

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.29819 of 2018
and
WMP No.34799 of 2018

The Trichy Play School Owners Association,
Registered as No.62/2015
Rep. by its President
Mr.S.Muruganantham ... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
School Education Department,
Fort St. George, Chennai.

2. The Director of Elementary Education,
Chennai.

3. The District Elementary Educational Officer,
Trichy. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, declaring Code of Regulations for Play Schools 2015, issued by the 1st respondent as ultra vires, arbitrary and illegal.

For Petitioner : Mr.T.Annaamalai

For Respondents: Mr.C.Munusamy
Special Government Pleader (Edu.)

ORDER
(Order of the Court was made by SUBRAMONIUM PRASAD)

Instant writ petition has been filed by The Trichy Play School Owners Association, for a declaration to declare the Code of Regulations for Play Schools, 2015, issued by the Government of Tamil Nadu as ultra vires, arbitrary and illegal. Pleading in the writ petition raises challenge only to Clause Nos.6(c), 6 (e) (i) and 9(a). Even though the grounds are limited to the

above mentioned sections, the petitioner has prayed to declare the entire Code as ultra vires, arbitrary and illegal.

2. During the course of the argument, the petitioner only argued that Clause No.9(a) of the Code is contrary to the judgment passed by the Hon'ble First Bench of this Court in W.P.No.18861 of 2014.

3. Clause No. 9(a) of the Code of Regulations for Play Schools, 2015, reads as under:

9. Buildings - Lease Deed

(a) The School building shall be owned or Leased. If the accommodation is provided in a leased building, the lease agreement shall be made for a period of not less than five years and the said agreement shall be duly registered in the Registration Department.

4. We called for the files, pertaining to W.P.No.18861 of 2014. During the hearing of the said writ petition, the draft of Code of Regulations for Play Schools, had been placed. The relevant portion of the order dated 30.10.2015, reads as under.

"We have scrutinized the draft code of regulation for play school, 2015 and appreciate the endeavour put in by the respondent in formulating the same.

2. There are however still some concerns expressed by the schools, which we are urged to deal with.

3. We are unable to accept the plea that the schools should not be restricted to the ground floor, especially as these are meant for young children, being play schools. Similarly, we see no reason why the minimum requirement of the lease of 5 years should be reduced to 3 years as there has to be some element of permanency".

5. The petitioner placed reliance on an order dated 19.05.2016 made in WMP(MD) No.7382 of 2016 in WP (MD) No.9299 of 2016, wherein a learned Single Judge of this Court has observed as hereunder.

"Already the First Bench of Principal Seat of this Court has passed an order in W.P.No.18861 of 2014 in which, in para No.3 it has been held that the minimum requirements of the lease should be reduced from five years to three years. But, the present Gazette Notification passed on 22.12.2015 in Column No.9(a) it is stated that the School building shall be owned or leased, if the accommodation is provided in a leased building, the lease agreement shall be made for a period of not less than five years and the the said agreement shall be duly registered in the Registration Department.

2. When the Hon'ble First Bench of Principal Seat of this Court has passed order by reducing the minimum requirement of the lease period from five years to three years, the Gazette Notification issued by the Government, is contrary to the order of this Court. Hence, there shall be an order of interim injunction. Notice."

6. A perusal of the order dated 30.10.2015 (extracted supra) passed by the Hon'ble First Bench would show that the learned Single Judge in WMP(MD) No.7382 of 2016 in WP (MD) No.9299 of 2016, has not correctly appreciated the finding of the Hon'ble First Bench.

7. We are also in agreement with the observation of the Hon'ble First Bench that there is no reason to reduce the minimum term of the lease as fixed in the Code, which is five years, in order to ensure that the school runs in the very same premises for a longer period.

8. Other than the said objection, learned counsel for the petitioner has not placed any other material challenging the Code. The Writ Petition is therefore dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai.

2. The Director of Elementary Education,
Chennai.

3. The District Elementary Educational Officer,
Trichy.

+1 CC to Govt. Pleader sr 81379.

+1 CC to Mr.T.Amarnath, Advocate sr 81541.

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SP(03/01/2019)