



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. (MD) No. 2124 of 2021
and C.M.P. (MD) No. 9898 of 2021

- 1.The Principal Secretary to Government of Tamil Nadu
School Education Department,
St. George Fort,
Chennai - 600 009.
 - 2.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.
 - 3.The Chief Educational Officer,
Pudukkottai District,
Pudukkottai.
 - 4.District Educational Officer,
Pudukkottai Educational District,
Pudukkottai.
- .. Appellants

Vs

Christ Matriculation School,
Naduppatti,
Gandharvakottai Taluk, Pudukkottai District,
Represented by its Correspondent,
Mr.M.Jeyaseelan S/o. Manimuthu

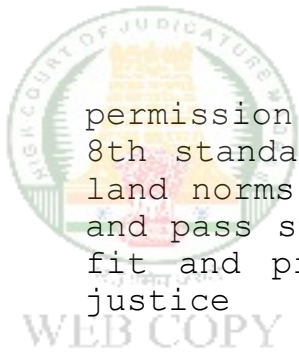
.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 27.07.2021 made in W.P.(MD) No. 11818 of 2021.

Prayer in WP(MD). 11818/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ directing Respondents , to call for the records on the file of the 2nd respondent pertaining to the impugned proceedings in Mu.Mu.No.973/A4/2019 dated 26/02/2021 and to quash the same and consequently direct the respondents to grant

<https://hcservices.ecourts.gov.in/hcservices/>



permission upgrading the petitioners school with classes L.K.G to 8th standard for the academic year 2020-2021 without insisting the land norms within a time frame that may be stipulated by this Court and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.S.P.Maharajan
Special Government Pleader

For Respondent : Ms.L.Victoria Gowri

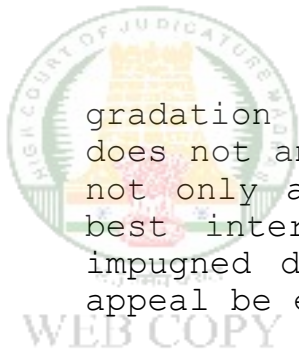
JUDGEMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 27 July 2021 recorded on W.P.(MD) No. 11818 of 2021. This appeal is by the respondent/ State Authorities.

2. Heard Mr.Veera Kathiravan, learned Additional Advocate General for the State Authorities and Ms.L.Victoria Gowri for the respondent / original writ petitioner.

3. Learned Additional Advocate General for the appellant State Authorities has submitted that, the petitioner school is a primary school which is recognized upto fifth standard and it had applied for up-gradation upto eighth standard. It is submitted that it does not meet with the criteria of having the ground of three acres, which is the requirement as per the policy of the Government and therefore the impugned direction to consider the application of the petitioner school for its up-gradation of on the line of G.O.No.175 dated 20 July 2017 is erroneous. It is submitted that the relaxation with regard to the requirement of having three acres of ground by the schools vide the said G.O. No.175 was only to meet with a situation, what should happen to the students already admitted and undergoing study. It is submitted that the said G.O could not have been taken support form, for the purpose of enhancement of intake of students in any manner, either by adding of classes in the same standard(s) or by up-gradation from primary / secondary school to secondary / higher secondary school. It is submitted that the policy of the State has to be observed, not only in letters but in spirit as well. It is submitted that the unfortunate accident which caused death of number of students and which shook the State earlier, led to judicial cognizance and framing of policy regarding requirement of sufficient open space for students in schools to avoid such occurrences. It is submitted that denial for up-



gradation to the petitioner school upto eighth standard, since it does not answer the requirement of having sufficient open ground, is not only as per the policy of the Government, it is also for the best interest of the safety of the students and therefore the impugned directions be interfered with. It is submitted that this appeal be entertained.

4. On the other hand, learned advocate for the writ petitioner has submitted that, the direction of learned Single Judge to the State Authorities to decide the application of the petitioner's school on the line of G.O.No.175 dated 20 July 2017 is within the four corners of the policy, more particularly Para :4 (x) thereof and therefore no interference be made by this Court. It is submitted that, this appeal be dismissed. Learned advocate for the respondent / original writ petitioner has also made serious grievance that, the Authorities are adopting pick and chose policy. It is submitted that, on one hand number of schools are granted permission on the line which is asked for by the petitioner and at the same time, it is not given to the petitioner school. It is submitted on this count also, the relief granted to the petitioner be not interfered with by this Court. It is submitted that this appeal be dismissed.

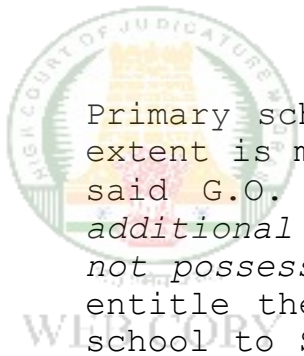
5. Having heard learned advocate for the respective parties and having considered the material on record this Court finds as under:-

5.1 The writ petitioner is a primary school. Initially, in the year 1998, permission was granted to it by the Authorities to run Kinder Garten School. Subsequently, it was upgraded upto fifth standard.

5.2 The school wanted up-gradation upto eighth standard from the Academic year 2020-2021. This request was rejected by the State Authorities vide order dated 26.02.2021 which gave rise to the writ petition.

5.3 The principal ground to deny the permission for up-gradation of the petitioner School is that it does not fulfill the norms of open ground i.e. composite land of 3 acres. The said requirement is as per the Policy of the State. The said policy was framed, for the safety of the students keeping in view unfortunate accident on 16.07.2004 which caused death of 94 students in a primary school at Kumbakonam and subsequent developments. No exception needs to be made to this policy decision of the State.

5.4 The point at issue is G.O.No.175 dated 20 July 2017, which is referred in the directions given by learned Single Judge. The plain reading of the said G.O. makes it clear that, it takes care of that situation, what to do with the schools which are already working and students are also there. Those classes could not have been closed or reduced. Such schools could not have been directed to reduce the classes or to downgrade it from Secondary school to



Primary school. Keeping this in view, an exception to that limited extent is made by the State by the said G.O. dated 20 July 2017. The said G.O. also stipulates [vide para : 4(ii)] that '*opening of additional classes shall not be permitted for the schools that do not possess minimum land requirement*'. This stipulation would dis-entitle the petitioner school to ask for up-gradation from Primary school to Secondary school. Stipulation 4(x) sought to be relied on behalf of the petitioner can not be read in isolation. It has to be read with 4(ii) quoted above.

5.5 The denial by the State Authorities to the demand of the petitioner school to increase classes by way of up-gradation of school, according to us, can not be said to be illegal or arbitrary in any manner. The directions in the impugned order dated 27.07.2021 (recorded on the writ petition), to consider the case of the writ petitioner in line with G.O.No.175 dated 20 July 2017 insofar as land space is concerned, according to us, is unsustainable and needs to be set aside.

5.6 We note that though the petitioner school does not meet with the land space criteria as prescribed by the State, it could not have been asked to shut down the school or to reduce the classes. It is not done. This is the policy of the State and the same is rightly implemented in favour of the petitioner as well to that extent. However the petitioner School can not be permitted to contend that since it is a running school (a going concern) additional classes should also be permitted by allowing up-gradation of the School to Secondary school, though it may not have sufficient open space. It is this demand, which is rejected by the State and according to us, rightly rejected. In the writ petition, no interference was required and according to us, discretion exercised was not justified in this case. While recording this, we also take note of the observations and directions contained in the decision of the Supreme Court in the case of Avinash Mehrotra v Union of India and others reported in (2009) 6 SCC 398. It needs to be noted that the said judgment was in a public interest litigation relating to a fire which swept through Lord Krishna Middle School at Kumbakonam, Tamil Nadu. As noted in the said judgment, the fire had started in the school's kitchen while cooks were preparing mid-day meal and for want of open space and way out, more than 90 students could not be saved. It is this incident which has led to framing of policy by the State. No risk can be taken to dilute it in any manner. If some orders are passed by the State, inconsistent with the said policy, the same would not be accepted as precedent by this Court. If the matter is remanded back to the State Authorities, it would not serve any purpose and therefore that option is also need not be resorted to. We hold that the denial by the State to the petitioner school to upgrade primary school to secondary school as ordered vide order dated 26.02.2021 was in accordance with the policy of the State and the same does not call for any interference. This appeal therefore

<https://hccs.courts.gov.in/hccs/ver/1.0.0/>



6. For the above reasons, the following order is passed.

6.1 This appeal is allowed.

6.2 The order dated 27.07.2021 recorded on W.P(MD) No.11818 of 2021 is quashed and set aside. W.P(MD) No.11818 of 2021 is dismissed.

6.3 The order passed by the Director of Matriculation School, Chennai (second respondent in the writ petition) dated 26.02.2021 is upheld.

6.4 No costs. Consequently, connected C.M.P. would not survive.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj

To

1.The Principal Secretary to Government of Tamil Nadu
School Education Department,
St. George Fort,
Chennai - 600 009.

2.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Pudukkottai District,
Pudukkottai.

4.District Educational Officer,
Pudukkottai Educational District,
Pudukkottai.

+1 CC to M/s.L.VICTORIA GOWRI, Advocate (SR-5577[F] dated 11/02/2022)

+1 CC to M/s.SPL.GP (SR-5661[F] &SR-5730[F]dated 11/02/2022)

W.A. (MD) No.2124 of 2021

10.02.2022