



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.19579 of 2018

Kothandaraman Memorial Aided Middle School
Represented by its Secretary
K.Manisekar

... Petitioner

Vs.

1. District Elementary Educational Officer,
Tiruchirappalli.

2. The Assistant Educational Officer,
Musiri, Tiruchirappalli District.

3. M.Thirumeni ... Respondents
(R3 has been impleaded vide order of this
Court dated 03.08.2020 in W.M.P.(MD) No.21922/2018
in WP(MD)No.19579 of 2018)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to approve the school committee of the petitioner by considering the petitioner's representation dated 29.11.2013.

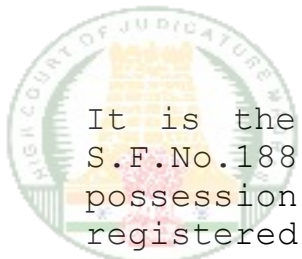
For Petitioner : Mr.Shangar Murali
For Respondents : Ms.Lakshmi Prasanna for R1&R2
Government Advocate
Mr.S.K.Mani for R3

ORDER

This writ petition has been filed for a direction to the respondents 1 and 2 to approve the school committee of the petitioner by considering the petitioner's representation dated 29.11.2013.

2. During the pendency of the writ petition, the third respondent got impleaded vide order dated 03.08.2020.

3.The petitioner School is an aided school with effect from 01.01.1993 and has been subsequently upgraded as a Middle School.



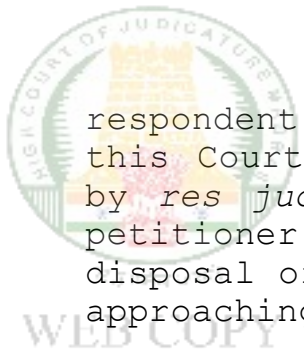
It is the case of the petitioner that since 2006, the land in S.F.No.188/8 belong to the petitioner and they are in peaceful possession and enjoyment. The petitioner educational agency was registered on 06.01.2011 and the petitioner has been elected as Secretary vide resolution of the School Committee, which has been approved by the first respondent vide proceedings dated 31.01.2011. While so, at the instance of the third respondent, one Chinnathambi proclaimed himself as Secretary filed O.S.NO.16/2012 and the same is pending.

3.1. It is the further case of the petitioner that the first respondent has approved the school committee as per Sections 12(1) (2) and 13 of the Tamil Nadu Recognized Private Schools Regulation Act, 1974 and as per G.O.Ms.No.1502 Education dated 23.09.1998, the school committee has been approved for a period of three years from 10.01.2011 to 09.01.2014. While so, since the period of three years come to an end by 09.01.2014, the petitioner preferred an application to recognize the President and Secretary of the School Committee along with the members and the said application dated 29.11.2013 is pending with the first respondent. Since no order has been passed on the said application, the petitioner is before this Court with this writ petition to approve the school committee of the petitioner.

4. The issue is narrowed down as to whether the petitioner's representation could be considered or not. Leaving aside whether the petitioner, as a matter of right, seeks for such request, as detailed arguments have been advanced by the parties concerned, without rejecting it at the threshold, this Court is likely to consider the pleadings made by the parties.

5. According to the petitioner, the petitioner is responsible for the administration and maintenance of the School accounts and he is the Secretary of the School committee. The action of the first respondent in not approving the school committee makes the school to face untold miseries and entire administration of the schools comes to a grinding halt. According to the petitioner, there was an earlier writ petition filed in W.P.(MD) No.5276/2011, which was subsequently withdrawn, as the name of the school was erroneously mentioned. The authorities, keeping the hands folded, has not passed any orders on the representation on the ground that O.S.No.16/2012 is pending. De hors the pendency of the civil suit and that there is no interim orders operating against the educational agency, the respondents are bound to pass orders on the representation dated 29.11.2013. Hence, according to the petitioner, the writ petition is maintainable and the prayer needs to be ordered.

6. The learned counsel for the impleaded respondent/third



respondent submitted that the petitioner has already approached this Court by filing W.P.(MD) No.11381/2011 and hence, it is hit by *res judicata*. The learned counsel further submitted that the petitioner had approached this Court after four years, after the disposal of the earlier writ petition and that there is a delay in approaching this Court for the very same period in question.

6.1. His further submission is that pursuant to the orders of this Court, civil suit is pending by invoking Section 53(a) of the Private Schools Regulation Act. For all these reasons, the writ petition is not maintainable and has got to be rejected, he contended.

7. In reply, the learned counsel for the petitioner contended that there is no question of *res judicata*, as contended by the third respondent, as there are no issues framed and answered. When that being the case, preventing the petitioner from approaching the Court under the pretext of *res judicata* is not applicable to the facts of the present case. He would further contend that the third respondent has no locus. The relief sought for by the petitioner, is only to enable the school to function smoothly. Hence, the writ petition needs to be allowed, the learned counsel contended.

8. Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondent.

9. The contention of the learned counsel for the petitioner that the principles of *res judicata* may not be applicable to the facts of this case found sound, because the issues have not been framed. If issues are framed and the same has been decided, after hearing the parties on merits, certainly, it is *res judicata*. But, in the present case on hand, there is no adjudication on merits. Hence, the question of *res judicata* is not applicable.

10. But for the very same relief, when the writ petition is filed and the same is withdrawn without liberty and that too, for the very same period, certainly, the petitioner cannot file a fresh writ petition for the same cause of action. As rightly pointed out by the third respondent, there is a delay of four years, after disposal of the earlier writ petition and the petitioner has knocked the doors for the very same period, however without giving any reason.

11. Even assuming for the sake of arguments, *res judicata* principle is not applied, from the order dated 20.07.2018, it appears to be no delay in approaching this Court, as the writ petition is withdrawn on 20.07.2018. But the writ petition was filed as early as in the year 2014. When the writ petition has



been withdrawn without seeking any liberty, that being the case, the petitioner cannot reopen the issue without seeking any liberty. That apart, as the civil suit is pending, this Court is not inclined to render or issue any direction to the respondents either to reject or grant approval, which could be decided based on the outcome of the civil dispute, which has been filed invoking Section 53 of the Act.

12. The civil Court, where the suit is pending, shall take up the matter and adjudicate the same without adjourning the matter beyond 10 working days, so that a decision could be arrived at, as not only the administration of the school, but also the children, who are studying should not be affected. Based on the outcome, the Government shall take a decision.

13. With the above observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

To:

1. District Elementary Educational Officer,
Tiruchirappalli.
2. The Assistant Educational Officer,
Musiri, Tiruchirappalli District.

+1cc to Mr.K.S.Shankar Murali, Advocate in SR.No.24948

Orders made in
W.P. (MD) No.19579 of 2018
Dated:09.12.2020

RR

AE (19/01/2021) 4P / 4C
<https://hcservices.ecourts.gov.in/hcservices/>