



W.P.(MD).No.11271 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 11.07.2022

ORDER PRONOUNDED ON : 19 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.11271 of 2012
and
WMP(MD).Nos. 1 & 2 of 2012**

MLWA Higher Secondary School
1, Tamil Sangam Road
Maninagaram
Madurai 625 001
represented by its Secretary

....Petitioner

Vs

1.The District Collector
Madurai District
Madurai

2.The Joint Director of School Education
(Higher Secondary Education)
College Road, Chennai 600 006

3.The Chief Educational Officer
Madurai District
Madurai 625 002

4.The District Educational Officer
Madurai District
Madurai 625 002

5.D.G.P.Dharmaraj
(5th respondent impleaded vide Court order
dated 11.07.2022)

....Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.De2/4817/2012 dated 21.05.2012 and the consequential order passed by the fourth respondent in his proceedings in Na.Ka.No.4195/A1/12 dated 25.05.2012 and quash the same as illegal and consequently direct the second respondent to pass orders on the closure application dated 29.09.2010 preferred by the petitioner.

For Petitioner	: Mr.Jerin Mathew for Mr.M.E.Ilango
For R1 to R4	: Mr.V.Nirmal Kumar Government Advocate
For R5	: Mr.M.Saravanan

ORDER

The writ petition has been filed challenging an order dated 21.05.2012 passed by the first respondent herein under which a direction was issued to the Educational Authorities to take over the petitioner School which is an aided School.

2.The petitioner had contended that the petitioner School was started in the year 1946 by Madurai Labour Welfare Association and primarily it was catering to the needs of children of the workmen employed in Madura Coats



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Ltd., The said School is receiving grant in aid from the State Government and it is a non minority institution. When Madura Coats Ltd., closed down its operations in Madurai, the workmen employed therein got their accounts settled and migrated to other area. Therefore, there was a sudden fall in the student's strength. As a result, the erstwhile management was contemplating to transfer the management in favour of an Educational Agency having similar objectives. Furthermore the management transferred the properties of the School in favour of one S.B.Rajkumar and he in turn had transferred the management to one Jain Educational Trust, Madurai. Thus, the said transfer had taken place in the year 2008 and an application has been submitted on 05.04.2008 for approving the transfer of educational agency. He had further contended that on 01.04.2009, the second respondent had approved the transfer of educational agency from Madurai Labour Welfare Association in favour of Jain Educational Trust with effect from 05.04.2008. The students' strength as on the date of transfer i.e. 05.04.2008 was only 333 with a teacher's strength of 19. Further, the fourth respondent by his proceedings dated 27.07.2012 has also granted approval for the change in secretaryship and approved the petitioner's appointment as the secretary of the petitioner School. In the meanwhile the recognition that was granted by the competent authorities for conducting classes 6 to 12 had expired on 25.11.2009.



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3.The petitioner had further contended that for renewing the recognition for conducting the classes, the management has to obtain No Objection Certificate from local body and other departments. Since the building is around 60 years old, the building was in dilapidated condition. In view of the condition, the Chartered Engineer who inspected the premises refused to give stability certificate as required under Rule 9(2) of Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974. In view of the said refusal of the stability certificate, the owner of the premises who is also one of the trustees of the educational agency directed the School to vacate the premises taking into account the interest and safety of the children .

4.The petitioner had further contended that the student intake declined phenomenally, the School was not able to get renewal as the building could not get stability certificate. The parents of the remaining few student after coming to know about the status of the building, voluntarily taken transfer certificate of their children so as to admit them in a different School. Thus, the School was left with only around 140 students. In such circumstances, left with no other option, the petitioner had applied for closure of the School on 29.09.2010 through proper channel. Upon receiving the said application, the second respondent had called for reports from the respondents 3 and 4. However, these reports were not sent. Despite several reminders, the said



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reports were not forwarded by the respondents 3 and 4. Since the petitioner had sought to close the School for the academic year 2011-2012, the remaining students have also received transfer certificate and migrated to other Schools. As on date of the filing of the writ petition, there were no students at all and only the teachers were left. Hence, the fourth respondent has sent a report to the third respondent highlighting the fact that the salary of the teachers being wasted. In pursuant to the said report, the second respondent had sent a communication on 25.04.2011 indicating the fact that the School had to be closed and call for report from them for taking a decision on the closure application presented by the School. In pursuance to the said report, the third respondent has sent a report on 09.06.2011 to the second respondent acknowledging the fact that there were no student studying in the school and as such salary could not be drawn for the teachers working therein after reopening of classes for the academic year 2011-2012. Therefore, the second respondent sent a communication to the third respondent on 24.06.2011 calling for proposal for redeployment of teachers working in the petitioner School on the ground that they have been rendered as surplus. Hence, all the appropriate procedure which are required under the Act and Rules have been followed for closure of the School. At that point of time, some persons in the vicinity of the School submitted a petition to the first respondent on the grievance day meeting making false a allegation as



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against the intention of the petitioner School and requested for reopening of the School. Without ascertaining the veracity of the complaint, the first respondent orally directed the third respondent to take steps for fresh admission of students in the petitioner School. Based upon the said oral direction, third respondent vide proceedings dated 05.11.2010 had directed the School to make a fresh admission and run the School by whatever means. The respondents 3 and 4 had even threatened to take over the School if their directions were not complied. The first respondent had called the petitioner School for enquiry and has chosen to pass the impugned order on 21.05.2012 directing the third respondent to take over the administration and management of the School and after making further admission run the School. The said impugned order has been passed by the first respondent namely the District Collector who has no jurisdiction whatsoever to pass such an order to take over the management of an aided School. Hence, the present writ petition has been filed seeking to quash the said order of the District Collector and a direction to the Educational Authorities to pass orders on the closure application dated 29.09.2010.

5.The respondents had filed a counter and contended that the Secretary of the School interfered and influenced the admission in a negative manner by writing a letter dated 13.05.2011 to stop the admission of the School. The



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Stability Certificate has been falsely issued the said Chartered Engineer and the building is in a stable condition. The School building were not properly maintained in a timely manner. Hence, it just requires repair but the stability is not in danger. It was further contended that the School is coming under the scheme of SSA, necessarily this School has to follow the instruction of the District Collector. So the involvement of the Collector not only appropriate but also legal. He had further contended that the Right of Children to Free and Compulsory Education Act, 2009 was implemented by the State Government from 11.08.2010. The petitioner School also comes within the purview of the said enactment. The recognition was granted to the petitioner School in the previous years for conducting classes of 6 to 12. As a Chairman of the District Level Committee, the District Collector has power to interfere in the administration of the School. If the applications have not been made in the last four years for Classes 6 to 8, it is the fault of the petitioner and he had refused admissions in those Classes even though permission was granted up to 25.11.2009. The petitioner cannot take advantage of his own fault and later contended that all students have left the School. The only intention of the management is to close the School and hence, the School had stopped admission of the students. Hence, he prayed for sustaining the impugned order.

6.I have carefully considered the submissions made on either side.



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7.The order impugned in the writ petition has been passed by the first respondent herein namely the District Collector on 21.05.2012. As per the said order, the District Collector has directed the third respondent to take over the management of the School from the academic year 2012-2013 and admit the students in the School and continue the School. He had further directed the third respondent to obtain Stability Certificate from the Public Works Department and based upon the said Stability Certificate, functioning of the School may be continued. The said order is under challenge in the present writ petition.

8.Section 34 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 is extracted as follows:

“34.Taking over management of private School:(1) If, on receipt of a report from the competent authority or otherwise, the Government are satisfied that the educational agency of any private School has neglected to discharge any of the duties imposed on, to perform any of the function entrusted to, that agency by or under this Act or any Rule for order made or direction issued thereunder and that is expedient in the interests of School education to take over the management of such private School, the Government may, by order, in writing, take over the management of such private School:

Provided that the Government shall not initiate any proceedings under this Section to take over the management of any private School



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unless they are satisfied that circumstances of the management under Section 18-A will not be sufficient.

(2)Before making an order under sub-section (1), the Government shall given the educational agency an opportunity of making its representations.”

9.A perusal of the above provision will clearly disclose that the power of taking over the management of a private aided School lies only with the Government and not with this District Collector who has passed the present impugned order. The Government is authorised to pass an order either on its own motion or on receipt of a report from the competent authority namely the Director of School Education. As per the first proviso to Section 34(1), even the Government will not be entitled to take over the management of the private School unless they are satisfied that the suspension of the management under Section 18-A will not be sufficient. Therefore, it is evident that the Government should also try to suspend the management at the first instance and appoint a Special Officer to take over the management of the School. Only if the Government feels that such a suspension will not be sufficient, they can invoke Section 34 wherein they can take over the management of the private School. Hence, it is evident that the District Collector is no way competent either to initiate proceedings or to pass an order for taking over the management of the aided School.



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10. In view of the above said discussion, the impugned order has been passed by an authority without any jurisdiction and hence, the same is liable to be set aside. However, with regard to the prayer for closure of the School is concerned, according to the writ petitioner, his application is pending before the competent authority for prior approval. This Court is not inclined to direct the authorities to close down the School. It is for the authorities to consider the said representation as per the procedure contemplated under Section 29 read with Rule 20 of the Act.

11. With the above said observation, the writ petition is partly allowed and the impugned order is set aside. As far as the prayer of mandamus is concerned, the statutory authorities are directed to consider the representation of the petitioner in the light of the above said observation. No costs. Consequently, connected miscellaneous petitions are closed.

19 .07.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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