

(2015) 04 MAD CK 0229

In the Madras High Court

Case No : Writ Appeal No. 658 of 2015 & M.P. No. 1 of 2015

Kanchi Kamakoti Peetathipathi Jayendra Saraswathy Sankara
Matriculation School

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 04 MAD CK 0229

Hon'ble Judges : V. Dhanapalan, J; R.S. Ramanathan, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for the Appellant; R. Rajeswaran, Spl. G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.

1. We have heard Mr.N.G.R. Prasad, learned counsel for the appellant and Mr.R.Rajeswaran, learned Special Government Pleader who took notice for the respondents. By consent of the learned counsel appearing for the parties, the Writ Appeal itself is taken up for final disposal.

2. This Writ Appeal is directed against the interim order, dated 16.04.2015 passed by the learned single Judge in M.P. No. 1 of 2015 in W.P. No. 9817 of 2015.

3. The appellant/writ petitioner filed the Writ Petition for issuance of a Writ of Declaration declaring that G.O.(2D).No. 48, dated 21.07.2004 issued by the first respondent, is null and void, as it is ultra-vires the provisions of the Constitution of India. Pending the said Writ Petition, the appellant- School filed miscellaneous petition in M.P. No. 1 of 2015 praying for interim direction to direct the respondents to permit them to invite applications for students commencing Sixth Grade for the academic year 2015-2016. The Writ Court, after hearing the learned counsel appearing for the parties, came to the conclusion that when the

impugnancy of the said G.O. is made in the Writ Petition, unless the same is set aside in the manner known to law, the interim direction sought for by the writ petitioner-School (appellant herein) would amount to granting the relief in the main Writ Petition itself, and therefore, the miscellaneous petition was dismissed by the impugned order dated 16.4.2015, against which, the writ petitioner-School has filed this Writ Appeal.

4. In this context, it is worthwhile to mention that the Government, by G.O. (2D).No. 48, School Education (X2) Department, dated 21.07.2004, has accepted the recommendations of the Committee constituted for fee structure, for indicating the minimum infrastructural facilities and also for specifying the salary scales for the teachers of the matriculation schools and matriculation higher secondary schools. Apart from going into these three issues and giving its recommendations, the Committee also recommended for strengthening of the Directorate of Matriculation Schools and also recommended for making suitable provision in the Code of Regulations for Matriculation Schools calling upon the permission granting authority to first satisfy itself that there is a felt-need for a matriculation school in the proposed locality, vis-a-vis a similar one or more than one already existing in the same locality or in its neighbourhood. The Government, after examination of the report of the said Committee and its recommendations/suggestions, passed the said G.O. specifying the details of fee structure, minimum infrastructural facilities indicating the land area, school buildings, class rooms and furniture, library, laboratory, play grounds, sanitary facility and also gave instructions on the salary of teachers and also stated that the recommendation with regard to the strengthening of the Directorate of Matriculation Schools would be considered separately at the time of reorganising the administrative set up of the entire School Education Department and further instructed the Director of Matriculation Schools to ensure reasonable distance between matriculation schools in the urban areas while recognising new matriculation schools so that there is no unhealthy competition among the schools and in respect of rural areas, a distance of at least 1 km. shall be maintained between two matriculation schools. The main challenge by the appellant is with regard to the prescription of 3 acres of minimum land area for the matriculation schools, as a condition specified in the said G.O. for granting recognition.

5. Learned counsel for the appellant-School mainly contended that the urgency involved in the matter as to the admission of the students for the academic year 2015-2016, has to be considered in the light of what is required by the appellant-institution to keep the minimum of land area for establishment of the matriculation school as a condition for grant of recognition and therefore, the learned counsel gave comparison of what is the position with regard to the Corporation Schools in the urban areas and District Headquarters' Schools in the rural areas, and hence, prescribing the said condition of 3 acres of minimum land area, in the said G.O. is contrary to the principles in prescribing the required land area for construction of the Schools, that too upto the level of 6th Standard and

the learned single Judge failed to consider the said aspect of the matter for grant of interim direction as sought for by the appellant-School.

6. The learned Special Government Pleader appearing for the respondents, after going through the material documents, submitted that the interim direction sought for by the appellant, if allowed, would tantamount to allowing the main Writ Petition itself, as the main contention raised therein relates to the minimum area of the land for the matriculation schools as prescribed in the said G.O. He also submitted that normally, the Writ Appeal would not lie against the interim order of this nature.

7. We have heard the learned counsel appearing for the parties and perused the material documents available on record.

8. It is seen that the appellant had challenged the said G.O. in respect of the instructions issued by the Government based on the recommendations of the said Committee with regard to functioning of matriculation schools, etc. In the said G.O., the area earmarked as minimum land area for the rural areas in respect of the recognition of the matriculation schools is 3 acres. Aggrieved by the said condition, the appellant raised a plea before the Writ Court seeking for issuance of a Writ of Declaration as stated above, with interim direction petition.

9. On a perusal of the said G.O., and the facts and circumstances of this case, it is seen that the plea of the appellant-School before the Writ Court is that they are one of the recognised Schools imparting quality education to the poor and downtrodden hailing from rural areas and the prescription of minimum 3 acres area of land, is causing hardship and difficulty and they are not able to commence classes for 6th Standard, and hence, pending Writ Petition, they have sought for interim direction.

10. Resisting the said claim, the respondents through the learned Government Advocate therein, informed the Writ Court that unless the said G.O. is set aside in the manner known to law, there cannot be any interim direction, which would amount to allowing the Writ Petition itself.

11. Normally, as against the interim order, this Court would not entertain the Writ Appeal, unless there is a compelling circumstance, like violation of rule of law and if the balance of convenience and prima-facie case, if in favour of the appellant, have not been considered by the Writ Court.

12. In this case, the relief sought for is as to the challenge to the G.O. in respect of the prescription of the land area for matriculation schools in rural areas, which is a factor to be considered in the main Writ Petition on consideration and examination of materials available on record and upon hearing the arguments of the learned counsel for the parties, and pending the Writ Petition, the grant of interim direction to them would ultimately amount to allowing the main relief itself. Therefore, we are not satisfied with the arguments advanced by the learned counsel for the appellant that the relief sought for in the miscellaneous

petition for interim direction and the relief sought for in the main Writ Petition is not one and the same.

13. Accordingly, we dismiss this Writ Appeal. However, considering the urgency involved in the matter as to the admission of students to the academic year 2015-2016 and that keeping the Writ Petition pending would cause serious prejudice to the appellant-School, we request the Writ Court to take up the Writ Petition in W.P. No. 9817 of 2015 and the single Judge is requested to take up the said Writ Petition on top priority basis and dispose of the same before the closure of the Courts for summer vacation 2015. No costs. The Miscellaneous Petition is closed.