



W.P.No.1326 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.1326 of 2019

Bharani Educational and Health Trust,
Establish and Administering, Sri Bharani College of Nursing,
No.239, Rajaram Nagar, Near Gandhi Stadium,
Salem - 636 007.

Rep. by Secretary Dr.P.S.Punithavathi

...Petitioner

Vs.

1. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai, Guindy, Chennai-600 032.

2. The President,
Majura Gollapatty Panchayat,
Salem - 636 030.

3. The Member,
Directorate of Town and Country Planning,
Sibramania Nagar, Suramangalam,
Salem - 636 005.

...Respondents

(R2 & R3 impleaded, vide order dated 08.04.2022 made in
WMP.No.7669 of 2022 in W.P.No.1326 of 2019)

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Mandamus directing the Respondent University not to insist
on building plan approval by the Directorate of Town and Country Planning
Authority for granting continuance of provisional affiliation for the



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petitioner college from 2017-18 onwards.

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For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.Elyaraja Kandasamy
for M/s.Ramalingam Associates

ORDER

The petitioner has come up with this Writ petition seeking direction to the Respondent University not to insist upon building plan approval by the Directorate of Town and Country Planning Authority for granting continuance of provisional affiliation for the petitioner college from 2017-18 onwards.

2. The case of the petitioner is that the petitioner trust started Sri Bharani School of Nursing for Women in the year 2006-2007 with an intake of 20 seats. Thereafter, regularly approval was granted to the trust to run the school with additional intake and the petitioner trust was granted affiliation till 2016-2017. Thereafter, in order to grant affiliation for the academic year 2017-2018, inspection was undertaken at which point, the petitioner college was directed to submit building plan approval from the Directorate of Town



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and Country Planning. Pursuant to which, upon payment of requisite fees, plan approval was sought, which application was returned on the ground that, the petitioner college is in a planning area, however, the Government Order on which approval was sought for pertains to non planning area. Though the petitioner submitted the response along with its compliance report, till date, no affiliation has been granted and the building was constructed prior to 2011 at which point, the Panchayat/Municipality had granted approval and grant of approval by DTCP was not envisioned. Hence, this Writ petition.

3. Learned counsel for the petitioner submitted that, though the petitioner obtained approval from the Executive authority, however, the Executive authority of the Panchayat did not obtain prior permission from the Town and Country Planning Authority. Hence, it would suffice, if this Court permits the petitioner trust to once again approach the Executive Authority to obtain approval and ratification from the Town and Country Planning Authority in terms of the order of the Hon'ble Division Bench of this Court dated 06.07.2018 made in W.P.Nos.17236 of 2013 & 3622 of 2014, in the case of *The Tamil Nadu Unaided Polytechnic Management*



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Association Vs The Commissioner of Technical Education, reported in

2018 SCC Online Mad 2076 : (2018) 4 CTC 129 : (2018) 6 Mad LJ 1. For

better appreciation, the relevant portion of the said order is extracted hereunder:

"70. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the Deputy Director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:

(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and offer his advice if the constructions have complied with all necessary statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting his permission. This will apply only to those public buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.



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(b)Where any permission has been granted by the Executive Authority of the Panchayat without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall, subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after following the due process of law.

(c)In cases of partially constructed buildings, no completion certificate or other amenities be provided unless a favourable opinion is given by the Town Planning Authority.

(d) In all cases falling under (a) and (c), if the opinion of the Town Planning Authority is negative, then such authorities as are empowered to initiate action for illegal constructions shall initiate appropriate actions as per law. The power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities.

71. In conclusion, this Court holds that (a) neither Section 49 nor Section 111(3)(b) of the Tamil Nadu Town and Country Planning Act is unconstitutional; (b) Sec.111(3)(b) of the TCP Act, to the extent it relates to constructions made without



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permission under Sec.49 of the TCP Act after the commencement of Tamil Nadu Panchayat Building Rules, 1997, is declared inoperable, and accordingly, subject to the declaration/directions given in paragraphs 44 and 46, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed. "

4. On the above said contentions, heard counsel appearing for the respondents and perused the materials placed on record.

5. In view of the limited request made by the learned counsel for the petitioner, this Court, without expressing any opinion on the merits of the case, grants permission to the petitioner trust to approach the Executive Authority, who in turn will approach the Town and Country Planning Authority for obtaining necessary approval for the purpose of construction of the building in terms of the order of the Hon'ble Division Bench of this Court dated 06.07.2018.

6. With the above observations and direction, this Writ Petition stands disposed. No costs.



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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No



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To

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M.DHANDAPANI., J.

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