



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.09.2018

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD)No.736 of 2018
and

C.M.P (MD)Nos.4330 and 7991 of 2018

The Association of University Teachers (Regd.,)
National College Unit,
Rep by its Secretary K.Raja,
National College,
Thiruchirapalli.

... Appellant

Vs.

1.The Director of Collegiate Education,
College Road, Chennai.

2.The Registrar,
Bharathidhasan University,
Thiruchirapalli.

3.The Regional Joint Director of Collegiate Education,
Thiruchirapalli Region, Thiruchirappalli.

4.The National College,
Rep by its Correspondent,
Thiruchirapalli.

5.The Academy of Higher Education,
Rep by its Secretary,
National College Campus,
Thiruchirappalli.

(Cause title accepted vide order dated 25.04.2018
made in C.M.P (MD)No.4135 of 2018)

... Respondents

Writ Appeal filed under clause 15 of the Letters Patent
against the order dated 31.07.2017 in W.P(MD)No.1401 of 2012.

Prayer in WP(MD). 1401/ 2012 :

Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to
call for the records relating to the impugned proceedings of the
third respondent in Na.Ka.No.7556/E2/2011 dated 15.12.2011 and
quash the same as illegal and consequentially to direct the
respondents No.4 & 5 from establishing a CBSE School in the land
belonging to the 4th respondent college.



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For Appellants : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates

For Respondents 1to 3: Mrs.J.Padmavathidevi,
Special Government Pleader.

For 4th Respondent : Mr.G.Prabhu Rajadurai

For 5th Respondent : Mr.AR.L.Sundaresan
for Mr.A.Saravanan

JUDGMENT

The appeal is directed against the order passed by the learned single Judge dated 31.07.2017 passed in W.P(MD)No.1401 of 2012.

2.The appellant has filed a writ petition seeking to issue writ of certiorarified mandamus relating to the impugned proceedings dated 15.12.2011, the appellant is the association of University Teachers of the National College Unit represented by its Secretary. The said college is a private aided college coming under the purview of Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred as 'the Act'). The college was started in the year 1886 in the form of National High School and was raised to the status of Secondary Grade College and subsequently, as a first grade college in 1924. The college is now governed by the National College Council which is an educational agency. The total extent of the college is spread over in an extent of 27.8 acres. The infrastructure of the college is put up with the help of University Grants Commission which includes the hostel building for the use of the students. The Trichy - Dindigul highway passes through the property with 20.72 acres in the north- west of the said highway and 7.51 acres to the south-east of the national highway.

3.It is stated that 7.51 acres on the south-east of the national highway where hostel facilities for more than 500 residential students are given accommodation. It is further stated that the fifth respondent who is the society registered under the Societies Registration Act, bearing registration No.25/2004 decided to divert the property belonging to the fourth respondent college. It is alleged that the fifth respondent has gone further to divert the said 7.51 acres of the land for establishment of Central Board of Secondary Education (CBSE) School. The reason for filing the writ petition is that the educational agency namely, the National College Council decided to establish CBSE school under its control. As the proposal to start such a school within the premises and on the land available in the college, the appellant



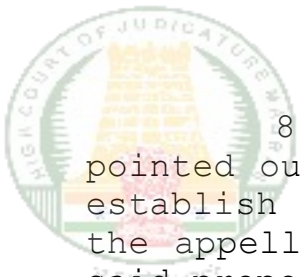
objected to the same. The primary objection of the appellant is that starting a CBSE school would be in violation of the Act, apart from taking away properties and amenities available to the students of the National College.

4. It is contended by the learned Senior Counsel for the appellant that earlier there was an attempt by the fourth respondent college to start a private engineering college in the National College Campus, and also obtained permission from the All India Council for Technical Education (AICTE) on 17.06.1998. Aggrieved by the same, the appellant herein had filed a writ petition in W.P.No.12430 of 1998. The said writ petition was disposed of by an order dated 11.11.1999, declaring the approval given by the AICTE dated 17.06.1998 as invalid for non compliance of the provisions of Section 27 of the Act and hence, the diversion of the lands for the purpose of other than for the use of the fourth respondent college was prevented.

5. Now, similar situation has arisen wherein the fourth and fifth respondents had decided to establish CBSE school in the said extent of 7.51 acres of land belonging to the fourth respondent college. In this regard, an application was also made to the first respondent requesting permission for conversion of the property belonging to the fourth respondent college for the purpose of commencing CBSE school. The appellant association immediately preferred a representation to the third respondent expressing the difficulties in the event of such conversion. However, the third respondent had accorded permission for the diversion of the land belonging to the fourth respondent college for the purpose of establishing CBSE school by its order dated 15.12.2011. Aggrieved by the same, the appellant has filed W.P(MD) No.1401 of 2012 which was dismissed by the learned single Judge. Hence, the above appeal.

6. It is contended by the learned Senior Counsel for the appellant that earlier on 13.12.2011, the third respondent sent a communication to the Director of Collegiate Education that as per the Act, except using the land for higher education, as prescribed under Section 27 of the Act, the lands cannot be utilised for any other purpose. However, the third respondent on 15.12.2011 vide proceedings in Na.Ka.No.7556/E2/2011, dated 15.12.2011 had accorded sanction after causing an inspection 15.12.2011. The said sanction is subject to the satisfaction of the norms prescribed by the CBSE which was under challenge in W.P(MD) No.1401 of 2012.

7. The only question that arises for determination is whether the establishment of a CBSE school by the fifth respondent is proper or not? The Academy of Higher Education in the portion of the property belonging to the National College is proper or not?



8. The learned Senior Counsel for the appellant only pointed out that on earlier occasion when there was an attempt to establish a private engineering college, the same was opposed by the appellant and this Court had interfered with the same and the said proposal was dropped.

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9. Section 27 of the Act imposes, a restriction on the transfer of private college's property offered by way of sale, exchange, mortgage, charge or pledge etc. or in any other manner, except with the prior permission of the competent authority or any such transfer is null and void. Further, even if such transfer is made with the sanction of the competent authority, it should be only in furtherance of the purposes of the private college or for similar purposes.

10. Now, it is relevant to examine 27 of the Act which reads as follows:-

"27. Restriction on alienation of property of the private college:-

(1) Notwithstanding anything contained in any other law for the time being in force or in any deed, document or instrument having effect by virtue of such other law.

(a) no property of a private college shall, except with the previous permission in writing of the competent authority, be transferred by way of sale, exchange, mortgage, charge, pledge, lease, gift or in any other manner whatsoever; and

(b) if any such property is transferred without such permission, the transfer shall be null and void.

(2) The competent authority may_

(a) grant the permission under clause (a) of sub-section (1) if the transfer is made in furtherance of the purposes of the private college or of similar purposes approved by the competent authority; and the assets resulting from the transfer are to be wholly utilised in furtherance of the said purposes; and

(b) when granting such permission, impose such conditions as it deems fit to ensure that assets are wholly utilised in furtherance of such purposes; but a contravention of any such condition shall not invalidate the transfer:

Provided that the permission shall not be refused under this section unless the applicant has been given an



opportunity of making his representations."

11. The fifth respondent is educational agency. The term 'educational agency' is defined under Section 2 (4) of the Act. The relevant portion of the said section reads as follows:-

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"2(4) 'educational agency' in relation to -

(a) any minority college, means any person who, or body of persons which, has established and is administering or proposes to establish and administer such minority college, and

(b) any other private college, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain such other private college;"

12. Section 26 deals with educational agency to send list of properties which reads as follows:-

"26. The educational agency shall, on or before the prescribed date in each year, furnish to the competent authority a statement (with such particulars as may be prescribed) of every:-

(a) movable property of not less than such value as may be prescribed: and

(b) immovable property of the private college."

13. Though Section 27 imposes a restriction on alienation of property of the private college, there is no specific definition for property of the college. The Section 26 also deals only with furnishing a statement to the competent authority regarding the immovable properties of the college. The fifth respondent is an educational agency and it is for the educational agency to decide whether any educational institution could be established in the property. Now, the fifth respondent agency is seeking to establish a CBSE School. Therefore, there is no question of getting consent from the competent authority under Section 27 of the Act, as the very same educational agency which is running the National College is proposing to start a CBSE School. Hence, there is no transfer requiring the consent from the appropriate authority. However, in view of Section 27, the properties which are included in the statement by the educational agency are to be treated as properties of the college. Therefore, the educational agency has to send property statement to the competent authority regarding the moveable and immovable properties of the college. Earlier, a report was also sought from the first respondent in this regard. As per the said report, the Regional Joint Director of Collegiate Education,



Tiruchirappalli Region has granted permission to the educational agency to start CBSE School in 7.51 acres vide proceedings 7556/E2/2011, dated 15.12.2011.

14. It is stated in the report that the National College Council was trifurcated into three. The proceedings of the Registrar of Societies dated 10.11.2003 in R.O.C.No.14775/CB/2003, approved the trifurcation of the National College Council under Section 30 (2) of the Tamil Nadu Societies Registration Act, 1973 which are as follows:-

“(1) National College Council

(2) Saranathan Academy of Higher Education

(3) Academy of Higher Education”.

15. Though it is stated that Saranathan Academy of Higher Education and Academy of Higher Education are not registered, the learned counsel produced registration certificate which shows that the said associations were registered as early as in 2004, other than this report, there were no adverse remarks.

16. The learned counsel for the fourth respondent submitted that first of all, the appellant could not be the person aggrieved to prefer an appeal or even to challenge the proceedings of the third respondent.

17. It is specifically pointed out that earlier when this Court dismissed the proposal prohibiting the educational agency from starting a self-financing engineering college in the property of the college, this Court has specifically stated that educational agency can start an engineering college after obtaining necessary permission from the competent authority as per the Act. Therefore, there is no impediment even now for the said educational agency to start the CBSE school. It is stated that the object of the fourth respondent is only to provide educational activities and establishment of a school is only similar to that of establishing a college and the same would come well within the ambit of the fifth respondent activities to start CBSE school after getting due approval from the competent authority. It is also admitted by the appellant that there is another school at higher secondary level run by the fifth respondent society. Therefore, there cannot be any impediment for the fifth respondent to start CBSE school. The appellant being only an association of university teachers cannot have say in this regard and their views need not be considered before the grant of permission by the competent authority.

<https://hcservices.ecourts.gov.in/hcservices/>

18. It is also pointed out that many of the institutions in Trichy have college and school in one and the same premises. It



is also further submitted by the fifth respondent/educational agency that the lands now available are more than sufficient for the purpose of starting a school. As has been pointed out by the learned single Judge in his order opening of a school is only in furtherance with the object of the educational agency and starting a school cannot be compared to starting a private engineering college, the charm of which has dwindled down. In the wake of All India examination like National Eligibility cum Entrance Test (NEET), many of the students are desirous of pursuing CBSE. One another aspect is that if the school is within the campus, it is easy for the students studying there to get admission in their own college which would be an indirect encouragement for the students who would be assured of their admissions. Therefore, the contention of the learned Senior Counsel for the appellant that the school is proposed to be opened only with the commercial motive and it would not be prosperous as there are other schools functioning in the very same area cannot be countenanced. It is further contended that as the lands are lying low from the national highway, the safety of the children is involved. The same cannot be a reason for not granting licence and any establishment of a CBSE school would certainly be subject to the approval of the CBSE Board and other competent authorities. Merely because the educational agency has proposed to start a school, it cannot be allowed to give a go-bye to the requirement of the competent authorities at every level.

19. Yet another grievance of the appellant is that the staff quarters is within the said 7.51 acres which was constructed with the aid of University Grants Commission. Therefore, the same cannot be shifted to any other place and for the purpose of establishing the school. The appellant association being the teachers forum of the National College, it cannot have any connection with the educational agency. It is vehemently contended that formation of opinion should not only be subjective but be based on the material disclosing that a necessity had arisen. In support of his contention reliance was placed on a decision of the Hon'ble Supreme Court reported in **(2008) 4 SCC 144 (Bhikhubhai Vithlabhai Patel and others Vs. State of Gujarat and another)**. The Supreme Court in paragraphs 24 to 26 has held as follows:-

"24. The proviso opens with the words "where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary,". These words are indicative of the satisfaction being subjective one but there must exist circumstances stated in the proviso which are conditions precedent for the formation of the opinion. Opinion to be formed by the State Government cannot be on imaginary grounds, wishful thinking, however laudable that may be. Such a course is impermissible in law. The formation of the



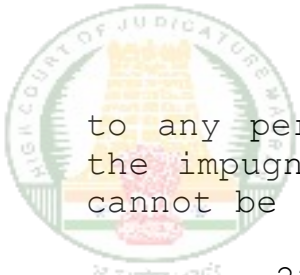
opinion, though subjective, must be based on the material disclosing that a necessity had arisen to make substantial modifications in the draft development plan.

25. The formation of the opinion by the State Government is with reference to the necessity that may have had arisen to make substantial modifications in the draft development plan. The expression: "as considered necessary" is again of crucial importance. The term "consider" means to think over; it connotes that there should be active application of the mind. In other words the term "consider" postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word "necessary" means indispensable, requisite, indispensably requisite, useful, incidental or conducive, essential, unavoidable, impossible to be otherwise, not to be avoided, inevitable. The word "necessary" must be construed in the connection in which it is used.

26. The formation of the opinion by the State Government should reflect intense application of mind with reference to the material available on record that it had become necessary to propose substantial modifications to the draft development plan."

20. In the present case, it is pointed out that the impugned order in the writ petition was passed on 15.12.2011 granting permission to establish a CBSE school. However, the third respondent on 13.12.2011 i.e., two days prior to passing of the said order had opined that it would not be feasible to start a CBSE school in the proposed place.

21. As held by the Hon'ble Supreme Court formation of opinion, though subjective should reflect intense application of mind with reference to the material available on record that it had become necessary to propose substantial modifications. The third respondent with reference to the material available had with subjective satisfaction accorded sanction to start a CBSE school. The establishment of the CBSE school, in any way would affect the service conditions, the college, the welfare of the students or even the improvement of the institution, then it is open to them to object and file a writ petition. But without any *locus standi* and not being an aggrieved person, it is not open to the appellant to oppose this, as the appellant association is in no way connected with either the society or the educational agency. The argument of the appellants that starting of the CBSE school with legal malice is unacceptable. The starting of a CBSE school by any stretch of imagination could not be attributed



to any personal ill will and would prejudice the appellant when the impugned order passed is not for an unauthorised purpose, it cannot be said to be malice in law.

22. In such circumstances, the writ appeal does not merit any consideration and the same is dismissed confirming the order of the learned single Judge. No costs. Consequently, C.M.P(MD) Nos.4330 and 7991 of 2018 are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The Director of Collegiate Education,
College Road, Chennai.
 2. The Registrar,
Bharathidhasan University,
Thiruchirapalli.
 3. The Regional Joint Director of Collegiate Education,
Thiruchirapalli Region, Thiruchirappalli.
- + 1 CC TO M/S.AJMAL ASSOCIATES, IN SR NO.86713
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.86604

SMS

BU/RSK/SAR-2 :23.10.2018 : 9P/6C

Judgment made in
Writ Appeal (MD) No.736 of 2018
25.09.2018