



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.10.2021

PRONOUNCING ORDERS ON : 07.10.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.30796 of 2019

Sri Kumaragurubara Swamigal
Middle School Thiruloki
Kumbakonam
Thanjavur District.
Rep by its Secretary /Correspondent
Mr.P. Srinivasan
Residing at No.44H
Arul Nandhi Nagar
Thiruppandal,
Thanjavur District.

..Petitioner

.Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary
School Education Department
Fort St.George
Chennai 600 009.
2. The Director of Elementary
Education,
College Road
Chennai 600 006.
3. The District Chief Educational Officer
Chief Educational Office
Thanjavur.
4. The District Educational Officer
District Educational Office
Kumbakonam.
5. Block Educational Officer
Block Educational Office
Thiruppanandal.

.. Respondents



PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to Call for records of the 2nd respondent issued in Na.Ka.No.020889 /H2/2018 dated 28/11/2018 and quash the same and issue direction to the respondents to implement G.O.Ms.No.525 School Education (D1) Department dated 29/12/1997 as declared by this Court in judgment reported in 2006 (5) CTC 385 (2009) 7 MLJ 527 and grant the Aid to the petitioner's Sri Kumaragurubara Swamigal Middle School, Thiruloki Kumbakonam, Thanjavur District by sanctioning teaching posts for the upgraded recognized Standards of 6th to 8th in the year 1990 -1991 and pay salaries with all benefits from 01/06/1997 onwards with prevailing rules.

For Petitioner : Mrs.Usha Raman
Mr.R.Venkatesulu

For Respondents : Mr.A.Selvendran,
Government Advocate
for R 1 to R 4

ORDER

The petitioner has questioned the impugned proceedings of the second respondent dated 28.11.2018 and has sought for a consequential direction to the respondents to implement G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997 and to grant aid to the petitioner School by sanctioning teaching posts for the upgraded Middle School.

2. The petitioner School was originally a Primary School with standards 1 to 5 and it was upgraded as a Middle School from 1990-1991 through the proceedings of the second respondent dated 19.07.1990. Even when the order upgrading the School was passed, a condition was imposed to the effect that no Government aid will be granted for a period of three years.

3. The petitioner School applied for granting aid in the year 1993 and the second respondent through letter dated 16.07.1993, informed the petitioner that the same will be considered and a decision will be taken. It has to be stated here that the petitioner is a denominational minority educational agency and it is recognised as a Minority School.

4.The Government of Tamil Nadu, School Education Department issued G.O.Ms.No.523, dated 29.12.1997, by revising the norms and it provided that the Schools opened up to the academic year 1990-1991, were sanctioned additional posts on the basis of pupil ratio of 1:50 with effect from 01.06.1997.



This was made applicable only to those schools run by minority managements.

5. The Government of Tamil Nadu issued G.O.Ms.No. 525, dated 29.12.1997, in which norms were fixed for teacher - pupil ratio of 1:40 and consequent additional strength of teacher posts was also fixed. The said Government Order dealt with the norms for assessment for grant for Schools opened up to 1990-1991.

6. As a consequence to G.O.Ms.No.317, dated 25.07.1997, the Government of Tamil Nadu passed G.O.Ms.No.13, dated 29.01.1998 and granted nearly 900 posts to various Schools which were opened / upgraded up to 1990-1991.

7. The Government of Tamil Nadu also issued G.O.Ms.No.120 dated 10.5.2000, wherein the Government recognised that some of the Schools have not been provided with the Government aid even though they were opened up to 1990-1991 and hence sanctioned Government aid to the left out Schools.

8. The petitioner Institution made representations dated 04.04.2002 and 20.01.2003 and requested for grant of sanction of posts to the petitioner School. Since the same was not considered, the petitioner also filed a Writ Petition before this Court in W.P.No.30954 of 2003 and this Court directed the first respondent to consider the representations and communicate the same to the petitioner. Accordingly, the first respondent through communication dated 02.08.2004, rejected the representations made by the petitioner.

9. Aggrieved by the same, the petitioner filed W.P.No.29216 of 2004. This Writ Petition was disposed of by an order dated 16.08.2018. The relevant portions in the order are extracted hereunder:

4. It is not in dispute that the Chief Educational Officer granted recognition for Standards 6 to 8. The recognition for the 6th Standard was given on 25.07.1990 and for the Standards 7 and 8, recognition was given by an order dated 10.06.1993. It is stated that the petitioner-School applied for grant of aid after expiry of three years, as the respondents have granted recognition on condition and based on the undertaking that the petitioner-School would not claim for aid for a period of three years.



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5. It is submitted that the petitioner has given a representation to the first respondent requesting them to sanction grant-in-aid to the Middle Sections as per G.O.Ms.No.525, dated 29.12.1997 and as per the students' strength. It is further stated that the petitioner-School is entitled to get sanction for six Secondary Grade Posts, one B.T. Headmaster, one Tamil Teacher and one Craft Teacher. However, it is the grievance of the petitioner that the respondents have not passed any order.

6. The petitioner earlier filed W.P.No.30954 of 2003 for issuance of a direction to the first respondent to consider and pass orders on the representation of the petitioner dated 20.01.2003, seeking sanction of posts for the Middle School Sections in the petitioner School. This Court allowed the writ petition, directing the first respondent to pass orders on or before 12.12.2003. Even though recommendation was made by the third respondent to the first respondent, the first respondent rejected the request of the petitioner on the ground of financial constraints and also in view of the amendment made to the Tamil Nadu Private Schools Regulation Rules. It is also indicated that the petitioner-School cannot be given aid for ever in view of the fact that the petitioner has obtained recognition by giving an undertaking that it will not seek aid for ever and the request of such Schools had already been declined by the Government.

7. The grievance of the petitioner in the present writ petition is that the undertaking given earlier not to claim aid was limited only for a period of three years, i.e., from 1990 to 1993 and therefore, there is no legal impediment for the first respondent to sanction the post, as per the requirements and to grant aid. Further, the action of the respondents in not granting aid to the petitioner-School by treating along with other Schools, which gave undertaking not claim grant, is arbitrary, discriminatory, and violation of [Article 14](#) of the Constitution of India.

8. The third respondent has filed a counter affidavit reiterating the stand taken in the impugned order. It is the firm stand of the



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teaching grant only after 2000, which was rejected. The respondent pointed out the students' strength for the academic year 2016-2017, and submitted that one Secondary Grade Teacher is working as surplus with reference to the teacher-pupil ratio prescribed under the Right of Children to Free and Compulsory Education Act, 2009.

9. Considering the nature of the grievance expressed by the learned counsel for the petitioner and the facts and circumstances of the case, this Court is of the view that the petitioner School is entitled to get sanctioned strength as reflected from the proceedings. However grant of aid is not one's right or as a matter of routine.

10. It is not in dispute that the petitioner School is entitled to the sanctioned strength, after upgradation from the Primary School to Middle School. The contention of the learned counsel for the petitioner is that there was an undertaking from the petitioner not to receive any grant-in-aid, only for a limited period of three years, and that therefore, the impugned order is not sustainable. Further, the learned counsel for the petitioner relied upon the proceedings of the Chief Educational Officer, Thanjavur, dated 18.01.2017, and submitted that the unfilled post in the petitioner School can be filled up by deploying the teachers now being found to be in surplus in another School under the same Management.

11. As per the proceedings dated 18.01.2017, it is seen that one teacher in S.K.S.D.S. Higher Secondary School, Thirupananthal got deployed into the petitioner School.

12. The learned Government Advocate appearing for the respondents submitted that the respondents are unable to verify the above position, even though the typed set of papers containing proceedings were served on them on 20.03.2018. With regard to the contentions of the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents, has no objection for issuing direction to the respondents to consider the above position and pass appropriate orders on merits.



13. As a result, this writ petition is disposed of with the following direction:

The second respondent is directed to consider the request of the petitioner to deploy the surplus teacher as found in the proceedings dated 18.01.2017 or the surplus teacher from any other School under the management of the petitioner School and pass suitable orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

10. Pursuant to the above order, the petitioner once again made representations. Since the same was not complied with, contempt petition was filed. During the pendency of the contempt petition, the second respondent passed the impugned order dated 28.11.2018, rejecting the claim made by the petitioner mainly on the ground that the petitioner does not have a fundamental right to claim for Government aid and creation and sanction of posts and that there is a bar for providing grant under Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as "the Act"). Aggrieved by the same, the present Writ Petition has been filed before this Court.

11. The fourth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

"4. It is submitted that the petitioner institution is an aided Institution initially recognized under Tamil Nadu Recognition of Private School Regulation Act, 1973 for the primary School from Standard I to V. It is further submitted that the petitioner institution has applied for upgradation of the School as Middle School upto 8th standard under onself financing and the petitioners Management has given undertaking that they will not claim for any educational Grant in respect of such upgraded Standards. It is submitted that permission was granted for the upgradation of the School as Middle School i.e. 6 to 8 standards without Educational Grant by the Department vide proceedings of the Director of Elementary Education k.Dis.41774/P20/990 dated 19.7.1990. Subsequently, the petitioner has filed Writ petition before this Hon'ble Court in W.P.No.30954 of 2003 and this Hon'ble Court passed orders on 6.11.2003. In compliance of the directions of this Hon'ble Court, the Government have examined the request of the petitioner and finally rejected the request for



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granting aid in respect of 6 to 8 standards vide Government letter No.33244/B2/2003-9 Dated 2.8.2004. It is submitted that the petitioner has again filed another Writ petition before this Hon'ble Court in W.P.No.29216 of 2004 and this Hon'ble Court passed orders on 16.8.2018 with the following directions:-

"13. The second respondent is directed to consider the request of the petitioner to deploy surplus teachers as found in the proceedings dated 18.1.2017 or the surplus teacher from any other School under the Management of the petitioner School and pass suitable order within a period of four weeks from the date of receipt of a copy of the order." It is submitted that in compliance of the above directions, the Director of Elementary Education, Chennai passed orders vide proceedings in Rc.020889/2018 Dated 28.11.2018 rejecting the request of the petitioner School, for the sanction of additional posts for classes 6 to 8. Aggrieved by the above orders, the petitioner has filed the present Writ petition.

10.Regarding the averments in para 7,8, 9 and 10 of the affidavit of the petitioner, it is submitted that Section 14.A(a) and (b) of TamilNadu Recognition of Private School Regulation Act 1973 reads as follows:-

"(a) Any Private School established and any Class or course of instruction opened in such private School on or after the date of commencement of the academic year 1991-92.

(b) Any private in existence on the date of commencement of the academic year 1991-92 to which no grant has been paid by the Government immediately before the date of such commencement.

Hence the petitioner School is not entitled for Educational grant since no education grant was sanctioned either during the academic year 1990-1992 or any subsequent academic years till now. More over the same request was already rejected by the Government vide Lr.No.33244/P2/2003-2 Dated 2.8.2004 in compliance of the direction issued by this Hon'ble Court in W.P.No.30954 of 2003 Dt.6.11.2003.

19.Regarding the averments in ground 'g' 'h' 'i' 'j' of the affidavit of the petitioner, it is submitted that the Government order in G.O.Ms.No.525 Education Department dated 29.12.1997 relates to pupil-teacher ratio and no related to the sanction of Education grant to the Private Schools. It is further submitted that the



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citations of various judgement relied upon by the petitioner are not applicable to the petitioner's Institution. It is submitted the sanction of posts depends upon the classes or standards for which approval or recognition was already granted by the competent authority. Admittedly, the petitioner's School was not granted Education grant ever since from the academic year 1990-1991 in which temporary permission was granted for opening of classes 6 to 8, till this year and hence there is no question of sanction of education grant retrospectively. It is submitted that in as much as the Government have issued amendment to Section 14A of the Tamil Nadu recognition of Private School Regulation Act, regulating the sanction of Education grant in respect of newly upgraded Classes/Standards, the petitioner's School cannot claim for Education Grant retrospectively for the period from 1990-1991.

20.Regarding the averments in ground "k' of the affidavit of the petitioner, it is submitted that the citations made by the petitioner is not applicable to the case of the petitioner's School. It is submitted the decision of the Hon'ble Court is being implemented taking into account the merit of each and every cases and these orders have no common applicability. It is submitted that admittedly, permission was granted for opening of new classes 6 to 8 only based on the undertaking given by the petitioner's School Management that no Education grant will be claimed permanently as pointed out in the proceedings of the District Elementary Education Officer, Thanjavur K.Dis.617/B3, Dated 10.3.2004. Hence the petitioner's School cannot take shelter on the basis of some other orders.

12. Heard Mrs.Usha Raman, learned counsel for the petitioner and Mr.A.Selvendran, learned Government Counsel appearing on behalf of respondents 1 to 4.

13. The main contention that was raised by the learned counsel for the petitioner is that Section 14-A of the Act, will not apply to the facts of the present case, since the petitioner School was upgraded as a Middle School in 1990-1991 itself. It was further contended that earlier a stand was taken to the effect that there are no funds for granting aid to the petitioner School and later a stand has been taken to the effect that the petitioner does not have a fundamental right to seek for grant and sanction of posts. It

<https://hcservices.hcscourts.gov.in/hcservices/> submitted that the petitioner never gave any



undertaking not to claim for educational grant and in fact the educational grant was not given for three years as per the original order of upgradation of the School into a Middle School. In any case, the stand taken by the respondent is unsustainable and to substantiate the same, the learned counsel for the petitioner relied upon the judgment of the Division Bench in G.Sahadevan Nair .v. Government of Tamil Nadu and Others reported in (2008 4 MLJ 289). The learned counsel also relied upon the judgment of the Division Bench in The State Government and Others v. The Correspondent, Infant Jesus Middle School, Ponmeni reported in (2018) 5 CTC 809.

14. The learned counsel for petitioner further submitted that G.O.Ms.No.525, dated 29.12.1997, was taken up for consideration by the Full Bench of this Court in Director of Elementary Education, Chennai-6 and Others v. S.Vigila and another reported in (2006) 5 CTC 385 and it was held that the posts must be sanctioned in the ratio of 1:40 after taking into consideration Article 21-A of the Constitution of India which guaranteed fundamental right of education to children upto the age of 14 years. The learned counsel therefore submitted that the impugned proceedings of the second respondent is liable to be interfered by this Court and the petitioner School is entitled for the grant in aid and the sanction of posts.

15. Per contra, the learned Government Counsel appearing on behalf of the respondents, apart from reiterating the stand taken in the counter affidavit submitted that the petitioner Institution was not given grant in aid when it was upgraded as a Middle School for a period of three years and at the expiry of three years, Section 14-A of the Act, came into force and Section 14A(b) specifically provides that any Private School which is in existence on the date of the commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of the commencement of the academic year, will not be entitled for educational grant. The learned Government Counsel by relying upon the judgments of the Hon'ble Supreme Court in TMA Pai Foundation case and PA Inamdar Case, submitted that the petitioner Institution even though is a minority Institution, does not have the fundamental right to seek for educational grant. It was further submitted that the petitioner gave an undertaking that they will not claim for any financial aid from the Government when they were granted upgradation for standard 6 to 8 and they cannot now turn around and ask for financial aid. To substantiate this submission, the learned Government Counsel relied upon the judgment of the Division Bench in Review Application (MD).No. 180 of 2018 dated 25.03.2021.



submissions by submitting that G.O.Ms.No.525 dated 29.12.1997, relates to pupil - teacher ratio and it has nothing to do with sanction of grant for the newly upgraded classes and hence the petitioner is not entitled for educational grant or for getting sanction for creating any new posts.

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

18. There is no dispute with regard to the fact that no Educational Institution can claim educational grant as a matter of right and the same has been made clear by the Hon'ble Supreme Court. In the present case, the petitioner School was upgraded as a Middle School from 1990-1991 onwards. While granting such upgradation, it was made clear that the petitioner will not seek for education grant for a period of three years. It is at this juncture, this Court has to take note of Section 14-A of the Act and for proper understanding, the same is extracted hereunder:

14A. Grant not payable to new private schools and new class and course of instruction. - Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to, -

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the



academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation. - For the purpose of this section, private school includes a minority school.

19. On a reading of the above provision, it is clear that no grant will be paid to any Private School established / opened on or after the academic year 1991-1992. In the present case, the petitioner was already receiving aid for standards 1 to 5. The upgradation into a Middle School with standards 5 to 8 was sanctioned with effect from academic year 1990-1991. This sanction was given with a specific condition that the petitioner School will not be given educational grant for a period of three years. Therefore, when the petitioner was seeking for a grant, after the expiry of three years, the respondents relied upon Section 14-A(b) of the Act and the same was put against the petitioner. This Clause dealt with any Private Schools in existence to which no grant was already paid by the Government before the commencement of the academic year 1991-1992. It must be borne in mind that the constitutional validity of Section 14-A of the Act, has been upheld by this Court in Maria Grace Rural Middle School rep.by its Correspondent .v. Government of Tamil Nadu, repby its Secretary and Others reported in (2007 2 MLJ 497).

20. This Court does not want to go into the disputed question as to whether the petitioner gave an undertaking that they will not claim any educational grant at the time when the permission was granted to upgrade the School as a Middle School. It is a fact that the petitioner was not given educational grant for a period of three years from 1990-1991. The entitlement of the petitioner to be considered for educational grant thereafter is barred by Section 14-A(b) of the Act. There is no material before this Court to show that Schools that were placed similarly like the petitioner were given educational grants and that only the petitioner was discriminated. Only if this criteria is satisfied by the petitioner, the Division Bench judgment relied upon by the learned counsel for the petitioner in G Sahadevan Nair case referred supra will apply. In the absence of the same, the said judgment will have no application to the facts of the present case.

21. In view of the above discussion, this Court finds that there is no illegality or infirmity in the stand taken by the respondents and that the petitioner is not entitled for educational grant by virtue of Section 14-A(b) of the Act. In view of this finding, there is no need to go into the scope of G.O.Ms.No.525, dated 29.12.1997. Only if the



petitioner is entitled for the educational grant, the sanction of posts and providing grant for additional expenditure for the additional posts will arise for consideration. In the absence of the same, there is no occasion for this Court to deal with the applicability of this Government Order to the petitioner Institution.

22. In the result, this Court is not inclined to grant the relief sought for by the petitioner and accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP
To

1. The Secretary Government of Tamil Nadu
School Education Department
Fort St. George
Chennai 600 009.
 2. The Director of Elementary
Education,
College Road
Chennai 600 006.
 3. The District Chief Educational Officer
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Kumbakonam.
 5. The Block Educational Officer
Block Educational Office, Thiruppanandal.
- +1 cc to Mrs. Usha Raman, Advocate Sr.NO. 52669
- +1 cc to Government Pleader Sr.NO. 53136

W.P.No.30796 of 2019

RSV(CO)
A.SK(12.11.2021)