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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.15845 of 2020

and

W.M.P. (MD)No.13263 of 2020

All India Private Schools Legal Protection Society,
(Registered Under Tamil Nadu Act 27 of 1975,
S.L.No.675 of 2014),
No.2/11/29, Vembhar Nagar,
Elathur, Tenkasi District - 627 803.
Represented by its Chairman,
I.Manoharan Jeyakumar

... Petitioner

Vs.

1. The Chief Secretary,
Government of Tamil Nadu,
St.George Fort, Chennai -9.
2. The Principal Secretary,
School Education Department,
St. George Fort, Chennai - 09.
3. The Director of Vigilance and Anti-Corruption,
NCB 21 to 28,
P.S.Kumarasamy Raja Salai,
Chennai - 600 028.
4. The Director of Matriculation Schools,
DPI Campus, Chennai - 600 006.
5. The Joint Director of Matriculation Schools,
DPI Campus, Chennai - 600 006.
6. The Deputy Director of Town and
Country Planning,
Tirunelveli District, Tirunelveli.
7. A.Karuppasamy,
Director of Matriculation Schools,
Chennai 600 006.
8. Sridevi,
Joint Director of Teachers
Recruitment Board,
Chennai - 600 006.



9. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
10. The District Educational Officer,
Valliyur Educational District,
Tirunelveli District.
11. The Correspondent,
Valliammai Matriculation School,
Tirunelveli Town, Tirunelveli District.
12. The Correspondent,
St.Francis Matriculation School,
Nanguneri, Valliyur Educational District,
Tirunelveli District.
13. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Tirunelveli District.

... Respondents

(13th respondent is suo motu impleaded
vide order dated 23.12.2020)

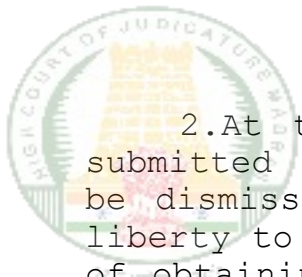
Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing respondents 1, 2 and 3 to investigate the corruption and malpractice of Mr.A.Karupphasamy, Director of Matriculation Schools, and Mrs.Sridevi, Joint Director of Teachers Recruitment Board, on the basis of the petitioner's representation dated 23.09.2020 within the time frame to be fixed by this Court.

For Petitioner	: Mrs.L.Victoria Gowri
For R-1, R-2 & R-4 to R-10	: Mrs.S.Srimathy, Special Government Pleader.
For R-3 & R13	: Mr.A.Robinson, Government Advocate (Cr1. Side).
For R-11	: Mr.M.P.Senthil.
For R-12	: Dr.FR.Xavier Arulraj, Senior Counsel for Mr.FR.V.John Kennedy for M/s.Fatehr Xavier Associates

O R D E R

Heard the learned counsel on either side. With their consent,
the writ petition is taken up for final disposal.

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

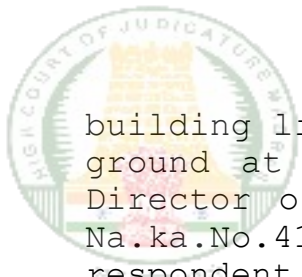


2. At the very outset, the learned counsel for the petitioner submitted that due to paucity of materials, the writ petition can be dismissed as against the 12th respondent. She however wanted liberty to proceed against the 12th respondent in future in the event of obtaining any adverse material. Reserving such liberty to the petitioner, the writ petition is dismissed as against the 12th respondent.

3. The petitioner has been registered under the Tamil Nadu Societies Registration Act, 1975. It has been taking up the cause of private school managements. The petitioner has submitted a number of representations making serious allegations against important officials of the Education Department. The petitioner wants the Vigilance Wing to investigate the said complaints.

4. I wanted the petitioner to substantiate a sample case of criminal misconduct. The petitioner's counsel drew my attention to the case of the 11th respondent. The 11th respondent is a Matriculation School being run in West Matha Street in Tirunelveli. According to the petitioner, the said school lacks even the elementary amenities. In response to the said allegation, it is contended by the department that the Inspector of Matriculation Schools/the Field Level Officer recommended the proposal seeking renewal of recognition on 07.10.2015. It is also stated that the school correspondent submitted the public building license issued by the jurisdictional Tahsildar, NOC issued by the jurisdictional Station Officer, Fire and Rescue Services Department and Sanitary Certificate issued by the Health Department.

5. I wanted the learned Special Government Pleader appearing for the department to produce photographs of the school. It is beyond dispute that the school does not possess the minimum extent of land as stipulated. However, by virtue of G.O (Ms) No.135, School Education Department, dated 18.08.2015, temporary recognition for the school was given originally upto 31.05.2016. But it is not known as to how the department kept renewing the recognition till last year. The learned Special Government Pleader claimed that the school management was putting up a pucca construction with the required land space in another locality and that was the reason for not issuing closure order. A mere look at the photographs would clearly show that the school is being run in a narrow street. The building housing the school was put up only for residential purpose. It does not even have set back area. The door of the building opens right into the street. For such a school, the Station Officer, Fire and Rescue Services, Pettai had granted NOC as recently as on 02.03.2020. One P.Radhakrishnan is said to have conducted the inspection. I fail to understand as to what kind of inspection he did. If a fire accident had broken out, it would have been a re-play of Kumbakonam tragedy. When the building plan is for residential purpose, the Tahsildar could not have issued a public



building license to authorise running of a school. There is no play ground at all. Realizing the untenability of their stand, the Director of Matriculation Schools issued show cause notice bearing Na.ka.No.4124/A3/2019 dated 22.12.2020 proposing closure of the 11th respondent school. A number of defects have been pointed out in the said notice. These defects were present always. Permitting running of such a school is a criminal misconduct. More than the Education Department, culpability will have to be fastened on the officials who issued the public building license and the No Objection Certificates. Prosecution has to be initiated.

6.Of course, the question that arises is since the Prevention of Corruption Act, 1988 has been amended, whether as per Section 17A of the Act, the previous approval of the competent authority will have to be obtained ?. Section 17A of the Act reads as follows :

**"17A.Enquiry or Inquiry or investigation of offences
relatable to recommendations made or decision taken by
public servant in discharge of official functions or duties
:-**

(1)No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

(a)in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b)in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

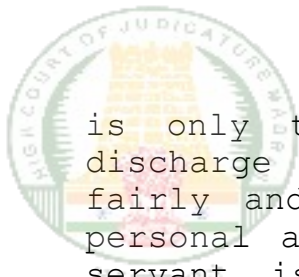
(c)in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

PROVIDED that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

PROVIDED FURTHER that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

In my view, for registering a case in this regard, no prior approval is required and Section 17A will not have any application. As held by the Hon'ble Delhi High Court in the decision reported in **2019 (1)**

Crimes (HC) 726 Devender Kumar vs. CBI, the purpose of Section 17A



is only to provide protection to officers/public servants who discharge their official functions and/or duties with diligence, fairly and in an unbiased manner, without any motive for their personal advantage or favour. However, when the act of a public servant is ex-facie criminal or constitutes an offence, prior approval of the Government would not be necessary. This was followed by the High Court of Chhattisgarh in **Sathish Pandey vs. Union of India (2020 0 Supreme (CHH) 149**. Respectfully following the aforesaid decisions, I hold that Section 17A of the Prevention of Corruption Act cannot be made applicable in those cases where the act of the public servant that amounts to an offence appears on the face of it lacking in good faith. Issuing public building license and no objection certificates for the 11th respondent cannot be said to be acts done in good faith. Where the performance of public function is grossly improper, the safe conclusion at least at the initial stage can be that it was in anticipation of or in consequence of accepting an undue advantage from the beneficiary.

7.I therefore direct the 13th respondent to register a case against unnamed public servants under Section 7 (c) of the Prevention of Corruption Act, 1988 for having issued public building license and no objection certificates and extending recognition after 2016 in favour of the 11th respondent. The 13th respondent will conduct proper investigation and file final report before the jurisdictional court within a period of five months from the date of receipt of copy of this order. I make it clear that the observations made herein are only for the purpose of triggering a prosecution and they shall not foreclose anybody's defence. The investigation shall be carried on with an open mind. It is open to the petitioner to place further materials before the investigation officer. I also direct the Special Government Pleader to communicate this order to the concerned Heads of the Departments so that they can initiate appropriate departmental proceedings.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

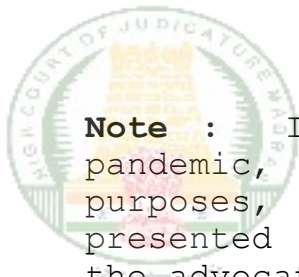
Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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Tirunelveli District.

+1cc to M/s.Father Xavier Associates, SR.No.27151.

W.P. (MD) No.15845 of 2020
23.12.2020

SS (CO)
CS (06.01.2021) 6P 11C