



W.P.(MD)No.24504 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 15.11.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.24504 of 2022
and
W.M.P.(MD)No.18573 of 2022

S.Sasikumar,
S/o.Swami Nadar,
Correspondent/Co-ordinator,
Mayakrishnaswamy Vidyalaya,
Ananda Nagar,
Athancode,
Killiyur Taluk,
Kanyakumari – 629 172.

.. Petitioner

Versus

1.The Director,
National Institute of Open Schooling,
A-24/25, Institute Area,
Sector – 62,
Noida,
Uttar Pradesh – 201 309.

2.The Chief Educational Officer,
Office of the Chief Educational Officer,
Ouzhbinaseri,
Nagercoil,
Kanyakumari District – 629 001.

3.The District Educational Officer (Private School),
Nagercoil,
Kanyakumari District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying
for issuance of a Writ of Certiorari, to call for the records relating to the



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proceedings of the third respondent, made in Na.Ka.No.007/A2/2022, dated 19.10.2022 and quash the same.

For Petitioner : Mrs.N.Krishnaveni
Senior Counsel
for Mr.S.Poornachandran

For Respondents 2 & 3 : Mr.J.John Rajadurai
Government Advocate

ORDER

The petitioner has prayed for issuance of a Writ of Certiorari, to quash the proceedings of the third respondent, in Na.Ka.No.007/A2/2022, dated 19.10.2022.

2. The case of the petitioner is that his School, known as "Mayakrishnaswamy Vidyalaya" is accredited as a study centre of National Institute of Open Schooling (NIOS), which is an autonomous Organization, in pursuance of National Policy on Education 1986, by the Department of School Education and Literacy, Government of India, to run Open Basic Education (OPE) Programme for the age group of 6 – 14 years and the accreditation is valid till 31.03.2025. The Open Basic Education (OBE) Programme is an alternative Educational Programme, equivalent to Elementary Education Programme of the formal education system aimed to reach the unreached



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children mainly in the rural areas. The petitioner's School runs Classes from 1st Standard to 8th Standard and the total strength is 287. The petitioner's School strictly adheres to the norms and the procedures prescribed by the first respondent and the same has been running smoothly since 2013 for the upliftment of the students, who hails from the rural background. While so, the petitioner's School had received a show cause notice, dated 03.04.2021, from the second respondent stating that why an action should not be taken against the petitioner's School for running without obtaining a Certificate of Registration from the competent authority. Immediately, the petitioner gave his reply stating that the School functions under the Aegis of NIOS after obtaining accreditation from appropriate authority and hence, requested them to allow the School to function smoothly.

3. Again, the second respondent, vide his proceedings, dated 06.05.2022, sent a similar show cause notice and the petitioner had also sent his reply. However, the third respondent did not take any further action. In the said circumstances, the petitioner was served with the impugned order of the third respondent, dated 19.10.2022, stating that the petitioner's School has been functioning in contravention of Rules, governing NIOS Institutions and as the accreditation has been granted to run the Classes for 6 to 14 years age group only, the same has been violated and the name board of the School does



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not mention it as NIOS Study Centre. Further, the Classes being conducted as regular School in contravention of the Rules and since an injunction order has already been passed not to run the School, the petitioner has been directed to transfer the Students studying in his Institution to a nearby recognised School and report compliance within three days, failing which, the petitioner will be held responsible for all resultant consequences.

4. The third respondent passed the impugned order invoking Section 18(1) and (5) of the Right of Children to Free and Compulsory Education Act, 2009, which reads as under:-

"18 No school to be established without obtaining certificate of recognition. ?

(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten



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thousand rupees for each day during which such contravention continues."

5. Section 2(a) of the said Act defines 'appropriate Government', which reads as under:-

"(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;"

6. According to the learned Senior Counsel appearing for the petitioner, the petitioner has been running the School after obtaining recognition from the first respondent, who is the competent authority under NIOS and insofar the petitioner's School is concerned, the Central Government is the competent authority referred to in Section 18(1) of the said Act. The third respondent has completely misread Section 18(1) of the said Act and assumed himself as if he is the competent authority and passed the impugned order. Further, the recognition granted to the petitioner's School is valid till 31.03.2025 and thus, Section 18(5) of the said Act is also not contravened. The third respondent can exercise his power only when a School obtains recognition from the Government of Tamil Nadu.



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7. The learned Senior Counsel further submitted that this Court in W.P.No.15404 of 2019 was pleased to save a similarly placed Institution when the State authorities tried to brand it as an unrecognised Institution. The act of the third respondent is illegal and the same has to be quashed for violative of Articles 19 and 21 of the Constitution of India, as the petitioner's School does not violate either Section 18(1) or Section 18(5) of the said Act. Further, the learned Senior Counsel submitted that the State authorities are not competent persons and only the first respondent is the competent person.

8. The respondents 2 and 3 filed a counter affidavit. The learned Government Advocate appearing for the respondents 2 and 3 submitted that as per the norms and procedure for accreditation issued by the National Institute of Open Schooling, the following types of Institutions/Schools, who have a sense of commitment and desire to contribute towards developing a learning Society, can apply to become an accredited Institution of NIOS, provided, they satisfy the criteria laid down for accreditation:

(a) The Institution/School must be affiliated to a recognised State Board of School Education/CBSE/ICSE for Secondary/Senior Secondary level, or

(b) An NGO/Registered Society of national repute, engaged in the education of the specially abled children in philanthropic activities getting grant from the Government. The institute should have recognition and



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accreditation with the Rehabilitation Council of India for running programme and allied services in their respective areas of disability and objectives of the institution.

9. The eligible Institution/School may submit the application for the following:-

(a) New Accreditation upto Secondary or Senior Secondary level or both.

(b) Upgradation to Senior Secondary level, applicable in case of already accredited Institutions.

(c) Increase in number of seats, applicable in case of already accredited Institutions.

(d) Additional mediums of instruction applicable in case of already accredited Institutions.

10. The learned Government Advocate submitted that for getting accreditation from National Institute of Open Schooling, the School must be affiliated to a recognised State Board of School Education/CBSE/ICSE for Secondary/Senior Secondary level. In the present case, no such affiliation is obtained by the petitioner's School and the petitioner's School is running without any proper permission from the State Government, and therefore, the



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11. The learned Government Advocate further submitted that on inspection, the respondents 2 and 3 found that the petitioner's School is running without getting NOC from them. Further, the petitioner's School have only accreditation from NIOS for running a study centre for the age group of 6 to 14 years *i.e.*, I Standard to VIII Standard alone in the year 2017, which was extended upto 31.03.2025. However, the petitioner is running additional Classes for students pursuing 9th and 10th Standards without any affiliation and further, there are no proper infrastructure in the said School. Hence, in order to safeguard the welfare of the students, the third respondent issued the show cause notice calling upon the petitioner to submit his explanation. However, till date, the petitioner has not chosen to give any explanation for the reasons best known to him. Subsequently, at the time of physical inspection, the educational authorities found the above illegalities and requested them to produce adequate affiliation or permission for carrying out Classes for the Students pursuing Standards IX and X, but nothing was produced even after lapse of more than six months. Hence, the third respondent left with no other option, has issued the order of closure of the petitioner's School on the interest and welfare of the Students.

12. The learned Government Advocate also submitted that the petitioner's School got accreditation for running a study centre for the age



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group of 6 to 14 years, whereas, the petitioner's School conducted Classes for IX and X Standards and send the Students for writing exams through NM CBSE School, by having tie up with them last year. In the said circumstances, a Student namely, Ashwin, pursuing VI Standard in the petitioner's School, who had consumed some kind of liquid, was admitted in the Hospital on serious condition, pursuant to which, an F.I.R. in Crime No.231 of 2022 was registered by the Kaliyakkavilai Police and further, the parents of the said Student gave a complaint dated 10.10.2022 to the District Collector, Kanyakumari District and the respondents 2 and 3 have also submitted a report after conducting field enquiry and on the other hand, the probe is being conducted by the Police and the same is pending. During inspection, it was found that apart from 287 Students pursuing their educations from I to VIII Standards, 6 Students pursuing IX Standard and 5 Students pursuing X Standard in the petitioner's School and on perusal of their books, it was found that the said Students are undergoing CBSE syllabus, for which, the petitioner has not given any explanation. Further, the petitioner's School has no proper toilet facilities and no proper compound wall and therefore, the authorities directed the petitioner to give explanation regarding non-obtaining of NOC from the concerned Departments of the State Government.



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13. Considering the aforesaid submissions made by the learned counsel on either side, this Court directs the petitioner to offer his explanation to the third respondent within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the third respondent shall consider and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. Till such time, the respondents not to disturb the Students, who are studying in the petitioner's School and transfer them to some other Schools.

14. This Writ Petition stands disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No

15.11.2022

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3.The District Educational Officer (Private School),
Nagercoil,
Kanyakumari District.



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V.BHAVANI SUBBAROYAN, J.

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