



W.P(MD)No.21138 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21138 of 2021

The Correspondent
R.C.Middle School
Lingampatti
Kovilpatti-628 502
Thoothukudi District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of Higher Education,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of School Education,
College Road, Chennai-600 006.
- 3.The Joint Director of School Education,
College Road, Chennai-600 006.
- 4.The Chief Educational Officer,
Thoothukudi District.
- 5.The District Educational Officer,
Kovilpatti, Thoothukudi District.
- 6.The Block Educational Officer,
Kovilpatti, Thoothukudi District.



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7. The District Educational Officer (Elementary)

Kovilpatti,

Thoothukudi District.

(R7 is impleaded vide order dated 05.01.2023

in W.M.P.(MD)No.22247 of 2022)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 4th respondent CEO in Na.Ka.No.6080/A3/2021, dated 11.11.2021, quash the same and further, direct the 4th respondent CEO to accord recognition forthwith to the High School Standards (9th and 10th) of the petitioner school from the academic year 2020-2021 in the proposed name of St.Mary's High School, Lingampatti, established at the new site viz., S.Nos.50-3D, 51-5A1, 51-5B2, 51-3D, 51-5C to 51-5J at Lingampatti, Kovilpatti, Thoothukudi District on the basis of the petitioner's applications dated 01.09.2020 (resubmitted on 17.08.2021).

For Petitioner : Mr.Mohamed Ashik Jamar

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. The writ petitioner is a middle school run by Roman Catholic Diocese of Palayamkottai. The school was initially established as primary school in the year 1950. It was upgraded into a middle school in the year 1966.



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The management wants to upgrade the school into a high school. The petitioner's request was rejected by the fourth respondent vide order dated 11.11.2021. Questioning the same, the present writ petition came to be filed.

3. When the matter was taken up on 26.11.2021, the following order was passed:-

“Heard, Mr.Issac Mohanlal, learned Senior Counsel for M/s. Issac Chambers on behalf of the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader, who had taken notice on behalf of all the respondents.

2.The issues raised in the writ petition may, hopefully with a little application of mind and bent of mind to actually address the issues, be examined in a positive manner.

3.The petitioner School seeks recognition owing to upgradation of a Middle School to a High School, which necessarily means classes for 9th and 10th have now been included in the curriculum of the School. The only issue which has necessitated the passing of the impugned order is that, a report had been obtained, which is found in reference No.2 of the impugned order pointing out various physical features to be rectified with respect to the School.

4.It is the contention of the learned Senior Counsel for the petitioner that they have been addressed. It is the contention of the learned Additional Government Pleader for the respondents that they have not been addressed.

5. It will be futile experiment on the part of this Court to go into the details thereof as the Court can never give a solution in this regard. Subjective satisfaction of the respondents can be done only on a physical verification and inspection of the School premises.

6.Mr.S.Shanmugavel, learned Additional Government Pleader, may get



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necessary instructions and also instruct the officials particularly, the fourth respondent to determine a particular date or a series of dates when a further inspection can be done over the premises of the petitioner's School to determine whether whatever issues had been pointed out in the reference No.2 of the impugned order have been addressed by the petitioner.

7.Call the matter once again on 06.12.2021 to inform about the probable date/dates for inspection.”

On 06.12.2021, the following order was passed:-

“On hearing the learned Senior Counsel on behalf of the petitioner and also the learned Additional Government Pleader, the date/17.12.2021 is determined as the particular date for inspection of the premises of the school of the petitioner and all issues which had been pointed out in reference No.2 of the impugned order may be examined and replies regarding compliance may also be given by the petitioner to the inspecting authority.

2.Let the report be filed before this Court on 21.12.2021.

3. The petitioner is permitted to make a visit to the office of the fourth respondent and if the fourth respondent is willing to allot time, even on an earlier date, such inspection can be conducted.

4. Call on 21.2.2021.”

Thereafter, the application for upgradation was resubmitted on 03.01.2023.

The petitioner had three fold request:-

(I) Upgradation

(II) Change of place

(III) Change of name.

4. The issue was not getting resolved in view of the stand taken by the



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respondents that applications must be submitted one after another. I directed the sixth respondent to forward the resubmitted application for upgradation through the impleaded seventh respondent to the fourth respondent. The fourth respondent was called upon to consider and pass appropriate order in this regard. On 25.01.2023, the Chief Educational Officer, Thoothukudi rejected the petitioner's request for upgradation. The District Educational Officer passed the consequential order. The Chief Educational Officer communicated the same. During the pendency of the writ petition, instead of calling upon the petitioner to amend the writ prayer, I decided to mold the relief myself. The petitioner was called upon to file an additional affidavit. The petitioner has filed an additional affidavit today.

5. The learned counsel appearing for the petitioner called upon this Court to take note of the averments set out in the original affidavit as well as the additional affidavit and also the materials enclosed in the typed set of papers and grant relief as prayed for. The respondents have filed counter affidavit and the learned Government Advocate took me through its contents.

6. The primary objection of the respondents is that the school management has not conducted itself in a proper manner. The petitioner is



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having recognition only upto 8th standard. Even before getting upgradation, the petitioner has been running classes 9th and 10th in the newly constructed building. In order to protect the interest of the students, the department had to make alternative arrangement to enable the students to write their public examination.

7. The learned Government Advocate wanted this Court to bear the conduct of the writ petitioner while considering the writ prayer. His other contention is that the new buildings are located at a distance of 1 ½ kilometers from the existing place. They are admittedly coming up on agricultural lands. G.O.(Ms)No.79, Housing and Urban Development (UD4(3)) Department, dated 04.05.2017 sets out the procedure to be followed for obtaining permission for use of the agricultural lands. He pointed out that the petitioner has not at all obtained any permission from the District Collector before putting up the buildings. He also would point out that the new buildings are located very close to the channel and that there are serious safety issues. He called upon this Court to dismiss the writ petition.

8. I carefully considered the rival contentions and went through the materials on record. I must straight away endorse the first contention advanced by the learned Government Advocate. The writ petitioner is run by a religious



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congregation. I can understand certain private corporate players starting institutions even without getting permission or recognition. Citing the plight of the students, they come to the writ Court at the last minute. The petitioner Management ought not to have admitted the students for classes 9th and 10th even before getting upgradation order from the department. I would expect the school management to have greater regard to rule of law atleast in future. Be that as it may, the fact remains that the school in question is an old institution. It has been functioning for more than 70 years. It is located in a backward rural region. It does not appear to be a money-making enterprise. All that the petitioner wants is to have a high school section in the newly constructed building. Of-course, the petitioner has not obtained permission for change of place from the District Collector. But then, this requirement was introduced only vide G.O.Ms.No.79, dated 04.05.2017.

9. The petitioner's counsel asserts that the new buildings were put up in the year 2017-2019. The learned counsel appearing for the petitioner placed strong reliance on Section 9 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It reads as follows:-

9.Minority school to be established without permission:- Any minority whether based on religion or language may establish and administer any private school without permission under Section 6.



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He also would contend that Section 9 is an echo and reflection of Article 30 of the Constitution of India. The said provision only states that the minority institution can establish and administer any private school without permission under Section 6. Section 6 of the Act is as follows:-

6. Grant of permission:- On receipt of an application under sub-section (1) of Section 5, the competent authority

(a) may, after considering the particulars contained in such application, grant or refuse to grant the permission; and

(b) shall communicate its decision to the applicant within a period of four months from the date of such receipt;

Provided that the permission shall not be refused under that section unless the applicant has been given an opportunity of making his representation:

Provided further that in case of refusal of the permission, the applicant shall be entitled to refund of one-half of the amount of the fee accompanying the application.

10. Of-course, when the statutory provision expressly permits the petitioner to administer any private school without permission under Section 6 of the Act, they are certainly entitled to do so. But then, the petitioner should not be expecting recognition from the department. This provision will have to be read in conjunction with Section 11 of the Act. Section 11 of the Act is as follows:-

11. Recognition of private school:- (1) on receipt of an application by-

(a) any private school in respect of which permission has been or is



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deemed to have been granted under Section 6; or

(b) any minority school;

the competent authority may, after satisfying itself, that proper arrangements have been made for the maintenance of academic standard in the school, that the provisions of this Act are complied with and that the prescribed conditions have been satisfied, grant a certificate recognising the private school for the purpose of this Act.

(2) The certificate under sub-section (1) shall be granted within such period as may be prescribed.

11. While a minority institution can very well establish an institution even without prior permission, recognition is not automatic. The authorities will have to satisfy themselves that all the requirement of law have been duly complied with. G.O.Ms.No.79 came into force in May 2017 itself. From Paragraph No.7 of the additional affidavit filed by the writ petitioner, it is seen that the building plan approval was obtained from the Block Development Officer only on 16.08.2017. In other words, permission has been obtained after issuance of G.O. The learned Government Advocate would contend that the substantial part of the construction took place in the year 2019. Therefore, it is too much on the part of the petitioner to invoke Section 9 in support of their demand.

12. Section 9 will have to be understood only in the light of Section 11 of the Act. If everything is clear and clean on the side of the petitioner, then,



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certainly, they can invoke Section 9 of the Act. When the petitioner has not adhered to the provisions of law in letter and spirit, then, Section 9 will not come their rescue. The photographs have been produced before the Court. It is so obvious that the petitioner has put up their buildings in the midst of agricultural lands. G.O.Ms.No.79, dated 04.05.2017 talks about prior concurrence of the Collector in the case of wet lands and obtain report from the Joint Director of Agriculture in case of dry lands. None of the procedures have been adhered to by the petitioner.

13. The learned counsel appearing for the petitioner however pleads certain mitigating circumstances. He points out that in the year 2014, the District Collector had put up a library building under “Namaku Naame” scheme in the same campus. The petitioner felt encouraged to develop the site only in view of the same. The learned counsel appearing for the petitioner also drew my attention to the proceedings issued by the Block Development Officer. It is not as if the buildings have been put up entirely in an unauthorized manner. It is not the case of the respondents that construction of the buildings or the compound wall would impede the free water flow in the adjacent channel. There is no certificate from the public works department indicating that there is any threat to the stability of the building. The fact remains that as on date, a



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pucca building has already been put up. If the said building is not put to use, it will not serve any purpose. It has already been noted that as regards the stability of the compound wall, no input has been received from the public works department. It is only the Education Department that has made such observation. The education department may not be competent to make such observation.

14. In this view of the matter, the order dated 25.01.2023 is set aside. The fourth respondent shall forward the petitioner's application to the third respondent. The third respondent is directed to issue proceedings upgrading the petitioner school from the middle school to the high school. The third respondent will also permit the petitioner to shift the high school section from the existing site to the petition mentioned new site. By permitting the petitioner to change the name of the school as “St. Mary's High School, Lingampatti”, no prejudice will be caused to the department. The petitioner is certainly entitled to change the name.

15. The Writ Petition is allowed. No costs.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

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