



W.P.(MD)No.27623 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27623 of 2022

and

W.M.P.(MD)Nos.21739 & 21741 of 2022

Kaviyan School rep.by its Correspondent,
Mr.C.Deenathayalapandian
Indira Nagar, Malayakoundanpatti,
Ammayanaickanur, Nilakottai,
Dindigul District.

... Petitioner

v.

1.The Director of Matriculation Schools,
Directorate of Matriculation Schools,
DPI Campus, Chennai.

2.The Chief Educational Officer,
Dindigul District, Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying 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 Oo.Mu.No.3081/A3/2022 dated 29.11.2022 and quash the same as illegal and consequently to direct the first respondent to grant permanent recognition for upgrading the petitioner school to Matriculation Higher Secondary (11th and 12th Standards) within the period that may be stipulated by this Court.



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For Petitioner : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.T.Amjadkhan, Government Advocate

ORDER

Heard the learned Senior Counsel appearing for the petitioner school and the learned Government Counsel appearing for the respondents.

2.The petitioner is a matriculation school. It seeks upgradation and permanent recognition as Matriculation Higher Secondary School. The petitioner's request was rejected by the first respondent vide proceedings dated 29.11.2022. Challenging the same, this writ petition has been filed.

3.The learned Senior Counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the same and allow this writ petition as prayed for.

4.The learned Government counsel on the other hand submitted that the impugned order does not warrant any interference. The only ground on which the petitioner's request for upgradation has been rejected is that the land area requirement is not fulfilled. As per G.O (2D) No.48, School Education Department dated 21.07.2004, the school must possess three acres of



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composite land. The petitioner is having only 2.29 acres as one single piece.

If relaxation is accorded for the petitioner school, that would set a wrong precedent. Similar requests will have to be entertained from as many as 746 Matriculation Schools. The learned Government Counsel placed reliance on the order dated 10.02.2022 made in WA(MD)No.2124 of 2021. The Hon'ble Division Bench in the said order held that while an existing school can be permitted by the State to run even if it fails to meet the land area requirement, it cannot be heard to contend that it should also be permitted to upgrade itself as secondary school though it may not have sufficient space. The learned Government Counsel pressed for dismissal of this writ petition.

5.I carefully considered the rival contentions and went through the materials on record.

6.The petitioner school was established on 07.09.2006 by a Trust. The school was located on a land measuring an extent of 14.88 acres. While so, in the year 2007, 2.45 acres was acquired under the National Highways Act. As a result of the acquisition, the land which was a single composite piece got divided into two portions. 2.29 acres of land fell on one side of the high way while the remaining 10.14 acres fell on the other side. The trust was originally permitted to have classes from LKG to 6th Std. However, when



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permission was sought for opening additional classes from 7 to 10, it was rejected by citing G.O (2D) No.24 School Education Department dated 23.04.2010.

7.Challenging the rejection order, the petitioner filed WP No.5225 of 2013. The writ petition was disposed of on 28.02.2014 in the following terms :

"12...The facts of the case are very peculiar. This is a case where the petitioner school had land of an extent of more than 14 acres in one piece. Unfortunately, the land acquisition for the National Highways Authority of India commenced only after the trust became the lessee. The national highway is now located in such a manner that it cuts across the land of the petitioner and divides the same into two portions. This supervening event, over which, the petitioner had not control, is what has actually made the petitioner school ineligible in terms of the government order. On the one side of the national highway, the petitioner school has land of the extent of 2.29 acres. On the other side of the highway, the petitioner had the land of the extent of 10.14 acres. Therefore, this is a case where the respondents should actually consider the petitioner to have fulfilled the requirements.



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13. One more objection raised by the respondents is about the main entrance of the school. Today, the petitioner has shifted the main entrance to the side which is 180 degrees opposite to the National Highways. Therefore, in the peculiar facts and circumstances of the case, the request of the petitioner is justified.

14. In view of the above, the writ petition is disposed of, directing the first respondent to consider the case of the petitioner in the light of the peculiar facts narrated above and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order."

Pursuant to the direction given by this Court, recognition was accorded by the first respondent vide proceedings Oo.Mu.No.1972/A1/2014 dated 06.05.2014. It has subsequently been renewed also. The issue raised in the present writ petition was already dealt with and answered vide order dated 28.02.2014 made in WP No.5225 of 2013. This court did not call upon the authority to relax the land area requirement and grant approval. On the other hand, this Court rendered a finding that in view of the peculiar facts and circumstances obtaining in this case, the authority must actually consider the petitioner school to have fulfilled the requirements. This order was not challenged by the department. It had become final. The authorities have also complied with the direction. Hence, they cannot take a contra stand subsequently



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also. When the petitioner submitted application for starting classes upto 10 Std, this court had held that the petitioner should be taken to have fulfilled the land area requirement. That legal position cannot change when the petitioner submits another application for upgrading classes upto 12th Std.

8.Of course, the land area requirement differs from region to region. If it is corporation, it is enough if the school possesses six grounds. If it is within District Headquarters, it must be 8 grounds. In Municipality, it must be 10 grounds. If it is township, it must be one acre. If it is rural, it must be three acres. The requirement appears to have been fixed taking into account the difficulties of the school management to possess a given area of land. Here is a case where the trust wanted to fulfil the land area requirement in letter and spirit. It was because of acquisition by the State, there arose shortfall. A learned Judge of this Court had taken the view in the aforesaid writ petition that the petitioner ought not to suffer as a consequence. Declaration has been given that the petitioner should be taken to have fulfilled the land area requirement.

9.The Hon'ble Supreme Court in the decision reported in **(2022) 5 SCC 210 (Adani Gas Ltd. v. Union of India)**, approvingly quoted G.P.Singh's principles of statutory interpretation to the effect that in



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interpreting a provision creating legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. The same approach can be adopted in the present case also. It is true that legal fictions are invariably created only by statutes. Declaration given in favour of the petitioner in WP No.5225 of 2013 is akin to creation of legal fiction. Once its existence is conceded, all the logical consequences flowing therefrom must also be accepted. On the earlier occasion, this Court had held that the petitioner must be taken to have fulfilled the land area requirement. When the petitioner applied for opening classes upto 10 to 12th Std, the authority cannot be heard to say that the land area requirement is not fulfilled.

10.The order impugned in this writ petition is set aside. The first respondent is directed to permit the petitioner to upgrade itself as Matriculation Higher Secondary School and also grant permanent recognition. The respondents shall also facilitate the conduct of the half yearly examinations that are scheduled to be held from 15.12.2022.



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11.The writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

14.12.2022

Index : Yes / No
Internet : Yes/ No
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Issue order copy immediately.

To

- 1.The Director of Matriculation Schools,
Directorate of Matriculation Schools,
DPI Campus, Chennai.
- 2.The Chief Educational Officer,
Dindigul District, Dindigul.



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G.R.SWAMINATHAN, J.

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