



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM:

WEB COPY

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P. (MD) No. 20465 of 2019

M.L.Suresh Babu

... Petitioner

/Vs./

- 1.The Government of Tamil Nadu,
rep., by its Secretary,
Education Department,
Chennai-2.
- 2.The Director of Matriculation Schools Education,
DPI Campus,
College Road,
Chennai-6.
- 3.The Joint Director of Matriculation Schools Education,
DPI Campus,
College Road, Chennai-6.
- 4.The District Education Officer,
DEO Office,
Kamatchi Josiyer Street,
Thanjavur District.
- 5.The Chief Educational Officer,
Office of the Chief Educational Office,
Thanjavur District.
- 6.The District Collector,
Collector Office,
Thanjavur, Thanjavur District.
- 7.The Principal,
Christ the King Matriculation Higher Secondary School,
47, Lal Bahadur Sastri Road,
Near Railway Station,
Kumbakonam, Thanjavur District.



8.The Principal,
Sri Matha Matriculation Higher Secondary School,
Dr.Besand Road, Anna Nagar,
Kumbakonam,
Thanjavur.

... Respondents

WEB COPY

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondent Nos.2, 5 and 6 to admit the petitioner's daughter S.Reguvedhitha in LKG standard for the year 2019-2020 as per application dated 25.06.2019 under the quota of the Right of Children to Free and Compulsory Education Act, 2009 in the 7th or 8th respondents schools in view of G.O.(Ms) No.180 dated 15.11.2011 within the time period stipulated by this Court.

For Petitioners : Mr.N.Saravanan
For Respondents : Mr.Aayiram K.Selvakumar
(for R1 & R6)
Additional Government Pleader
Mr.M.Karuppsamy (for R2 to R5)
Government Advocate
Mr.T.N.Bharath Natchiappan (for R7)
No appearance (for R8)

ORDER

Mr.N.Saravanan, learned counsel for writ petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader for respondents 1 & 6, Mr.M.Karuppsamy, learned Government Advocate for respondents 2 to 5 and Mr.T.N.Bharath Natchiappan, learned counsel for seventh respondent are before this Court.

2.With regard to eighth respondent (private respondent), service has been duly effected. Name and full address of the eighth respondent as in the cause-title of the writ petition is shown in the cause list. This Court is informed that no counsel has entered appearance on behalf of eighth respondent. Name of the eighth respondent called out aloud thrice in Court hall and in the adjoining corridor, but, no response.

3.With consent of aforesaid four learned counsel i.e., learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

4.The case of the writ petitioner or in other words the central theme of this writ petition has been captured and incapsulated in proceedings of this Court dated 23.09.2019 which reads as follows:



'Mr.N.Saravanan, learned counsel on record for writ petitioner is before this Court.

2.Subject matter of instant writ petition pertains to admission of writ petitioner's daughter one S.Reguvadhitha in either seventh respondent or in eighth respondent School.

3.This plea of the writ petitioner is predicated on 'Right of Children to Free and Compulsory Education Act, 2009' (Central Act 35 of 2009) (hereinafter referred to as 'said Act' for the sake of brevity) and a Government Order being G.O.Ms.No.180, School Educational (C2) Department, dated 15.11.2011 issued by the Government of Tamil Nadu in this regard. It is the case of the writ petitioner that he is entitled to benefit of the said Act and aforementioned Government Order as his annual income is less than Rs.2,00,000/- (Rupees Two Lakhs only).

4.Mr.Ayiram K.Selvakumar, learned Additional Government Pleader accepts notice on behalf of respondents 1 and 6. Mr.Karuppasamy, learned Government Advocate accepts notice on behalf of respondents 2 to 5. Both State counsel seek time to get instructions.

5.Notice to respondents 7 and 8 returnable by 03.10.2019. In the next listing, Registry to show the names of State counsel as well as private respondents together with their addresses as in cause title or counsel on their behalf, if they are duly served /if they enter appearance through counsel as the case may be.

6.Writ petitioner is permitted to take out private notice to respondents 7 and 8.

7.List on 03.10.2019 in the motion list.'

5.In exercise of rule making power under Section 38(1) of the 'Right of Children to Free and Compulsory Education Act, 2009' (Central Act 35 of 2009)' (hereinafter referred to as 'said Act' for the sake of brevity) a set of rules which go by the caption 'The Right of Children to Free and Compulsory Education Rules, 2010' (hereinafter referred to as 'said Rules' for the sake of brevity) have been made and therefore said rules is clearly a piece of statutory legislation. Besides this, an executive order has also been passed by the Government of Tamil Nadu and the same is 'G.O.Ms.No.180, School Education (C2) Department, dated 15.11.2011' (hereinafter referred to as 'said GO' for the sake of brevity).



6. Most relevant provision in the said Act qua factual matrix of this case is Section 12(1)(c) of said Act and the same reads as follows:

'12. Extent of School's responsibility for free and compulsory education. _ (1)....

(a)...

(b).....

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education. '

7. To be noted, aforesaid Section 12(1)(c) of said Act is slotted under chapter IV of said Act and chapter IV of said Act is captioned 'Responsibilities of Schools and Teachers'.

8. Most relevant portion of the said GO is paragraph No.3 and the same reads as follows:

'3. In the Government order read above, orders have been issued to notify "a child belonging to Disadvantaged Group" and "a child belonging to weaker section" as follows:

(i) "Child belonging to disadvantaged group" means a child who is an Orphan, or affected with Human Immuno Deficiency Virus or a transgender or a child of a scavenger in addition to the definition given in the Right of Children to Free and Compulsory Education Act 2009 and (ii) "Child belonging to weaker section" means a child belonging to such parents or guardians whose annual income is lower than Rs.2,00,000/- (Rupees Two Lakh only). '

9. It is not in dispute that writ petitioner's child namely S. Reguvedhitha is qualified as 'a child belonging to Weaker Section' within the meaning of 3(ii) of said GO. What is of relevance in this regard is the income certificate of child's father i.e., writ petitioner being income certificate dated 26.02.2019 issued by jurisdictional revenue authority which is follows:



WEB COPY

10. Prayer in the writ petition is as follows:

'praying for the issuance of a Writ of Mandamus, to direct the respondent Nos.2, 5 and 6 to admit the petitioner's daughter S.Reguvedhitha in LKG standard for the year 2019-2020 as per application dated 25.06.2019 under the quota of the Right of Children to Free and Compulsory Education Act, 2009 in the 7th or 8th respondents schools in view of G.O.(Ms) No.180 dated 15.11.2011 within the time period stipulated by this Court. '

11. The fourth respondent has filed two counter affidavits both dated 14.10.2019 and to be noted, both these counter affidavits have been signed by the jurisdictional District Educational Officer, namely District Educational Officer, Kumbakonam, Thanjavur District. Most relevant paragraphs in these two counter affidavits are paragraph No.4 which in one counter affidavit which reads as follows:



'4.It is submitted that the 7th respondent institution is a recognized Matriculation Higher Secondary School and imparting education to the children of all society and giving importance to the weaker section of people in Kumbakonam and surrounding area. It is further submitted that 7th respondent Institution is a self financing one. It is submitted that consequent on the introduction of Right of Children to Free and Compulsory Education Act, the 2nd respondent herein have issued guidelines for the admission of students in self financing Institutions vide proceedings in Rc.843/E1/2019 dated 27.03.2019 on the basis of the several Government orders referred to therein. It is submitted that as per Section 12(1)(c) of Right of Children to Free and Compulsory Education Act, 2009, and the guidelines issued by the 2nd respondent, applications shall also be made through online. It is submitted that the maximum strength of students allowed in LKG is 150. I submit that 128 applications were received through online seeking admission to LKG. I further submit that minimum 25% reservation for free Education is provided in respect of weaker section and disadvantageous students as per the guidelines issued by the 2nd respondent dated 27.03.2019 which works out to 38 students. It is submitted that district limit was also prescribed as 1.K.M. from the residence of the student to the School as contemplated in Section 12(1)(c). It is submitted that the petitioner has also applied for admission of petitioner's daughter namely Reguvedhitha in L.K.G vide registration ID.9790902302. It is submitted that 128 applications were received seeking admission to L.K.G. for the academic year 2019-2020. While perusing the application of the petitioner, it is noticed that the distance between the residence and the school exceeded 1. KM but the petitioner has incorrect information with regard to the distance. As there was 128 applications, the application of the petitioner was not considered during the course of short listing the applications for admission, since the application is not within the purview of the distance rule. It is also submitted that the selection for admission was made in the presence of the Block Resources Supervisor and in the presence of parents also as per the date schedule communicated by the 2nd respondent vide his proceedings dated 27.03.2019. It is submitted that the list of applicants selected for admission was duly published in the notice of the school. Aggrieved by the non selection of the petitioner's daughter, the petitioner has filed this writ petition.'

and paragraph 4 in the other counter affidavit reads as follows:

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



'4.It is submitted that the 8th respondent institution is a recognized Matriculation Higher Secondary School and imparting education to the children of all society and giving importance to the weaker section of people in Kumbakonam Town and surrounding area. It is further submitted that 8th respondent Institution is a self financing one. It is submitted that consequent on the introduction of Right of Children to Free and Compulsory Education Act, the 2nd respondent herein have issued guidelines for the admission of students in self financing Institutions vide proceedings in Rc.843/E1/2019 dated 27.03.2019 on the basis of the several Government orders referred to therein. It is submitted that as per Section 12(1)(c) of Right of Children to Free and Compulsory Education Act, 2009, and the guidelines issued by the 2nd respondent, applications shall also be made through online. It is submitted that the maximum strength of students allowed in LKG is 150 in respect of 8th respondent school. I submit that 203 applications were received through online seeking admission to LKG in open competition. I further submit that 6 students belonging to SC, ST, SCA category were selected directly as per our norms. I further submit that minimum 25% reservation for free Education is provided in respect of weaker section and disadvantageous students as per the guidelines issued by the 2nd respondent dated 27.03.2019 which works out to 38 students. It is submitted that district limit was also prescribed as 1.K.M. from the residence of the student to the School as contemplated in Section 12(1)(c). Similarly annual income limit has also been prescribed as two lakhs per annum for the parents or guardian. It is submitted that the petitioner has also applied for admission of petitioner's daughter namely Reguvadhitha in L.K.G vide registration ID.979190902302. It is submitted that 203 applications were received seeking admission to L.K.G. for the academic year 2019-2020. It is submitted that as per the Government orders and guidelines issued by the second respondent, if the total No.of applications is beyond the requirement selection has to be made by shuffling the application in lot system by the Chief Educational Officer. Accordingly, the applications received by the Chief Educational Officer was short listed and sent to the 8th respondent for conducting lot as per the date schedule as fixed by the 2nd respondent. It is submitted that the list of applicants and the proposed date for selection through lot was duly published in the notice of the 8th respondent school. Consequently, the selection was made on 06.06.2019 in the presence of the Supervisor, Block Resources Training, Parents and the Principal of 8th



respondent School. Out of 203 applications, 38 applications were selected by drawing lot. In fact the application made by the petitioner's daughter has not been selected. It is submitted that the list of applicants selected for admission was duly published in the notice of the school. Aggrieved by the non selection of the petitioner's daughter, the petitioner has filed this writ petition.'

12.In the aforesaid backdrop, it emerges clearly that said Act and said GO have been given effect to, but the petitioner's daughter was unlucky in draw of lots.

13.Owing to this scenario and in the light of the narrative thus far, instant writ petition has to inevitably be dismissed, in other words instant writ petition cannot but be dismissed.

14.Accordingly, instant Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

rmk

To

- 1.The Secretary,
Government of Tamil Nadu,
Education Department,
Chennai-2.
- 2.The Director of Matriculation Schools Education,
DPI Campus, College Road,
Chennai-6.
- 3.The Joint Director of Matriculation Schools Education,
DPI Campus, College Road, Chennai-6.
- 4.The District Education Officer,
DEO Office,
Kamatchi Josiyer Street,
Thanjavur District.



5.The Chief Educational Officer,
Office of the Chief Educational Office,
Thanjavur District.

6.The District Collector,
Collector Office,
Thanjavur,
Thanjavur District.

+1 CC to M/s.T.N.BHARATH NACHIAPPAN, Advocate SR-92550.

+1 CC to M/s.SPL GP SR-93134.

+1 CC to M/s.N.SARAVANAN, Advocate SR-93306.

Order made in
W.P. (MD)No.20465 of 2019
17.10.2019

CS(11.11.2019) 9P 10C