
(2013) 09 MAD CK 0174

In the Madras High Court

Case No : Writ Petition (MD) No. 14756 of 2013 and M.P. (MD) No's. 1 and 2 of 2013

Jeevana Schools

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 5 CTC 832

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; K. Chellapandian, Additional Advocate General assisted by S. Kumar, Additional Government Pleader, for the Respondent

Judgement

S. Nagamuthu, J.—The Petitioner-School was established by Jeevana Education Trust at Madurai in the year 1985. In 1985, Provisional Recognition was given to the Petitioner-School to start primary classes. In 1989, provisional recognition was given to start High School, both by the ICSE Board and by the State Board under matriculation curriculum. The Petitioner-School was also given provisional recognition to start Higher Secondary Classes in 1993 under the Matriculation Curriculum of the State Board. The provisional recognition of the Higher Secondary Course has been renewed periodically upto 2011. In the year 2008, the Petitioner-School opted to ICSE Board only for classes LKG to 10th standard and opted for State Board Syllabus for the Higher Secondary Education. Thus, the Petitioner-School imparts education upto X-standard in ICSE Syllabus and imparts Higher Secondary Education under the State Board Syllabus. The Petitioner made an Application to the 5th Respondent herein seeking renewal of the provisional recognition given for XI & XII standards. The said request of the Petitioner was rejected by the 5th Respondent, by his proceedings in Na. Ka. No. 4096/A4/2013, dated 22.8.2013, stating that as per G.O.Ms. No. 102, School Education U-2 Department, dated 26.7.2001, there is no scope to recognize a School that imparts education upto 10th standard under ICSE Board or some

other stream to impart higher secondary education under the State Board. Challenging the same, the Petitioner is before this Court with this Writ Petition.

2. In this Writ Petition, it is contended that though the Petitioner-School is offering education upto 10th standard under ICSE stream as well as under Matriculation Stream, the School was granted provisional recognition to offer +1 & +2 classes in the School under Tamil Nadu State Board Syllabus and thus the School is entitled for renewal of provisional recognition. In support of the said contention, the Petitioner relies on G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001. In the said G.O., the Government has directed that the Directorate of School Education shall not permit starting of Schools with only +1 & +2 classes, without having classes from 6th standard to 10th standard. The learned Counsel for the Petitioner would submit that the aim of the said G.O. is to discourage truncated Schools which are offering only +1 & +2 course alone, like tutorial institutions. In the case of the Petitioner, the Petitioner-School has got already classes upto 10th standard and therefore, according to the learned Counsel, the Petitioner-School is entitled for starting classes +1 & +2 under the Tamil Nadu State Syllabus.

3. Learned Counsel appearing for the Petitioner would further bring to my notice that a similar question arose before a learned Single Judge of this Court in W.P. (MD) No. 2473 of 2011. The Correspondent. The Little Kingdom Senior School, Vedapurai v. The State of Tamil Nadu and others. By Order dated 13.12.2011, the Writ Court directed the Joint Director of School Education (Higher Secondary), Chennai, to grant permission to the Petitioner therein to start +1 & +2 classes, though the said School was offering education upto 10th standard under a different stream. When the same was challenged by the Government in an Appeal in W.A. (MD) No. 118 of 2011, a Division Bench of this Court dismissed the said Appeal, thereby confirming the Order of the learned Single Judge. As against the same, the Government filed SLP before the Hon''ble Supreme Court in SLP (Civil) No. 23223 of 2012. By Order dated 22.2.2013, the Hon''ble Supreme Court dismissed the said Special Leave Petition. However, the Hon''ble Supreme Court has left the question of law open.

4. Relying on the above Judgment, since the Petitioner-School also stands in the same footing, the learned Counsel would submit that the Petitioner-School is also entitled to continue +1 & +2 classes under the Tamil Nadu State Board Syllabus.

5. The learned Additional Advocate General would, however, vehemently oppose this Writ Petition. Referring to the Counter Affidavit filed by 5th Respondent, the learned Additional Advocate General would submit that the validity of G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, cannot be gone into in this Writ Petition, because there is no challenge to the said Government Order. Further, he would submit that G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, upon which much reliance has been made by the learned Counsel for the Petitioner has got no Application to the Petitioner-School at all. The learned Additional Advocate General would further submit that

G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, is applicable only in respect of the Schools which are imparting education upto 10th standard under the Tamil Nadu State Board Syllabus and if Schools are imparting education upto 10th standard under different streams, like ICSE, CBSE, etc., then, those Schools are not entitled for starting +1 & +2 Classes under the Tamil Nadu State Board Syllabus. The learned Additional Advocate General would further submit that this issue was not considered by the Division Bench in the judgment in W.A. (MD) No. 118 of 2012 and therefore the Judgment of the Division Bench in the said Appeal cannot be taken as a precedent. The learned Additional Advocate General would further submit that as against the order of the Division Bench, already a Review has been filed, in which, in the Delay Condonation Petition, notice has been ordered to the School therein. Therefore, according to the learned Additional Advocate General, the Petitioner-School is not entitled for renewal to continue +1 & +2 classes under the Tamil Nadu State Board syllabus. In such view of the matter, according to the learned Additional Advocate General, the impugned order does not require any interference at the hands of this Court.

6. I have considered the above submissions.

7. G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, upon which much reliance has been made on either side, reads as follows:

8. A perusal of the above Government Order would make it very clear that the Government was conscious of the fact that there were mushroom growth of Schools in the State of Tamil Nadu offering +1 & +2 Courses alone. Since these Schools were showing mushroom growth, like private tutorial institutions, the Government thought it fit to curb the said practice of Schools having only +1 & +2 courses alone. With that good intention, the Government issued G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, directing that there shall be no Schools having truncated courses like +1 & +2 alone. The said G.O. further directs that in the event, if any School wants to start +1 & +2 courses, the School should simultaneously have classes from 6th standard to 10th standard. In respect of the Schools which are already running truncated courses like +1 & +2 alone, the G.O. directs them to start classes from 6th standard to 10th standard also within the prescribed time. Thus, the intention of the Government Order is inferable and it is of course a good intention.

9. Now coming to the Petitioner's School, already the School is imparting education upto 10th standard, of course it is under a different stream, namely ICSE stream. Now, the question is whether the Petitioner's School is entitled for continuing +1 & +2 courses in the very same School under Tamil Nadu State Board Syllabus.

10. The contention of the learned Additional Advocate General is that if the School is allowed to start +1 & +2 courses, these two classes will be like truncated course from the courses offered upto 10th standard, because both the

streams are different. In my considered opinion, the said argument of the learned Additional Advocate General may not be accepted for more than one reason. First of all, going by the intention of the Government, it should be ensured that there is no truncated course of +1 & +2 alone in any School. One can see that the Petitioner's School satisfies the requirement of G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, because the School has already got standards 6th to 10th standards. Thus, there is no truncation. The students, who are in the Petitioner's School upto 10th standard will quite naturally join +1 & +2 courses in the same School. Thus, there is continuous education in the very same School upto 12th standard, though the students study upto 10th standard under one stream and +1 & +2 under a different stream. Since there is continuation in imparting education from 6th standard to 10th standards under the very same School, it cannot be stated that because upto 12th standard the education is imparted under a different stream, the classes of +1 & +2 are truncated. I hold that it is a continuing education, commencing from 6th standard to 12th standard. Thus, the argument of the learned Additional Advocate General that allowing the Petitioner's School to continue +1 & +2 course alone under the Tamil Nadu State Board Syllabus will amount to allowing truncated courses does not persuade me.

11. As could be seen from the judgment of the Division Bench of this Court, referred to above, the School therein is also offering classes upto 10th standard under a different stream. It is not as though the learned Single Judge, who issued the direction therein to the Joint Director of School Education (Higher Secondary) to grant permission to start +1 & +2 courses, was not aware of that fact. The learned Single Judge allowed the Writ Petition directing the Joint Director to grant permission to the School to start +1 & +2 course under the Tamil Nadu State Board Syllabus, whereas upto 10th standard the School was offering education under a different stream. This order came to be confirmed by the Division Bench. On further appeal, the Hon'ble Supreme Court did not find any reason to interfere with the order of the Division Bench. Therefore, the Hon'ble Supreme Court dismissed the SLP itself. Thus, the Order of the Division has become final, wherein the Division Bench has directed the authorities concerned to grant permission to start +1 & +2 course in the School which is offering education upto 10th standard in a different stream.

12. The learned Additional Advocate General would submit that the Hon'ble Supreme Court has left open the question of law and therefore, still it is available for the Respondents to raise the question of law. When the learned Additional Advocate General was requested to formulate the question of law, if any available for the Respondents and place before the this Court for consideration, the learned Additional Advocate General initially submitted that the question of law is regarding the validity of G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001. In my considered opinion, that question is not at all before this Court, because the Petitioner has not challenged the validity of the said G.O. Nextly, the learned Additional Advocate General submitted that the

question of law is whether G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, is applicable to the Petitioner's School. This question, I have already discussed and answered relying on the Judgment of the Division Bench.

13. Further, the learned Additional Advocate General would submit that the Division Bench had no occasion to answer this question and therefore the said question is available to the Respondents to contend before this Court, Assuming for a moment that the said question can be examined by this Court, after considering the rival submissions in the earlier paragraphs, I have considered this question precisely and I have come to the conclusion that G.O.Ms. No. 102, School Education-U2 Department, dated 26.7.2001, is applicable to the Petitioner's School and the Petitioner is entitled for starting the classes +1 & +2, though the School is offering classes upto 10th standard under a different stream.

14. The learned Additional Advocate General would submit that continuing education means continuation of education under the same stream/syllabus. According to him, insofar as the Petitioner's School is concerned, upto 10th standard, the syllabus prescribed by ICSE is followed; whereas for +1 & +2 classes, the students will have to study under the State Board Syllabus. Referring to the position, the learned Additional Advocate General would submit that there is no continuation and that is why it should be held as a truncated course. This argument also does not persuade me for the simple reason that it is continuation in the angle of the students. A student, who joins 6th standard, is to study continuously in the same School upto 12th standard. Whether it is under the same syllabus or different syllabus makes no difference. In this regard, the learned Counsel for the Petitioner Mr. S. Srinivasa Raghavan would submit that though it is possible to the Petitioner's School to seek permission to start +1 & +2 course under ICSE syllabus, still the Petitioner's School is inclined to continue +1 & +2 course under the Tamil Nadu State Board Syllabus, because the students who study + 1 & +2 course in any stream, other than Tamil Nadu State Board Syllabus, are put to great hardship when they seek admission in professional courses in this State. He would further submit that because of this difficulty faced by the students, the Petitioner's School wants to mingle with the Tamil Nadu State Board Syllabus stream. This submission, in my considered opinion, is justifiable and the same deserves acceptance.

15. Choosing the study under the State Board Syllabus or different syllabus is the choice of the students. If the Petitioner's School starts/continues classes in +1 & +2 under the State Board stream, it is for the students to decide whether to continue in the same School or to shift to a different School. So long as there is rush from the students to join +1 & +2 in the same School, I do not understand why the State Board should raise hurdle in this regard. Therefore, this last leg of argument advanced by the learned Additional Advocate General is also rejected. In view of all the above, the Writ Petition is allowed. The impugned order passed by the 5th Respondent declining renewal of provisional recognition to the Petitioner's School to continue classes in +1 & +2 is set aside and the 5th

Respondent is directed to grant renewal to the Petitioner's School, without any delay, to continue +1 & +2 courses under the Tamil Nadu State Board Syllabus, within a period of four weeks from the date of receipt of a copy of this Order. No costs. Connected M.P. (MD) Nos. 1 & 2 of 2013 are closed.