

(2017) 04 MAD CK 0282
In the Madras High Court
Case No : 8895 of 2016

The Correspondent

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Companies Act, 1956, Section 25 -
Tamil Nadu Recognised Private Schools (Regula

Citation : (2017) 04 MAD CK 0282

Hon'ble Judges : V. Pa Rthiban

Bench : SINGLE BENCH

Advocate : V. Pa Rthiban

Judgement

1. The Petitioner has approached this Court invoking Article 226 of the Constitution of India seeking quashment of the orders issued by the 4th respondent District Elementary Educational Officer in Na.Ka.No.2537/A3/2013 dated 15.06.2015 and further to direct the 3rd respondent Chief Educational Officer to grant recognition forthwith to the up granted Middle School section of the petitioner's school viz., "St.Thomas M.S.C. Middle School, Mankuzhi".

2. The facts and circumstances which necessitated filing of the present writ petition are stated hereunder: (a) The petitioner school is administered by Malankara Syrian Catholic Diocese of Marthandam (hereinafter referred to as "MSC Diocese of Marthandam"). It is a Society registered in the name and style of "Managing Board of the Malankara Syrian Catholic Schools of the Arch Diocese of Tiruvandrum in Kanyakumari District. MSA Diocese of Marthandam is running several schools for promoting education to the Malankara Syrian Catholic Population of the Kanyakumar District. All the schools are recognized and aided Minority Educational Institutions. As far as the petitioner school is concerned, it originally offered education from standards 1 to 5. The medium of instruction is both Tamil and Malayalam. The school was established in the year 1978 and the

primary school was recognized in terms of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as Act).

(b) According to the petitioner, there was a constant demand from the local population for upgrading the school from primary school to middle school and for starting standards VI to VIII. According to the petitioner, the school is located in 31/4 acres and the land was owned by the MSC Diocese of Marthandam, which is the educational agency of the school. The school has sufficient playground and all facilities have been provided. Therefore, the school in order to cater to the needs of the local public, decided to upgrade the school to middle school and to start Sections VI to VIII from the academic year 2002-2003. In the circumstances, as per the requirement of the Act, 1973, the petitioner school submitted an application/statement on 27.02.2002 to the respondents containing all particulars for grant of recognition to the middle school sections. According to the petitioner, the 4th respondent without forwarding the proposal to the competent authority, namely, the third respondent Chief Educational Officer, returned the proposal after 16 months vide proceedings dated December, 2003 pointing out certain deficiencies and directing re-submission of the proposal after rectifying those deficiencies. According to the petitioner, the deficiencies pointed out were rectified and renewed their request for upgradation of the school into middle school on 05.03.2004.

(c) According to the petitioner, even though every deficiency pointed was rectified by the petitioner, the fourth and fifth respondents periodically were returning the applications under one pretext or the other and pointed out new deficiencies in piecemeal insisting on the school to rectify those defects. Whenever the application has been returned, the same were duly complied with by the school and resubmitted. The issue was going back and forth between the school authorities and the petitioner for several years and according to the petitioner school whenever deficiencies were pointed out the same were duly complied with but still for some such reasons the authorities concerned were not inclined to dispose of their applications finally and favourably.

(d) While matter stood thus, finally the second respondent had directed the school to comply with certain deficiencies, among them condition No.3, directs the school to deposit endowment amount vide proceedings in Na.Ka.No. 11306/H2/2014 and communicated the same to the petitioner by the third respondent in proceedings Na.Ka.No.2537/A3/2013 dated 24.11.2014. In response to the return of the application by the second respondent, the school submitted a detailed reply complying with all the deficiencies by letter dated 22.12.2014 and also paid a sum of Rs.25,000/- by way of Demand Draft dated 15.06.2013. While so, the school was dismayed and surprised to note that the fourth respondent without forwarding the proposal to the competent authority, namely, third respondent returned the application vide proceedings dated 15.06.2015, directing the school to produce certain documents.

(e) The impugned notice issued by the 4th respondent is extracted below:

"i) The school property is registered in name of St.Joseph's Catholic Church instead of school name.

ii) No document is produced in relation to the play ground and the Assistant Elementary Educational Officer has not produced his plan to that effect.

Iii) The endowment fund sum of Rs.25,000/- only is paid instead sum of Rs.50,000/-.

iv) The school building license under the Survey No.7/2 should be registered in the name of the school."

(f) In response to the above demand of the fourth respondent, the school appears to have submitted applications to the second respondent Director and the first respondent on 06.07.2015 and 09.07.2015 respectively. The explanation offered by the School is extracted below:

"i) The School "St.Thomas M.S.C. Middle School" is not a legal entity as such and it has not been incorporated/registered under any Law.

ii) An Educational Institution which is not a legal entity cannot hold any property in its name.

iii) The Educational Agency of the school namely, "MSC Diocese of Marthandam" is a Charitable Institution, which is a legal entity registered under Societies Act 1955 and it is competent to hold properties in its name for the purpose of its school. iv) The school as well as the properties attached to it (total 3 - acres acres) are properties / arms of the Society.

v) The Society owns the above school-property and it is not in the name of any individual.

vi) The foundation has earmarked the above 3 1/4 acres of land for the exclusive use of the school.

vii) It is not require to transfer any land in the name of the school by way of sale or lease or rent etc. On the other hand, it only requires a minimum land area viz., 3 1/4acres of land by the school (3 acres with respect of the schools in rural area and the petitioner's school situates in a rural area).

viii) Requirement of creating the Endowment of Rs.50,000/- creates an unreasonable restriction on the fundamental right of the petitioner institution which is a Minority Educational Institution. It is causing great financial strain on the right of establishing an institution. The petitioner institution being set up by a charitable Society, the said requirements puts a heavy financial burden on the institution."

(g) It is also the case of the petitioner that though they have no legal obligation to deposit any amount towards endowment fund because of the undue pressure exercised by the educational authorities the school also made payment of the amount, by way of payment of additional Rs.25,000/- towards endowment funds

on 06.07.2015. In spite of the explanation offered by the school management, there appears to be no action forthcoming from the authorities concerned towards grant of recognition to the middle section of the petitioner's school in response to the application submitted by the petitioner way back in 2002.

(h) According to the petitioner, all the deficiencies which were pointed out by the respondents have been duly complied with and the latest deficiencies which were pointed out were duly answered vide their explanations dated 06.07.2015 and 09.07.2015 and such being the case, the inaction on the part of the authorities concerned in taking a decision in the matter has put the middle school to great prejudice and hardship. In the circumstances, the petitioner is now constrained to approach this Court seeking the relief as stated supra.

3. Mr. Isaac Mohanlal, the learned Senior Counsel appearing for the petitioner would submit that the latest deficiencies pointed out by the educational authorities cannot be a ground for rejection of the request of the school for recognition of the middle school. According to the learned Senior Counsel, the school is not a juristic person and therefore, it cannot own any property on its own, however, the educational agency who is administering the and running the school is owning the property and in which property alone the school is situated. Therefore, there cannot be any impediment in law for grant of recognition and in any event that cannot be a reason by which the educational authorities can reject the request of the petitioner.

4. In support of his contention Mr. Isaac Mohanlal, the learned Senior Counsel would rely upon the decision of this Court dated 24.01.2013 made in W. P.(MD) No. 12933 of 2012. In the said decision, a learned Judge of this Court has clearly held that the school is not actually a juristic person and only the educational agency is running the school. In paragraph 3 of the order the learned Judge has held thus: "3. There is no dispute about the fact that School is run by the petitioner, which is incorporated as a Company under Section 25(A) of the Companies Act, 1956. Paragraph Nos. 4 and 16 of the counter affidavit filed by the Director of Matriculation Schools also confirm the fact that the School has adequate provision of land. The land is actually owned by the petitioner, which is a Company incorporated under Section 25(A) of the Companies Act, 1956. Thinking that the school is a different entity, the Director of Matriculation Schools seems to have entertained a doubt that the school cannot claim recognition unless they get a registered lease deed in their favour. But, such a stand cannot be sustained in law. The school is actually not a juristic person. The petitioner is the educational agency running the school."

5. The learned Senior Counsel also relied on another decision passed by this Court in W. P.(MD) No. 22339 of 2013 dated 16.02.2015 in and by which the learned Judge has held that the educational authority cannot insist on registering the property in the name of the school either by lease or otherwise. For better appreciation of the legal issue paragraphs 7 to 9 of the order are extracted below: "7. The short issue which fell for consideration of this

Court is as to whether the respondents 5 and 6 are justified in refusing to extend recognition granted to the petitioner/school solely on the ground that the property does not stand in the name of the petitioner/school. Admittedly, the land has been in the name of the educational agency, which has established and is administering the petitioner/school. The petitioner/school has been recognised as a minority institution and granted protection under the provisions of the Act and Rules and as envisaged under Article 30(1) of the Constitution of India. Some of the identical circumstances arose for consideration before the Court in *M/s. Subbulakshmi Lakshmi Pathy Foundation's* case (cited supra), wherein also the school was run by an educational agency which is registered as a company u/s 25 of the Companies Act. The Department insisted that the School should own the land. However, the contention was not accepted by this Court and it was pointed out that insofar as the petitioner therein, there is no allegation that in the same campus, showing the same property, the same educational agency is running two or more schools. So long as there is no such finding and so long as it is admitted that only one school is located in the campus having land extent adequate to run a school and once it is found that the property is owned by the educational agency, the requirement of execution of lease deed in favour of the school or committee does not arise.

8.The decision rendered by the Madurai Bench of this Court in the decision cited supra is squarely applicable to the case on hand. In the instant case also, there is no allegation that in the extent of land, the educational agency has established more than one school. In such circumstances, the question of insisting upon the execution of lease deed in favour of the institution as called for in clause (1) of the impugned order does not arise.

9.Accordingly, the writ petition is allowed and the impugned order passed by the 5th respondent District Educational Officer, in O.Mu.No.9896/Aa4/2011 dated 18.12.2012 insofar as clause (1) is quashed. The respondents are directed to consider the petitioner's application for renewal of recognition in accordance with law, if it is found to be otherwise in order and pass orders on merits within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."

The learned Senior Counsel appearing for the petitioner would submit that in view of the settled legal position, the impugned order insisting on the requirements of registration of the property in the name of the school cannot be valid in law and the same will have to be discountenanced.

6. From the above, it is seen that it is enough the educational agency owns a property and the property need not be in the name of the school which of course is not a juristic person as held by the learned Judge in one of the above decisions.

7. As regards the demand of endowment fund in order to process the application for consideration, the learned Senior Counsel would submit that the demand is *per se* illegal in view of the fact that the Rule under which such a demand is

made is not applicable to the minority institutions. He relied on the decision of the decision of this Court reported in 2 0 0 0 (II) C T C 2 3 8 in the matter of S t . J o s e p h ' s H i g h e r S e c o n d a r y S c h o o l v. S t a t e in and by which the learned Judge has held that demanding and creation of endowment in respect of Minority Institution as condition precedent for recognition is invalid since Rule 9 (2)(e) of Tamil Nadu Recognition of Private Schools (Regulation) Rules, 1974 is not applicable to the minority institutions. Such a demand for the endowment fund is found to be illegal. The same view has been taken by another learned Judge in the decision reported in 1 9 9 9 (I) C T C 1 2 1 in the matter of S t . I g n a t i u s H i g h e r S e c o n d a r y S c h o o l v. D i r e c t o r o f S c h o o l E d u c a t i o n , wherein the leaned Judge has clearly held that the demand for endowment fund for Minority Institutions as pre-condition amounts to unreasonable restriction. The learned Judge has followed the earlier order decision of the Division Bench of this Court reported in 1 9 9 1 W. L. R. 4 1 9 in the matter of M a d r a s E n g l i s h B a p t i s t C h u r c h , M a d r a s - 3 , r e p. by t h e M i n i s t e r & C h a i r m a n , B o a r d o f T r u s t e e , J . A. L . B a y n e s v. S t a t e o f T a m i l N a d u and held that such a demand as a matter of pre-condition is "an inroad into the minority"s right to administer the institution." In the above circumstances, the learned Senior Counsel would submit that the impugned order dated 15.06.2015, calling upon the petitioner to fulfill the requirements as contained in the said order is without any justification and cannot stand the test of judicial scrutiny. In the circumstances, the learned Senior Counsel would pray for setting aside the impugned order passed by the fourth respondent with a consequential relief.

8. On behalf of the respondents Mr.M.Alagathevan, the learned Special Government Pleader appeared and a counter affidavit has also been filed.

9. The learned Special Government Pleader has taken this Court through the averments contained in the counter affidavit, particularly paragraphs 4 and 9. According to the learned Special Government Pleader, the petitioner school has been running with middle sections with Standards VI to VIII since 2002 without any permission from the authorities concerned as mandated under Section 4 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. In the absence of any permission it is not open to the school to commence the classes and therefore, no recognition can be granted post facto to the school. The learned Special Government Pleader further contended that after coming into force of the Right of Children to Free and Compulsory Education Act, 2009, no school can be established without recognition by fulfilling the norms and standards specified in Sections 18 and 19 the Act. Therefore, he emphasized that without fulfilling the norms and standards specified under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 it is not open to the petitioner school to demand recognition for the middle sections and therefore, the fourth respondent has rightly rejected their application for recognition.

10. Per contra, the learned Senior Counsel Mr. Isaac Mohanlal appearing for the petitioner would submit that as regards Section 4 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, the same is not applicable to the Minority Institutions as per Section 9 of the Act. Section 9 of the Act 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."

From the above, it is clear that the Act itself has provided for exemption for the minority schools. Therefore, starting of the middle school sections without permission cannot be the reason for rejection of claim for recognition. Moreover, the learned Senior Counsel would also submit that as regards the submissions of the learned Special Government Pleader regarding the fulfillment of norms with reference to Right of Children to Free and Compulsory Education Act, 2009 (RTE) is concerned, the Act itself came into being subsequently in 2009, whereas the application for recognition was made as early as in the year 2002. Moreover, in this regard, the learned Senior Counsel would rely on the decision of the Constitution Bench of the Hon'ble Supreme Court reported in (2 0 1 4) 8 S C C 1 in the matter of Pr a m a t i E d u c a t i o n a l & C u l t u r a l T r u s t v. U n i o n o f I n d i a , wherein the Hon'ble Supreme Court has held that the Right of Children to Free and Compulsory Education Act, 2009 is not applicable to minority schools as it would offend Article 30 of the Constitution of India as the same is ultra vires the Constitution. Therefore, the learned Senior Counsel would submit that in all fours, the said submissions made by the learned Special Government Pleader cannot be countenanced in law and the same is liable to be rejected.

11. I have given my anxious consideration to the submissions made by the learned counsel appearing for the parties and perused the materials and pleadings.

12. The deficiencies which were pointed out by the 4th respondent in the impugned proceedings dated 15.06.2015 cannot be considered as valid requirements in view of the settled legal positions as contended by the learned Senior Counsel appearing for the petitioner. The above cited decisions in regard to both ownership of the property and the endowment fund are very clear without any ambiguity and also the Rules which grant exemption to the minority institutions would fortify the contentions raised by the learned Senior Counsel appearing for the petitioner. In that view of the matter, it is to be held that the requirements that were pointed out in the impugned proceedings dated 15.06.2015 were invalid and cannot be sustained in law.

13. Moreover, the records would disclose that the authorities have been deliberately or otherwise dragging the matter on one pretext or the other in acceding to the legitimate request of the petitioner school towards grant of recognition of middle sections. In spite of the eagerness exhibited on the part of petitioner school in rectifying whatever and whenever deficiencies pointed out by the authorities over the years, but the authorities for some reasons were not

inclined to give quietus to the issue. They kept raking upon new deficiencies in piecemeal and in instalments every now and then. Such an action on the part of the authorities concerned did not serve any public interest, particularly when the school has come forward to upgrade from primary section to middle section in order to cater to the educational needs of the local population.

14. Moreover, it has also to be seen that the averments contained in the counter affidavit filed on behalf of the respondents raising new objections were never found in the order of objection as contained in the impugned order dated 15.06.2015. Though even by the very application provisions of the Act, namely, Section 9 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 provides for exemption to the minority schools from getting any permission for appointment and administration of any school, but still counter statement insisting the petitioner school as to its non-compliance of Section 4 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 cannot be appreciated as a valid submission. Further, the averments in counter affidavit regarding fulfilling of certain norms as per RTE Act which came into force subsequently in 2009 and also without reference to the Constitution Bench decision which held that RTE Act will not be applicable to the minority institutions are misconceived and without any legal basis. In view of the above narrative, it appears the educational authorities have some axe to grind as against the petitioner institution and therefore, despite the eligibility of the school for grant of sanction to the middle school sections, the respondents have adopted dilatory tactics and delaying the issue for more than a decade from reaching to its logical end. The public authorities, who are vested with power under a statute ought not to exercise their power in order to scuttle public interest for serving their own narrow ends.

15. In view of the above circumstances, I am of the considered view that the impugned rejection order passed in Na.Ka.No.2537/A3/2013 dated 15.06.2015 suffers from the vice of illegality, as the same is unreasonable, arbitrary and unjust and therefore, I have no hesitation in setting aside the impugned order.

16. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the third respondent or any other competent authority is directed to grant recognition forthwith to the upgraded middle school, i.e., Standards VI to VIII of the petitioner, without insisting the requirement found in the order dated 15.06.2015. The said order has to be passed within eight weeks from the date of receipt of a copy of this order and the same shall be communicated to the petitioner. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.