



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.11.2019	Pronounced on: 19.11.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.27327 of 2019
& W.M.P.No.26760 of 2019

M/s.Akshayah Global School,
No.8, Tansi Nagar, 1st Street,
Velacherry, Chennai - 600 042,
represented by its Founder-Chairman,
T.K.Venkatesh.

... Petitioner

/versus/

1. The State of Tamil Nadu,
represented by its Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Chief Educational Officer,
Makaana Magalir Government Higher
Secondary School Campus, Gengu Reddy Road,
Opp. to Santhosh Hospital, Egmore,
Chennai - 600 008.
3. The Director of Private Schools,
DPI Campus, No.6, College Road,
Subba Road Avenue, Nungambakkam,
Chennai - 600 006.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents to issue 'No objection Certificate' to the petitioner school in terms of Section 2(n)(iii) of the Right of Children to Free and Compulsory Education Act, 2009 until the Tamil Nadu Act 35 of 2019 is notified and given effect to for the establishment and certification of private schools under the new Act.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel,
for Mr.N.V.N.Margandeyan

For R1 to R3 : Mrs.V.Annalakshmi,
Government Advocate

O R D E R

Heard the Learned Senior Counsel for the Petitioner and the Learned Government Advocate for the Respondents 1 to 3.

2. The petitioner School to cater the needs of Non Resident Indians and Foreign Nationals, had started Global school offering classes from kinder Garden upto 'A' level (Plus 2) under the Cambridge University based on United Kingdom Curriculum. It has obtained license from the Cambridge University to run the School as per the University curriculum. The intention of the School is to provide best quality education of International Standard to the children by following the Cambridge pattern of Schools. Till 2010, there is no provision or Educational Policy regulating the functions of Global Schools. After the implementation of Right of Children to Free and Compulsory Education Act, 2009 with effect from 01.04.2010, recognition of Global school is envisaged under Section 2 (n) (iii) of the said Act. Under the said Act, the 1st respondent is the Regulating Authority. So far, there is no policy declared by the 1st respondent regarding regulating the Global School. Being a Self Finance Institution, without getting aided from the state, there is no statute as on date to govern or regulate Global schools in Tamil Nadu. The Act 35 of 2019 intend to regulate Private schools in Tamil Nadu has not so far come to force since the Government has not so far appointed the date of effect by notification. Under such circumstances, when the petitioner approached the Authorities regarding issuance of No Objection Certificate, they directed to make an application under the Form prescribed under the Private School Regulations, 1973. When their application dated 04.12.2018 is pending, the 2nd respondent/Chief Educational Officer issued proceedings dated 03.06.2019 pointing out certain defects in the petitioner Institute regarding infrastructure. Also observed that for conducting classes from Pre-K.G to +2, the Institutes has not obtained recognition.

3. Referring 18(1) of the Right of Children to Free and Compulsory Education Act, 2009, the respondents has directed the petitioner/Institute to rectify the defects pointed out in the proceedings within 30 days and report. Further threatened that if the petitioner Institute fails to rectify the deficiencies within 30 days, then closure order will be issued.

4. The contention of the petitioner is that, on receipt of this proceedings, the petitioner/Institute forwarded the copy of the application for No Objection Certificate, stability certificate, and building license along with their explanation for the queries raised in the 2nd respondent proceedings. While the matter was pending with the 2nd

respondent, a press release was hosted in the Website on 18.06.2019 that the petitioner Institute is an unrecognised Institute.

5. Aggrieved by the inaction on the part of the 2nd respondent for not considering the application for No Objection Certificate and hosting in the website mentioning the petitioner/Institute has an unrecognised School, the Present Writ Petition is filed on the ground that there is no regulations or legislation in respect of Global Schools in Tamil Nadu. Without proper inspection, the application of the petitioner/Institute, to grant No Objection Certificate to the Petitioner School in terms of 2 (n)(iii) of the Right of Children to Free and Compulsory Education Act, 2009 is kept pending by the 2nd respondent. The delay in issuance of No Objection Certificate, causes harassment and inconvenience to the students. Hence, Mandamus to direct the respondent to issue No Objection Certificate to the Petitioner/Institute is sought.

6. The 2nd respondent herein has filed counter, wherein, it is stated that the petitioner school falls under the definition of "School" as defined under Section 2 (n)(iv) of the Right of Children to Free and Compulsory Education Act, 2009. Under the said Act, Schools established should get recognition either from the State Government or the Central Government and such schools should be affiliated to any Board providing approved courses of studies. However, the Schools are at liberty to affiliate themselves to a Board of their choice, which can either be the State Government or CBSE, ICSE, ISE or any other International Board, subject to No Objection issued by the State Government. In any case, the schools should get recognition from the State Government. Only affiliation to the Board is the choice of the concerned school. While so, the Petitioner School covered under the Right of Children to Free and Compulsory Education Act, 2009 is bound to get recognition from the State Government as per Section 18(1) of the said Act and the State Government is the competent Authority for sanctioning recognition to the Petitioner School.

7. By virtue of G.O.Ms.No.144 School Education (GE) Department, dated 18.09.2014, the Government of Tamil Nadu has notified the Director of School Education is the competent authority for granting recognition for schools affiliated to Boards, other than the State Board or School Examination (Secondary) and State Government Board of School examination (Higher Secondary). The petitioner Institute, so far has not obtained proper recognition for running the Global School.

8. When an application was received for issuance of NOC, inspection was conducted and was found that the petitioner School running from Pre-K.G to +2 standard, without proper recognition and in the very same building three schools 1. Akshayah Matriculation Higher Secondary School, 2. Akshayah

Global School and 3.Trinity College of Music were functioning. There is no separate land and buildings made available for each school. The same building and class rooms are used for both Matriculation Higher Secondary School as well as Global School. Since there was no proper infrastructure facility provided by the petitioner, it was informed to the petitioner through notice to rectify the defects and seek for No objection Certificate.

9. In response to the counter, the petitioner herein has filed reply statement, reasserting, so far Rules and Regulations are formulated only in respect of State Board, CBSE, ICSE. No Rules and Regulations have been formulated for International Schools. The petitioner/Institute having been affiliated to IGSE Board following Cambridge University UK-Syllabus, in the absence of Rules or Act prohibiting conduct of International School. They are entitled to run the Global Schools and get recognition from the State Government. The petitioner Institute is already been affiliated to the International Board IGCSE. In so far as obtaining recognition or NOC is concerned, there is no prescribed rules, either under old Act or under the new Act of 35 of 2019, which is yet to be notified. The petitioner School is functioning from the year 2012 onwards and there is a regular intake of new students and transfer of outgoing students. Till the year 2018, the transfer certificates of the petitioners were being duly recognized by the Competent Authority. While so, refusal to issue "No Objection Certificate" without any sanction of law is unconstitutional. Regarding running of three Institutes in the very same building, the petitioner has circulated details of 17 Institutes in the same District, were schools running two different Boards of examinations within the same campus.

10. Pending Writ Petition, the 2nd respondent has caused inspection of the petitioner Institute and has made certain observations regarding infrastructure and building violation in the petitioner Institute, referring the guidelines laid in G.O.Ms.No.131, School Education Department, dated 10.08.2006.

11. For the said Government Order, the petitioner herein states that G.O.Ms.No.131 is the outcome of one man committee recommendation. In the light of Kumbakonam school Fire Tragedy, Justice K.Sampath Committee was constituted and based on his recommendation, G.O.Ms.No.131 was issued. This Government Order has no force of law and therefore, G.O.Ms.No.131, dated 10.08.2006 cannot be relied upon to refuse 'No objection Certificate' to the Petitioner Institute.

12. In respect of running two schools affiliated under two different boards, the petitioner contends that, the Matriculation School consists of 209 students and 18 teachers, already been recognized by the Matriculation Board. As far as Global School is concerned, 166 students are studying with

permission of Cambridge University with separate faculty of 24 teachers. There is no bar under law to run two schools for different Board within the same campus or building structure. Similarly, the usage of three floor is also prohibited only by virtue of G.O.Ms.No.131, dated 10.08.2006 which was issued based on the Mr.Justice K.Sampath Commission recommendation. When more than 80% of the Schools functioning with atleast three floors were recognized, the petitioner Institute cannot be isolate and discriminated.

13. Similarly, regarding the defects pointed out of using common Science Laboratory, Library and playground for both Matriculation and Global School, the petitioner contends that there is no infringement of any Rules for using same playgrounds, Science Laboratory and Library in common for Matriculation and Global School, since use of those facilities are not during the same hours.

14. Regarding the legal force of G.O.Ms.No.131, School Education (GE) Department, dated 10.08.2006, which is the result of Mr.Justice K.Sampath Commission, this Court, had an occasion to deal with this issue in W.P.No.22121 of 2019 in Dayasadan Agarwal Vidyalaya Vs. the State of Tamil Nadu, and held that,

12. There cannot be any second opinion that C.M.D.A is the Authority competent to decide about the building to grant building permission. As far as the grant of building permission, the Regulations of Development Control Rules and Regulations will prevail. However, when the building is to be used as Educational Institute, the Department concern with the said Education has a say how the building is to be. The letter/circular of the Director of School Education, dated 11.02.2016 is reiteration of the G.O.Ms.No.131/School Education, dated 10.08.2006. As pointed earlier, the said Government Order is in turn based on the recommendation of a Commission assisted by a Expert panel consisting of Chief Engineer (Buildings) of the Government and the Secretary to the School Education. The State Government has taken a policy decision to accept the recommendation and issued Government Order to that effect. The policy decision of the Government to restrict the usage of School buildings upto 3 floors is backed by good reasoning.

15. The Learned Senior Counsel appearing for the

Petitioner would contend, when there is no statute regulating Global Schools in the State Government Order issued pursuant to an Enquiry Commission report cannot be a substitute for a statute and he would further state that, a composite legislation for regulating Private Schools in the state, has been passed by the assembly and the President has also given assent to the said Act as early as 07.08.2019. While so, the State Government has not chosen to notify the date of commencement of the Act. In such circumstances, if existing law does not have provisions for Regulating Global Schools, the status of recognition enjoyed by the Petitioner Institute since in the year 2012 has to be continued.

16. After the advent of Right of Children to Free and Compulsory Education Act, 2009 and Rules framed thereunder, no School in the State can exist without recognition of the Government. The Rules also notify the Competent authority to grant recognition No objection Certificate. In case of the petitioner, it is the District Educational Officer, who has to give recognition No objection Certificate. Pursuant to the application for No Objection Certificate Inspection has been conducted and the committee has found that in the very same building, a Matriculation School with recognition is functioning along with the Global School for which No Objection Certificate is sought. The Government has already granted recognition to the Matriculation School. Therefore, the 2nd respondent/Chief Educational Officer, is constrained to refuse 'No Objection Certificate' for the Global School.

17. It is contended by the petitioner that, facilities of the Global School is used by the Matriculation School students, which is advantage for them and when there is no bar for a Global School to run in a Matriculation School building, No Objection Certificate to the petitioner Institute should be granted. The contention of the petitioner is may be correct superficially but in converse, the Matriculation school Regulation prohibits running of any other Institute within the recognized Matriculation school campus/building so, if the petitioner wants No Objection Certificate for the Global School, he should either shift the School to some other independent building or should forgo the recognition granted to the Matriculation School.

18. No doubt, the guidelines stated in the G.O.Ms.No.131 has not so far incorporated in the statute but those guidelines are the outcome of a enquiry commission and accepted by the Government. Taking into consideration the safety of the children studying in the Educational

Institute, the state has power to issue Executive Orders under Article 162 of the constitution which are not contrary to law.

Article 162 of the Constitution reads as below:-

162. Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers

19. Till the notification of date of commencement of Act 35 of 2019, there cannot be a vacuum in Regulations of International/Global schools functioning in the state. Therefore, the 2nd respondent in exercise of the power conferred under the Right of Children to Free and Compulsory Education Act, 2009, had caused inspection of the petitioner Institute and found certain defects and deficiency, which has been pointed out in his communication. Unless the petitioner herein rectifies the same, it cannot, as a matter of right seek for No Objection Certificate.

20. Therefore, this Court finds that the plea of the petitioner herein cannot be granted. For the above said reason, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bsm
To,

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

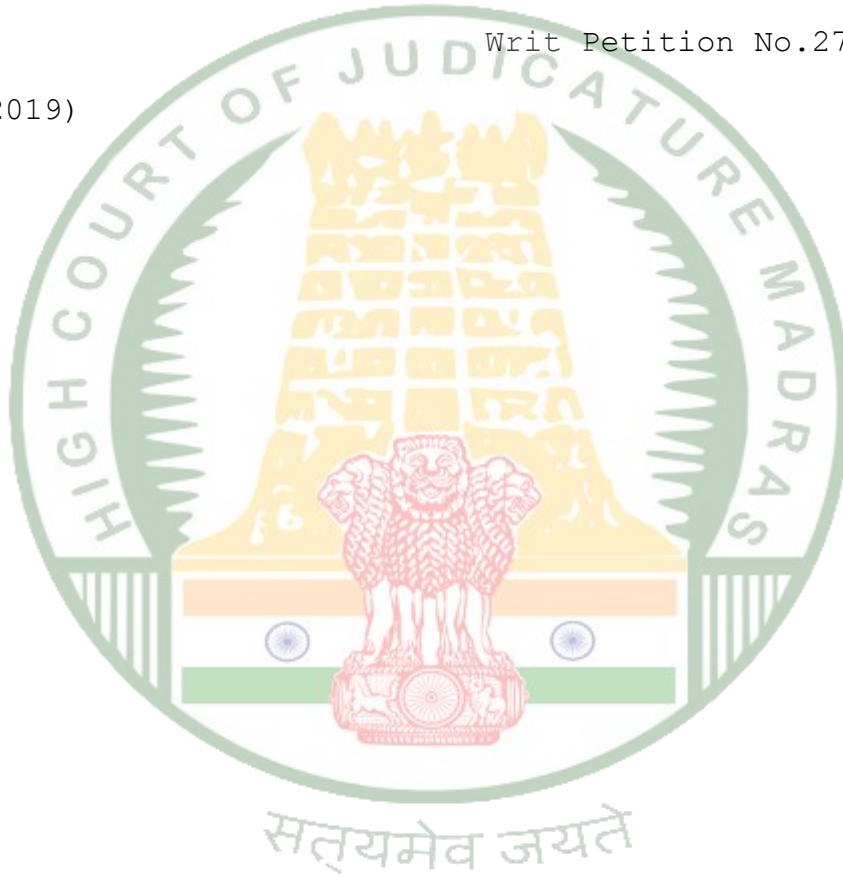
2. The Chief Educational Officer,
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Chennai - 600 008.

3. The Director of Private Schools,
DPI Campus, No.6, College Road,
Subba Road Avenue, Nungambakkam,
Chennai - 600 006.

+1cc to Mr.N.V.N.Margandeyan, Advocate SR.95924

Writ Petition No.27327 of 2019

GMR (CO)
CB (03/12/2019)



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