



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.26674 of 2019

and

W.M.P. (MD)No.22999 of 2019

WEB COPY

Somasundaram Chettiar Primary School,
represented by its Correspondent,
R.M.Somasundaram

... Petitioner

vs.

1.The District Educational Officer,
Sivagangai Educational District,
Collectorate Complex,
Maruthupandian Nagar, Sivagangai.

2.The Block Educational Officer,
Sivagangai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the return of petitioner school's proposal seeking for approval of the School Committee and Secretary of the petitioner School by the second respondent on 03.12.2019 and quash the same and consequently, to direct the respondents herein to give approval to the petitioner School proposal, dated 17.09.2019 seeking approval of School Committee and Secretary for the period from 01.10.2019 to 30.09.2022.

For Petitioner :Mr.D.Srinivasaragavan

For Respondents :Mr.M.Karuppasamy Pandian
Government Advocate

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent, dated 03.12.2019 and to direct the respondents to give approval to the petitioner School proposal, dated 17.09.2019 seeking approval of School Committee and Secretary for the period from 01.10.2019 to 30.09.2022.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

<https://hcservices.evms.gov.in/Services/>



2.1.The petitioner is a Non-Minority Private Aided School, having standards upto +2. Though the School was started in the year 1952 as a Primary School, it was upgraded to High School in the year 1968 and later as Higher Secondary School in the year 1999. It is also admitted that upto 10th standard, the School gets aid from the Government and the petitioner Management impart education for +1 and +2 under self finance scheme without any aid from the Government.

2.2.It is the case of the petitioner that the School Committee duly constituted under Section 15 of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 is functioning and that the School Committee constituted for the period from 01.10.2016 to 30.09.2019 was approved by order, dated 07.11.2017. It is stated by the petitioner that a new School Committee was elected in the meeting of the Educational Agency and a resolution was passed on 27.08.2019 by the Educational Agency to the effect that one SM.Meenakshi was elected as Secretary of the School Committee for a period of three years from 01.10.2019 to 30.09.2022. Thereafter, a proposal was submitted for the approval of School Committee as well as the Secretary by a representation, dated 17.09.2019. Though the petitioner enclosed all the documents and certificates along with proposal, as required under the Act and Rules, the second respondent returned the application for approval on the ground that the petitioner has not obtained the licence under the Tamil Nadu Public Buildings Licensing Act 1963. Challenging the said order, the above Writ Petition is filed.

3.The learned Counsel appearing for the petitioner submitted that the second respondent is not justified in returning the proposal sent by the School seeking approval of the School Committee and Secretary and that the reasons assigned for returning the application is not supported by any of the provisions of Tamil Nadu Recognised Private Schools (Regulations) Act or Rules. The learned Counsel also submitted that the petitioner School has complied with all the requirements stipulated under the Act, while submitting the proposal seeking approval of School Committee and Secretary and that the second respondent, who has no jurisdiction or authority to approve the constitution of new School Committee and election of Secretary, returned the proposal by the impugned order. In other words, the learned Counsel for the petitioner submitted that the first respondent is the competent authority to give approval for the School Committee and Secretary and that the second respondent, who does not enjoy any power or authority to consider the proposal for approval of School Committee and Secretary, has returned the proposal. It is also stated by the petitioner that the petitioner



School has some issues with the revenue officials in respect of a portion of the land and that therefore, they could not get licence from the Tahsildar concerned under the Tamil Nadu Public Buildings Licensing Act, 1963.

4.The learned Government Advocate earlier produced before this Court, a Hand Book, which was circulated among the officials of Educational Department giving certain guidelines and directions, while considering the application for approval of School Committee and the approval of appointment of Secretary of the School Committee. Though the learned Government Advocate produced the Hand Book earlier, the Hand Book is not available with the learned Government Advocate, while disposing the Writ Petition. This Court noticed that the so called guidelines issued to the respondents require several documents to be produced even for getting approval for the School Committee and Secretary.

5.The learned Government Advocate referring to the counter affidavit filed by the second respondent and Rule 9 of Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974, contended that the certificates, which are required for getting recognition should be made available, when the proposal is submitted for approval for constitution of new School Committee or appointment of Secretary.

6.The second respondent in the counter affidavit submitted that the Directorate of Elementary Education has issued instructions to all the subordinate authorities of District Educational as well as the Block Educational Officers, as to how the authority should act, while granting approval for the new School Committee once in three years. It is stated that the authorities are required to verify, as to whether all the documents are produced by the petitioner for considering the application for approval of School Committee along with application. It is further submitted by the second respondent in the counter affidavit that the Honourable Supreme Court has taken note of several incidents and occurrence in various Schools. It is stated that Honourable Supreme Court has give direction that the safety regulations, which are required to be provided as part of imparting compulsory education, cannot be ignored. The learned Government Advocate submitted that without submitting the building license as required under the Tamil Nadu Public Buildings Licensing Act, the application submitted by the petitioner for approval of School Committee and Secretary cannot be processed.

7.This Court considered the rival submission of learned Counsel on either side.



8.As per Rule 12 of the Tamil Nadu Recognised Private Schools (Regulations) Rules, the Educational Agencies of every School is permitted to constitute School Committee. The constitution of School Committee and term of office of the School Committee are also dealt with under Rule 12. Similarly, Rule 13 of the Rules deals with the procedure for appointing anyone as Secretary of the School Committee. From Rules 12 and 13, this Court is unable to see any statutory requirement to insist the School to submit the license under Tamil Nadu Public Buildings Licensing Act.

9.Rule 9 of Tamil Nadu Recognised Private Schools (Regulations) Rules, relates to the procedure for granting approval to a School or for opening of a Higher standard or additional section by the competent authority specified in Rule 29 in respect of Section 11 of the Act. For convenience, Rule 9(1) and 9(2) are extracted below:

9. Recognition.- (1) *The educational agency of a private school including a minority school shall apply in Form VI for recognition of the school or for opening of a higher standard or additional section to the competent authorities specified in rule 29 in respect of section 11. The application shall be made within three months from the date of opening of the school or higher standard or additional section. Where a temporary recognition is accorded, application for the continuance shall be made not later than three months prior to the expiry of the period of the temporary recognition.*

A sum of Rs. 200 shall be remitted into the Treasury and the challan forwarded with the application for recognition or renewal of recognition of Higher Secondary Schools, as the case may be, till permanent recognition is granted.

(2) *The following conditions shall be satisfied for the purpose of recognition: -*

[(a) The educational agency shall, -

(i) produce a licence permitting the use of the school building as public building under the Tamil Nadu Public Buildings (Licensing) Act, 1965 (Tamil Nadu Act 13 of 1965);

(ii) produce structural stability certificate from the Engineers of Public Works Department/Chartered Engineers (from the Engineers in the panel of qualified and registered Engineers maintained by the District Collectors) in accordance with the Tamil Nadu Public Buildings (Licensing) Act, 1965 (Tamil Nadu Act 13 of 1965);



(iii) provide adequate sanitary facilities separately for teachers and pupils (boys/girls separately) and produce a certificate to that effect obtained from the local Health Authority;

(iv) produce a No Objection Certificate from the Station Officer, Fire and Rescue Services Department, in the area where the school is situated:

Provided that no thatched structure shall be in the school premises.]

(b) Where the licence has been issued for a specified period, a fresh licence shall be produced before the expiry of the period of validity of the said licence.

(c) (i) The educational agency of a private school including a minority school shall create an endowment as follows, namely: -

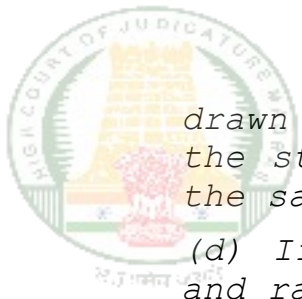
(a)	Pre-Primary School	Rs. 10,000
	Existing Pre-Primary School to be upgraded as Primary School.	15,000
(b)	Primary School.	25000
	Existing Pre-Primary School to be upgraded as Middle School.	25,000
(c)	Middle School.	50,000
	Existing Middle School to be upgraded as High School.	50,000
(d)	Teachers' Training Institute	1,00,000
(e)	High School.	1,00,000
(f)	High School to be upgraded as Higher Secondary School	25,000;

Provided that, in respect of an existing school to be upgraded where no endowment had already been created, the amount of endowment payable by such school, shall be the same as for opening a new school.



The endowment shall be created in the name of the school in the shape of Government securities like National Defence Certificates or National Plan Certificates or in fixed deposits for a period of not less than seven years with Tamil Nadu Industrial Investment Corporation Limited, [Chennai] or the Tamil Nadu Industrial Co-operative Bank Limited or the Tamil Nadu State Co-operative Bank or the [Chennai] Central Co-operative Bank, [Chennai] or in any corresponding new Bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970) (Central Act 5 of 1970). Fifty per cent of such endowment amount shall be created before the school is opened. The remaining amount shall be created in two equal annual instalments in the case of pre-primary and primary schools and in five equal annual instalments, in the case of middle and high schools. In the case of upgrading the existing High School as Higher Secondary School, the endowment amount of Rupees Twenty-five thousand shall be paid in three annual instalments, the first instalment being Rupees fifteen thousand, the remaining amount shall be paid in two equal instalments. Trust or society or corporate body which run more than one private school shall have the option to create fifty per cent of the endowment in cash and fifty per cent in the form of immovable property other than school building. The immovable property so endowed shall be unencumbered and income yielding. It shall be endowed in the name of the school and conveyed to the school through proper legal document. [The immovable property endowed shall not be sold, mortgaged, exchanged or gifted or alienated in respect of schools without the prior approval of the Director of School Education and in respect of the Teacher Training Institutes without the prior approval of the Director of Teacher Education, Research and Training]. The entire income derived from the endowed immovable property shall be brought to the general accounts of the school.

(ii) In addition to the creation of the endowment referred to above, the educational agency shall also deposit in the Tamil Nadu State Co-operative Bank Limited or in the Tamil Nadu Industrial Co-operative Bank Limited, or in [Chennai] Central Co-operative Bank Limited, or in any corresponding new Bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970) in the name of the school, a sum equivalent to a minimum of one month's salary of the staff employed in such school, to serve as a working capital of that school, which may be



drawn for the disbursement of salary to the members of the staff, on the due date in the event of any delay in the sanction of grant by the Education Department.

(d) If the educational agency pays more than the scales and rates ordered by Government, such excess shall be met by the educational agency from its own funds and shall not be debited to the school funds and, for purposes of grants, such higher scale or rate shall not be taken into consideration.

(e) The educational agency shall not collect fees or donations compulsorily other than those permitted by the competent authority under rule 23 from pupils or parents or any other persons for any purpose whatsoever.

(f) The educational agency shall carry out the instructions issued by the Government, from time to time, in the public interest to ensure that the admission in the schools run by them, of pupils belonging to the socially and educationally backward classes of citizen and to safeguard the interest of linguistic minorities.

(g) The educational agency shall carry out the instructions issued by the Director of School Education or other officers subordinate to him with a view to maintain the academic standards and to safeguard the interest of teachers and the pupils including the linguistic minorities.

(h) The educational agency should have fulfilled all the conditions stipulated by the competent authority at the time of according permission to open the school or the additional standard or section.

(i) The school shall be situated in a building which is accessible to all castes and communities.

(j) The premises of the school or subsidiary building appertaining to it or a playground or a vacant site belonging to the school, whether adjacent to or remote from it, shall ordinarily be used for the purposes of conducting the school or for functions conducted by such schools or for authorised examinations or for other purposes specifically permitted by the Chief Educational Officer.

[(jj) The use of the building and other properties including the playground of any recognised private school for conducting drill or training with or without arms by persons who are not students or members of the staff of the school shall not be permitted by the management under any circumstances:

<https://hcservices.e-petitions.hcscservices.in> Provided further that non-observance of the condition



laid down in clause (jj) above will entail the withdrawal of recognition, and aid as per sub-section (1) of section 12 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974).]

(k) The School Committee shall not appoint any teacher whose certificate has been suspended or cancelled or who has been declared unfit to be a teacher in recognised schools or who has been convicted for offences involving moral turpitude.

(1) The additional factors given in section 11-A of the Act shall also be taken into account by the competent authority before passing orders on an application for recognition under section 11.

[(2-A) The conditions specified in Annexure VI shall also be satisfied for the purpose of recognition of a Teachers' Training Institute, in addition to the conditions specified in sub-rule (2).]

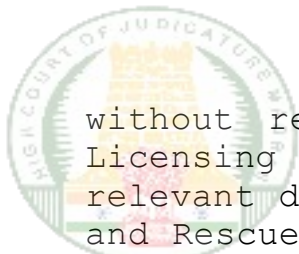
(3) The certificate of recognition of the private school shall be granted within a period of two months from the date of receipt of application.

(4) It shall be open to the competent authority to reject the application for recognition if he considers that any one of the conditions under sub-rule (2) has not been satisfied. The order rejecting the application shall specify the grounds for rejection and shall be communicated within a period of two months from the date of receipt of the application.

[(5) No Institute which does not enjoy recognition shall be permitted to present student for writing public examination conducted by the Director of Government Examinations.]”

10.From the above, it is evident that Rule 9 deals with recognition of School and it requires production of license under Tamil Nadu Public Building License Act, 1965, structural stability certificate, sanitary certificates and No Objection Certificate from the Station Officer of Fire and Rescue Services Department in the area where the school is situated. The ingredients of Rule 9 cannot be read into Rule 12 to 14 of the Rules framed under Tamil Nadu Recognised Private Schools (Regulations) Rules.

11.It is well settled that the power and jurisdiction of a statutory authority under the Statute cannot be enlarged by a Government Order in exercise its administrative power. As it has been repeatedly held in several precedents, the application for approval of School Committee or Secretaryship can be considered



without reference to licence under Tamil Nadu Public Buildings Licensing Act, 1965. In this case, the petitioner has produced relevant documents. No Objection Certificate from Fire and Safety and Rescue Department, sanitary certificate and Building Stability Certificate are not required for considering the approval of School Committee. Though every School is expected to produce those certificates for getting recognition, the requirements of Rule 9 cannot be insisted for getting approval for the School Committee. Though the petitioner could not get a license for the reasons attributable to the attitude of Statutory authorities, this Court is unable to appreciate the reasons for rejecting the proposals submitted by the petitioner School seeking approval for the School Committee and Secretaryship.

12.As a result, this Writ Petition is allowed and the impugned order passed by the second respondent returning the proposal sent by the petitioner is hereby quashed and the respondents are directed to consider the petitioner's application for approval of the School Committee and Secretary and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order.

13.It is stated that the teachers, who are entitled to get salary from the State Government, have not been paid salary for the past few months, on account of the impugned order. Since this Court do not find any illegality in the claim of the petitioner for approval of the School Committee, the School Committee shall be treated as a Committee in office by the respondents for the purpose of disbursement of salary and other grants which shall be made within two weeks from the date of petitioner's re-submission of proposal, which was earlier returned by the second respondent.

14.Office is directed to return the original application, which is produced before this Court by the petitioner, so as to enable the petitioner to present the said application for approval.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

cmr

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



To

1.The District Educational Officer,
Sivagangai Educational District,
Collectorate Complex,
Maruthupandian Nagar, Sivagangai.

2.The Block Educational Officer,
Sivagangai.

+1 CC to MR.RATHINA ASOHAN, Advocate (SR-105631[F] dated
18/12/2019)

+1 CC to SPL.GP (SR-105912[F] dated 19/12/2019)

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