IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

WP.Nos.29269, 29276, 29280 & 29284 of 2018
and WMP.Nos.34193, 34196, 34204, 34206, 34212, 34214,
34219 and 34221 of 2018
and
WP.Nos.29366, 29389, 29396 & 29403 of 2018
and WMP.Nos.34314, 34315, 34345, 34346, 34354,
34356, 34362, 34363 of 2018

ST.JOSEPHS BOYS ANGLO INDIAN
HIGHER SECONDARY SCHOOL,
REP. BY ITS CORRESPONDENT
1/2 COLLEGE ROAD
COONOOR-643 102 NILGIRIS. ..PETITIONER in WP Nos.29269,
29276,29280 & 29284 of 2018

ST.ANTONY HIGHER SECONDARY SCHOOL
REP. BY ITS CORRESPONDENT
114A RITZ HOTEL ROAD
COONOOR - 643101 THE
NILGIRIS DISTRICT ... PETITIONER in WP No.29366 of 2018

ST.JOSEPHS CONVENT ANGLO-INDIAN
GIRLS HIGHER SECONDARY SCHOOL
REP. BY ITS CORRESPONDENT
72D ST.JOSEPH CONVENT ROAD
COONOOR - 643102
THE NILGIRIS DISTRICT ... PETITIONER in WP No.29389 of 2018

ST.JOSEPHS CONVENT ANGLO-INDIAN
GIRLS HIGHER SECONDARY SCHOOL
REP. BY ITS CORRESPONDENT
72C ST. JOSEPH CONVENT ROAD
COONOOR - 643102
THE NILGIRIS DISTRICT ... PETITIONER in WP No.29396 of 2018

ST.JOSEPHS CONVENT ANGLO-INDIAN
GIRLS HIGHER SECONDARY SCHOOL
REP. BY ITS CORRESPONDENT
72B ST. JOSEPH CONVENT ROAD
COONOOR - 643102
THE NILGIRIS DISTRICT ... PETITIONER in WP No.29403 of 2018

Vs.

1 THE SECRETARY
DEPARTMENT MUNICIPAL ADMINISTRATION
AND WATER SUPPLY
THE GOVERNMENT SECRETARIAT
FORT ST.GEORGE CHENNAI-600 009.

2 THE COMMISSIONER,
MUNICIPAL ADMINISTRATION,
COMMISSIONERATE OF MUNICIPAL ADMINISTRATION
CHEPAUK CHENNAI- 600 005.

3 EXECUTIVE AUTHORITY/THE COMMISSIONER
COONOOR MUNICIPALITY COONOOR-643 102.

4 THE DISTRICT EDUCATIONAL OFFICER
THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
COONOOR,
NILGIRIS DISTRICT-643102. ..RESPONDENTS 1 TO 4
IN ALL THE WRIT PETITIONS
(R4 IMPLEADED AS PER ORDER DATED
23/09/2019 MADE IN WMP.NOS.27716, 27726,
27734, 27736, 28371,28378,28380,
28383 of 2019 IN WP.Nos.29269,29276,
29280,29284, 29366, 29389, 29396
AND 29403 of 2018 RESPECTIVELY)

WP No.29269 of 2018 : Writ Petitions filed under Article 226 of Constitution of India, Praying for issuance of Writ of Certiorari calling for the records, pertaining to the impugned Assessment order dated 26.07.2018, in Order No.065/0003018 for assessment No.065/014/00253, and the consequential Distraint Notice dated 30.10.2018 in respect of the Assessment No.065/014/00253 in so far as it imposes property tax on petitioner Aided School in respect of the building of St.Josephs Boys Anglo Indian Higher Secondary School, 1/2, College Road, Coonoor, Coonoor-643 102, and quash the same.

WP No.29276 of 2018
calling for the records, pertaining to the impugned Assessment order dated 26.07.2018, in Assessment No.065/014/00252, and the

consequential Distraint Notice dated 30.10.2018 in respect of the Assessment No.065/014/00252 in so far as it imposes property tax on petitioner Aided School in respect of St.Josephs Boys Anglo Indian Higher Secondary School, 1/2, College Road, Coonoor, Coonoor-643 102, and quash the same.

WP No.29280 of 2018
calling for the records, pertaining to the impugned Assessment order dated 26.07.2018, in Assessment No.065/014/00250, and the consequential Distraint Notice dated 30.10.2018 in respect of the Assessment No.065/014/00250 in so far as it imposes property tax on petitioner Aided School in respect of St.Josephs Boys Anglo Indian Higher Secondary School, 1/4, College Road, Coonoor, Coonoor-643 102, and quash the same.

WP No.29284 of 2018
calling for the records, pertaining to the impugned the Assessment order, dated 26.07.2018, in Assessment No.065/014/00251, and the consequential Distraint Notice dated 30.10.2018 in respect of the Assessment No.065/014/00251 on the file of the 3rd respondent, in so far as it imposes property tax on petitioner Aided School in respect of the building in St.Josephs Boys Anglo Indian Higher Secondary School, 1/5, College Road, Coonoor, Coonoor-643 102, and quash the same.

WP No.29366 of 2018
Calling for the records, pertaining to the impugned Assessment order, dated 26.07.2018 in Assessment Nos. 065/ 001/ 538 and 065/ 001/ 539, and the consequential Distraint proceedings dated 08.10.2018 in Na.Ka.No. 823/ 2018/ A1, and quash the same in so far as it imposes property tax on petitioner Aided School in respect of St. Antony Higher Secondary School, Coonoor, Coonoor - 643101

WP No.29389 of 2018
Calling for the records, pertaining to the impugned Assessment order dated 05.09.2018 in Assessment No.065/010/00385 and the distraint proceedings dated 08.10.2018 in Na.Ka.No.823/2018/A1, in respect assessment No.065/010/00385 and the consequential notice dated 30.10.2018 on the file of the 3rd respondent and quash the same in so far as it levies property tax on petitioner Aided School in respect of St.Josephs Convent Anglo Indian Girls Higher Secondary School, 72 D, St. Joseph Convent Road, Coonoor - 643102, The Nilgiris District

WP No.29396 of 2018
Calling for the records, pertaining to the impugned Assessment order dated 05.09.2018 in Assessment No.065/014/00386 and the

distraint proceedings dated 08.10.2018 in Na.Ka.No.823/2018/A1, in respect assessment No.065/014/00386 and the consequential notice dated 30.10.2018 on the file of the 3rd respondent and quash the same in so far as it levies property tax on petitioner Aided School in respect of St.Josephs Convent Anglo Indian Girls Higher Secondary School, 72 C, St. Joseph Convent Road, Coonoor - 643102, The Nilgiris District

WP No.29403 of 2018

Calling for the records, pertaining to the impugned Assessment order dated 05.09.2018 in Assessment No.065/010/00387 and the distraint proceedings dated 08.10.2018 in Na.Ka.No.823/2018/A1, in respect assessment No.065/010/00387 and the consequential notice dated 30.10.2018 on the file of the 3rd respondent and quash the same in so far as it levies property tax on petitioner Aided School in respect of St.Josephs Convent Anglo Indian Girls Higher Secondary School, 72 B, St. Joseph Convent Road, Coonoor - 643102, The Nilgiris District

For Petitioner	:	Dr.Father Xavier Arulraj for Ms.A.Arul Mary
For Respondents	:	Mr.B.Anand (for R1 & R2) Government Advocate Mr.P.Srinivas (for R3) Mr.C.Munusamy (for R4) Special Government Pleader

COMMON ORDER

This batch of eight writ petitions has been filed by various Anglo Indian Convents situated at Coonoor.

2.The facts in W.P.No.29389 of 2018 filed by St. Joseph's Convent Anglo-Indian Girls' Higher Secondary School, Coonoor, The Nilgiris District (in short 'Convent') are taken to be representative of the factual and legal position in all writ petitions.

3.The Convent was established in the year 1900 and is run by The Roman Catholic Congregation of Sisters of St. Joseph of Tarbes, a registered Society functioning under the name and style of 'The Nilgiris St. Joseph's Sisters Society'. Several minority Educational Institutions are being run by the Society, comprising classes from the Lower Kindergarten to the XIIth Standard. The Institutions, according to learned Senior Counsel Dr.Father Xavier Arulraj, appearing for Ms.A.Arul Mary, learned counsel for the petitioner, run on a Deficit Grant in so far as there is a difference between the income received by way of collected fees, and the outflow comprising the salaries paid to sanctioned and approved staff. This Deficit is made good by the State Government.

4.The petitioner was hitherto enjoying an exemption from payment of property tax in respect of the properties owned by it under the provisions of Section 83(c) of the Tamil Nadu District Municipalities Act, 1920. The aforesaid provision was amended on 11.01.2018 providing that while the exemption would continue in respect of Aided Educational Institutions, there would be no benefit of exemption extended to self-financing Institutions. Thus, with effect from 11.01.2018 the grant of exemption in so far as it related to properties utilized for the conduct of self-financing courses came to an end. Pursuant thereto, a Circular was issued by the Commissioner, Municipal Administration (R2) to all Commissioners of Municipalities to assess the appropriate property tax in line with the amendment and a consequential Resolution passed by the 3rd respondent, the Commissioner/Executive Authority (R3). Based on the aforesaid Circular and resolution, R3 is stated to have issued notices to several Educational Institutions including the petitioner fixing property tax from 01.10.2017 onwards and calling upon them to remit the same. Since the petitioner was of the view that it was entitled to exemption as an aided school, representations were filed before R3 seeking full exemption from payment of property tax. Without reference to the same, coercive recovery proceedings by way of distraint orders had been issued that are the subject matter of the present writ petitions.

5.The petitioner would state that aided schools, either fully or partially were exempted from the levy of property tax and as per the amendment, it is only Institutions that run self-financing courses that would be fastened with the liability and then, only to that extent. The petitioner periodically receives a Deficit Grant from the State Government and thus falls outside the ambit of levy of property tax. In addition, the petitioner also runs classes/courses on a self-financing basis in respect of which it remits property tax regularly.

6. Reference is also made to order dated 03.06.2011 passed by the Private Schools Fee Determination Committee in the case of The Association of the heads of Anglo Indian Schools (Objector School) where the Committee held that Institutions that had received grants-in-aid either fully or partially (deficit payment) would satisfy the definition of an aided school as per Section 2(b) of the Act.

7. The Committee also goes on to say that such exemption would not be available in respect of self-financing classes run by the school without the benefit of aid or grant from the Government. The Committee, at paragraph Nos.4 to 6 states as follows:

> '4.From the above, it is an admitted fact that the member institutions of the Association are receiving grant in aid from the Government which is termed as "deficit grant". The term "aid" or "grant" or "deficit grant" has not been defined in the Act 22/2009. The term "grant" has been defined in the Tamil Nadu Private School Regulation Act 1973 to meet "any sum of money paid as aid out of the state fund to any Private School". Sec 2 (b) of the Act 22/2009 defines the word "aided school" to mean a school receiving any sum of money as aid out of the State fund. The words "any sum of money" assumes much significance. If the words are interpreted literally it would mean that any school receiving any sum whether "full grant or partial or deficit grant" out of the State fund is regarded as aided school. Sec 2(j) (i) of the Act 22/2009, excluded the aided school from the definition of the Private School and Sec 3(4) of the Act mandated the Government to fix the fee for Government and aided school.
>
> 5.From the above, it is clear that the schools receiving "aid" in whatever proportion, go out of the Jurisdiction of Committee which is empowered to fix the fee for Private Schools with the exclusion of aided school.
>
> 6.In respect of "self-financing" classes i.e., the classes financed by the school without any aid or grant from the Government, all the Anglo Indian Schools are regarded as "Private School" as defined in Sec.2(j) and the Committee has every power to determine the fee for the said classes.'

8. The primary vital or critical determination would thus relate to whether the Institution in question was aided, either full or partly or self-financing and to what extent. Such a determination has admittedly not been made in the cases of any of the petitioners.

9. Mr.B.Anand, learned Government Advocate appearing for R1 and R2, Mr.P.Srinivas, learned counsel who appears for R3 and Mr.Munusamy, learned Special Government Pleader who appears for R4, the District Educational Officer impleaded by this Court,

would agree that this exercise has to be carried out as a preliminary exercise prior to actual imposition of tax, if at all. For the aforesaid reasons and conscious of the facts that admittedly, there has been no characterisation of the Institutions before me as aided or self-financing, and to what extent, the impugned proceedings are set aside.

10. Let the petitioners appear before R4 i.e. District Educational Officer, on Wednesday the 22nd January, 2020 at 10.30 a.m. without expecting any further notice in this regard. After hearing the petitioners, a determination shall be made as to whether the petitioners fall within the category of 'aided', either fully or partially by way of deficit funding, or self-financing. Based on such classification, after hearing the petitioners by way of personal hearing and inspection of all the buildings after due notice, let orders of assessment be passed within a period of 12 weeks from date of receipt of a copy of this order.

11. These writ petitions are allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
1.The Secretary, Department of Municipal Administration and Water Supply, The Government Secretariat,
Fort St. George, Chennai - 600 009.
2.The Commissioner, Municipal Administration, Commissionerate of Municipal Administration, Chepauk, Chennai-600 005.
3.Executive Authority/The Commissioner,
Coonoor Municipality,Coonoor - 643 102.
4.The District Educational Officer,
The Office of the District Educational Officer,
Coonoor, Nilgiris District - 643 102.

+3cc to M/s.Father Xavier Associates Sr.Nos.634 & 647
+1 cc to M/s.P.Srinivas,Advocate Sr.No. 701
+1 cc to The Government Pleader Sr.Nos.1012,1013,1324,1325

AKM/09.01.2020/7P-10C/ WP.Nos.29269, 29276, 29280 & 29284 of 2018 and WMP.Nos.34193, 34196, 34204, 34206, 34212, 34214, 34219 and 34221 of 2018 and WP.Nos.29366, 29389, 29396 & 29403 of 2018 and WMP.Nos.34314, 34315, 34345, 34346, 34354, 34356, 34362, 34363 of 2018