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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.19415 OF 2021

AND

WMP NOS.20701 AND 20705 OF 2021

Indian Modern Matriculation School,
Rep. by its Correspondent,
Raghavan G.
S/o.Late Ganesan R.
No.2/483, K.T.Road - D.T.V.Road,
Kasinaickanpatti Village & Post-635 901
Tirupattur Taluk & District

...Petitioner

Vs

1.The Director of Matriculation Schools
Directorate of Matriculation Schools
DPI Campus, College Road
Chennai 600 006.

2.The Directorate of Town
and Country Planning,
CMDA Complex,
Koyambedu, Chennai 600 107.

...Respondents

(R 2 suo-motu impleaded by the
order of this Court dated 29.09.2021)

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the Respondent in Na.Ka.No.3466/A2/2019 dated 15.07.2021 and to QUASH the same and consequently directing the Respondent to grant opening permission for 11th and 12th standards Higher Secondary sections and for upgradation for Petitioner School as Higher Secondary School based on the proposal submitted by Chief Educational Officer, Tirupattur in Na.Ka.No.2560/A5/2020 dated 10.12.2020, without insisting DTCP approval, from the academic year 2020-21 and 2021-22, within a frame frame to be fixed by this Hon'ble Court.



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For Petitioner : Mr.G.Sankaran
For Respondents : Mr.A.Selvendran
Government Advocate
for R 1

for R 2 suo motu impleaded

O R D E R

The Directorate of Town and Country Planning, CMDA Complex, Koyambedu, Chennai 600 107, is suo motu added as the second respondent in this writ petition.

2.The subject matter of challenge in the present writ petition pertains to the impugned proceedings of the first respondent dated 15.07.2021 and for a consequential direction to the respondent to grant upgradation to the petitioner School as Higher Secondary School based on the proposal submitted by the Chief Educational Officer, Tirupattur through letter dated 10.12.2020.

3.The case of the petitioner is that the School was established during the academic year 2002-2003. Initially, the School had LKG to 6th Standard and subsequently it was upgraded up to 10th Standard and the petitioner School is a Matriculation School governed under the provisions of Matriculation Code.

4.The petitioner School thereafter made an application before the first respondent seeking for upgradation of the School into a Higher Secondary School. The proposal was rejected by the first respondent by an order dated 01.11.2019. This order became a subject matter of challenge in W.P.No.33526 of 2019. This writ petition was disposed of by an order dated 03.12.2019 and the relevant portions in the order are extracted hereunder:

3.This writ petition has been filed by a Matriculation School and they are aggrieved by the proceedings issued by the 1st respondent dated 01.11.2019, by which, the request made by the petitioner for upgradation of the School to have 11th Standard and 12th Standard was rejected primarily on two grounds. Firstly, the petitioner has not produced the copy of the concurrence given by the Directorate of Town and Country Planning to the concerned panchayat, which approved the building plan submitted by the petitioner-School. The second ground is that in the construction put up by the petitioner,



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there are only 18 rooms as against the minimum requirement of 22 rooms, which includes 15 class rooms and 7 other rooms for laboratories, Principal room, Teachers' room, Library, etc.

4.The learned counsel for the petitioner submitted that as per the approved plan, 22 rooms are available and he produced a copy of the original plan. However, on the inspection conducted by the Chief Educational Officer and the report having been submitted by the Director of Matriculation Schools would show that there is a deficit.

5.This Court cannot go into the disputed question of fact in a writ petition. If according to the norms, which have been framed in pursuant to the Right of Children to Free and Compulsory Education Act, 2009, those norms have to be strictly adhered to by the institution and this Court cannot issue any direction relaxing the norms in favour of a particular institution.

6.With regard to the concurrence, which was required to be obtained from the Directorate of Town and Country Planning, those concurrence will be issued only to the Panchayat, which granted the building plan approval. Therefore, if a request is made by the petitioner to the panchayat, the panchayat is bound to get all the concurrence given by the Directorate of Town and Country Planning. Therefore, in my considered opinion, the petitioner has to rectify the defects pointed out. The problem faced by the petitioner is that anticipating approval, they have admitted nine students in the 11 th Standard. This is improper because, without approval for upgradation, no students have been admitted. Therefore, the petitioner has to issue transfer certificates to those students and the Department has to facilitate and accommodate all those students in nearby schools.

7.The learned counsel appearing for the petitioner submitted that the 1st respondent has no jurisdiction to pass the impugned proceedings and in this regard she referred to G.O.(Ms) No.145, School Education (GL1(2)) Department, dated 17.07.2018. However, this Court finds that the said Government Order will have no



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application to Matriculation Schools, since as per the Code of Regulations for Matriculation Schools, the competent authority is the 1st respondent. Therefore, this contention raised by the petitioner does not merit acceptance.

8. In the light of the above, this writ petition is disposed of by directing the petitioner to approach the President, Kasinaickenpatty Panchayat, Tirupattur (Taluk), Vellore, and request for furnishing a copy of the concurrence given by the Directorate of Town and Country Planning. If such a request is made by the petitioner, the Panchayat is directed to give a copy of the concurrence within a period of one week from the date on which the request is made. With regard to infrastructure requirement, the petitioner is directed to construct additional rooms and cure the deficit and submit a fresh application for upgradation for the academic year 2020-2021. No costs. Consequently, connected miscellaneous petitions are closed.

5. Pursuant to the above order, the petitioner School submitted all the particulars and also constructed the additional rooms and a fresh application was made seeking for upgradation for the academic year 2020-2021. The Chief Educational Officer, Tirupattur through letter dated 10.12.2020, after considering the materials placed by the petitioner School forwarded the proposal.

6. Even thereafter, there was no progress and the first respondent was insisting for production of the Directorate of Town and Country Planning [DTCP] approval. Therefore, the petitioner once again approached this Court and filed W.P.No.9927 of 2021, seeking for appropriate directions. This writ petition was disposed of by an order dated 18.06.2021 and the directions issued by this Court is extracted hereunder:

"3. In view of the aforesaid submission made by the learned Government Advocate for the respondent and considering the limit scope of prayer sought for by the petitioner, this Court, without expressing any opinion on merits, directs the respondent to consider the application for upgradation submitted by the petitioner school, by taking into account the proposal forwarded by the Chief Educational Officer, Tirupattur dated 10.12.2020 and pass orders on merits and in



accordance with law as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order."

7. Pursuant to the above order, the first respondent has proceeded to issue the impugned proceedings dated 15.07.2021 and the application submitted by the petitioner was rejected only on the ground that the DTCP approval was not furnished by the petitioner School. Aggrieved by the same, the present writ petition has been filed before this Court.

8. Heard Mr.G.Sankaran, learned counsel for the petitioner and Mr.A.Selvendran, learned Government counsel appearing on behalf of the first respondent.

9. The learned Government Counsel appearing on behalf of the first respondent based on the written instructions submitted that the petitioner School is yet to produce the DTCP approval and therefore the first respondent was not in a position to consider the application seeking for upgradation of the School. The learned Government Counsel further submitted that the first respondent made a communication to the Directorate of Town and Country Planning and had enquired regarding the status of the application submitted by the petitioner School. The Directorate of Town and the Country Planning by letter dated 16.04.2021, informed the first respondent that the application submitted by the School management is under process. The learned Government Counsel therefore submitted that the application made by the petitioner was considered along with the proposal forwarded by the CEO, Tirupattur and it was rejected on the ground that the petitioner did not satisfy the requirement by producing the DTCP approval.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. The issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court. In the present case, the School building was constructed in the year 2009 and approval was granted by the Executive Authority of the concerned Village Panchayat as per the provisions of the Tamil Nadu Panchayats Building Rules, 1997. Similar cases that were dealt with by this Court also relates to those Schools which were seeking for approval / upgradation and which were not in a position to submit the DTCP approval. In all those cases, this Court directed the approval to be granted subject to the production of the DTCP approval. One such case was in W.P.No.12229 of 2019, disposed of by order dated 29.04.2019. The relevant portions in the order are extracted hereunder:



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"7. At this juncture, it is also relevant to advert to the following directions issued by a Division Bench of this Court in the judgment in Tamil Nadu Unaided Polytechnic Management Association V. Government of Tamil Nadu, reported in (2018) 4 CTC 129.

"46. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the Deputy Director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:

(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and offer his advice if the constructions have complied with all necessary statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting his permission. This will apply only to those public buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.

(b) Where any permission has been granted by the Executive Authority of the Panchayat without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall, subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after following the due process of law.

(c) In cases of partially constructed buildings, no completion certificate or other



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11. Learned counsel for the AICTE also pointed out that the Handbook is applicable for each of the States all over India and when there is a specific direction given by this Court, particularly, for the State of Tamil Nadu, even the AICTE is bound to follow the said procedure and consequently, without any doubt, the petitioner is also bound to satisfy the authorities by producing the DTCP approval.

12. The Division Bench in the aforesaid judgment has given certain directions, since time-frame for each of the authorities is not prescribed therein and the approval of the AICTE is to be granted by 30th April of each year, the petitioner as well as similarly placed institutions find it difficult to get the order of approval within time.

13. The learned counsel for the petitioner contended that since the cut-off date for obtaining the approval of the AICTE is on or before 30th April of each year, the anxiety of the petitioner is that the approval should not be rejected for want of certification from the DTCP authorities.

14. In such circumstances, the petitioner is permitted to submit the duly self-attested copies of the plan documents to the seventh respondent within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the seventh respondent is directed to forward the copies of the papers, either available with them or as submitted by the petitioner, with due endorsement to the concerned DTCP authorities/sixth respondent within a period of two weeks thereafter.

15. The respondents 5 and 6 thereafter, have to follow the procedure mandated in paragraph 46 of the judgment of the Division Bench in Tamil Nadu Unaided Polytechnic Management Association case (cited supra) and complete the said exercise within a period of four weeks from the date of receipt of a copy of the papers pertaining to the petitioner institution.

16. However, during hearing, learned counsel for the petitioner produced the report of the



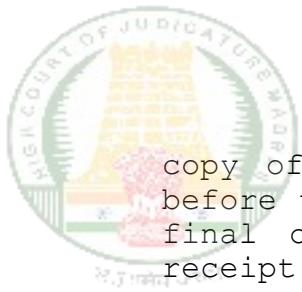
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SAC dated 22.04.2019, from which, it is seen that the approval is not granted for want of DTCP approval and also NOC from the State Government. The rejection order is not yet communicated to the petitioner, as informed by the learned counsel.

17. Since the application submitted by the petitioner trust for merger is considered by the respondents 1 to 3/AICTE and certain requirements were pointed out, the said authorities are directed to reconsider the application of the petitioner trust as sought in their application, forthwith and pass appropriate orders on or before 30.04.2019, without reference to DTCP approval, if otherwise all the other norms and conditions are complied with. In the event of the AICTE acceding to the request of the petitioner trust, it is open to the AICTE to indicate in the said order that the same would be subject to the production of the approval of the DTCP, immediately upon receipt of the same from the DTCP authorities, as directed above.

12. It is clear from the above order that this Court took into consideration the judgement of the Division Bench and this Court directed the authorities to consider the application without reference to the DTCP approval and directed the approval to be granted if all the other conditions are satisfied subject to the production of the DTCP approval. In the considered view of this Court, a similar direction can be issued in the present case also. This is in view of the fact that the DTCP approval is pending before the Directorate of Town and Country Planning and this was made clear by the concerned authority through letter dated 22.04.2021, when a clarification was sought for by the first respondent.

13. In view of the above discussion, the impugned proceedings of the first respondent dated 15.07.2021, is quashed. The matter is again remanded back to the file of the first respondent. The first respondent is directed to reconsider the application submitted by the petitioner for upgradation of the School into a Higher Secondary School without reference to the DTCP approval. If the petitioner has satisfied all the other requirements, the approval shall be granted subject to the production of the DTCP approval. There shall be a further direction to the second respondent to process the application submitted by the petitioner and pass appropriate orders within a period of six weeks from the date of receipt of



copy of this order. This order thereafter shall be forwarded before the first respondent and the first respondent shall pass final orders within a period of two weeks from the date of receipt of the order.

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14. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

KP

To

1. The Director of Matriculation Schools
Directorate of Matriculation Schools
DPI Campus, College Road
Chennai 600 006.

2. The Directorate of Town
and Country Planning,
CMDA Complex,
Koyambedu,
Chennai 600 107.

+1cc to Mr. G. Sankaran, Advocate SR.No.50667

+1cc to the Government Pleader SR.No.50895

W.P.No.19415 of 2021

PS (CO)
RVM(29/11/2021)