IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.09.2018

Delivered on : 07.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.7542 of 2010
and
M.P.No.1 of 2010

The Tamil Nadu Anglo Indian School
Teachers and Staff Association,
(Regd. No.279/97)
16, Muthiah Street,
Royapettah,
Chennai - 600 014,
Represented by its Secretary,
S.U.Peter Surenderan. ... Petitioner

Vs.

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

2.The Director of School Education,
DPI Compound,
No.6, College Road,
Nungambakkam,
Chennai - 600 006.

3.The Joint Director of School Education,
(Vocational),
DPI Compound,
Nungambakkam,
Chennai - 600 006.

4.The Inspector of Anglo-Indian Schools,
DPI Compound,
No.6, College Road,
Nungambakkam,
Chennai - 600 006.

5.The Accountant General (A&E),
Tamil Nadu,
361, Anna Salai,
Teynampet, Chennai - 600 018.

6.The Correspondent,
St. John Vestry Higher Secondary School,
Trichy - 620 001.

7.The Correspondent,
St. Joseph's Anglo Indian Higher Secondary School,
Melapudur, Trichy - 1.

8.The Correspondent,
Sacred Heart Higher Secondary School,
Villupuram - 605 602.

9.The Correspondent,
Holy Cross Anglo Indian Higher Secondary School,
Tuticorin - 628 002.

10.The Correspondent,
Campion Anglo Indian Higher Secondary School,
Trichy - 620 001.

11.The Correspondent,
Montfort Higher Secondary School,
Yercaud.

12.The Correspondent,
St. Joseph's Girls High School,
Coonoor - 643 101, Nilgiris.

13.The Correspondent,
Sacred Heart Girls Higher Secondary School,
Yercaud, Salem District.

14.The Correspondent,
Stanes Higher Secondary School,
Coonoor - 643 101, Nilgiris.

15.The Correspondent,
St. Joseph's Boys Higher Secondary School,
Coonoor, Nilgiris.

16.The Correspondent,
Brweks Memorial Anglo Indian Higher Secondary School,
Ootacamund, Nilgiris.

17.The Correspondent,
Stanes Higher Secondary School,
Coimbatore - 641 018.

18.The Correspondent,
St. Francis Girls High School,
Coimbatore.

19.The Correspondent,
St. Mary's Al Higher Secondary School,
Chennai - 600 001.

20.The Correspondent,
Columban's Anglo Indian Higher Secondary School,
Chennai - 600 001.

21.The Correspondent,
St. Francis Xavier's Anglo Indian Higher Secondary School,
Chennai - 600 001.

22.The Correspondent,
Christ Church Anglo Indian Higher Secondary School,
Chennai - 600 002.

23.The Correspondent,
St. Bede's Anglo Indian Higher Secondary School,
Chennai - 600 002.

24.The Correspondent,
St. Ursula's Anglo Indian Higher Secondary School,
Chennai - 600 006.

25.The Correspondent,
St. Antony's Anglo Indian Higher Secondary School,
Chennai - 600 008.

26.The Correspondent,
St. Williams Anglo Indian High School,
Peters Road, Chennai - 600 014.

27.The Correspondent,
St. Dominic Anglo Indian Higher Secondary School,
Chennai - 600 016.

28.The Correspondent,
Holy Angel's Higher Secondary School,
Chennai - 600 017.

29.The Correspondent,
St. Patrick's Higher Secondary School,
Chennai - 600 020.

30.The Correspondent,
St. Kevin's Anglo Indian Higher Secondary School,
Chennai - 600 013.

31.The Correspondent,
St. Joseph's Boys Anglo Indian Higher Secondary School,
Chennai - 600 007.

32.The Correspondent,
Bishop Corrie Higher Secondary School,
Chennai - 600 001.

33.The Correspondent,
Deveton Corrie Boys' Higher Secondary School,
Chennai - 600 007.

34.The Correspondent,
St. Mathias Anglo Indian Higher Secondary School,
Chennai - 600 007.

35.The Correspondent,
St. Aloysius Anglo Indian Higher Secondary School,
Chennai - 600 112.

36.The Correspondent,
Deveton Corrie Girls' Higher Secondary School,
Chennai - 600 007.

37.The Correspondent,
St. Joseph's Anglo Indian Girls' High School,
Chennai - 600 011.

38.The Correspondent,
St. George's Anglo Indian Higher Secondary School,
Chennai - 600 030.

39.The Correspondent,
Atkinson's Anglo Indian Higher Secondary School,
Viajayawada- 520 001.
Andhrapradesh. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 to 4 to inquire into the affairs of the management of the respondents 6 to 39 in respect of receipt of fees and its expenditure and also further direct the first respondent to have the management of the respondents 6 to 39 to be audited by the 5th respondent.

For Petitioner	::	Mr. R.Bharanidharan
For Respondents 1-4	::	Mr.P.Raja Government Advocate
For Respondents 6	::	Mr.D.Muthukumar for M/s.Paul & Paul
For Respondents 7 to 13, 14, 15 to 32, 34, 35, 37 & 38	::	Mr.M.Ramamurthy
For Respondent s 33 & 36	::	Mr.N.D.Bahety
For Respondents 5 & 39	::	No appearance

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ORDER

The above Writ Petition is filed for issuing a Writ of Mandamus directing the respondents 1 to 4 to enquire into the affairs of the management of respondents 6 to 39 in respect of receipt of fees and its expenditure and further to direct the first respondent to have the management of the respondents 6 to 39 to be audited by the fifth respondent.

2.The respondents 6 to 39 are the Anglo Indian Schools run by Christian minorities. The petitioner is the association of teaching and non-teaching staff working in all the forty one Anglo Indian Schools located throughout the State. The petitioner association was formed in the year 1997 for the welfare of teaching and non-teaching staff working in all the Anglo Indian Schools in Tamil Nadu. It is admitted that in respect of Anglo Indian Schools, the schools are permitted to collect tuition fees to meet the expenditure towards salary and other allowances to the teachers and other non-teaching staff and that the deficit is sanctioned by the Government of Tamil Nadu. The grievance of the petitioner association is that the teachers and non-teaching staff working in Anglo Indian Schools have not been paid their salary and other emoluments promptly and many often the members of the petitioner association are made to wait till the Government sanction the required amount after a process which takes a longer time. A specific allegation is made in the affidavit filed in support of this petition that the Anglo Indian Schools, namely, respondents 6 to

39 are collecting fees from their students not only towards tuition fees but also other miscellaneous fees, computer fees, book fees and fees under several heads and that they do not disclose such fees collected by them under various heads. It is stated that the respondents 6 to 39 are collecting fees under other heads more than tuition fees and appropriate the entire collection under other heads without proper sanction and authority by the educational authorities. It is further stated that the accounts submitted by the respondents 6 to 39 is only regarding the tuition fees collected towards payment of salary to their respective staff and that if the entire fees collected by the schools are accounted, the salary of the teachers and other non-teaching staff can be paid by the schools without any financial assistance or grant from the Government. The petitioner also stated in the affidavit that salary and other monetary benefits are paid to the teaching and non-teaching staff in Anglo Indian Schools several months after the payment is due. It is further stated that the respondents 1 to 4 despite receiving representation from the petitioner association did not take any action so far.

3.It is contended that the management of Anglo Indian Schools except few are not paying salary and other emoluments to staff only under the pretext that they are unable to get the grants in time. It is also the grievance of the petitioner that the staff of the respondents 6 to 39 are unable to get their retirement benefits in time and that the delay was on account of proper and timely audit of the receipt and expenditure of individual schools. It is also the case of the petitioner that all the institutions, namely, respondents 6 to 39 except few are receiving Government grant for more than Rs.35 Lakhs and that therefore, the accounts of the schools have to be audited by the Accountant General of Tamil Nadu, namely, the fifth respondent. It is also stated by the petitioner that the respondents 6 to 39 are not maintaining proper accounts and that the deficit grant is claimed by the schools by showing false accounts and that therefore, the Government also loosing substantial money by sanctioning deficit grant. It is specifically alleged that the moneys collected by the schools from the students on various other accounts are not properly accounted and that the accounts for receipts and expenditure if properly audited, there will be no occasion for the Government sanction/disburse deficit grant. Though the petitioner has submitted several representations from 1998, it is contended that the respondents 1 to 4 have not taken any action against any of the respondents schools to find out whether the schools are collecting any amount unauthorisedly under other heads which can be utilised for paying salary to the staff in time.

4.It is admitted that there are 41 Anglo Indian Schools in the State of Tamil Nadu. Out of 41 Anglo Indian Schools, 8 schools are managed by the Southern Railway and only 33 Anglo Indian Schools are run by Christian Minorities, who are respondents 6 to 39. The 39th respondent is located in the State of Andhra Pradesh. Therefore, the remaining schools alone have to be considered in this Writ Petition.

5.The sixth respondent filed counter affidavit stating that it is not getting any deficit grant from the Government of Tamil Nadu and that therefore, they are unnecessarily impleaded in the Writ Petition. It is further stated that inasmuch as the sixth respondent is not receiving any grant from the Government and that the salary and other emoluments are promptly paid to the teaching and non-teaching staff working in 6th respondent school, their accounts need not be audited either by the sixth respondent or by the fifth respondent. Hence, it is stated that the Writ Petition is liable to be dismissed as against the 6th respondent with exemplary costs.

6.Counter affidavit has also been filed by respondents 33 and 36. It is stated by the respondents 33 and 36 that in respect of all the Anglo Indian Schools, financial statements from every school has to be filed with the 5th respondent, namely, the Inspector of Anglo Indian Schools. It is further stated that only after the auditing is done by the departmental auditors, the deficit grant is determined and approved by the Government and that therefore, the contentions of the petitioner are denied by the respondents 33 and 36. Since the allegations in the affidavit filed in support of the petition were generally made without reference to any individual school or any specific instance, it is stated in the counter affidavit that no Writ will lie on the basis of the bald and sweeping statements without any material to substantiate those allegations. It is also stated in the counter affidavit that the grievances expressed by the petitioner has no relevance as the teaching and non-teaching staff working in their schools are receiving salary and other payments promptly as per new and revised 6th Pay Commission.

7.On behalf of official respondents, a counter affidavit was filed by the fourth respondent. Pursuant to the direction of this Court earlier to respondents 1 to 4 and to respondents 6 to 39 to file audit reports of the respective schools for the past ten years, some of the individual schools have also produced before this Court the audit report for getting deficit grant from the Government. The fourth respondent apart from filing counter affidavit has also produced before this Court the details of the deficit amount sanctioned in favour of the respondent schools based on the internal audit. The respondents 7 to 13, 15 to 32, 34, 35, 37 and 39 produced before this Court the audit report of respective schools for the year 2015-2016.

8.On behalf of the fifth respondent, the Senior Deputy Accountant General (Admin), Office of the Principal Accountant General (Civil Audit) has filed counter affidavit. Paragraphs 7 to 9 and 12 of the counter are relevant and hence, they are extracted for convenience:

> "7.It is submitted that the 5th respondent is periodically auditing the office of the Inspector of Anglo Indian Schools (the 4th respondent). During the audit of the Inspectorate, it is verified through test check whether norms prescribed by Government in respect of deficit grant are being adhered to.
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> 8.It is submitted that the individual school being partly funded by the Government would not come under audit of the 5th respondent, unless the audit is mandated under Section 14 of the CAG's DPC Act or the audit is specially entrusted by order of President or Governor under Section 20 of the Act.
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> 9.The Petitioner has made averment at paragraphs 9 and 10 of his Affidavit that the receipts and payment accounts of the Anglo Indian Schools have to be submitted for audit by the Comptroller and Auditor General of India in accordance with Section 14 of the CAG's DPC Act. It is submitted that the Petitioner has not properly interpreted the provision of the said section of the Act. According to Section 14(1), where a body or authority is substantially financed by grants or loans from the Consolidated Fund of India or State, the CAG shall, subject to the provisions of any law applicable to that body/authority, audit the receipts and expenditure of that body/authority. The body or authority is deemed to be substantially financed if the amount of such grants and loans in a financial year is not less than Rs.25 lakh and also not less than 75 per cent of the total expenditure of the body/authority. Section 14(2) of the Act says that CAG may with the previous approval of the President or Governor as the case may be, audit all receipts and expenditure of the body/authority where the amount of grants and loans in a financial year exceed Rs.1 Crore. Therefore, audit under Section 14 (2) is only discretionary and not mandatory.
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> ....

> 12.Regarding the issue of audit by the 5th respondent of the receipts and expenditure of the Anglo Indian Schools in Tamil Nadu, it is reiterated that in order that an individual school may qualify for audit, it is necessary that conditions of Section 14(1) are satisfied. If these criteria are applied in respect of each school, it is unlikely that any of these schools would qualify for audit by 5th respondent. However, the Inspector of Anglo Indian Schools (the 4th respondent) has been requested to provide the details of grants released to these schools and to instruct the schools to furnish the audited annual accounts from the last 5 years to assess if any of these 34 schools would qualify for audit under Section 14(1) of the DPC Act. Based on the particulars received from the Department, if it is found that audit is attracted in respect of any of these schools, further action as may be necessary will be taken by the 5th respondent in exercise of authority conferred under Section 23 of the DPC Act, taking into account the audit plan and man power available in his office."

9.From the counter affidavit, it is seen that the statutory audit is required by the Comptroller and Auditor General of India, only if a body or an establishment is substantially financed by grants and loans from the Consolidated Fund of India or State. Unless the amount of such grants and loans in a financial year is not less than Rs.25,00,000/- or if the grant is not less than 75% of the total expenditure of the body, there need not be any audit by Comptroller and Auditor General. It is submitted that unless the conditions of Section 14(1) of the Comptroller and Auditor General of India (Duties and Power and Conditions of Service) Act, 1971, is satisfied, there is no scope for directing the audit by the fifth respondent. In the additional affidavit filed on behalf of the petitioner, the details of payments due to various teaching staff who are members of the associations are given. The specific allegations of the petitioner that the Anglo Indian Schools are collecting fees under various heads and they are not accounting those receipts is not seriously disputed. From the counter affidavit filed by the fourth respondent, namely, the Inspector of Anglo Indian Schools, most of the schools are receiving deficit grant based on the internal audit. Out of 33 schools listed in the table, no details are provided in respect of three schools. The deficit grant claimed or sanctioned is not available for some of the years in respect of few schools. From the table, it is seen that at least in respect of about 22 schools, out of 33 schools, the deficit grant exceeds beyond Rs.25,00,000/-. Hence, we are unable to sustain the stand taken by the fifth respondent who has not bothered to find out whether a statutory audit is required in respect of the respondent schools. Having regard to the position that the conditions of Section 14(1) are satisfied in respect of most of the schools, the contention of the fifth respondent that it is unlikely that any of the schools qualified for audit by fifth respondent is correct. Even without the intervention of the Court, the fifth respondent ought to have directed the fourth respondent to provide the details of the grants released to the respondent schools and taken an action on their own. The respondent schools have filed counter denying some of the allegations. However, the representations submitted by the petitioner association have not been properly considered by the fifth respondent or respondents 1 to 4 at the appropriate time. Considering the nature of grievance expressed by the petitioner and the allegations made in the representation as well as in the affidavit filed in support of this petition, this Court is inclined to issue the following directions:

(i) The fifth respondent is directed to take appropriate action for regular audit being done by the fifth respondent in respect of the schools which are receiving deficit grant exceeding Rs.25,00,000/- and such deficit grant exceed 75% of expenditure.

(ii) The fifth respondent is directed to make arrangements for an audit in accordance with the provisions of Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971 in respect of any other schools as may be referred to by the fourth respondent, namely, the Inspector of Anglo Indian Schools in future and the fourth respondent shall ascertain whether the school that is referred to satisfy the conditions found in Section 14 of the Act before it is referred to.

(iii) All the respondent schools who are receiving deficit grants from the Government are required to submit accounts in respect of all the receipts under all heads and the fourth respondent is directed to monitor and ensure that all the Anglo Indian Schools receiving aid or deficit grant submit periodical accounts of receipts of every fee that is collected from the students on all heads promptly so that there will be proper auditing for the purpose of sanction of deficit grant.

(iv) With regard to the allegations regarding the delay in payment of salary and other allowances to the teaching and non-teaching staff, the petitioner is directed to submit a fresh representation to the respondents 1 to 4. The fourth respondent is directed to hold an enquiry so that the grievances of the members of the association can be redressed and sorted out in the manner known to law. For the said purpose, the fourth respondent is further directed to give an opportunity to the Anglo Indian School concerned in case specific allegations are directed against such schools. The petitioner should specify the grievance of the members of the petitioner association with reference to the particular school so that the fourth respondent need not conduct any rowing enquiry unnecessarily at every Anglo Indian Schools who are respondents in this Writ Petition. The fourth respondent on receipt of such representation is directed to consider the representation on merits and in accordance with law and to pass appropriate orders after giving sufficient opportunity to the individual schools.

10.The Writ Petition against the respondents 6 and 39 is dismissed. Accordingly, this Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Director of School Education,
DPI Compound, No.6, College Road,
Nungambakkam, Chennai - 600 006.

3.The Joint Director of School Education,
(Vocational), DPI Compound,
Nungambakkam, Chennai - 600 006.

4.The Inspector of Anglo-Indian Schools,
DPI Compound,
No.6, College Road,
Nungambakkam, Chennai - 600 006.

5.The Accountant General (A&E),
Tamil Nadu, 361, Anna Salai,
Teynampet, Chennai - 600 018.

+1cc to Mr.R.Karthikeyan, Advocate sr.46363
+1cc to M/s.Paul & Paul, Advocate sr.46471

Order made in
W.P.No. 7542 of 2010

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