



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W. P (MD) .No. 4941 of 2017

The Correspondent,
Jothi Higher Secondary School,
V.R.Naidu Nagar, Solaiseri,
Reddiapatti, Sankarankoil - 627 753.

... Petitioner

vs.

1. The State Government,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
College Road, Chennai - 600 006.

3. The Chief Educational Officer,
Collectorate Campus, Tirunelveli - 627 009.

4. The District Educational Officer,
Opp. to Rethana Theatre,
Tirunelveli District - 627 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents to sanction and release forthwith the grant-in-aid towards staff salary for the teaching and non-teaching posts in the High School section of the petitioner-School from the academic year 1986-1987.

For Petitioner : Ms. Amala for
Mr. T. Cibi Chakraborty
For Respondents : Mr. N. Shanmuga Selvam
Addl. Government Pleader

ORDER

The petitioner has come forward with this petition for issuance of a Writ of Mandamus directing the respondents to sanction and release the grant-in-aid towards staff salary for the teaching and non-teaching posts in the High School section of the petitioner-School from the academic year 1986-1987 forthwith.

2. Heard both sides.

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

3. The petitioner's School is a recognized School and aid is extended for standard VI to VIII. Insofar as the standards IX to



XII are concerned, the same were being run on self finance basis by the management. By G.O.Ms.No.354, Education Department, dated 01.04.1992, the Director of School Education had permitted to accord temporary recognition to standards IX and X of the School for a temporary period on condition that grant-in-aid will not be paid to the petitioner's School.

4.It is the case of the respondents that since the management had earlier accepted the condition that they will not claim grant-in-aid, they are not entitled to seek for such a benefit. It is in this background the present writ petition has been filed seeking for a direction to the respondents to sanction and release grant-in-aid towards salary for teaching and non teaching staffs in their School from the academic year 1986-1987 onwards.

5.The learned counsel for the petitioner by relying upon an order of the Division Bench of this Court, reported in (2008) 4 MLJ 289, submitted that the respondents are not justified in taking a stand that in view of their undertaking not to claim grant-in-aid, they cannot be deprived of claiming the benefit which is discriminatory.

6.The learned Government Pleader on the other hand submitted that the petitioner herein had agreed to the condition that grant-in-aid will not be paid, while the Middle School was upgraded to High School. Therefore, after a lapse of so many years, the petitioner herein is not justified in making such a claim, in view of the undertaking given by them. The learned Government Pleader further submitted that the petitioner cannot compel the Government to sanction the post of teachers to classes IX and X to this School in view of the undertaking.

7.I have given careful consideration to the submissions made by the respective counsels. In the judgment of the Honourable Supreme Court in T.M.A. Pai Foundation V. State of Karnataka reported in AIR 2003 SC 355, the Honourable Apex Court had recognized that the state cannot deny recognition on arbitrary or irrelevant consideration, but would be entitled to only regulate the extent of grant of recognition or affiliation to ensure the quality of the institution. When there is a provision for grant-in-aid to other Educational Institutions, the minority Institutions cannot be denied of such a right which would amount to discrimination. This aspect came up for consideration, before the Division Bench of this Court. In a judgment reported in (2008) 4 MLJ 289 the Honourable Bench while deciding the matters as to Whether the Government would be justified in denying the right to School for aid, in view of the Institutions voluntarily waiving the right, had 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 grant 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 fore. 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.

25.The question can be viewed from another angle. As there is no dispute that the right under Article 30(1) to establish an institution is very much available as has been repeatedly recognised, an institution, unless it is recognised or affiliated practically, serves no purpose, particularly for the students concerned. In TMA Pai Foundation v. State of Karnataka (Supra), it is well recognised that the State cannot deny recognition on arbitrary or irrelevant consideration, but it can regulate the question of grant of recognition or affiliation in order to ensure quality of the institution such as availability of infrastructure, employment of duly qualified teachers and the like. For minority institutions, Section 9 of the Act itself contemplates that no prior permission is required, though for other institutions such prior permission is required.

26.The right of the minority to establish such an institution being one of the fundamental rights, obviously statutory provisions have been made dispensing with the normal procedure of obtaining prior permission. Having thus statutorily recognised the fundamental right of such an institution to establish and administer educational institution, to deny aid on the ground that no prior permission has been obtained sounds like a catch-22 situation. The main purpose under Article 30(1) is the privilege given to the minority to establish their own institutions. Such institutions would obviously have a



right to seek recognition in respect of their degrees or diplomas or as in the cases of schools, their right to present students for examinations held for other similarly situated students of other schools. The State is bound to give recognition for such qualification and such institutions cannot be discriminated against except on the ground of want of infrastructure or excellence or absence of qualified staff, etc.

27. Some what inter-related question was raised by the learned Additional Advocate General appearing for the State that since no permission is sought for by the minority school to be established, the necessity of establishing such a school is not proved and, therefore, the authorities have right to deny grant-in-aid, if it is found that there is no necessity to establish such school.

For other institutions, the provisions for obtaining prior permission has been incorporated to ensure that a institution is established only if there is need for such an institution. In the case of minority institutions, such need is presumed to exist in view of the right conferred under Article 30(1). Having provided that there is no requirement for obtaining prior permission to establish such an institution to cater to the need of the religious or linguistic minority, it would be paradoxical to deny any such institution the benefit of the grant-in-aid merely on the footing that no prior permission has been obtained.

28. It was also submitted that in view of the provisions contained in Section 14(1) of the Act, no school, whether minority or non-minority is entitled to claim grant-in-aid merely on account of the fact that such institution has been subsequently recognised or affiliated.

This provision merely emphasise the well accepted concept that the institutions whether minority or otherwise can seek grant-in-aid only if there is specific provision to that effect. The question in the present case is not that there is no provision relating to grant aid, but the question is inspite of the existence of provision relating to grant-in-aid, whether the denial of such grant-in-aid to the minority institutions is justified. It is not the claim of the institution that merely because it has been recognised it is entitled to receive aid. The claim of the institution is to the effect that since there is provision for grant-in-aid, the concerned institution should not be discriminated against in the matter of sanction of such grant-in-aid."



discriminate or deny the benefit of grant-in-aid on the ground that the institution has waived such a right earlier. It is needless to point out that while considering an application for grant-in-aid, the Government would be well within its power to seek for compliance of certain other relevant factors such as the required infrastructure, Teacher-Students ratio and eligibility of the concerned teachers who hold the post, etc.,. Merely, because the Institution had waived its right to claim the aid earlier, that cannot be a bar or an impediment for the Government to consider the claim positively.

8.At this juncture, the learned Counsel appearing for the petitioner submitted that the petitioner had given a detailed representation dated 05.01.2017 to the respondents seeking for grant-in-aid to their High School Sections and that the said representation is still pending.

9.In view of the above findings, it can only be concluded that the respondents are not justified in denying the claim of the petitioner on the ground that they had waived their rights to claim grant-in-aid earlier. In the light of the above observations, the first respondent herein is directed to consider the petitioner's representation within a period of twelve weeks, without being influenced on the fact that the petitioner's institution had given undertaking to restrain from claiming any grant-in-aid.

10.This writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

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

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Collectorate Campus, Tirunelveli - 627 009.

4.The District Educational Officer,
Opp. to Rethana Theatre,
Tirunelveli District - 627 001.

+1cc to Mr.T.Cibi Chakraborty, Advocate, SR.No.66827.

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