

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10-02-2021

Coram:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal Nos. 233, 1534, 1538, 1539, 1909, 2084 and 3495 of
2019

Writ Appeal No. 328 of 2021
and

C.M.P. Nos. 2475, 2477, 12987, 12989, 14109, 14110, 14457, 22371
and 22400 of 2019

C.M.P. No. 2067 of 2021

ALL INDIA PRIVATE EDUCATIONAL INSTITUTIONS ASSOCIATION
REPRESENTED BY ITS STATE GENERAL SECRETARY
K. PALANIAPPAN
NO.5, M.P. AVENUE
MAJESTIC COLONY
SALIGRAMAM, CHENNAI - 600 093

...APPELLANT/PETITIONER IN W.A. NO. 233/2019

1 MUTHAYAMMAL EDUCATIONAL TRUST
AND RESEARCH FOUNDATION AND RESEARCH
FOUNDATION REP BY ITS ADMINISTRATIVE OFFICER
RASIPURAM 637408 NAMAKKAL DT.
...APPELLANT/THIRD PARTY in WA No.1534 of 2019

1 GUDIYATTAM EDUCATIONAL TRUST
REP BY ITS SECRETARY MELMUTTUKUR VILLAGE
KAKATHOPPU GUDIYATTAM TK VELLORE-632 602
...APPELLANT/THIRD PARTY in WA No.1538 of 2019

1 SRI RENGASWAMY EDUCATIONAL TRUST
REP BY ITS CHAIRMAN NH-544 SALEM
MAIN RAOD PALLAKAPALAYAM SANKARI WEST POST
KOMARAPALAYAM TK NAMAKKAL DT- 637303.
...APPELLANT/THIRD PARTY in WA No.1539 of 2019

1 PONMUDI MUTHUSAMY GOUNDER TRUST
REP BY ITS MANAGING TRUSTEE 67/1
SUMASAMUDRA ILLAM ALANKATTUPUDUR UTHUKULI
ROAD S.PERIYAPALAYAM TIRUPPUR DIST-641 607
...APPELLANT/THIRD PARTY in WA No.1909 of 2019

1 THE KONGU VELLALAR INSTITUTE
OF TECHNOLOGY TRUST REP BY ITS EXECUTIVE
OFFICER PERUNDURAI ERODE DISTRICT - 638052
...APPELLANT/THIRD PARTY in WA No.2084 of 2019

1 SABARI'S EDUCATIONAL TRUST
REP BY ITS AUTHORIZED SIGNATORY NO.6
SABARI ST BINNY COMPOUND TIRUPUR 641601.
...APPELLANT/THIRD PARTY in WA No.3495 of 2019

1 ANGAMMAL EDUCATIONAL TRUST
REP BY ITS AUTHORIZED SIGNATORY
ELAYAMPALAYAM THIRUCHENGODU TK
NAMAKKAL DISTRICT 637205.
...APPELLANT/THIRD PARTY in WA No.328 of 2021

Vs.

1. THE PRINCIPAL SECRETARY
HOUSING AND URBAN DEVELOPMENT (UDA (3))
DEPARTMENT
FORT ST. GEORGE
CHENNAI - 600 009
2. THE SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
FORT ST. GEORGE
CHENNAI - 600 009
3. THE FEDERATION OF PRIVATE SCHOOLS IN
TAMIL NADU (FAPSIT)
A REGISTERED SOCIETY (REGISTRATION NO. 108/2010)
REP. BY ITS SECRETARY D.C. ELANGOVAN
NO.11/6A, P.T. RAJAN SALAI
20TH AVENUE, K.K. NAGAR
CHENNAI - 600 078

(R3 impleaded vide Court order dated 27.03.2019
made in CMP No. 6792 of 2019 in WA No.
233 of 2019) ...RESPONDENTS/RESPONDENTS in W.A. 233/2019

1 ALL INDIA PRIVATE EDUCATIONAL INSTITUTIONS ASSOCIATION
REP BY ITS STATE
GENERAL SECRETARY K.PALANIYAPPAN
NO.5 M.P. AVENUE MAJESTIC COLONY SALIGRAMAM
CHENNAI-600093.

2 THE STATE OF TAMILNADU
REP BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
HOUSING AND URBAN DEVELOPMENT (UDA(3))
DEPARTMENT FORT ST.GEROGGE CHENNAI- 600009.

3 THE STATE OF TAMILNADU
REP BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF SCHOOL EDUCATION FORT ST.
GEORGE CHENNAI-600009.

4 THE FEDERATION OF PRIVATE SCHOOLS IN
TAMILNADU(FAPSIT) A REGISTERED
SOCIETY(REGN.NO. 108/2010)REP BY ITS
SECRETARY D.C.ELANGOVAN NO. 11/6A P.T.RAJAN
SALAI 20TH AVENUE K.K.NAGAR CHENNAI 78.

...RESPONDENTS/RESPONDENTS in W.A. Nos.
1534, 1538, 1539, 1909, 2084, 3495/2021, 328/2021.

Common Prayer in W.A. Nos. 233, 1534, 1538, 1539, 1909, 2084 &
3495/2019 and 328/2021:

To set aside order passed in W.P. No. 17178/2018 dated
10.12.2018 and allow the Writ Appeal.

W.P. No. 17178/2018:

Writ Petition is filed under Article 226 of the Constitution
of India Writ of Declaration declaring the G.O.Ms.No.76 dated
14.06.2018 issued by the 1st Respondent and Consequential Letter
No.1818 / MS / 2018 1 dated 25.06.2018 of the 2nd Respondent as
illegal and unconstitutional being passed without any
legislative sources as it is ultra - virus and inconsistent with
legislative domain conferred under Article 243(g) 243(w) 243ZD
r/w Article 40 of the constitution of India and pass such
further order.

W.A. No. 233/2019:

For Appellant : Mr. K.M. Vijayan, Senior Advocate
for Mr. E. Vijay Anand

For Respondents: Mr. P.H. Aravindh Pandian
Additional Advocate General
assisted by Mrs. A. Srijevanthi
Special Government Pleader for R1
and M/s.P. Kavitha Government Advocate
for R2
Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. V.G. Suresh Kumar for R3

For Appellant: Mr. Kandhan Dorai sami
in W.A. Nos. 1534, 1538, 1539
1909, 2084 & 3495/2019
and 328/2021.

For Respondents: Mr.K.M. Vijayan, Senior Counsel
for Mr.E. Vijay Anand for R1
Mr.P.H. Aravind Pandian AAG
Assisted by
M/s.A. Sri Jayanthi,
Special Government Pleader for R2 and
M/s.P. Kavitha Government Advocate for R3
Mr.A.R.L. Sundaresan Senior Counsel
for Mr.V.G. Suresh Kumar for R4
in W.A. Nos. 1534, 1538, 1539, 1909,
2084 & 3495/2019 & 328/2021.

COMMON JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

All these writ appeals arise out of the common order dated 10.12.2018 passed by the learned single Judge in WP Nos. 18539, 23484 to 23486. 23079 add 17178 of 2018. The said writ petitions were filed challenging the validity of G.O. Ms. 76, Housing and Urban Development (UDA) (3) Department dated 14.06.2018 issued by the Principal Secretary, Housing and Urban Development Department, G.O. Ms. No.167, School Education (MS) Department dated 07.08.2018 passed by the Secretary, Department of School Education, Chennai and after quashing the same in so far as it relates to imposition of a condition that the member institutions of the Petitioners shown in the annexure to the writ petitions have to submit plan Approvals from the Directorate of Town and Country Planning of the buildings built in the non-planning area before 01.01.2011 for the purpose of obtaining school recognition.

2. It is seen from the averments in the writ petitions that most of the educational institutions, which are functioning in non-planning area, have hitherto applied to the local bodies and got the planning permission approved for construction of the school building. While so, the Government issued G.O. Ms. No.76, Housing and Urban Development Department dated 14.06.2018 ordering that the building of the educational institutions constructed prior to 01.01.2011 in non-planning area must also apply with Town and Country Planning or DTCP Department and get the building plans approved. Consequently by a letter No. 1818/MS/2018 1, dated 25.06.2018, the Principal Secretary to the Government instructed all the education department to mandatorily insist for the educational institutions to apply for

concurrence as per the aforesaid Government Order. Aggrieved by the same, the writ petitions were filed before the learned single Judge for the prayer stated supra.

3. The writ petitions were filed before the learned single Judge mainly on the ground that (i) once the planning approval is granted by the competent authority viz., local body after due verification and resolution, then it cannot be said to be invalid unless it is set aside or modified in a manner known to law (ii) the educational institutions in the non-planning area applied to the local body or Village Panchayat as per Section 25 of the Tamil Nadu Panchayat Rules, 1995 and the competent authority grants planning permission under the Rules to the Executive authority and they cannot be directed to apply to the Town and Country Planning Authority (iii) while the Government has issued G.O. Ms. No.76 Housing and Urban Development Department dated 14.06.2018 making it optional for the educational to comply with the directions issued in the said Government Order, the Education Department insists the educational institutions to compulsorily apply and comply with G.O. Ms. No.76 Housing and Urban Development Department dated 14.06.2018.

4. The learned single Judge accepting the submission of the writ petitioners quashed the Government Order. While quashing the Government Order, a direction was issued by the learned single Judge that if any application is made it shall be considered by granting regularisation. The relevant portion of the order of the learned single Judge is as follows:-

"12. In view of the above, firstly, it is made clear that if any educational institution, either school or college, building is constructed before 01.01.2011, i.e. prior to the introduction of Section 47-A of the Act, after obtaining valid and lawful permission from the competent authority, the G.O. Ms. No.76 cannot be made applicable to them. Because, if any new building was constructed after 01.01.2011 in any part of the State without getting proper concurrence from the Director of Town and Country Planning, the G.O. Ms. No. 76 can be made applicable. Secondly, it is made clear that if any building is constructed even prior to the said Section 47-A came into force i.e. before 01.01.2011 leaving any deficiencies to be rectified now and not rectified even today, such buildings will be covered by the impugned proceedings. In any event, if the three months time given in the said G.O. had already lapsed, the 2nd respondent is also entitled to take

appropriate action against all those educational buildings which have not obtained planning permission and put up even prior to 01.01.2011 and not rectified any of the deficiencies till 02.01.2011. Lastly, in respect of the charges of Rs.7.50/- per square feet, if any application is made during the relevant period i.e. before the expiry of three months, the 2nd respondent shall consider the same to grant the benefits.

13. With the above observations and directions, all these Writ Petitions are allowed and the Government Order in G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department, dated 14.6.2018, issued by the 1st respondent and the consequential Government Order in G.O.167, School Education (MS) Department, dated 7.8.2018 on the file of the 3rd respondent are hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

5. It is seen from the records that even during September 2018, by complying with the directions issued in G.O. Ms. No.76, Housing and Urban Development Department dated 14.06.2018, some of the educational institutions have paid the Concurrence fee for obtaining the concurrence of the Department of Town and Country Planning within the time stipulated in the Government Order. However, the learned single Judge granted interim stay pending disposal of the writ petitions. By virtue of the interim stay granted by this Court, the applications submitted by the educational institutions could not be processed. In such circumstances, implead petitions were filed before the learned single Judge inter alia supporting the Government Order.

6. The grievance put forth by the Federation of Private Schools in Tamil Nadu (FAPSIT), third respondent in W.A. No. 233 of 2019, is that even though the learned single Judge, by the order dated 10.12.2018 granted liberty to the institutions to submit their applications for concurrence as contemplated under G.O. Ms. No.76, Housing and Urban Development Department dated 14.06.2018, in the operative portion of the order dated 10.12.2018, the learned single Judge quashed the entire Government Order. Therefore, the Federation of Private Schools in Tamil Nadu (FAPSIT) seek a clarification of the order dated 10.12.2018 passed by the learned single Judge.

7. Mr. K.M. Vijayan, learned Senior counsel appearing for the appellants would contend that the concept of getting concurrence from the DTCP was brought into effect only on 01.01.2011 by way of inserting Section 47-A in Town and Country Planning Act, 1971. Prior to such amendment, Rule 25 of the

Tamil Nadu Panchayat (Building) Rule 1977 was in force which rule is still in existence. As per the said Rule, a consultation process was contemplated whereby the local body has to consult the DTCP before issuing a building planning approval. While so, the impugned Government Order seeking to enforce Section 47A of the Act with retrospective effect and thereby calling upon application for getting concurrence to the buildings constructed prior to 01.01.2011 is against the provisions of the law and contrary to the various decisions of this Court and the Honourable Supreme Court. It is his contention that by virtue of an executive instruction, a statute cannot be amended with retrospective effect. Such an amendment would tantamount to taking away the powers of the legislature by the executive, which is legally impermissible.

8. Mr. Aravindh Pandian, learned Additional Advocate General submitted that the Government Order was issued as an one time measure and it is optional for the educational institutions to get the concurrence and it is not compulsory. He also invited the attention of this Court to the counter affidavit filed in the WP No. 17178 of 2018 wherein it was stated as follows:-

"5. It is further submitted that by way of implementing the impugned G.O., those educational buildings which are functioning without the concurrence of the Town and Country Planning Department are to be subject to audit to confirm whether they stand to the scrutiny of safety and security of the students and the staff of the educational institution. With a view to ensure the above objective, the impugned G.O. has been issued as a one-time measure and it is optional for the educational institutions to avail the benefits under the scheme and it has not been made compulsion in the perspective of the Town and Country Planning Department. It is further submitted that in respect of the said letter issued by the second respondent instructing all the educational departments to mandatorily insist the institutions to apply for concurrence under the impugned G.O. authenticity of which will be confirmed by him.

6. With regard to the averments made in Ground (F, G, H & I) of the affidavit, it is submitted that the averment made by the petitioner is false. Under the impugned G.O. the individual developers of the educational institutions are not compelled to obtain concurrence, however, it is only an optional to avail the benefits under the one-time scheme. The concurrence to be issued under the impugned G.O. is not another approval and the

necessity to obtain concurrence of the official of the Town and Country Planning Department under the said proviso of Rule 25 has been confirmed vide the order of the Division Bench of the Madras High Court dated ; 06.07.2018 in W.P. Nos. 17236 of 2013 and 3622 of 2014 and other connected Miscellaneous Petitions."

9. Thus, the learned Additional Advocate General would submit that by recording the counter affidavit, the appeals may be disposed of.

10. By way of reply, Mr. K.M. Vijayan, learned Senior counsel for the appellant submits that the writ appeal has been filed only to test the correctness of the order of the learned

single Judge. The learned single Judge, after quashing the Government Order, ought not to have issued the consequential direction and thus, he prayed this Court to consider the legal grounds raised in the appeal.

11. Mr. Ar.L. Sundaresan, learned Senior counsel appearing for The Federation of Private Schools in Tamil Nadu (FAPSIT) submits that in view of the stay granted by the learned single Judge, they could not apply or the application already submitted for concurrence within the time granted in the Government order could not be processed. Therefore, the learned Senior counsel submits that time may be extended to enable the individual educational institutions to submit the application seeking concurrence.

12. On consideration of the rival submission, it is evident that most of the educational institutions have chosen to comply with G.O. Ms. No.76, Housing and Urban Development (UDA) (3) Department dated 14.06.2018. However, by virtue of the interim stay granted in the Writ Petition, some of the educational institutions could not get their applications processed. Therefore, they have filed impleading applications to vacate the interim stay so as to enable them to apply for concurrence from the Town and Country Planning authorities. All the applications were dismissed by the learned single Judge, which has given rise to the filing of the writ appeals.

13. In our opinion, when the Government itself says that obtaining concurrence is only optional and not mandatory, dealing with the direction given by the learned single Judge is unnecessary. Therefore, by recording the statement of the respondents in para Nos. 5 and 6 above to the effect that compliance of the Government Order is not mandatory and it is only optional, the writ appeals can be disposed of.

14. In the light of the above submission of the learned counsel on either side, particularly, the averments in Para Nos. 5 and 6 of the counter affidavit filed before the learned single Judge in WP No. 17178 of 2018, which we have extracted above, all the writ appeals are disposed of. No costs. We direct the Directorate of Town and Country Planning to process the applications already filed by the educational institutions during the pendency of the writ petition/writ appeal before this Court seeking concurrence and to pass appropriate orders thereof as per the guidelines issued in G.O. Ms. No.76, Housing and Urban Development Department dated 14.06.2018. To those educational institutions, who have not applied so far, they are permitted to submit their application (s) seeking concurrence to the Directorate of Town and Country Planning within a period of two weeks from the date of receipt of a copy of this judgment and on receipt of the same, the Directorate shall process it and pass appropriate orders thereof.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh

To

1. THE PRINCIPAL SECRETARY
HOUSING AND URBAN DEVELOPMENT UDA (3)
DEPARTMENT
FORT ST. GEORGE
CHENNAI - 600 009
2. THE PRINCIPAL SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
FORT ST. GEORGE
CHENNAI - 600 009
3. THE DIRECTOR
DIRECTORATE OF TOWN AND COUNTRY PLANNING
CHENNAI

+1 CC to The Government Pleader sr 7707
+7 Ccs to Mr. Kandhan Dorai Sami, Advocate sr 7803, 7805, 7806,
7808, 7809.

WA Nos. 233, 1534, 1538, 1539,
1909, 2084 and 3495 of 2019
and WA No. 328 of 2021

NRJK (CO)
SP (24/02/2021)