



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.11.2019**

CORAM:

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

W.P(MD)No.22082 of 2019
and
W.M.P(MD)No.18851 of 2019

Sri Ganesar Higher Secondary School Committee,
Panicka Nadar Kudiuruppu,
Thothukudi,
Represented by its Secretary,
M.Subba Nadar.

... Petitioner

/vs./

1.The Chief Educational Officer, Tuticorin.

2.The Joint Director of School Education (Higher Secondary),
DPI Campus, College Road, Chennai - 6. ... Respondents

[Former R-2, namely Gnanagowri, Chief Educational Officer, Tuticorin, is deleted and present R-2 is *suo-motu* impleaded vide order of this Court dated 01.11.2019.]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in Na.Ka.No.5962/A3/2019, dated 01.10.2019 and quash the same as illegal and arbitrary.

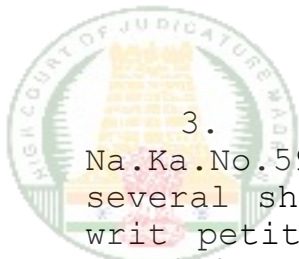
For Petitioner : Mr.P.Ganapathy Subramanian

For Respondents : Mr.M.Karuppasamy
Government Advocate

ORDER

Mr.P.Ganapathy Subramaniam, learned counsel on record for writ petitioner and Mr.M.Karuppasamy, learned Government Advocate on behalf of both the respondents are before this Court.

2. With consent of learned counsel on both sides, ie., learned counsel for writ petitioner and learned State counsel, main writ petition is taken up, heard out and is being disposed of.



3. 'An order dated 01.10.2019 bearing reference Na.Ka.No.5962/Aa3/2019 made by the first respondent enlisting several shortcomings qua the writ petitioner's School calling upon writ petitioner School to rectify the same within the time frame specified therein and holding that failure to do so will result in writ petitioner School being brought under direct grant of the Government' (hereinafter referred to as 'impugned order' for the sake of brevity, clarity and convenience) has been called in question in instant writ petition.

4. A perusal of the impugned order reveals that first respondent has issued communications in the nature of show cause notices all dated 12.09.2019 pertaining to as many as eight (8) shortcomings, obtained response of the Correspondent of the writ petitioner School and thereafter passed the impugned order after considering the response of the Correspondent of the writ petitioner School.

5. One of the main grounds on which instant writ petition is predicated is that first respondent does not have powers to pass the impugned order. In this regard, when this writ petition was listed in the Admission Board, proceedings dated 18.10.2019 were made which read as follows:

'Mr.M.Karuppasamy, learned Government Advocate who accepts notice on behalf of both the respondents seeks time to get instructions and revert to this Court.

2. Learned State counsel shall get specific instructions regarding the following:

(a) Provision of law under which impugned order dated 01.10.2019 has been passed by the first respondent.

(b) Subject to (a) whether there is any statutory appeal or revision available against impugned order.

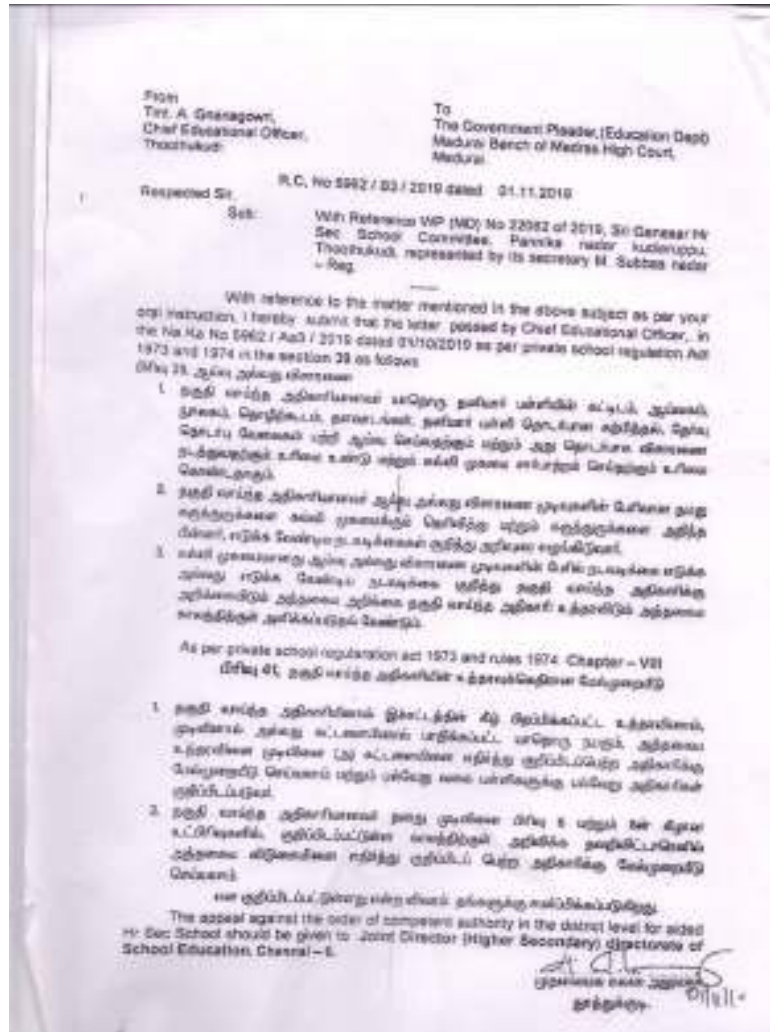
3. Registry to show name of the State counsel in the next listing.

4. List in the motion list on 01.11.2019.'

6. Pursuant to the aforesaid proceedings, today learned State counsel has placed before this Court a communication from the first respondent being Communication dated 01.11.2019 bearing reference R.C.No.5962/B3/2019 which is as follows:



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7. At request of learned State Counsel, the aforesaid communication is treated as counter affidavit on behalf of all the respondents.

8. Though very many averments have been made in the affidavit filed in support of this writ petition, though several grounds have been urged / canvassed in the affidavit filed in support of this writ petition, issues in instant writ petition have now been narrowed down to two (2) aspects of the matter which have been adumbrated in 18.10.2019 proceedings.

9. With regard to first issue, there is no dispute or disagreement before this Court that the first respondent does have power under Section 39 of 'Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974)' (hereinafter referred to as 'said Act' for brevity). Section 39 of said Act reads as follows:

'39. Inspection or inquiry.- (1) The competent authority shall have the right to cause an inspection of, or inquiry in respect of, any



private school, its buildings, laboratories, libraries, workshops and equipment, and also of the examinations, teaching and other work conducted or done by the private school, to be made by such person or persons as it may direct and to cause an inquiry to be made in respect of any other matter connected with the private school and the educational agency shall be entitled to be represented thereat.

(2) The competent authority shall communicate to the educational agency the view of that authority with reference to the results of such inspection or inquiry and may, after ascertaining the opinion of the educational agency thereon, advise that agency upon the action to be taken.

(3) The educational agency shall report to the competent authority the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry. Such report shall be furnished within such time as the competent authority may direct.

(4) Where the educational agency does not, within a reasonable time, take action to the satisfaction of the competent authority that authority, may, after considering any explanation furnished or representation made by the educational agency, issue such directions as that authority deems fit and the educational agency shall comply with such directions.'

10. This puts an end to the first aspect of the matter and takes us to the second aspect of the matter namely alternative remedy.

11. Though aforesaid 01.11.2019 communication from the first respondent states that an appeal is available to the writ petitioner against the impugned order under Section 41 of said Act, there appears to be some lack of specificity in this regard. This takes us to Section 41 of said Act which reads as follows:

'41. Appeal against orders of competent authority.- (1) Any person aggrieved by any order, decision or direction of the competent authority under (Section 29 or under any other provision] (other than Section 34) of this Act may prefer an appeal against such order, decision or direction, to such authority or officer as may be prescribed; and different such authorities or officers may be prescribed for different classes of private schools.



(2) If the competent authority omits to communicate its decision to any applicant within the period specified in Clause (b) of Section 6 or in Clause (b) of Sub-Section (2) of Section 8 [or in sub-section (3) of Section 29], such applicant may prefer an appeal against such omission to the appellate authority prescribed under this section.'

12. Before discussing Section 41 of said Act, it is to be noted that there is no disputation or disagreement that the first respondent is a competent authority within the meaning of Section 2 (2) of said Act read with Section 27 of 'Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974' (hereinafter referred to as 'said Rules' for brevity).

13. To be noted, said Rules have been made in exercise of Rule Making Power under Section 56 of said Act and said Rules is therefore a piece of subordinate legislation which is to be read as part and parcel of parent Act namely said Act.

14. Reverting to Section 41 of said Act, learned counsel for writ petitioner drew the attention of this Court to Rule 29 of said Rules which makes adumbration of various orders passed by various competent authorities and also prescribes the appellate authority all by way of tabulation in four (4) columns.

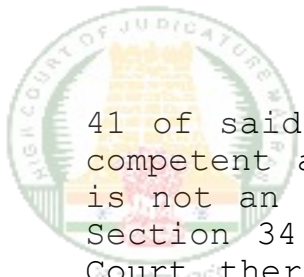
15. A careful and close perusal of Rule 29 of said Rules reveals that there is no mention about an order made by a competent authority under Section 39 of said Act.

16. In this regard, learned State counsel submits that an appeal against the order made by a competent authority under Section 39 of said Act will be heard by the Joint Director of School Education (Higher Secondary), DPI Campus, College Road, Chennai - 6.

17. This takes us to a question as to whether there is any bar for the aforesaid authority hearing an appeal qua impugned order in instant case.

18. Section 41 of said Act has been extracted and reproduced supra. A careful and close perusal of Section 41 of said Act reveals that any person aggrieved by any order made by the competent authority can prefer an appeal and only exception carved out in Section 41 of said Act is an order made by competent authority under Section 34 of said Act.

19. Section 34 of said Act deals with taking over management of Private School. Therefore, a careful and close perusal of Section



41 of said Act brings to light that any and every order made by a competent authority under the said Act is appealable as long as it is not an order of taking over management of Private Schools under Section 34 of said Act. This is the scheme of the Statute. This Court therefore has no difficulty in accepting the submission of learned State Counsel that in instant case the Joint Director of School Education will hear an appeal against the impugned order which is under Section 39 of said Act.

20. In aforesaid view of this matter, this Court now examines the alternative remedy aspect.

21. Rule of alternative remedy no doubt is a rule of discretion. It is a self imposed restraint of Courts exercising writ jurisdiction, since alternative remedy rule is not a rule of compulsion, but a rule of discretion. Though it is not an absolute rule and though it is a rule of discretion, there are clear exceptions to the Rule of alternative remedy. It may not be necessary to enlist the exceptions here in this case as, as already alluded to supra, it comes to light that eight different shortcomings have been pointed out, a response of the Correspondent of writ petitioner School has been obtained and a detailed order has been passed.

22. All the alleged shortcomings and findings in the impugned order turn heavily on facts. As it turns heavily on facts, this Court in the light of facts and circumstances of this case is of the view that this is a fit case to relegate the writ petitioner alternative remedy of appeal to the aforesaid Joint Director by placing reliance on Section 41 of said Act. As already mentioned supra, only exception to Section 41 appeal is an order under Section 34 of said Act with regard to taking over management of Private Schools and it is nobody's case that the impugned order falls under Section 34 of said Act.

23. In the light of the discussion thus far, following order is passed:

(a) Writ petitioner undertakes to file an appeal against the impugned order to the Joint Director of School Education (Higher Secondary), DPI Campus, College Road, Chennai - 6 within one (1) week from the date of receipt of a copy of this order.

(b) On writ petitioner filing an appeal within the aforesaid time frame, the aforementioned appellate authority ie., Joint Director of School Education (Higher Secondary), DPI Campus, College Road, Chennai - 6 shall take up the appeal, consider the same as an appeal under Section 41 of said Act, examine the same on



its own merits and in accordance with law after giving reasonable opportunity to writ petitioner and dispose of appeal.

(c) Appeal shall be disposed of as expeditiously as possible.

(d) Though obvious, it is made clear that the appellate authority shall deal with the appeal on its own merits uninfluenced /untrammelled by any observations made in the instant order qua impugned order.

24. It is made clear that instant order is passed in the light of the facts and circumstances of the instant case and in the light of the matter turning heavily on facts.

25. Writ petitioner has arrayed present incumbent Chief Educational Officer, Tuticorin by name as the second respondent. This order does not deal with allegations of malafides. Therefore, the second respondent is deleted. Instead, The Joint Director of School Education (Higher Secondary), DPI Campus, College Road, Chennai - 6 is *suo-motu* impleaded as second respondent.

26. Instant Writ Petition is disposed of with the aforesaid directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1. The Chief Educational Officer,
Tuticorin.

2. The Joint Director of School Education
(Higher Secondary),
DPI Campus, College Road, Chennai - 6.

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-95670[F] dated 01/11/2019)

+1 CC to SPL GP (SR-95951[F] dated 04/11/2019)

Order made in
W.P(MD)No.22082 of 2019
01.11.2019

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