



W.P.No.16737 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	25.08.2022
<i>Pronounced on</i>	29.09.2022

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.16737 of 2004

1.Mr.Mohamed Iqbal (Deceased)

2.A.Ikram Rasul,
The Correspondent,
Oriental Arabic High School,
Akkur, Nagapattinam District.

(P2 substituted in the place of deceased sole petitioner vide order dt.19.07.2022 made in
W.M.P.No.19580 of 2020) ... Petitioners

Vs.

1.The Joint Director,
Secondary Education,
Chennai – 600 006.

2.The District Educational Officer,
Raj Building,
Myiladuthurai – 609 001.

3.The Chief Educational Officer,
Nagapattinam,

4.A.Arokiaswami



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5. M.Dawood Badsha

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the impugned order dated 01.06.2004 in Na.Ka.No.2050/G6/2004 and quash the same and direct the respondents 1 to 3 to continue to recognise the petitioner's institution as a Muslim Religious Minority Institution and to confirm all the benefits arising therefrom.

For Petitioner : Mr.S.Nedunchezhiyan
for G.Shankaran

For Respondents 1 to 3 : Mr.G.Nanmaran,
Special Government Pleader

For Respondents 4 & 5 : No Appearance

ORDER

The learned counsel for the petitioner submitted that the petitioner is the Correspondent of the Oriental Arabic Higher Secondary School, Akkur, Nagapattinam District. This School was started as a Middle School in the year 1955 by the Muslim Minority Community and later it was upgraded as Higher Secondary School in the year 2002-2003. From the beginning, "Arabic" is taught as the first language. Further, the



Government has given aid upto High School and no aid was given to the Higher Secondary Courses. This School was established by the Muslim Jamath and is being

administered by a Committee, and more than 65% of the students of the school belong to Muslim Community.

2. The learned counsel for the petitioner further submitted that the previous Headmaster Mr.C.Sankaran retired from the school on 31.05.2002. Therefore, the vacancy for the post of headmaster arose from 01.06.2002. As Arabic is taught as the first language in all standards, the Management decided to appoint a Headmaster with Arabic knowledge. As there was no such suitable teacher among the teacher's employed in the school, the Management decided to call for a suitable candidate from the open market.

2.1. In this case, as stated supra, 65% of the students of the school are Muslims and study Arabic as the first language. Apart from this, many of the Non-Muslim students have also taken “Arabic” as one of the subjects. Only in these circumstances, the decision was taken to have a Headmaster with Arabic knowledge. To the aforesaid



effect, publication was made calling for qualified and suitable persons for the post of Headmaster. This being so, Mr.A.Arokiaswami, the Senior B.T.Assistant Teacher in the said school, who is the fourth respondent herein was also directed to participate in the interview, which was held on 26.05.2002. However, Mr.A.Arokiaswami did not attend the interview. Totally three candidates appeared for the interview and out of three, the Committee has selected the fifth respondent viz., Mr.M.Dawood Badsha, because he possessed Arabic knowledge apart from other qualification and appointed him as Headmaster on 27.05.2002. He joined the duty as Headmaster on 01.06.2002 in the aforesaid school.

3. The learned counsel for the petitioner contended that after the appointment of the fifth respondent as Headmaster, a communication for approval dated 26.02.2002 was sent to the District Education Officer, Mayiladuthurai, who is the second respondent herein with all necessary records of the fifth respondent viz., a Post Graduate Degree (I Class), B.Sc., (II Class) and B.T. (II Class) with 12 years teaching experience in the Crescent Higher Secondary School, Avaniapuram, Auduthurai. But, the second respondent rejected the communication and refused to give approval to the appointment



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of the fifth respondent as Headmaster on 23.03.2004, after a lapse of two years.

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3.1. In the aforesaid communication dated 23.03.2004 sent by the second respondent, it was mentioned that he wanted some clarifications relating to the service of the fifth respondent in his earlier school i.e., the Crescent Higher Secondary School, Avaniapuram, Auduthurai. Even though the management has replied to the clarification, the second respondent has refused to appoint the fifth respondent as Headmaster. The Management left with no option, preferred an appeal against the order passed by the second respondent dated 23.03.2004, before the first respondent / The Joint Director, Secondary Education, Chennai. Subsequently, the fifth respondent viz., Dawood Badsha has filed a writ petition in W.P.No.12650 of 2004 before this Court by challenging the order of the second respondent dated 23.03.2001 and the same was pending.

4. This being so, the fourth respondent viz., Arokiaswami preferred an appeal against the order of appointment of Dawood Badsha as the Headmaster of the aforesaid Oriental Arabic High School before the first respondent. In regard to this, the first respondent in his order dated 24.10.2002 has categorically stated that Akkur Oriental



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Arabic High School is a Minority School. Hence, he could not interfere in the appointment. Aggrieved over the order dated 24.10.2002 passed by the first respondent, the fourth respondent has filed a writ petition in W.P.No.11477 of 2003 before this Court and the same was dismissed on 28.10.2003 with a liberty to the fourth respondent to establish with sufficient proof before the first respondent that the petitioner is not a Minority Institution and the first respondent has jurisdiction in the appointment of the Headmaster. While so, the first respondent has passed an order dated 01.06.2004 in Na.Ka.No.2050/G6/2004 stating that the petitioner institute is a Non-Minority Institution.

Aggrieved over the order of the first respondent dated 01.06.2004, the petitioner has come forward with the present writ petition. Subsequent to the filing of this writ petition Mr.M.Mohamed Iqbal, petitioner herein died in the year 2014 and Mr.A.Ikram Rasul was substituted in the place of deceased sole petitioner on 19.07.2022.

5. When the matter was taken up for hearing the learned counsel for the petitioner submitted a copy of a Government Order in G.O.Ms.No.2080, Education (D3) Department dated 14.09.1977, wherein it was stated that the petitioner's institute was declared as an Minority School by the Government of Tamil Nadu and the copy of the



said Government Order was also sent to the Correspondent, Oriental Arabic High School, Akkur Nagapatinam.

6. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the educational institutions claiming minority status should approach the State Government and till the State Government issued an order declaring the institution to be a minority institution, it can not operate as such. The petitioner has not obtained any order from the Civil Court or from the Government declaring his school as a minority one, as pointed out by the Hon'ble High Court in W.P.No.4478 of 1974 dated 17.12.1995 and this has been mentioned in G.O.Ms.No.648/E.S.T, dated 03.08.1994.

7. The learned Special Government Pleader appearing for the respondents 1 to 3 further submitted that as ordered by the Hon'ble Apex Court on 17.10.1994 in I.A.No.20 in W.P.(c) No.317 of 1993 till the petitioner's school got orders declaring the school as a minority school from the competent authority it can not operate as such. The G.O.Ms.No.371 E.S.T., dated 10.05.1995 issuing guidelines for declaring minority status only relates to professional colleges and not related to schools as per order No.375 dated 12.10.1998. Moreover, the first respondent has not stated in impugned order that the



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petitioner's school is not a minority school, it has only held that until an order declaring the school as minority one from the competent authority, the school shall follow the rules applicable to non-minority institution which is correct approach of law and perfectly valid.

8. Considering the submission made by the learned counsel on either side, it is clear and evident that the petitioner's school is a Minority Institution and the same is confirmed from the G.O.Ms.No.2080 Education (D3) Department, dated 14.09.1977, issued by the Competent Authority i.e., the Director of School Education, Government of Tamil Nadu, Chennai. Hence, the proceeding issued by the first respondent in Na.Ka.No.2050/G6/2004 is not sustainable in law and the same is hereby quashed.

9. In the result, this writ petition is allowed and the respondents 1 to 3 are directed to recognize the petitioner's institution as Muslim Religious Minority Institution and confer all the benefits arising therefrom in the light of G.O.Ms.No.2080 Education (D3) Department, dated 14.09.1977.

29.09.2022



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Index : Yes/No

Speaking Order : Yes/No

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- 3.The Chief Educational Officer,
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J.SATHYA NARAYANA PRASAD,J.

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Pre-delivery order in
W.P.No.16737 of 2004

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