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W.P.(MD)NO.547 OF 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.547 of 2017

Hindu Nadar Uravinmurai Kalvi Committee,
Represented by its Secretary,
K. Chelladurai,
S/o. Kalliappan,
Chinthamani,
Pullianyankudi,
Tirunelveli District.

... Petitioner

Vs.

1. The Secretary,
Department of School Education,
DPI Compound,
Chennai.

2. The Director of Elementary School Education,
DPI Compound,
Chennai.

3. The Joint Director of Elementary School Education,
DPI Compound,
Chennai.

4. The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

5. The District Elementary Officer,
Tirunelveli,
Tirunelveli District.

... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his letter No.15857/Tho.Ka2(2)/2016-1, dated 16.08.2016 and quash the same and direct the respondents to provide grant in aid for classes 6-8 of the petitioner's school in par with G.O.Ms. No.115 dated 17.08.2010 issued in favour of the similarly placed schools confer all the consequential benefits.

For Petitioner : Mr. S. Chellapandian

For Respondents: Mr. V. Om. Prakash,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is a society registered under the provisions of the Tamil Nadu Societies Registration Act 1975. They purchased an aided primary school in the year 1984. They applied to the Education Department for starting classes from 6 to 8. The Joint Director of School Education granted permission on 24.07.1990 granting recognition for



classes 6 to 8 with effect from 01.06.1989. One of the conditions clearly stated that for the classes 6 to 8, no aid will be given. Later, the petitioner submitted an application for grant of aid. Since it was not considered, the petitioner filed W.P.(MD)No.2754 of 2016. The said petition was disposed of on 09.12.2016 with the following direction:-

“4. Considering the facts and circumstances of the case and without going into the merits and contentions raised by the petitioner, the writ petition is disposed of directing the first respondent to dispose of the representation of the petitioner dated 26.09.2015 and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. ”

3. Pursuant thereto, the impugned communication dated 16.08.2016 came to be issued rejecting the petitioner's request. Challenging the same, this writ petition came to be filed.



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4. The respondents have filed a detailed counter affidavit.

5. The learned Government Advocate took me through its contents. The primary contention advanced by the learned Government Advocate is that even in the order granting recognition for classes 6 to 8, it was made clear that the aid will not be given. Accepting the said condition, the petitioner commenced the classes from 6 to 8. Having originally accepted the said condition, it is not open to the petitioner to do an about-turn and demand disbursement of aid. The learned Government Advocate also relied on Sections 14 and 14A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. He wanted this Court to follow the decision of the Hon'ble Division Bench rendered on **04.11.2006** in **W.P.(MD)No.1213 of 1999** etc. batch **(Maria Grace Rural Middle School V. The Government of Tamil Nadu)** and the order dated **25.03.2021** made in **W.P.(MD)No.180 of 2018 (The Government of Tamil Nadu, Rep. By its Secretary, Department of School**



Education V. The Correspondent, St.Joseph's Middle School, Eraviputhanthurai Kanyakumari District).

6. The learned counsel appearing for the writ petitioner on the other hand contended that this is a case in which violation of Article 14 of the Constitution of India is apparent on the very face of the record.

7. I carefully considered the rival contentions.

8. Reference to Section 14 as well as 14A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 may not be appropriate in the present context. Section 14A of the Act states that the grant is not payable to new private schools and new classes and courses of instruction. The said provision was inserted with effect from the academic year 1990-91. The validity of this provision was sustained in the aforesaid decision of the Hon'ble Division Bench. But the petitioner herein started their class 6 with effect from 01.06.1989; in other words, before the academic year 1991 – 1992 with which Section 14A is concerned. Therefore, the order impugned in this writ petition is vulnerable on that account.



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9. Of course there is considerable force in the objection of the respondents that the petitioner has no right to demand aid. One of the contentions set out in the proceedings dated 24.07.1990 is that the Government will not disburse it for the newly started classes. But the petitioner's counsel draws my attention to G.O.Ms.No.115 School Education Department dated 17.08.2010. The school in the said case was started by ' Melakadayanallur Senaithalavar Samudhaya Kalvi Committee '. In paragraph No.8 of the affidavit filed in support of this writ petition, it has been specifically contended that the Government had disbursed grant to similarly placed schools in and around Puliyangudi but failed to apply the same yardstick to the petitioner's school. It is stated that the school was also started in the very same year. The classes in question were also started in the academic year 1989-1990 and the similar condition was also incorporated in the other case also.

10. All that the petitioner states is the petitioner cannot be treated otherwise. While the general principle is that one cannot claim equality in illegality, grant of aid in



terms of G.O.Ms.No.115 cannot be considered as an act of illegality. Therefore, the petitioner is entitled to parity of treatment. The Government should either deny grant for all the schools which were permitted to be started with such a condition or it should grant aid to all the schools. It cannot grant aid to some of the schools and say ' no ' to the petitioner alone. Applying the mandate of equality set out under Article 14 of the Constitution of India, I quash the impugned order. The petitioner through their counsel states that they would confine their claim from this current academic year and they will not have any claim for the previous years. The respondents are directed to inspect the petitioner school and based on the students' strength sanction the posts and disburse aid. This writ petition stands allowed accordingly. No costs.

06.07.2022

Index : Yes / No
Internet : Yes/ No

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G.R.SWAMINATHAN,J.

PMU

To:

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Chennai.
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Chennai.
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