



W.P.Nos. 24909 , 24996 & 28525 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.24909, 24996 and 28525 of 2022
and WMP.Nos. 23847, 23848, 23930,
23932, 27835 & 27836 of 2022

W.P.No.24909 of 2022

All India Private School Legal Protection Society,
No.1/1, Salvation Avenue,
Thirumullaivoyan,
Chennai – 600 062
Rep. By its Chairman,
I.Manoharan Jeyakumar,
S/o. Issac

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government
School Education Department,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai – 600 006.



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4. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

5. The Director of Town and Country Planning,
2nd, 3rd and 4th floor, C&E Market Road,
Koyambedu, Chennai – 600 107.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government Order in G.O(1D) No.221, School Education (MS)Department dated 10.08.2022 issued by the 1st respondent and to quash the same and consequently directing the respondents 1 to 4 to grant renewal of recognition for the petitioner schools for a period of three years as per G.O.Ms.No.152 School Education(MS)Department dated 12.11.2021 without insisting submission of application for obtaining concurrence of DTCP for the school building.

W.P.No.24996 of 2022

Tamil Nadu Correspondent Welfare Association for Private School,
Kalaimahal School Campus,
Sembanarkoil 609 309
Mayiladuthurai District,
Rep. By its General Secretary,
N.S.Kudiyarasu,
S/o.Nedunchezian

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government
School Education Department,
Secretariat, Fort St.George,



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Chennai – 600 009.

2. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai – 600 006.
4. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
5. The Director of Town and Country Planning,
2nd, 3rd and 4th floor, C&E Market Road,
Koyambedu, Chennai – 600 107. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government Order in G.O(1D) No.221, School Education (MS)Department dated 10.08.2022 issued by the 1st respondent and to quash the same and consequently directing the respondents 1 to 4 to grant renewal of recognition for the petitioner schools for a period of three years as per G.O.Ms.No.152 School Education(MS)Department dated 12.11.2021 without insisting submission of application for obtaining concurrence of DTCP for the school building.

W.P.No.28525 of 2022

All India Private Educational Institutions Association,
Rep.by its State General Secretary,



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K.Palaniappan,
No.5, M.P.Avenue,
Majestic Colony,
Saligramam, Chennai – 600 093

...Petitioner

-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.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorari, calling for the records
relating to the impugned government order in G.O(1D).No.221, School
Education (MS) Department dated 10.08.2022 and quash the same.

For Petitioners : Mr.G.Sankaran
[in W.P.Nos.24909
& 24996 of 2022]

For Petitioner : Mr.R.Suresh Kumar
[in W.P.No.28525 of 2022] for K.M.Vijayan Associates

For Respondents : Mr.S.Silambanan
[in W.P.Nos.24909 & 24996 of 2022] Additional Advocate General
assisted by Mr.S.Mythreya Chandru
Special Government Pleader [R1 to
R5]

Mr.R.Kumaravel
Additional Government Pleader [R6]



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For Respondents : Mr.R.Kumaravel
in W.P.No.28525 of Additional Government Pleader [R1]
2022

Mr.S.Silambanan
Additional Advocate General
assisted by Mr.S.Mythreya Chandru
Special Government Pleader [R2]

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of learned counsel appearing for both sides, all these writ petitions were heard together and are disposed of by this common order.

2. The petitioners are associations of Education Institutions, their common grievance is that, Government issued a Government Order i.e., G.O.(1D) No.221 School Education Department dated 10.08.2022, under which, for extension of approval of the educational institutions i.e., Schools, who are the members of these petitioners Associations from 01.06.2022 till 31.05.2023 i.e., for the current academic year, the Management of these institutions should make an application for such extension of approval only with a proof that they have got approval from the competent authorities for having constructed school or education



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institutions buildings or to file a proof that such an application had already been made to the competent authority to get the approval.

Without these proof or documents their plea to get extension of recognition or approval for their school or educational institutions beyond 01.06.2022 would not be considered.

3. Against these import of the Government Order dated 10.08.2022 in G.O.(1D).No.221 referred to above, these writ petitions have been filed.

4. Heard Mr.G.Sankaran and Mr.R.Suresh Kumar, learned counsel appearing for the petitioners, Mr.S.Silambanan, learned Additional Advocate General assisted by Mr.S.Mythreya Chandru, learned Special Government Pleader appearing for the respondents Education Department and Mr.R.Kumaravel, learned Additional Government Pleader appearing for the respondents Housing and Urban Development Department and the Director of Town and Country Planning.

5. The learned counsel appearing for the petitioners pointed out that, almost with similar rigour already a Government Order has been



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issued by the respondent Government in G.O.No.76, Housing and Urban Development Department dated 14.06.2018, the said Government Order was put under challenge in a batch of writ petitions, which was decided by this Court and ultimately, the Government order was set aside as against which, when some third parties filed intra court appeal in W.A.Nos. 233 of 2019 etc., batch before the Division Bench, the stand taken up by the respondent Government was that, the import of G.O.No.76 referred to above only insists the institution to get planning or building approval from the competent authority based on Section 47-A of the Tamil Nadu Town and Country Planning Act [in short "the Act"] that means, under Section 47-A of the Act, it has become a mandatory one, for those who wants to make any constructions, to get approval from the competent authorities with the prior concurrence of the DTCP.

6. In that context, when the writ appeals were heard by a Division Bench of this Court, the stand taken by the Government was that, such insistment to get approval for the buildings, which were constructed even prior to 01.01.2011, the date on which, Section 47-A of the Act was brought into force, is only optional and there was no mandatory direction given in this regard under the Government Order. This, in fact, has been



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recorded by the Division Bench in paragraph 13 of the order dated

10.02.2021 in the said batch of writ appeals, which reads thus:

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 judges 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.

7. Accordingly, the said writ appeals were disposed of.

8. In that context, now the present impugned Government order dated 10.08.2022 has been issued, under which, according to the petitioners' counsel, once again the respondent Government wants these institutions to make an application to get approval from the DTCP/competent authority for giving plan approval or building approval for educational institutions buildings or school buildings concerned, which were constructed even prior to 01.01.2011.

9. However Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents, by relying upon the averments



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made in the counter affidavit, would submit that, insofar as the insistent of getting approval from the planning or building authorities for the buildings constructed prior to 01.01.2011 is concerned, the stand already taken by the Government is that it is only optional and still it holds good.

10. Insofar as the impugned Government Order is concerned, especially in paragraph 6, which is the operative portion of the Government Order, it was only insisted that those who made construction after 01.01.2011 without getting an approval, should make an application to the competent authority to get such an approval and produce the proof that they have made an application to get approval to the educational authorities, who are empowered to consider the application of the respective institutions to extend the recognition from 01.06.2022.

11. Therefore, the learned Additional Advocate General clarified this position by quoting paragraph 18 of the counter affidavit that the import of the Government order, which is impugned herein, has not deviated the earlier stand taken by the respondent Government. The institution, who constructed any school or institution building prior to 01.01.2011 after getting approval from the concerned authority need not



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make any application mandatorily to get such approval once again or afresh from the present competent authority i.e., DTCP

12. The only insistment under the impugned Government order, according to the learned Additional Advocate General, is that, those institutions shall make an application for getting approval from the competent authority only for the building, which were constructed after 01.01.2011 and also additional building, which were constructed after 01.01.2011 and the proof that such applications have been made by such institution shall be filed before the competent authority of the education department, then only the competent authority of the education department would consider the plea of the institution to give extension of approval or recognition as the case may be.

13. It is also submitted by the learned Additional Advocate General that, insofar as the institutions, who did not make any construction either as afresh or as an additional construction after 01.01.2011 and they run the institution only in the building or construction that has been made prior to 01.01.2011 or construction made pursuant to the approval given by the then competent authority



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prior to 01.01.2011 shall make a declaration before the competent authority of the education department at the time of making application for getting extension of approval or recognition that the said institution did not make any construction either as afresh or as an additional one after 01.01.2011, if that is fulfilled, the application otherwise would be considered and action would be taken in accordance with law to grant of extension of recognition or approval.

14. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

15. Even though the import of the Government Order, which is impugned herein, has been challenged by the petitioners in all these writ petitions, their only concern is that, insofar as the buildings, which were constructed for the purpose of educational institutions or school of these petitioners members prior to 01.01.2011 are concerned those buildings need not be once again put under the scanner for getting approval or fresh approval from the present competent authority under the Town and Country Planning Act.



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16. They also apprehend that, the import of Government Order, which is impugned herein, especially in paragraph 6, has made it clear that, the petitioner while making application to get approval or extension of approval for their educational institution beyond 31.05.2022 is concerned they shall file the proof that they filed application for approval for the building, which were constructed even prior to 01.01.2011 and after making such an application if the proof is filed before the competent authority of the education department then only they will consider the application for granting the extension of recognition.

17. Only on that apprehension, the import of Government Order has been challenged by the petitioners.

18. However, the respondents especially the State Government has filed the counter affidavit, where *inter alia* the following has been stated:

“18. It is further submitted that several opportunities were given to the management of those unapproved schools to get the building plan approval regulated by extending the period from time to time through various Government orders. Like wise, orders have been issued in



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G.O.(D)No.221, School Education, dated 10.08.2022 permitting the Commissioner of School Education, Director of Elementary Education and Director of Matriculation Schools to grant recognition/renewal of recognition from 01.06.2022 to 31.05.2023 only to such of those unapproved schools in both planning and non-planning areas referred to in paragraph 14 above, which have applied for regulation of building plan approval to the competent authority. Since the Government order impugned do not insist those schools which had already constructed school buildings prior to 01.01.2011 with the approval of the competent authority, to apply for approval again to the planning authority for getting recognition/renewal of recognition as observed by the Hon'ble High Court in its order dated 10.02.2021 in W.A.No.223 of 2019, the said Government Order impugned in the writ petitions is in order and suffers from no infirmity.”

19. In fact, relying upon this stand taken by the respondent Government in paragraph 18 of the counter affidavit, the learned Additional Advocate General made the aforesaid submissions.

20. Therefore, now the issue has become clear that, the respondent Government does not insist the educational institutions or schools like



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the members of the petitioners, who constructed building for the purpose of schools or educational institutions after getting approval or without approval prior to 01.01.2011, to once again make the application to get approval from the competent authority as of now. This has been clearly made in paragraph 6 of the impugned order and this has also been reiterated by the respondent in the counter affidavit as has been quoted herein above and the learned Additional Advocate General also has submitted that, the only insistment is that, those who made construction afresh or an additional construction after 01.01.2011 alone shall make an application to the competent authority to get approval and proof of such application having been filed by them shall be annexed along with an application to be filed by these schools or institutions for getting extension of recognition beyond 31.05.2022.

21. If this is the stand taken by the respondents, this Court feels that the petitioner need not have any such apprehension as they projected before this Court as a reason or ground for challenging the impugned order. Therefore, the aforesaid stand taken by the respondents as projected by the learned Additional Advocate General is hereby taken on record.



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22. In that view of the matter, this Court is inclined to dispose of

these writ petitions with the following order:

- ◆ That the members of the petitioners herein, who are the education institutions/schools or its Managements if made any construction for the purpose of running their educational institutions or schools after getting approval or without approval prior to 01.01.2011, the date on which Section 47-A of the Act has come into force, need not make any fresh application to the planning or building authorities for getting approval. But at the same time, if they made fresh construction after 01.01.2011 or additional construction, as the case may be, for which, if there is no approval obtained by them from the competent authority under the said act, those institutions and its Managements shall make an application to the competent authority i.e. planning or building approval authorities under the said Act and such proof shall be filed before the educational authorities, who are competent to consider the request of the individual schools or institutions like the members of the petitioners to consider the extension of recognition or approval of their school or educational institutions beyond 31.05.2022.
- ◆ If any of such institutions has not at all made any construction after



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01.01.2011, a declaration to that effect in a format by way of an affidavit shall be given by each of the institutions to the educational authorities along with the application, that they have not put up any fresh or additional construction after 01.01.2011 for the purpose of running their educational institutions.

- ♦ If such an application is made by the institutions their application for extension of approval or recognition, as the case may be, can be considered and decided by the competent authorities of the education department on merits and in accordance with law within a reasonable time because it relates to the current academic year i.e., 2022-2023.

With these observations and directions, these writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

28.10.2022

mp

Index: Yes

Speaking order: Yes

Note: Issue order copy on 02.11.2022



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To

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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 Principal Secretary to Government
School Education Department,
Secretariat, Fort St.George,
Chennai – 600 009.
4. The Commissioner,
Directorate of School Education,
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R.SURESH KUMAR.J.,

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