

(1991) 04 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 3457 of 1990

S. Deivasigamani, Correspondent CBI Bishop Sam Ponnisah High School, Gnanodayam Periapoolambi post APPELLANT

Vs

The Director of School Education, Madras-6 and Others RESPONDENT

Date of Decision : 08-04-1991

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (1991) 04 MAD CK 0069

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : G. Rajagopalan, for the Appellant; K. Balasubramanian, Government Advocate, for the Respondent

Judgement

S. Ramalingam, J.—Admittedly the petitioner is a minority educational institution protected by Art. 30 of the Constitution of India. It was

started as an elementary school with Standards I to V in the year 1936 and in the year 1945, it secured recognition for Standards VI to VIII also.

For more than 40 years, this has been run as a recognised middle school with Standards I to VIII. In the year 1986, the petitioner applied to the

Joint Director of School Education (Secondary Education) (second respondent) for the grant of recognition to Standards IX and X Under R.4 of

the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 (Hereinafter referred to as "the Rules"), the application for

recognition should be disposed of within a period of two months. In the instant case, no orders were made for nearly two years. By orders dated

13.2.1988, the second respondent rejected the application of the petitioner on the following grounds:

- (1) There is inadequacy of place for the students;
- (2) There is inadequacy of sanitary facilities for students and teachers;
- (3) There are insufficient equipments;
- (4) There is no laboratory;
- (5) Inadequate teaching equipments and implements; and
- (6) There is no library with books.

2. Aggrieved by the above order, the petitioner filed an appeal before the Director of School Education-first respondent, in which in paragraph

No. 5 it has stated that all the defects pointed out in the order of the second respondent have been rectified. This appeal which was filed on

30.5.1988 was dismissed by the impugned order passed more than six months later on 11.1.1989. The second respondent has stated in his order

as follows:

- (1) The post of headmaster is vacant from 1-9-1988;
- (2) Physical Training Inspector has not been appointed;
- (3) Adequate staff has not been appointed;
- (4) The certificates and other credentials of the teaching staff have not been made available for inspection;
- (5) There is no separate library with books;
- (6) Playground requires improvement;
- (7) There is no enough space for students;
- (8) Sanitary facilities for students and teachers are inadequate; and
- (9) There are no sufficient equipments.

The validity of this order of the first respondent is challenged on the following grounds:

- (1) The Rules, especially R.4 dealing with recognition confer unguided and arbitrary powers upon the authority to grant or refuse recognition,

according to the yardsticks of its own, there being no guidelines regarding what is meant by "adequacy";

- (2) In the appeal memo, the petitioner had clearly stated that all the defects pointed out in the order of the Joint Director have been rectified. But,

the Director of School Education has not chosen to make an inspection of the school to verify whether the claim of the petitioner is correct or not;

and

(3) In other similar cases, the Director after taking into consideration the interests of the students, who are studying in minority schools, which could

be started without the grant of prior permission, has posed orders granting temporary recognition, subject to fulfilment of certain conditions

prescribed for the grant of recognition, (vide orders of the Director in Pa. Mu. No 186594/G2/88 dated 21-6-1988).

3. A perusal of the Rules leaves no doubt in the minds of this Court that the rules have been framed in such a manner to vest arbitrary and

uncanalised power in the authorities, who are empowered to grant recognition. For example, any application for recognition can be rejected if (i)

the amenities to teachers and pupils are not adequate; and (ii) the equipments, buildings, laboratory, library and playground and other facilities for

imparting instruction are inadequate. What exactly is meant by adequate or adequacy has not been spelt out by the yardsticks adopted, which may

vary with the length of the Chancellor's foot. The competent authority may hold in one case that the facilities are adequate and in another case, be

may hold that the facilities are not adequate. In the instant case, from the order of the Joint Director, it is clear that he has used the expressions

employed in the Rules and he has merely repeated those expressions by saying that the facilities are not adequate. In what manner and why he says

that these facilities are not adequate has not been spelt out in the order of the Joint Director; nor is it known that when the petitioner has made an

express statement that the facilities were provided and the alleged defects had been rectified, why the Director once again used the expressions as

are found in the Rules to say that the facilities are not adequate. In such circumstances, there can be no doubt that the impugned orders dated

11.1.1989 have to be quashed.

4. It is brought to the notice of this Court that executive instructions have been given subsequently and containing in G.O. Ms. No. 536, Education

dated 17.5.1989. If for any reason, those executive instructions are required any modification or amendment, steps should be taken expeditiously

in that regard so that the persons like the petitioner, who seek recognition in the hands of the Government would be in a position to satisfy the

authorities that the prescriptions and the yardsticks are adequately met by the

facilities provided in their respective schools. When the same Director had passed orders in Pa. Mu. No. 186594/G2/88 dated 21.6.1988, granting temporary recognition, there is no reason why the petitioner school should be discriminated against. In the application, made by the petitioner-School for grant of recognition, which has been pending for inordinate length of time, the Director of School Education has not chosen to make a personal inspection of the petitioner-School; nor does it appear on the face of the records that he had directed any officer subordinate to him to inspect the petitioner-School, to verify whether the facilities are adequate or not. It is seen from the papers filed by the petitioner, that the Health Inspector. Valathi, has certified that the sanitary facilities, ventilation and the state of the building are all adequate. This certificate has been countersigned by the District Health Officer, Villupuram, on 25-11-1986. The Junior Engineer, Valathi had issued a certificate on 22-12-1986, which has been countersigned by the Assistant Executive Engineer, Tindivanam Sub Division on 24-12-1986, regarding the structural soundness of the school building. The petitioner has also produced a list of books numbering to as many as 225, available in the library of the School. It had also given the stock position of the equipments available in the laboratory as on 2-7-1986. These are all matters on which the Director of School Education should have applied his mind before rejecting the application of the petitioner for grant of recognition. For the foregoing reasons, the impugned orders dated 11-1-1989 is quashed. The appeal filed by the petitioner before the Director of School Education will stand restored to his file and he shall dispose of the same afresh in accordance with law on or before 30-6-1991 and in the meanwhile, it is for the Director of School Education to issue suitable directions to enable the students studying in IX and X Standards in the petitioner-School to take up the examinations, as was done by the Director himself in Pa. Mu. No. 186594/G2/88 dated 21-6-1988. There will be no order as to costs.