



W.A.(MD) No.198 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 25.06.2024

JUDGMENT PRONOUNCED ON : 29.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE L.VICTORIA GOWRI

W.A.(MD) No.198 of 2019

and C.M.P.(MD) No.1627 of 2019

- 1.The State Government,
Rep., by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Collectorate Campus,
Tirunelveli-627 009.
- 4.The District Educational Officer,
Opp. to Rethana Theatre,
Tirunelveli District-627 001.

... Appellants/Respondents



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Vs

The Correspondent,
Jothi Higher Secondary School,
V.R.Naidu Nagar, Solaiseri,
Reddiapatti, Sankarankoil-627 753.

... Respondent/Writ Petitioner

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 04.06.2018 in W.P.(MD) No.4941 of 2017.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent : Mr.K.Ragatheeshkumar
for M/s.Isaac Chamber

JUDGMENT

(Judgment of the Court was delivered by **N.SESHASAYEE, J.**)

This appeal is preferred by the respondents in W.P.(MD) No.4941 of 2017 which the respondent herein had filed for issuing a writ of mandamus to direct the appellants herein to sanction and release grant-in-aid towards the salary of teaching and no-teaching staff of Classes IX and X of the respondent-School which the respondent had commenced from the academic year 1986-1987. The department resisted it with Sec.14-A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (hereinafter referred to as



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'the Act') which provided that from and after the commencement of the academic year 1991-1992, no grant-in-aid would be given. When the matter came before the learned Single Judge, relying on the dictum of a Division Bench of this Court in ***G.Sahadevan Nair Vs Government of Tamil Nadu*** [(2008) 4 MLJ 289], directed that grant-in-aid be paid.

2. The facts that lead up to the institution of this appeal are now bullte-pointed as below:

- The respondent was running a Primary School, which was later upgraded into a Middle School. From the academic year 1986-1987, it has been granted temporary recognition to run a High School by the first appellant *vide* G.O.Ms.No.354, Education (R1) Department, dated 03.04.1992. The G.O. informs that temporary recognition for Class IX has been accorded to the respondent-school from the academic year 02.06.1986 to 31.12.1994, and for Class X it was granted from 01.06.1987 to 31.12.1994. Subsequently, permanent recognition has been accorded *vide* proceedings of the first appellant dated 04.06.2001.
- The G.O.Ms.No.354, dated 03.04.1992, also provided that the



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management of the respondent-school has conveyed its willingness to run Classes IX and X without any grant-in-aid forever. And it proceeded to state that the recognition was subject to the condition that grant-in-aid will not be paid for ever.

- Since the grant-in-aid was not given, the respondent filed W.P.(MD) No.4941 of 2017 some 25 years after the Government had passed G.O.Ms.No.354, dated 03.04.1992, seeking direction to the appellants to sanction the same.

3.1 As outlined earlier, the appellants resisted the prayer with Section 14-A of the Act, 1973, more particularly Section 14-A(c) thereof. This provision which commences with a *non obstante* clause reads that “*notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to inter alia any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement.*”



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3.2 The contention of the appellants was that even though it had granted recognition for Classes IX and X run by the respondent from the academic year 1986-1987, prior to 1991-1992 academic year, no grant-in-aid had been paid either to the teaching or non-teaching staff of Classes IX and X of the respondent-School. It was also canvassed by the appellants that the respondent had already given up its claim seeking payment of grant-in-aid, a fact expressively emphasized in G.O.Ms.No.354, dated 03.04.1992.

4. The learned Single Judge in his order, however refused to be persuaded by the stands of the appellants, and directed the grant be paid to the teaching and non-teaching staff of Classes IX and X of the respondent-School, based on the dictum of an earlier order of a Division Bench of this Court in **G.Sahadevan Nair's** case. The learned Single Judge proceeded to hold that inasmuch as the respondent-school was a minority educational institution and since recognition has been duly granted for its Classes IX and X, the school cannot said to have waived its right to grant-in-aid and directed payment of the same. This order is now under challenge.



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5. Heard both sides. The learned Additional Government Pleader made the following submissions:

(a) While the respondent has prayed for payment of grant, at no time it had addressed the Department seeking it. Indeed, the affidavit filed in support of the petition refers to communications dated 24.03.1995, 14.10.1995, 01.07.1996, 05.08.1997, 10.11.1998, 09.06.1999, 15.01.2000, 01.04.2003, 06.08.2006, 11.01.2008, 15.03.2010 and 01.07.2012, and in all of which the respondent has only required sanctioning 10 posts for Classes IX and X. This was followed by further representations dated 01.04.2015, 01.07.2016 and 05.01.2017. Not one representation of the respondent involves the issue of payment of grant to Classes IX and X. Therefore, the mandamus they have sought is something very alien to the representation they have made. In deed, there is no request made by the respondent to enforce any statutory duty or obligation by the appellants before the writ petition was laid for seeking grant-in-aid.

(b) In ***T.M.A.Pai Foundation***'s case, the Hon'ble Supreme Court has held that there is no vested right in the minority institution to seek grant-in-



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aid. Now, in the absence of any vested right, there is no statutory duty on the part of the appellants to pay the grant-in-aid.

(c) In ***G.Sahadevan Nair***'s case, the Division Bench of this Court has only underscored that the Government shall not discriminate between educational institution run by the majority community and the minority community in the matter of payment of grant-in-aid. But Section 14-A of the Act, 1973 does not discriminate between majority run school and minority run school in the matter of payment of grant-in-aid. In the absence of any statutory duty to pay grant-in-aid, the respondent cannot seek mandamus.

(d) Even going by ***G.Sahadevan Nair***'s case, unless the respondent demonstrates that it has been singled out for discriminatory treatment by the appellants in paying grant-in-aid, it cannot sustain its prayer for one.

(e) So far as the waiver of grant is concerned, it is not a fundamental right that the respondent cannot waive and after introduction of Section 14-A of the Act. There is not even a statutory right vested in it for the respondent to waive. This is specifically covered by ***G.Sahadevan***



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(f) So far as sanctioning about 10 posts for Classes IX and X is concerned, the Tamil Nadu Private Schools (Regulation) Act, 1973 only enables the Government to regulate the functioning of the school and this regulation merely involves what is the minimum teaching staff the school may have, taking into account the student-teacher ratio. Unless the Government pays grant, it is not the concern of the Government as to how many teachers a minority institution need to employ. As long as the school complies with the minimum posts required for its Classes IX and X, the appellants have no qualms. Therefore, the issue of sanctioning the post does not arise and this issue however is alien to the prayer made in the writ petition.

6. The argument of the learned counsel for the respondent was no more than supporting the line of reasoning of the learned single Judge.

7. This Court may not be able to subscribe to the views of the learned Single Judge. When the statute vide Sec.14-A says that there would be no payment



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of grant-in-aid to schools from the academic year 1991-1992, it did not make any discrimination against any schools – be it minority run schools or majority run schools. And, when it is an indisputable statement in law that no educational institution has a vested right to seek grant-in-aid, then the argument of the learned Additional Government Pleader that there is neither any right in the respondent to seek payment of grant-in-aid, nor is there a corresponding duty in the appellants to pay the same. Where there is discrimination, it provides a cause of action for the one who is discriminated for seeking parity in treatment as has been declared by the Hon'ble Supreme Court in ***T.M.A. Pai Foundation case*** [(1994) 2 SCC 734] and by a Division Bench of this Court in ***G. Sahadevan Nair case*** [(2014) SCC OnLine Mad 11623]. This view was also later confirmed by another Division Bench of this Court in ***State of Tamil Nadu & Others Vs The Correspondent, St. Joseph's Middle School, Eraviputhathurai*** [Rev.Application (MD) 180 of 2018, in W.A.(MD) 928 of 2017, dated 25.03.2021]. But whether one is discriminated is a question of fact, and that has to be established in each particular case.



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8. The respondent has not established: (a) that it has a statutory right to seek grant-in-aid; (b) that there is a corresponding statutory duty on the appellant to pay it; and/or (c) that it has been discriminated. Worse, it has not even required payment of grant in aid at any time till it filed the writ-petition which it instituted some 25 years after the accrual of its alleged cause for action. The respondent has embarked on an extravagant expedition in a speculative, if not adventurous litigation. This Court hardly could appreciate it. Here, it needs to be emphasised that when the game started – when the respondent approached the authorities concerned for obtaining recognition for its high school classes, it had taken a conscious decision not to run them on any grant that the government may pay, and accordingly it gave an undertaking not to claim it. It does not amount to waiver as the learned Single Judge was impressed upon, since waiver requires the existence of a pre-existing right. As has been stated a few time earlier, there is zero right in the respondent to seek payment of grant, and hence the it cannot waive something it does not have.



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9. In conclusion, this court finds every reason to interfere with the decision of the learned Single Judge, and accordingly it allows this appeal, sets aside the order in in W.P.(MD) No.4941 of 2017 dated 04.06.2018. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(L.V.G., J.)

.07.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

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State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.

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Pre-delivery Judgment made in
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