

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.08.2020

Delivered on 26.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.29025/2019 and WMP.No.1539/2020

Sri Kanchi Kamakoti Peetathipathi Jayendra  
Saraswathy Sankara Nursery & Primary School  
6/338, Thoppu Street  
Pulivalam, Thiruvarur District 610 109  
rep.by its Hon.Correspondent & Chairman  
- School Committee  
Prof.V.Janakiraman

..Petitioner

Versus

1. The Chief Educational Officer  
Office of the Chief Educational Officer  
1<sup>st</sup> Floor, Collectorate Annexe Building  
Tiruvarur 610 004.
2. The Government of Tamil Nadu  
rep.by its Secretary,  
School Education Department  
Fort St George, Chennai 600 009.
3. The Deputy Commissioner  
Directorate of Town & Country Planning  
Thanjavur.
4. The Director of Elementary Education,  
College Road, Nungambakkam  
Chennai 600 004.

..Respondents

\*\*R4 impleaded vide order dated 19.11.2019  
in WMP.No.32810/2019

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1<sup>st</sup> respondent in Proceedings No.Na.Ka.No.1435/A5/2019 and quash its order dated 27.08.2019 and direct the 1<sup>st</sup> respondent to pass an order granting upgradation to the petitioner School as a Middle School.

For Petitioner : Mr.V.Karthic, Senior counsel  
assisted by Mr.S.Haroon Al Rasheed  
For Respondents : Mrs.V.Annalakshmi, GA [Edn]

#### ORDER

(1) The petitioner - School has filed this writ petition challenging the proceedings of the 1<sup>st</sup> respondent dated 27.08.2019 wherein the recognition sought for by the petitioner - School to grant upgradation as a Middle School, has been rejected by the 1<sup>st</sup> respondent.

(2) Brief facts of the case:-

- The petitioner - School is functioning with effect from 01.11.2002 on the basis of the approval granted under the Tamil Nadu Code of Regulation for Nursery and Primary Schools. The recognition has been renewed from time to time. It offers classes from L.K.G. to 5<sup>th</sup> standard. There are two buildings. The first building consists of 8 classrooms, one office room, one computer room and other toilet facilities for the students. There is also another structure which has an open auditorium. In the year 2013, based on the help received from some donors, a three-storeyed building has been constructed with 12 classrooms. This structure was put up with a view to upgrade the School initially into a Middle School [8<sup>th</sup> standard] and later, into a Senior Secondary School. The School is located in a village called Pulivalam and it is an admitted case that the total extent of the property that is available is 65 cents [29,940 sq.ft].
- The petitioner - School submitted an application to start a Higher Secondary Course [HSC] under the Matriculation curriculum in the year 2013. The papers were returned citing various reasons including the fact that the petitioner - School did not possess the land requirement of 3 Acres as per G.O.[2D] No.48, dated 21.07.2004. The petitioner - School filed a writ petition in WP.No.9817 of 2015 before this Court challenging the said Government Order and to declare the same as null and void and ultra vires the provisions of the Constitution of India. This writ petition came to be dismissed vide order dated 07.03.2016. The petitioner - School filed a writ appeal in WA.No.505 of 2016. In the mean time, some steps were taken to appoint a Committee to review the Government Order. This was brought to the notice of the Division Bench at the time of hearing the writ appeal and the Division Bench, recording the fact that a fresh Government Order is going to be issued by revisiting the norms, closed the writ appeal as infructuous. This was done on the ground

that the earlier Government Order is going to get replaced by a new Government Order. It must be stated here that the Government Order never got reviewed and G.O.[2D] No.48, dated 21.07.2004 continues to be in force.

- The petitioner - School again submitted an application on 25.02.2019 before the 1<sup>st</sup> respondent seeking for upgradation as a Middle School. Even in the application, the petitioner - School had stated that one A.G.M.Nursery and Primary School located in Cuddalore was given upgradation as a Middle School even though it had the property less than 5 grounds as against the minimum requirement of 8 grounds. The attention of the authority was also brought to the orders passed by this Court in WP.No.2560 of 2017, dated 06.07.2017.
- The application submitted by the petitioner - School was kept pending without any action being taken on it and therefore, the petitioner - School approached this Court and filed WP.No.17285 of 2019 seeking for a direction to the Chief Educational Officer [CEO] to grant upgradation as a Middle School. When the writ petition was taken up for final hearing, this Court was informed that the CEO, Tiruvarur, by communication dated 27.06.2019, has directed the petitioner - School to approach the Directorate of Matriculation through the District Educational Officer, Tiruvarur, for upgradation of the School. This Court found that the attitude of the authorities to be not reasonable and it lacked total non-application of mind. Therefore, this Court, by an order dated 03.07.2019 imposed a cost of a sum of Rs.25,000/- to be paid by the CEO, Tiruvarur.
- The case was again taken up for hearing on 06.08.2019. The following order was passed by this Court:-

''3 When the matter was admitted and notice ordered, the learned Government Advocate appearing on behalf of the respondents circulated the communication of the 1st respondent dated 27.06.2019 stating that the petitioner has to approach the Directorate of Matriculation through District Educational Officer, Tiruvarur, for upgradation of the Institute as a Matriculation, which was per se irrelevant and not the actual request or in consonance with the application given by the petitioner to the 1st respondent on 25.02.2019. The earlier request of the petitioner for grant of permission to upgrade for Matriculation was also not the subject matter of the writ petition. Therefore, this Court has imposed costs of Rs.25,000/-; to the 1st respondent, who has issued the proceedings with an

intention to mislead the Court.

4. Be that as it may, now the counter has been filed by the 1st respondent wherein, it is admitted that the petitioner Institute was accorded approval to run Nursery and Primary School under the provisions of Code of Regulations for Approved Nursery and Primary School and the same is renewed upto 30.10.2020. However, it is contended that since the School was granted approval with reference to 'Code of Approved Nursery and Primary Schools' and being governed under the said Code, the school has applied for upgradation under the Code whereas, the said Code does not provide for upgradation of the Nursery and Primary School as a Middle School. The petitioner has not applied for upgradation under the Tamil Nadu Recognised Private Schools Regulation Act, 1973. Hence, the request of the petitioner cannot be complied with.

5. Further, the 1st respondent has stated the procedure and law in respect of according permission for starting Matriculation after extracting the relevant provisions under the Code of Regulation for Approved Nursery and Primary School as well as Tamil Nadu Recognised Private Schools Regulation Act, 1973. The 1st respondent contends that as per the Code of Regulation for Approved Nursery and Primary School, there is no provision in the Code to upgrade the Nursery and Primary Schools into Middle School. Since the petitioner School was not recognized as per Act and Rules of Tamil Nadu Recognised Private Schools Regulation Act, 1973, the respondent can not apply the Tamil Nadu Recognised Private Schools Regulation Act and Rules, 1973 in respect of the petitioner's School and to grant approval for upgradation upto class 8th.

6. It is also contended by the 1st respondent in his counter affidavit that he has informed the petitioner herein vide letter dated 27.06.2019 to rectify all the deficiencies pointed out by the Inspector of Matriculation Schools for opening of Matriculation School. This Communication what has already referred above, is misleading and irrelevant to the present writ petition and

unconnected to the representation given by the petitioner to the 1st respondent vide letter dated 25.02.2019.

7. It is suffice to state that the 1st respondent has predetermined not to entertain the petitioner's application and therefore filed a counter affidavit and relied upon the communication, which is totally irrelevant to the relief sought by the writ petitioner. Since this Court has already pointed out the manner in which he has tried to mislead, cost being imposed. So nothing more is required to say except to point that even after filing of the writ petition and counter, the 1st respondent has not considered the representation of the petitioner dated 25.02.2019.

8. Therefore in the said factual situation, the 1st respondent is hereby directed to consider the representation given by the petitioner herein dated 25.02.2019 call for particulars, if any required and pass appropriate orders within a period of three weeks from today.''

- This Court gave a very specific finding that the CEO, Tiruvarur, has a predetermined mind not to entertain the application submitted by the petitioner - School and was giving various explanations which this Court thought to be misleading and irrelevant. Therefore, this Court

directed the 1<sup>st</sup> respondent to consider the application submitted by the petitioner - School on 25.02.2019, afresh and pass appropriate orders within a period of three weeks.

- Pursuant to the above orders, the 1<sup>st</sup> respondent has again rejected the application submitted by the petitioner - School by the impugned communication dated 27.08.2019 which has now become the subject matter of challenge in the present writ petition.

(3) The 1<sup>st</sup> respondent filed a counter affidavit which was sworn on 22.10.2019. The counter affidavit contained an averment to the effect that an inspection was conducted on 26.08.2019 and various deficiencies were pointed out. After this counter affidavit was filed, a further affidavit came to be filed by the petitioner - School on 30.11.2019. This Court, on going through the counter affidavit filed by the 1<sup>st</sup> respondent and the additional affidavit filed by the petitioner - School, thought it fit to give a direction to the 1<sup>st</sup> respondent to conduct one more inspection and therefore, a fresh inspection was conducted on 16.03.2020 and a further Report was also filed

before this Court. The petitioner - School has given their objections to the Inspection Report dated 16.03.2020. The 1<sup>st</sup> respondent has also filed an additional counter affidavit after the subsequent inspection was conducted and a Report was filed before this Court.

(4) Mr. V. Karthic, learned Senior counsel assisted by Mr. S. Haroon Al Rasheed, learned counsel appearing on behalf of the petitioner made the following submissions:-

- Most of the reasons that have been given for the rejection of the approval are curable in nature and therefore, an opportunity could have been given to the petitioner - School for curing the defects and to report back the same to the 1<sup>st</sup> respondent.
- The requirements of G.O.[2D] No.48, dated 21.07.2004 cannot be put against the petitioner - School since it was informed before this Court that it is being reviewed and on that ground, the earlier proceedings were closed by the Division Bench without considering the writ appeal on merits.
- The case of the petitioner - School could have been considered on par with the upgradation granted to A.G.M. Nursery and Primary School, Cuddalore, based on the orders passed by this Court. Even in the said case, the School was falling short of the land requirement as per the Government Order.
- The petitioner - School has created sufficient infrastructure and in order to ensure that it does not go waste, the petitioner - School is running a School on the basis of the accreditation granted by the National Institute of Open Schooling [NIOS] for providing basic training to the students studying upto 7<sup>th</sup> standard and the petitioner - School is ready and willing to stop the functioning of this School once the 1<sup>st</sup> respondent grants upgradation to the petitioner - School to run a Middle School.
- The 1<sup>st</sup> respondent is bent upon not to grant the upgradation and he is acting in bias in view of the earlier orders passed by this Court wherein cost was imposed on the 1<sup>st</sup> respondent by commenting upon his attitude. Therefore, the 1<sup>st</sup> respondent is every time finding reasons for not granting upgradation to the petitioner - School.
- The petitioner - School is run entirely on the charity extended by good Samaritans and there is no profit motive for running the School and the requirement to have a Middle School in that area is felt by the people belonging to Pulivalam Village.
- Each deficiency that was pointed out in the Report has been countered by way of objections given by the petitioner - School and except the minimum land requirement, there is no other major deficiency to deny the request made by the petitioner - School to upgrade the same into a Middle School.

(5) Per contra, Mrs.V.Annalakshmi, learned Government Advocate [Edn] appearing on behalf of the respondents, made the following submissions:-

- ◆ The petitioner - School admittedly lacks in the minimum land requirement which is mandatory in G.O.[2D] No.48 dated 27.08.2019 and without challenging the said Government Order, the petitioner - School cannot be allowed to seek for an approval when it is not satisfying the requirements of the said Government Order.
- ◆ The petitioner - School is required to have a minimum land area of 3 Acres since it is located in a rural area and what is available is only 65 cents [29,940 sq.ft] which is less than 1 Acre. Therefore, the permission sought for by the petitioner - School cannot be granted.
- ◆ Even though the petitioner - School is claiming to have approval for ground and 2 floors from the Panchayat, the actual approval is given only to the ground floor.
- ◆ The requirements of the Sampath Committee have been reiterated in G.O.Ms.No.131, dated 10.08.2006 and the size of the classes available in the old building is only 300 sq.ft. and in the new building, it is only 387 sq.ft., as against the requirement of 400 sq.ft. Likewise, a separate entry and exit must be available for each class and this is also not available in the petitioner - School.
- ◆ There are two Schools that are functioning within the same campus and the School that is functioning in the new campus has obtained recognition from NIOS.
- ◆ The toilet facilities as required under G.O.Ms.No.270, dated 22.10.2012, is not being properly followed by the petitioner - School.
- ◆ A residential complex was found inside the petitioner - School.
- ◆ The petitioner - School was granted permission under the Tamil Nadu Code of Regulations for Nursery and Primary School and there is no provision in the said Code for the upgradation of the Primary School as a Middle School since the Middle School is governed by the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973.
- ◆ The 1<sup>st</sup> respondent did not act with any bias and the authority was more concerned about the safety of the children and therefore, when the petitioner - School did not satisfy the various requirements, the impugned communication came to be issued by the 1<sup>st</sup> respondent to the petitioner - School refusing to grant upgradation as a Middle School.

(6) This Court has carefully considered the submissions made on either side and the materials placed before it.

(7) In order to get a bird's eye view of the reasons that are given for the rejection of the claim made by the petitioner - School and the reply given by the petitioner - School for those reasons, can be captured in a tabulated form:-

| Sl.No | Reasons stated by the 1 <sup>st</sup> Respondent in the Impugned Communication                                                                                                | Reply of the Petitioner for each reason                                                                                                                                                                                                                                             |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Area of each class room should be not less than 400 sq.ft.                                                                                                                    | <ul style="list-style-type: none"> <li>The class rooms are more than 400 sq.ft.</li> <li>Photos as well as the approved plan layout will demonstrate the same.</li> </ul>                                                                                                           |
| 2     | Class Room should have 2 entrances                                                                                                                                            | <ul style="list-style-type: none"> <li>Each classroom has 2 entrances</li> <li>Photographs will demonstrate the same.</li> <li>In any event this is not a statutory requirement.</li> </ul>                                                                                         |
| 3     | There was a name board Sankara Vidyashram from which it could be gathered that there was another school functioning                                                           | <ul style="list-style-type: none"> <li>An accreditation was granted by NIOS for providing basic training to students upto VII. The petitioner is ready to surrender it upon upgradation.</li> <li>The reason has been dropped in the inspection report dated 06.03.2020.</li> </ul> |
| 4     | Though the approval of the Pulivalam Panchayat President was obtained for the ground floor, the approval for the 1 <sup>st</sup> and 2 <sup>nd</sup> floors was not attached. | <ul style="list-style-type: none"> <li>The Panchayat has granted permission for the entire building consisting of ground plus two floors.</li> <li>Incorrect to state that the approval is only for one floor.</li> </ul>                                                           |

| Sl.No | Reasons stated by the 1 <sup>st</sup> Respondent in the Impugned Communication                                                                                               | Reply of the Petitioner for each reason                                                                                                                                                                                                                                 |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5     | There is a residential building. There is a plaque Janaki Palace is embedded in the compound wall. The entry and exit of the Residential house are inside the school campus. | <ul style="list-style-type: none"> <li>• It is incorrect to state that the residential house is in the school premises.</li> <li>• The house is adjacent. It is demarcated with a separate gate and entrance.</li> </ul>                                                |
| 6     | Though the School started that there was a Lease Deed, a copy of the Lease Deed was not produced.                                                                            | <ul style="list-style-type: none"> <li>• The Lease agreement between trustee and Correspondent was produced before 1<sup>st</sup> Authority which has not been considered.</li> <li>• The reason has been dropped in the inspection report dated 06.03.2020.</li> </ul> |
| 7     | The DTCP approval has not been obtained.                                                                                                                                     | <ul style="list-style-type: none"> <li>• The DTCP approvals required for the buildings in Panchayats in terms of DB Judgment.</li> </ul>                                                                                                                                |
| 8     | Petitioner School does not have land area of 3 Acres                                                                                                                         | <ul style="list-style-type: none"> <li>• The contentions of the petitioner in this regard are made in para [f] to [m] of its written arguments.</li> </ul>                                                                                                              |

| Sl.No | Reasons stated by the 1 <sup>st</sup> Respondent in the Impugned Communication | Reply of the Petitioner for each reason                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------|--------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9     | Petitioner's School doesn't have sufficient sanitary facilities                | <ul style="list-style-type: none"> <li>• The 1<sup>st</sup> respondent has submitted a report dated 06.03.2020 merely considering one building alone and has concluded that there are only 2 Urinals and 3 Toilets for the Girls.</li> <li>• The Report of the 1<sup>st</sup> respondent does not refer to the three - storeyed building which has 6 bathrooms [two in each floor] with each having urinals and toilets.</li> <li>• The photographs have been filed in this regard.</li> <li>• The petitioner in its objection dated 08.07.2020 has pointed out that the respondent has not taken into consideration one building. This has not been denied in the additional affidavit that was filed thereafter.</li> </ul> |
| 10    | Petitioner School doesn't have permanent fencing                               | The entire premises of the School has been covered by brick wall. Photographs have been filed in this regard.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 11    | Sports and Laboratory equipments are not available                             | The School as early as 2009, conducted a Science Fair in which foreign Scientists had participated. A clean copy of the comments made in the Visitors' Book is attached to the Typedset.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| Sl.No | Reasons stated by the 1 <sup>st</sup> Respondent in the Impugned Communication                                                                                                     | Reply of the Petitioner for each reason                                                            |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| 12    | 1 <sup>st</sup> Respondent has no independent powers either to grant permission to upgrade the Nursery and the Nursery adn Primary as Middle School or to open a New Middle School | Rule 4 of the TN Private School Regulation Rules, 1994, contemplates a power vested only with CEO. |

(8) This Court had an occasion to consider a similar claim made by the other School named A.G.M. Nursery and Primary School, Cuddalore. Even that School which was having upto 5<sup>th</sup> standard, had sought for upgradation as a Middle School. The respondents in the said writ petition also took a very similar stand to the effect that the School is governed by the Tamil Nadu Code of Regulation for approved Nursery and Primary Schools and it is not governed by the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 and therefore, the School cannot be upgraded as a Middle School. This contention was specifically rejected by this Court and this Court held that sufficient powers are available under Section 4 of the Tamil Nadu Recognised Private Schools [Regulation] Rules, 1974, to consider the upgradation of an existing Nursery and Primary School into a Middle School. For proper understanding, the order passed by this Court in WP.No.2560 of 2017, dated 06.07.2017 is extracted hereunder:-

'2. The petitioner is the Correspondent of A.G.M.Nursery and Primary School. The said School is being run by a Trust and it is a minority institution. The said School was started in the year 2011 and the recognition had been granted for every three years. The last recognition was granted on 06.02.2015 by the 4th respondent and is granted from 10.06.2014 to 09.06.2017. It is stated that there are about 140 students in the School studying from L.K.G to 5th standard, though the sanctioned strength of the School is 500. The School has got all infrastructural facilities including play ground. The School was desirous of upgrading the existing nursery and primary School to one of middle school for catering education to the students upto 8th standard. Accordingly, the School had applied for upgradation along with the required fees under Rule 4 of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974. As there

are adequate facilities for pupils, teachers, sufficient equipments and buildings including play ground, the petitioner had applied for upgradation and also produced the Sanitary Certificate from the local authority and no objection certificate from the Fire Department. However, the first respondent passed the impugned order rejecting the approval, which is under challenge by the petitioner in this Writ Petition.

3. The third respondent, who is the Chief Educational Officer, has filed counter affidavit contending that there is no provision in the Code of Regulation for approved Nursery and Primary Schools for upgradation of Nursery and Primary School into Middle School. Further, it is stated that in accordance with the provisions of Code of Recognised Nursery and Primary Schools, the School can continue only as a Nursery and Primary Schools with L.K.G to V Standard and the same cannot be upgraded.

4. The fourth respondent, who is the District Elementary Educational Officer, had filed separate counter affidavit reiterating that the Rules in the Tamil Nadu Recognised Private Schools (Regulations), Rules 1974 does not apply in the case of Nursery and Primary Schools. Therefore, the petitioner's request to upgrade the Nursery and Primary School into a Middle School with Tamil Nadu Recognised Private Schools (Regulation) Rules, cannot be complied with.

5. Heard both sides and perused the materials available on record.

6. It is contended by the learned counsel appearing for the petitioner that the impugned order is passed without application of mind as Rule 4 of the Tamil Nadu Recognised Private Schools (Regulations) Rules clearly provides for power to grant permission for upgradation. After the impugned order was passed, the Inspection Report of the Assistant Elementary Educational Officer was filed, according to which, Building Licence Certificate and Structural Stability Certificate are in force. No objection Certificate from the Fire Department and Sanitary Certificate from the Health Department had to be renewed. The students admission of 25% followed. Hence, the Assistant Elementary

Educational Officer had recommended for upgradation of the School. The Tamil Nadu Recognised Private Schools (Regulation) Act came into force in the year 1974, which exclusively deals with private schools including Pre-Primary School, Primary School, Middle School, Teachers' Training Institute, High School and Higher Secondary School. Any Private School including Pre-Primary School has to be established only under the statutory enactment. Without the permission of the competent authority, no person is allowed to start any School.

7. The learned Additional Government Pleader contended that the petitioner's School is governed only by the Code of Regulation for approved Nursery and Primary Schools of the State. He also contended that the School is not governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As the said Code does not specify about the upgradation, the petitioner's School cannot be allowed to upgrade the School from Primary School to Middle School. The said Code defines 'Educational Agency' as any person or body of person which has established and is administering or proposes to establish and administer such Nursery and Primary Schools. The only special feature of the Nursery and Primary School is that Tamil or mother tongue is compulsory in the Nursery Classes and Standard 1 to 5. As the upgradation is not contemplated under the Code, the learned Additional Government Pleader opposed for grant of any upgradation for the petitioner's School.

8. Per contra, the learned counsel for the petitioner contended that as per Section 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, "Private School" means a pre-primary, primary, middle or high school or higher secondary school or teacher training institution imparting education or training, whether receiving grant from the Government or not, established and administered or maintained by any person or body of persons and recognised by the competent authority under this Act, but does not include a School or an institution. As per the said Act, the "minority School" means a private school of its choice established and administered by any such

minority, whether based on religion or language as has the right to do so under clause(1) of Article 30 of the Constitution of India. Rule 3 of the Tamil Nadu Recognised Private Schools (Regulation) Rules prescribes the stages of education. Rule 4 defines the power to grant permission. As per Rule 4, the competent authorities shall grant permission to open a private School or to upgrade an existing School to open higher standards or additional Sections in an existing School established in the following, namely, Pre-Primary, Primary and Middle Schools-Chief Educational Officer.

9. On a perusal of the above provisions, it is evident that none of the private person or management can establish any Private School without the permission of the competent authority. For establishing and administering a School, Pre-Primary, Primary, Middle Schools, High Schools or Higher Secondary Schools, permission from the competent authorities is bound to be obtained under Section 4 of the Tamil Nadu Recognised Private Schools (Regulation) Act. If the School is already established, upgradation is done only by the competent authorities as per Rule 4 therein. The petitioner also has asked for upgradation and sent his application dated 24.02.2016. In response to the same, the fourth respondent had negatived the same by stating that there is no provision under the Code of Regulation for approved Nursery and Primary School, whereas on 22.04.2016, the Chief Educational Officer has sent a letter, which is impugned in the Writ Petition stating that there were certain deficiencies, which are to be complied with, after which, an inspection was also conducted and the deficiencies pointed out as per the inspection report were also complied with by the petitioner. The petitioner also had produced the No Objection Certificate from the Fire Department and the Sanitary Certificate from the Cuddalore Municipality. The Tahsildar, Cuddalore has given a valid licence for the said School, the validity of which is from 10.06.2017 to 09.06.2020. As the petitioner has submitted all the necessary certificates mandated by the relevant Rule including infrastructural facilities available, description of the building etc., to the

satisfaction of the competent authority, the competent authority is required to grant permission.

10. For the foregoing reasoning, this Court is of the view that the petitioner has made out a case for upgrading the existing School from Primary School to Elementary level. Therefore, the impugned Orders passed by the first and third respondents dated 04.05.2016 and 09.05.2016 are quashed and the Writ Petition is allowed. The respondents 3 and 4 are directed to consider the representation of the petitioner along with necessary annexures enclosed or to be produced later and pass appropriate orders for upgradation of the existing Nursery and Primary School into Middle School. No costs. Consequently, connected miscellaneous petition is closed.''

(9) This order passed by the learned Single Judge was subsequently confirmed by the Division Bench of this Court in WA.No.532 of 2018, by judgment dated 12.03.2019. The relevant portions of the judgment are extracted hereunder:-

'4. On going through the above reasoning assigned by the learned Single Judge on the submission made by the parties, it is evident that upto VIII Standard, it is deemed as Middle School and the school concerned is presently imparting education from L.K.G. to VI standard, and upgradation is sought for VI standard to VIII standard and the learned Single Judge, on appreciating the facts and circumstances in the light of the provisions viz., section 4 of the Tamil Nadu Recognized Private Schools (Regulation) Act,

directed for consideration of the representation of the respondent herein for upgradation of the School for imparting education from VI standard to VIII standard.

5. The learned Government Advocate appearing for the appellants mainly contended on one hand that certain deficiencies were pointed out by the authorities with regard to the infrastructure and the condition of the building and on the other hand, the upgradation sought for by the appellant being one for conducting classes for VI standard to VIII standard, the appellants, against whom direction is issued, are not the authority vested with the power for granting upgradation

and it is only the Director of School Education, who is vested with such powers.

6. If so, then similar representation may be submitted by the respondent herein to the Director or Joint Director of School Education and in such event, there cannot be any impediment for the authority concerned to consider the same and grant the required upgradation especially, when there is already clearance and report at the level Tahsildar concerned and the inspecting authority in favour of the respondent herein.

7. So far as the issue of lack of infrastructure and the condition of the building is concerned, we find from the photographs produced by way of typed set of papers that the School is run in a tiled construction, which appears to be in good condition and it is contended that the School has been run in such building for more than ten years without any issues and of course, the students had to sit on floor because of lack of furnitures, but, it appears that in no way it causes inconvenience to the students. It is for the authority concerned to insist for such infrastructural facilities, if it is mandatory one or otherwise, it shall not be insisted upon.

8. In view of the above, we do not find any illegality or infirmity in the order passed by the learned Single Judge. Accordingly, the writ appeal filed by the Department is dismissed. No costs. The connected miscellaneous petition is also dismissed.'

(10) It is clear from the above that the ground taken by the 1<sup>st</sup> respondent that the request made by the petitioner - School for upgradation as a Middle School cannot be considered since it is governed by the Tamil Nadu Code of Regulation for Nursery and Primary School, is completely unsustainable.

(11) The order passed by this Court in WP.No.17285 of 2019, imposing a cost of Rs.25,000/- on the 1<sup>st</sup> respondent, has really had an impact in the mind of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent seemed to be bent upon finding reasons for somehow rejecting the claim made by the petitioner - School. The legal malice on the mind of the 1<sup>st</sup> respondent has somehow played a role and an authority who was directed to pay cost, cannot be expected to be neutral when it comes to again considering the same file and it is human nature that the malice will start

impacting the decision making process.

(12) In the present case, except the minimum land requirement, about which this Court will separately consider, the other reasons given by the 1<sup>st</sup> respondent reflects his biased mind.

(13) An action becomes bad where the true object is to reach an end which is different from the one for which the power is entrusted and it is influenced by irrelevant considerations. This is in legal parlance, it is called as 'Legal malice or malice in law'.

(14) This concept has been succinctly dealt with by the Hon'ble Supreme Court of India in two judgments and the same is extracted hereunder:-

[i] State of Punjab v. Gurdial Singh reported in (1980) 2 SCC 471 at page 475 :-

'9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which

the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act''

[b]Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808 at page 448

25.The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521 : AIR 1976 SC 1207] , S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49], State of A.P. v. Goverdhanlal Pitti [(2003) 4 SCC 739 : AIR 2003 SC 1941], BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567] and W.B. SEB v. Dilip Kumar Ray [(2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)''

The above two judgments beautifully brings out this concept of malice in law. It is not an act necessarily done with an ill-feeling and spite. However, it is an act which is done with an oblique or indirect motive, some times called as colourable exercise of power.

(15)It has always been considered that when a remand is made to an authority, more particularly after commenting about the conduct of the authority and also imposing a cost like in the present case, it is always expedient that the file is placed

before a different authority. The reason is that there is something called as confirmation bias which would make a remission to the original decision maker undesirable.

(16)The mind of this Court is redolent of the judgment in R V. Sussex Justices [1924 1 KB 256], wherein it was held that ''A long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.''

(17)The U.K.Court of Appeal recently had an occasion to consider this concept of confirmation bias where it felt that a confirmation bias always warrants a remand to be made to a different authority. The relevant portions of the judgment in HCA International Limited V. Competition and Markets Authority reported in 2015 [1] WLR 4341 is extracted hereunder:-

''70 It is, however, always the case that the presence of actual bias, apparent bias or confirmation bias would make remission to the original decision-maker undesirable, because any such bias would amount both to reasonably perceived unfairness to an affected party and potentially serious damage to public confidence in the decision-making process.

71 It is important also to understand the kind of unfairness that is relevant to the question of whether the decision should be remitted to the original decision-maker. The unfairness concerned is such as contravenes the public law duty of fairness, not some abstract concept of unfairness based on a colloquial usage of that word. It is well- established that what fairness requires will vary with the factual circumstances, but what is required in order to achieve fairness is a matter of law, and not a matter of discretion for the decision-maker.''

(18)In the considered view of this Court, the remand made by this Court in the earlier writ petition in WP.No.17285 of 2019, before the same CEO after commenting upon his conduct and imposing a cost, has really impacted his mind in the decision making process and it would have been more appropriate if the file was considered by a different authority. The 1<sup>st</sup> respondent seems to have decided not to grant the upgradation and he was only finding reasons as to why it should not be granted. Obviously, the confirmation bias and the malice in law has, to a great extent, made the decision making process, more questionable.

(19) If the 1<sup>st</sup> respondent had been careful enough to consider the explanation given by the petitioner - School with regard to the approval granted for the building, availability of sanitary facilities, availability of entrance and exit for each classroom, the size of each classroom, the undertaking given by the petitioner - School that it will discontinue the School run under the accreditation granted by NIOS if it is upgraded as a Middle School etc., with a neutral mind, there was a good chance to consider the request made by the petitioner - School with a more positive frame of mind. However, the 1<sup>st</sup> respondent was not willing to consider it in that manner because of the confirmation bias and therefore, it actually clouded his decision making process.

(20) The only other issue which requires consideration is with regard to the minimum land requirement. It was not made clear before this Court as to whether the requirement of 3 Acres will also apply to a case where the authority is considering upgradation of a Nursery and Primary School into a Middle School. It is at this juncture that the order passed by the authorities while granting upgradation to A.G.M. Nursery and Primary School, Cuddalore, has a lot of significance. After the orders were passed by the learned Single Judge and confirmed in the appeal, the CEO, Cuddalore, by proceedings dated 26.07.2018 has granted the concerned School upgradation as a Middle School subject to various conditions. This School is also located in a rural area and it has only an extent of 5 grounds and whereas the petitioner - School has an extent of 16 grounds. The petitioner - School has two concrete buildings with 22 classrooms and the new building is a three-storeyed building comprising of 12 classrooms with an area of 6502 sq.ft. This new building was constructed only with a view to get an approval for Middle School. The petitioner - School made it clear that the old building will be used only as a Primary School and for which, there is already a recognition granted and valid up-to-date. Therefore, if the petitioner - School had also been considered on the same lines like that of A.G.M. Nursery and Primary School, Cuddalore, there was a good chance to upgrade the petitioner - School as a Middle School. It was also brought to the notice of this Court that apart from this School at Cuddalore, there were two other Schools, for which similar upgradation was given, viz., Sivani Nursery and Primary School, Madurai District, and Kilikodi Tamizhthai Nursery and Primary School, Pudukottai District.

(21) In view of the above, the request made by the petitioner - School requires reconsideration. The facilities created by the petitioner - School should not go waste and it has to cater to the needs of the people living in Pulivalam village. The

petitioner - School, in order to use the facilities, is running a basic training School with the accreditation granted by NIOS and a specific undertaking has been given by the petitioner - School to take steps to withdraw the accreditation and discontinue the School, once the request made by the petitioner - School for upgradation as Middle School is considered positively.

(22) The above discussion leads this Court to come to a conclusion that the impugned communication of the 1<sup>st</sup> respondent dated 27.08.2019 requires interference and accordingly, the same is quashed. The petitioner - School is directed to submit a fresh application to the Director of School Education, DPI Campus, College Road, Chennai - 600 006, seeking for upgradation as a Middle School by providing all the necessary particulars and documents. The Director of School Education, shall assign this file to a different official other than the one who had already dealt with the file, at the level of the Chief Educational Officer and the said Officer shall conduct a fresh inspection in the petitioner - School and deal with the file in accordance with law. A decision shall be taken within a period of twelve weeks from the date of receipt of a copy of this order.

(23) In the result, the writ petition is allowed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Educational Officer  
Office of the Chief Educational Officer  
1<sup>st</sup> Floor, Collectorate Annexe Building  
Tiruvarur 610 004.
2. The Government of Tamil Nadu  
rep.by its Secretary,  
School Education Department  
Fort St George, Chennai 600 009.
3. The Deputy Commissioner  
Directorate of Town & Country Planning  
Thanjavur.

4. The Director of Elementary Education,  
College Road, Nungambakkam  
Chennai 600 004.

Copy to:-

The Director of School Education,  
DPI Campus, College Road,  
Chennai 600 006.

+2cc to Haroon AL Rasheed, Sr.No.27971  
+1 cc to the Government Pleader Sr.No.28125

WP.No.29025/2019

rsv(co)

rr ii (14/09/2020)