made directly and in the light of the fire accident took place on 08.11.2018, the District Elementary Educational Officer, Chennai East had also sent a communication in the form of show cause notice dated 08.11.2018 to the Management of the School, calling for their explanation and the said proceedings would also reveal that cognizance as to the fire accident has been taken note of by the concerned official respondents and further course of action is also contemplated.

8. Though the petitioner prays for appointment of a Special Officer for taking over the School itself, this Court is of the considered view that any positive direction cannot be issued, unless and until, the total non response / in action pointed out on the part of the official respondents. The fact remains that the official respondents had also taken action and resorted to direct payment / disbursal of salary and very recently on 08.11.2018, had also issued a show cause notice to the Management of the School. Therefore, it is the well considered opinion of the Court that the official respondents are taking action in accordance with law and it is for the School management to respond to the Show cause notice dated 08.11.2018 in the form of reply with supporting documents, if any and either upon receipt or non receipt of the same, the concerned respondents are always at liberty to pass appropriate orders in accordance with law as expeditiously as possible which include adhering to the principles of natural justice.

9. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

TO:-

1.The Principal Secretary to Government
School Education Department, Secretariat,
Fort St.George, Chennai-600 009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai- 600 006

3.The District Elementary
Educational Officer DPI Campus College
Road Chennai-600 006

4.The Assistant Elementary
Educational Officer, Royapuram Range I,
Chennai-600 001.

5. The District Elementary Officer, Chennai East,
DBI Campus, College Road, Chennai-6.

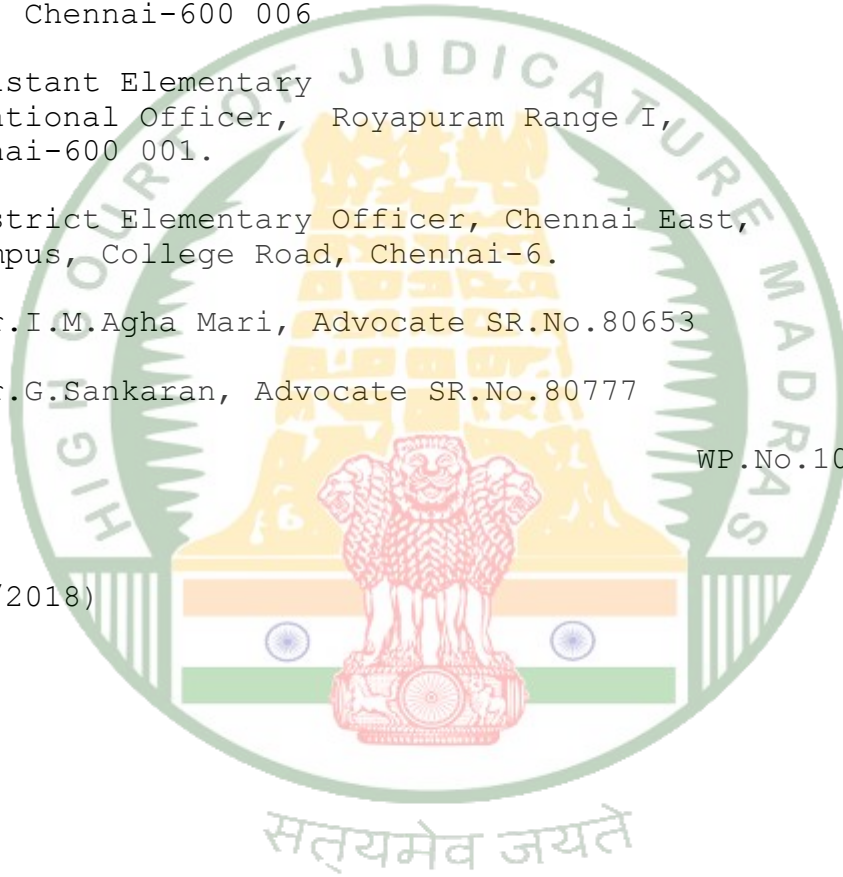
+2cc to Mr.I.M.Agha Mari, Advocate SR.No.80653

+1cc to Mr.G.Sankaran, Advocate SR.No.80777

WP.No.10000 of 2017

KS (CO)

GMV (10/12/2018)



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