

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18/2/2019
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4531 of 2019

Dr.K.Krishnasamy, M.D.
Founder - President
Puthiya Tamilagam Party
No.2/34 V. Gangadar Street
Nungambakkam
Chennai 600 034.

... Petitioner

Vs

1. The Principal Secretary to Government
School Education Department
Fort St. George
Chennai 600 009.
2. The Director
School Education Department
College Road
Chennai 600 006.
3. The Managing Director
Tamil Nadu Textbook and
Educational Services Corporation
College Road
Chennai 600 006.
4. The Director
State Council of Educational Research & Training
Chennai 600 006.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to include the life history of Immauel Sekaranar in the syllabus for the Tamil subject for 6th, 7th or 8th Standard of the respondent Schools by considering the petitioner representation dated 11/10/2018, within a stipulated time.

For Petitioner

... Mr.J.Saravanavel

For respondent

... Mr.K.Karthikeyan,
Government Advocate

O R D E R

(Order of the Court was delivered by S.Manikumar, J)

Dr.K.Krishnasamy, Founder of Puthiya Tamilagam, a registered political party, has filed the instant writ petition, for a mandamus, directing the respondents, to include the life history of Immanuel Sekaranar, in the syllabus for the Tamil subject, for 6th, 7th or 8th Standards of the respondent Schools, by considering the petitioner's representation, dated 11/10/2018, within a stipulated time.

2. Supporting the prayer sought for, petitioner has contended that Mr.Immanuel Sekaranar, an eminent leader of the suppressed Communities, was a freedom fighter, opposed and struggled against the oppressors of the weaker sections of the Society and recognising the same, Education Department, ought to have included the life history and biography of Mr.Immanuel Sekaranar, in the curriculum of School Education Department, particularly, for standards VI, VII and VIII, under the caption "Freedom Fighter and a Fighter for Social Justice".

3. Petitioner has made a representation, dated 11/10/2018, to the Hon'ble Chief Minister, Hon'ble Educational Minister, etc. Since no action is taken on the representation, petitioner has come forward with the instant writ petition, for the relief, stated supra.

4. Mr.J.Saravanel, learned counsel for the petitioner made submissions.

5. Before advertng to the averments and submissions, let us consider as to when a writ of mandamus can be issued.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court

considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

6. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, bWhen a Mandamus can be issued, it is worthwhile to consider few decisions,

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7. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so

required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

11. A prerogative writ, like, a Mandamus cannot be demanded ex debito justitiae, but it can be issued by the court in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for. ut unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

8. A prerogative writ, like, a Mandamus cannot be demanded ex debito justitiae, but it can be issued by the court in its discretion, for which, it must be shown that, there is a

legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, and there is a failure of performance of a legal or statutory duty, by the authority against whom, relief is sought for.

9. Many a times, we find writ petitions are filed, seeking for a direction to the respondents, to consider the representations submitted by the petitioners therein and to act upon. If there is a right constitutional, statutory or customary, recognised by law and correspondingly a duty is cast on the official respondents or even a person, and if there is a failure to exercise the duty cast on them and if any representation is pending to the competent authority, directions can be issued to consider the said representation. Therefore, firstly there must be a legal right to make a representation, bringing to the notice of the official respondents that there is a duty to be discharged and that there is also a failure. Every request made by way of representation, cannot be directed to be considered.

10. Adverting to the case on hand, it could be seen that the petitioner has made a request, to include the life history or biography of Mr.Immanuel Sekaranar, under the caption "Freedom Fighter and a Fighter for Social Justice", in the School syllabus.

11. During the course of hearing, posed with a specific question as to whether writ petitioner can points out there is a constitutional, statutory or even customary right to demand for inclusion, it is the answer of the learned counsel for the petitioner that in respect of other leaders, it has been done. Thus, in the light of the decisions stated supra, making it clear as to what request or representation, can be considered by the official respondents. It is purely a prerogative right of the Government to consider inclusion, if they so desire.

12. Inviting the attention of this Court to the response of the Tamil Nadu Textbook and Educational Work Corporation, Chennai, respondent No.3, learned counsel for the petitioner, sought for appropriate directions to the latter to respond. Copy of the said letter has been addressed to the Hon'ble Chief Minister Cell, Government of Tamil Nadu as well as to Dr.K.Krishnaswamy/petitioner. Petitioner can at best be said to be entitled to know the decision. The Director SCERT, Chennai, fourth respondent, is directed to communicate the decision accordingly.

13. With the above observation, writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Principal Secretary to Government
School Education Department
Fort St. George, Chennai 600 009.
2. The Director
School Education Department
College Road , Chennai 600 006.
3. The Managing Director
Tamil Nadu Textbook and Educational Services Corporation
College Road, Chennai 600 006.
4. The Director
State Council of Educational Research & Training
Chennai 600 006.

+1 cc to The Government Pleader, SR.No.15160
+1 cc to Mr.J.Saravanavel, Advocate Sr.No.14550

W.P.No.4531 of 2019

SSI(CO)
CSL/27.03.2019

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