



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.06.2018
PRONOUNCED ON : 19.06.2018

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CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
W.A(MD)NO.772 OF 2018
and
C.M.P(MD)No.4559 of 2018

1. The State Government,
represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
 2. The Director of Elementary Educational Officer,
College Road,
Chennai - 600 006.
 3. The District Elementary Educational Officer,
R.M.S.Road,
Madurai,
Madurai District.
 4. The Assistant Elementary Educational Officer,
Thirupparankundram - 625 006,
Madurai District.
- :Appellants/Respondents 1 to 4

vs.

The Correspondent,
Infant Jesus Middle School,
Ponmeni - 625 010,
Madurai District.

: Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.100 of 2011, dated 15.06.2016.

Prayer in WP(MD). 100/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue appropriate writ, order or direction in the nature of a WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to the impugned proceeding issued by the 2nd respondent Director of Elementary Education in Na.Ka.No.25383/L2/2010 dated 10.08.2010 and quash the same and further direct the respondents to sanction and release forthwith the



grant-in-aid towards staff salary for the teaching and non-teaching posts in the petitioner school.

For Appellants : Mr.VR.Shanmuganathan
Special Govt.Pleader
For Respondent : Mr.T. Cibi Chakraborty

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JUDGEMENT

[Judgement of the Court was made by **K.RAVICHANDRABAABU, J.**]

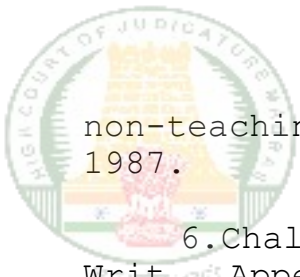
This Writ Appeal is directed against the final order made in W.P(MD)No.100 of 2011, dated 15.06.2016.

2.The respondents 1 to 4 before the Writ Court are the appellants. The respondent herein as Writ Petitioner, challenged the order of the Director of Elementary Educational Officer, dated 10.08.2010, wherein and whereby, the claim of the Writ Petitioner for grant-in-aid to the Writ Petitioner's School was rejected on the reason that the school management had already given an undertaking that the school will not claim grant-in-aid in view of Section 14(A) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. Consequently, the Writ Petitioner sought for a direction to the respondents to sanction and release forthwith the grant-in-aid towards staff salary for the teaching and non-teaching posts in the Writ Petitioner/School.

3.It was contended by the Writ Petitioner before the Writ Court that denial of grant-in-aid to the Writ Petitioner/School by placing reliance under Section 14(A) of the said 'Act' is not justifiable, since the Writ Petitioner's School was initially established as Primary School during the year 1987 itself and subsequently, it was upgraded as Middle School during the year 1997 and therefore, the Writ Petitioner/School is entitled to get grand-in-aid. It was also urged before the Writ Court that the undertaking furnished by the Writ Petitioner/School at the time of granting recognition cannot be a bar for considering the claim for grant-in-aid.

4.The respondents before the Writ Court contended that the Writ Petitioner/School having given an undertaking, that it would not claim any grant-in-aid at any time in future, is not entitled to seek such relief against such undertaking.

5.The learned Single Judge after considering the rival contentions of the parties and by following the decision of the Division Bench made and reported in **2008(4) MLJ 289(G.Sahadevan Nair .vs. Government of Tamil Nadu and others)** and also another decision of the learned Single Judge in the case of **C.Manonmony .vs. State of Tamil Nadu reported in (2006) 3 MLJ 242** allowed the Writ Petition and set aside the impugned order. The Writ Court also directed the respondents 1 and 2 therein to pass necessary orders in sanctioning and releasing the grant-in-aid towards staff salary for teaching and



non-teaching staffs for the Writ Petitioner/School from the year 1987.

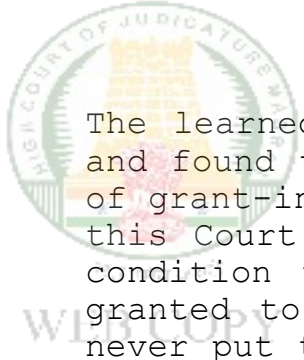
6. Challenging the above decision of the Writ Court, the present Writ Appeal is filed by the respondents 1 to 4. Mr. VR. Shanmuganathan, learned Special Government Pleader appearing for the appellants mainly contended that at the time of granting recognition to the Writ Petitioner's school, specific condition was imposed on the Petitioner not to claim grant-in-aid and such condition was never challenged by the Writ Petitioner at any point of time. Therefore, he contended that, the Writ Petitioner is not entitled to the relief of grant-in-aid, in view of the undertaking given by them. The learned Special Government Pleader further contended that there is delay in approaching the Court for seeking the relief. He further contended that Section 14(A) of the said 'Act' was upheld by this Court and therefore, the Writ Petitioner cannot seek the relief as a matter of right.

7. Per contra, the learned counsel for the respondent/Writ Petitioner submitted that the embargo put under Section 14(A) of the said 'Act' cannot be applied to the Writ Petitioner's case, more particularly, when the Writ Petitioner's School was initially established as a Primary School in the year 1987 itself, much earlier to the academic year 1991-1992, being is the cut-off period to apply Section 14(A) of the said 'Act'. He further submitted that the appellants cannot discriminate the Petitioner which they have chosen to extend the grant-in-aid to the similarly situated persons. He further submitted that the decision rendered by the Division Bench of this reported in **(2008) 4 MLJ 289 (G. Sahadevan Nair .vs. Government of Tamil Nadu and others)** has become final and conclusive and binding on the parties. He further submitted that under identical circumstances, another Writ Petition filed in **W.P (MD) No. 3094 of 2014 (The Correspondent, St. Joseph's Middle School Eraviputhanthurai, Thoothoor Post, Kanyakumari District- 629 176 -vs. The State of Tamil Nadu, represented by its Secretary, Department of School Education, Fort St. George, Chennai-9 and three others)** was allowed by this Court on 24.11.2016 and the said order was also confirmed by the Division Bench of this Court in W.A(MD) No. 928 of 2017, dated 30.08.2017. Therefore, the learned counsel contended that the appellants are not entitled to deny the relief to the Petitioner.

8. Heard both sides.

9. The point for consideration in this Writ Appeal is as to whether the Writ Petitioner/School is entitled to get grant-in-aid as ordered by the learned Single Judge?

10. A perusal of the facts and circumstances as well as the order made by the Division Bench in **G. Sahadevan Nair .vs. Government of Tamil Nadu and others reported in (2008) 4 MLJ 289** would make it clear that the issue involved in this case is no more res-integra.



The learned Single Judge rightly applied **G.Sahadevan Nair's case** and found that the Writ Petitioner/School is entitled to the relief of grant-in-aid. The only objection raised by the appellants before this Court is that at the time of granting recognition, a specific condition was imposed that no grant-in-aid would be given or granted to the Writ Petitioner/School and that such condition was never put to challenge by the Writ Petitioner at any point of time. In fact, the very same contention was already considered and rejected by the Division Bench of this Court in **G.Sahadevan Nair's Case**, where at Paragraph Nos.24 and 29, it has been observed as follows:

'24.The next contention is that many of the institutions had, at the time of seeking recognition, voluntarily waived their right to seek for aid from the Government.

It is true that such letters had been obtained from many of the institutions. It is also true that, as already adverted to, no minority institution has a fundamental right under Article 30(1) of the Constitution to claim aid as a matter of right. But as repeatedly observed by the Supreme Court, even though there is no such fundamental right to demand grand-in-aid as such, the inherent right of not being discriminated against is very much recognized in the shape of Article 30(2) as well as Article 14 of the Constitution. Where there is no provision relating to grant-in-aid, obviously there is no question of discrimination, but where there are provisions relating to grant-in-aid, the right to treat the minority institution at par with other educational institutions as envisaged under Article 14 and Article 30(2) come to the force. If there is provision for grant of aid to other educational institutions, minority institutions cannot be denied of such right by obtaining a letter that no such aid will be claimed in future. Law is well settled that there cannot be any waiver of a fundamental right. Judged in the above angle, the very fact that most of the institutions had written letter indicating that they would not claim aid cannot be held against such institutions.

29.For the aforesaid reasons, we allow the various writ petitions by giving the following directions:

(i)The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that

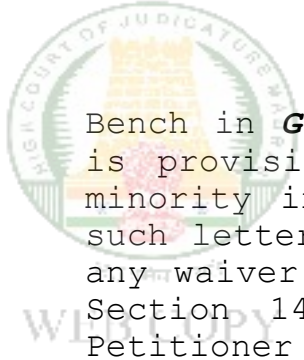


after obtaining recognition they will not claim any grant in aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.''

11. Further, it is seen that in a decision reported in **2006(3) MLJ 242 (C.Manonmony .vs. State of Tamil Nadu)**, the learned Single Judge found that similar objection raised by the Government based on the undertaking given by the Management was considered in a case in **W.P.No.6592 of 1993 (Arokia Annai Middle School, Palayam, Kanyakumari District and another .vs. The State of Tamil Nadu and two others, dated 11.10.1993)**, where, the learned Single Judge found that even if the management has given an undertaking that it will not claim grant-in-aid from the Government, that undertaking has no value. It is seen that the said order was challenged in W.A.No.1040 of 1997 and the same was dismissed by the Division Bench on 11.08.1997. It is further seen that the Special Leave Petition filed against the said decision of the Division Bench, was also dismissed on 17.08.1998. Thereafter, it is seen that the Government sanctioned posts to the said School. It is further seen that the Division Bench decision made in W.A.No.1040 of 1997 was followed by another learned Single Judge in W.P.No.5831 of 1997 dated 11.06.1998 and the Writ Appeal filed against the said order in W.A.No.228 of 1998 was also dismissed by the Division Bench on 29.01.2005. These facts are evident from the order of the learned Single Judge in the case reported in **2006(3) MLJ 242**.

12. It is further brought to our notice that apart from the above decisions, another Writ Petition in W.P(MD)No.3094 of 2013, on an identical circumstance was allowed with a direction to the respondents therein to disburse the grant-in-aid, by an order, dated 24.11.2016. The facts of the said case would also reveal that the Writ Petitioner/School therein was constrained to give an undertaking to the Department that they will not ask for grant-in-aid. The learned Single Judge after following the **G.Sahadevan Nair's Case**, allowed the Writ Petition. The said order of the learned Single Judge was put to challenge in W.A.No.928 of 2017 by the Department. The Division Bench by order, dated 30.08.2017, dismissed the Writ Appeal by holding that Article 14 of the Constitution of India is positive in nature and when the benefit is extended to similarly placed persons, the same cannot be denied to another.

13. Considering the above-stated position of law settled by this Court by several decisions as referred supra, We do not think that the appellants have any case before us to contend differently. Merely non-challenging the conditional recognition order itself cannot be the reason to deny a right to the Writ Petitioner/School, if the same is otherwise available to them, as provided to other similarly situated persons. At this juncture, it is useful to refer, at the risk of repetition, the observation made by the Division



Bench in **G.Sahadevan Nair's case** at Paragraph No.24 that if there is provision for grant of aid to other educational institutions, minority institutions cannot be denied of such right by obtaining such letter that there will be no grant-in-aid and there cannot be any waiver of fundamental rights. Further, in our considered view, Section 14(A) of the said Act will not stand in the way of Petitioner in getting the relief, as it is seen that the Petitioner/School was established as early as in the year 1987 itself and therefore the embargo put under the said provision of law is not applicable to the Petitioner/School. Therefore, in our considered view the appellants have not made out a case for interfering with the order of the learned Single Judge.

14.Accordingly, the Writ Appeal fails and the same is dismissed. The appellants are directed to release the grant-in-aid to the respondent/Writ petitioner's School, as directed by the Writ Court, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

+1cc to M/s.ISSAC CHAMPERS, SR. No.68968

+1cc to SPECIAL GOVERNMENT PLEADER, SR. No.68845

vsn

MK/SB/SAR 4/29.06.2018/6P/3C

JUDGEMENT MADE IN
W.A(MD) NO.772 OF 2018
and
C.M.P (MD) No.4559 of 2018
19.06.2018