

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28424 of 2019

The Correspondence
St. Marys Primary School
Represented by Mr.J.Charleskennadi
S/o. Joseph,
Nagavayal Padathanpatti Post,
Kallal Via, Kaikudi Taluk,
Sivagangai District-630 305.

... Petitioner

Vs.

1. The Principal Secretary to Government,
Secretariat School Education Department,
Fort St. George Chennai 600 009.
2. The Director,
Directorate Elementary School Education,
DPI Complex, College Road, Chennai 600 006.
3. The District Primary School Educational Officer,
Sivagangai Collectorate
Manamadurai, Sivangangai District 630 562.
4. The Assistant Primary School Education Officer,
Kallal, Sivangangai District.

...Respondents

Prayer:

The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, Directing the 2nd respondents to call for the records pertaining to the impugned order of the proceedings in Na.Ka.No. 025371 / g3 / 2018 dated 02.04.2019 and quash the same and further direct the 2nd respondent herein to implement the 1st respondent in G.O.Ms.No.752 (Education Science and Technology Department) dated 02.09.1994 and following the 1st respondent proceedings order in Ne.Mu.Ka No. 36566 /d 1/2001-1 dated 21.11.2003 further direct the 3rd respondent to comply the 2nd respondent proceedings in Na.Ka.No. 557 / tho.k.j / 2002 dated 25.02.2002 and to grant permanent recognition with grant aid of

St.Marys Primary school running by the management at Nagavayal Padathanpatti Post Kallal Via Karaikudi Taluk, Sivaganga District.

For Petitioner : Mr.R.Selvakkodi
For Respondents : Mr. Stalin Abimanyu
Additional Government Pleader

ORDER

Challenging the order passed by the second respondent, whereby the petitioner school's request for grant of permanent recognition was negatived, the present writ petition has been filed.

2. The brief facts of the case are as follows:

The petitioner's school was started in the year 1989 with a temporary recognition for a period of three years. According to the petitioner, the school was started with the sole aim of eradicating illiteracy and to ensure that every child should get education. It is the case of the petitioner that they did not charge any fees from any students studying in their school.

3. While that being so, in the year 1989, the third respondent recommended two teachers for the petitioner's school. Since no follow-up action was taken, the second respondent was directed the third respondent to file a compliance report. During the year 1993, the Government appointed three persons viz., Cook-officer, Cook-master and Assistant cook-master and the petitioner's school appointed other office bearers and teachers, because of the non-support from the Government, the Government was losing students and the strength becoming thinner and thinner. The Government continued to renew the periodical temporary recognition once in every three years.

4. In the meanwhile, the first respondent issued a Government Order in G.O. Ms. No. 752 dated 02.09.1994 granting permanent recognition to schools, those who are running for 10 or more years. The Government order stipulated that the schools should produce stability certificate in respect of the school buildings. According to the petitioner, though the petitioner's school submitted the relevant structural soundness certificate, the permanent permission was not granted to them.

5. However, the first respondent issued order in Na.Ka.No.Ne.Mu.Ka.No.36566/d 1/2001-1 dated 21.11.2003 to the second respondent to issue permanent recognition for the schools

running for more than ten years. Since the same is not complied with by the second respondent, the petitioner's school has filed the present writ petition before this Court in W.P.No.26623 of 2018 seeking a direction upon the second respondent to comply with the order of the first respondent. This Court vide order dated 29.10.2018 issued a direction to the second respondent to consider and pass orders on the representation of the petitioner dated 12.04.2018, after giving an opportunity to the petitioner, within eight weeks from the date of receipt of that order.

6. In response thereto, the learned Additional Government Pleader appearing on behalf of the respondents viz., Education Department justified the impugned order and submitted that it is not the number of years that should be taken into consideration, but number of students studying in the school should be taken into consideration. Even after 30 years, the petitioner's school is functioning upto class I to Class V, wherein there are 17 students studying at present. This shows that the petitioner's school is not serious in imparting education but only with the aim of seeking permanent recognition from the Government, the school is being run by them. The respondents have also filed a detailed counter in this regard. Accordingly, the learned Additional Government Pleader prayed for dismissal of the writ petition.

7. Heard both sides, and perused the materials available on record.

8. As rightly pointed out by the learned Additional Government Pleader rather than going by number of years, number of students studying in the school at present has to be taken into consideration. The petitioner's school conducting classes only I standard to V standard. But there were only 17 students studying in the school. This shows that the school does not have sufficient number of dedicated teachers or staff to run the school. The petitioner's school claims to have obtained periodical temporary recognition once in every three years in view of the fact that no strength of students can be accepted during the initial period of functioning of the school and that the institution is functioning for the 30 long years. However, even after 30 years, the petitioner's institution could not attract more students and only 17 students studying in the school, which shows the petitioner's school is in a poor light.

9. A useful reference of Section 14A of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 is extracted hereunder:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, or in

any decree, order or direction of any court or other authority,--

(i) no private school shall, only on the ground of having been granted recognition under this Act, be entitled to any grant or other financial assistance from the Government;

(ii) The Government may, subject to:--

(a) the availability of funds;

(b) the norms and conditions specified in the Grant-in-aid Code of Tamil Nadu Education Department;

(c) the condition that every private school receiving any grant or financial assistance from the Government levies and collects from the pupils only such fee, charge or other payment as may be specified by the competent authority, which

shall not be in excess of the fee, charge or other payment, levied and collected from the pupils studying in the schools or institutions established and administered or maintained by the State Government, or any local authority in the locality;

(d) the rules, orders and notifications issued by the Government from time to time; and

(e) such other conditions as may be prescribed.

[Pay to the private school grant or other financial assistance at such rate and for such purposes as may be prescribed)''

10. As rightly pointed out by the learned Additional Government Pleader that the payment of aid schools is based on the years issued from time to time. Like wise, the power to grant aid includes power not to grant aid and the right to refuse or to withdraw any grant is at the discretion of the government. This court is in agreement with the submission of the learned Additional Government Pleader that aid is no automatic and that right to receive aid is not a fundamental right. The learned Additional Government Pleader drew attention of this Court to the judgment of this Court dated 07.10.2021 in the case of Sri Kumaragurubara Swamigal Middle School Vs. the Secretary to Government, School Education Department, Secretariat, Chennai and others in W.P.No.30796 of 2019. In this case, the petitioner therein had sought a protection upon the respondents therein to grant aid to the petitioner's school by sanctioning teaching posts for the upgraded middle school.

11. The relevant paragraph of the order in W.P.No.30796 of 2019 dated 07.10.2021, is extracted hereunder:

''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 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 Vs. Government of Tamil Nadu, rep. By its Secretary and others reported in (2007 2 MLJ 497).''

12. This Court is in full agreement with the views expressed by the learned single Judge in the above quoted order. This Court does not find any interference in the order passed by the second respondent. In view of the above discussions, this Writ petition fails and therefore, dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Principal Secretary to Government,
Secretariat School Education Department,
Fort St. George Chennai 600 009.
- 2 The Director,
Directorate Elementary School Education,
DPI Complex, College Road, Chennai 600 009.
- 3 The District Primary School Educational Officer,
Sivagangai Collectorate
Manamadurai, Sivangangai District 630 562.

4 The Assistant Primary School Education Officer,
 Kallal, Sivangangai District.

+1cc to Mr.R.Selvakkodi, Advocate, S.R.No.941
+1cc to the Government Pleader, S.R.No.1143,1140,681.

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KSM(CO)
CT 08/02/2022