
(2015) 08 MAD CK 0055

In the Madras High Court

Case No : Writ Appeal (MD) No. 911 of 2015 and M.P. (MD) No. 2 of 2015

The Director of Matriculation Schools

APPELLANT

Vs

Kaviyan School

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2015) 6 CTC 737 : (2015) 5 LW 101

Hon'ble Judges : R. Sudhakar and V.M. Velumani, JJ.

Bench : Division Bench

Advocate : B. Pugalendhi, Spl. Govt. Pleader, for the Appellant; Ramakrishna Raghavan for K. Saravanan, for the Respondent

Final Decision : Disposed Off

Judgement

R. Sudhakar, J.—One Jegamathi Educational Trust, a public Educational and Charitable Trust, acquired 14.88 acres of land at Indira Nagar, Malayakoundanpatti, under a lease for 30 years, on 07.09.2006, for construction of a school (respondent school). The Trust submitted an application to Malayakoundanpatti village panchayat, seeking approval of building plan for construction of ground floor of the school building and the president of the said panchayat also granted approval of the building plan, in the year 2009 and construction of ground floor was completed. Thereafter, the respondent School made an application to the educational authorities seeking permission to commence classes from LKG to VI Standards, on 28.08.2009. On 04.01.2010, the Director of Matriculation Schools, the appellant herein, granted permission to the respondent School for commencement of Classes LKG to VI Standards, for three years, from 01.06.2009 to 31st May, 2012. On 02.03.2012, the respondent school submitted an application for renewal of recognition for LKG to VI Standards, with another application seeking permission to open additional standards from VII to XI standards. On 05.04.2012, Stability Certificate for the School Building has been granted by a recognized panel of engineers and it was

submitted to the authorities. Since no order was forthcoming, the respondent school filed a writ petition in W.P.(MD) No. 5225 of 2013, before this Court, seeking for a direction to the educational authorities to grant permanent recognition for classes LKG to VI Standard and also permission for opening of additional classes from Standard VII to IX. On 26.04.2013, this Court granted interim direction to the authorities to renew the temporary recognition, pursuant to which, on 07.06.2013, the authorities granted temporary recognition for classes LKG to VI Standards, from 01.06.2012 to 06.05.2015.

2. In the year 2013, the president of Malayagoundanpatti Panchayat approved the building plan for construction of additional first floor of the school building and on the strength of which, construction was completed in 2014. On 28.02.2014, this Court passed final orders in W.P.(MD) No. 5225 of 2013, directing the appellant to consider the application of the respondent school for permanent recognition. Pursuant to the orders of this Court, dated 28.02.2014, the officers of the appellant inspected the respondent's school on 08.04.2014. On 06.05.2014, the appellant permitted the respondent school to open additional classes from VII to X Standards. Thereafter, on 12.05.2014, the respondent school submitted a letter to the appellant, seeking permanent recognition, which was followed by a reminder on 29.05.2014. On 18.11.2014, the appellant passed the impugned order, among other things, requiring the respondent school to obtain building plan approval from the Directorate of Town and Country Planning, to grant recognition. The defects pointed out by the appellant, in the order dated 18.11.2014, translated in English, are as follows:

"(a) The basic infrastructure facility described below are in incomplete stages, (or)

b. Documents and Proofs described below have not been produced, (or)

c. Prescribed details have not been partly or completely filled up in the application form, (or)

d. Particulars furnished are incorrect or erroneous.

1. Building Plan approval has been approved by the Panchayat President. Approval of the Director of Town and Country Planning has not been obtained.

2. Order of the Collector, empanelling the Panel Engineer has not been enclosed.

3. Stability Certificate for the building First Floor (for Hundred persons) has been enclosed. Ground Floor Certificate has not been produced."

3. On receipt of the above order of the appellant, the respondent school, by its letter dated 10.12.2014, gave a reply to the appellant. In the meantime, the respondent school also obtained renewal of Licence under Tamil Nadu Public Building (Licensing) Rules. As there was no positive response from the appellant for their reply dated 10.12.2014, the respondent school challenged the order of the appellant, dated 18.11.2014, in writ petition in W.P.(MD) No. 20329/2014.

4. Defects/Objections (a) to (d) are standard defects/objections. There is no indication that there is any short fall in compliance of those defects, thereby making it clear that the respondent school did not furnish any or all those particulars. So far as the specific requirements (1) to (3) are concerned, the primary stand of the Department before the learned Single Judge, through their counter affidavit, appears to be that the building plan approved by the panchayat president does not contain the approval of the Director of Town and Country Planning. On this short issue, the writ petition, apparently, has been decided. The learned Single Judge, taking note of the provisions of Rule 2(e), Rule 2(g) and Rule 25 of the Tamil Nadu Panchayats Building Rules, 1997 (in short "the Rules"), came to be conclusion as follows:

"6. Heard both sides.

7. From the reading of the Rules extracted supra, it is seen that the Executive Authority under the Tamil Nadu Panchayats Buildings Rules, 1997, is the Village President, who is competent to grant approval for construction. What is required is only a consultation with the concerned Joint Director or Deputy Director of Town and Country Planning, in which the petitioner school has no role to play, since it is an internal arrangement between the Panchayat President and the Joint Director or Deputy Director of Town and Country Planning.

8. Admittedly, no action has been initiated against the said Panchayat President, on account of his competency under the Rules to grant such approval. That apart, the petitioner is a Matriculation School, being run within the Malayakoundanpatti Panchayat and the G.O.(Ms) No. 270 School Education (X2) Department, dated 22.0.2012, does not insist upon the building plan to be approved by the Joint Director or Deputy Director of Town and Country Planning. Since the executive authority, namely, Panchayat President has approved the building plan, the act of the petitioner cannot be faulted with in any manner, more particularly, it cannot be said that it is against the provisions of law. Admittedly, the petitioner has fulfilled all the requirements and the only issue raised by the respondent that prior approval of the Joint Director or Deputy Director of Town and Country Planning is mandatory, cannot be accepted in view of the Rules extracted supra.

9. Hence, the writ petition is allowed. The impugned order dated 18.11.2014 is set aside. In case the respondent finds any violation in the construction of the school building, the same can be brought to the notice of the petitioner school either to modify or change the structure/superstructure of the school building. The respondent shall consider granting permanent recognition to the petitioner School from LKG to X standards, on fulfilling all the requirements, pointed out by them. No costs. Consequently, connected miscellaneous petition is closed."

5. Learned Single Judge was of the view that approval can be granted only by the Executive Authority, namely Village Panchayat president and that has been granted in this case. Learned Single Judge declined to entertain the argument of

the appellant that the approval of the Joint Director or Deputy Director of Town and Country Planning is mandatory. The learned Single Judge was also of the view that in terms of G.O.Ms. No. 270 School Education (X2) Department, dated 22.10.2012, which clearly states that school buildings should be constructed only after obtaining building plan approval from the competent authority. That "competent authority" has been defined in Rule 2(e) of the Tamil Nadu Panchayats Building Rules, 1997. In Rule 2(g) of the Rules, "public building" has been defined as under:

"(g) "public building" means any building to which the public or any class or section of the public are granted access or any building which is open to the public or any class or section of the public and including any building:--

(a) used as a--

(i) educational institution including school or college;

....."

The learned Single Judge, considered provision to Rule 25 of the Rules, which reads as follows,

"25. Multi-storeyed and public buildings.--Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920):

Provided that the executive authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director or Deputy Director of Town and Country Planning."

to hold that the Executive Authority, namely, village panchayat president, is competent to grant approval for construction of multi-storeyed/Public Buildings, in consultation with the concerned Joint Director or Deputy Director of Town and Country Planning, meaning thereby, for the purpose of granting building permission, law provides consultation between the village panchayat and the Joint Director or Deputy Director of Town and Country Planning. There is no rule that the School should get approval from the authorities of Town and Country Planning. On that score, the learned Single Judge held that it is not mandatory.

6. The interpretation as pointed out by the learned Single Judge may be accepted to the extent that approval should be granted through one authority. But, there should be compliance of the requirement of law in relation to public building, more particularly school buildings and it is incumbent on the part of the appellant or the educational authorities to seek compliance of all other requirements, as may be prescribed. If the Educational Authorities had any doubt that the approval of the Town and Country Planning Authorities has not been obtained, it is for them to seek information and thereafter proceed to consider

the claim for permanent recognition, either way. We agree with the view of the learned Single judge that unless there is specific prescription by law on the school concerned that they have to file application before the Town and Country Planning Authority and seek its approval, independent of the approval by the Village Panchayat, then all requirements may be justified. The Educational Authorities cannot merely shirk their responsibilities to ensure compliance of requirement of law, by throwing the blame on the schools, because we find that provision to Rule 25 of the Rules mandates the Executive Authority to seek approval of the Town and Country Planning Authority and thereafter to grant approval. Duty is cast on the authorities to act in a particular manner. This aspect could be verified by the Educational Authorities, by referring the matter to the village panchayat or to the Town and Country Planning Authorities and get a clarification whether approval is granted by Town and Country Planning Authority or not. If it is a case of no approval, then the consequence that is to follow is that the Educational Authorities can call upon the institution concerned to get approval of the Town and Country Planning Authority, through the Executive Authority. If approval has been granted by the Town and Country Planning Authorities, on behalf of the Executive Authority, there is no cause for concern. Either of the above two situations has not arisen in the present case. On the contrary, the educational authorities have just pushed the ball out of their table, by merely stating that the respondent school has to get approval from the Town and Country Planning Authorities. We deprecate such action of the educational authorities.

7. As a result, the learned Single Judge allowed the writ petition, set aside the entire impugned order, dated 18.11.2014, whereby and whereunder, the Director of Matriculation Schools, the appellant, has pointed out various other conditions/requirements to be fulfilled by the respondent school for grant of permanent recognition. Approval of the building plan by the Joint Director or the Deputy Director of Town and Country Planning is one among the various conditions/requirements pointed out by the appellant in the impugned order, dated 18.11.2014. It is also pointed out by the appellant that the respondent school should comply with all the conditions/requirements, within four weeks and thereafter final decision will be taken. It is also pointed out that if the respondent school does not file compliance to the queries raised, action will be taken to reject the request for grant of permanent recognition, in accordance with provisions of law. It is also pointed out in the impugned order of the appellant that if the school conducts classes without permanent recognition, penalty will be charged, as provided for in the Right to Education Act.

8. Constitution provides a right to children to be educated. If some good intentional citizen or a group of persons or a Trust wants to establish a school, the educational authorities should assist the opening of Schools, more particularly in rural areas to further the avowed object.

9. We also note that the Hon''ble supreme Court in Avinash Mehrotra vs. Union of

India, reported in (2007) 6 SCC 398, has set out series of conditions and guidelines, taking strong note of Article 21 of the Constitution and the need for establishment of primary schools with all safety measures, enumerated the measures for establishment of a proper school. While doing so, reliance has been placed on the National Building Code of India, 2005, in particular Part-II and other fire safety measures. It was a case in public interest in relation to an unfortunate incident where 93 school children were burnt alive in a school, which was functioning without proper infrastructure facilities and approval under the nose of the authorities. In the said decision, specific directions have been issued to the Educational Department all over the country to ensure compliance of those conditions, as a condition precedent for grant of recognition or approval of school. The specific directions issued by the Hon"ble Supreme Court are as follows:

"40. In view of what has happened in Lord Krishna Middle School in District Kumbakonam and other incidents which have been enumerated in the preceding paragraphs, it has become imperative that each school must follow the bare minimum safety standards, in addition to the compliance with the National Building code of India, 2005, in particular Part IV - Fire & Life Safety, and the Code of Practice of Fire Safety to Educational Institutions (IS 14435:1997) of the Bureau of Indian Standards.

41. The said safety standards are enumerated hereinbelow:

3.1. Fire safety measures in schools:

(i) Provision of adequate capacity and numbers of fire extinguishers of ISI mark to be provided in eye-catching spots in each block of the school.

(ii) First aid kits and necessary medicines should be readily available in the school.

(iii) Provision of water tank and separate piping from the tank with hose reel to the ground floor and first floor.

(iv) Fire-fighting training to all teachers and students from Xth to XIIth standards.

(v) Fire task force in every school comprising of head of the institution, two teachers/staff members and one member from the Fire and Rescue Department should be constituted. The Fire and Rescue Department member shall monitor and make fire safety plan and conduct inspections once in every three months.

(vi) Display of emergency telephone numbers and list of persons to be contacted on the notice board and other prominent places.

(vii) Mock drills to be conducted regularly. Fire alarm to be provided on each floor and for rural schools separate long bell arrangement in case of emergency.

(viii) All old electrical wiring and equipment shall be replaced with ISI mark equipments and routine maintenance conducted by the school management in

consultation with the Fire and Rescue Department.

(ix) No high tension lines should run inside or in close proximity to the school. Steps must be taken to shift them if they are already there.

(x) The Fire and Rescue Department, shall frame guidelines with DOs and DONTs for schools and issue a fitness certificate, which shall be renewed periodically.

3.2. Training of school teachers and other staff:

(i) The teachers along with other staff shall be trained to handle safety equipment, initiate emergency evacuations and protect their students in the event of fire and other emergencies by the Fire and Rescue Department.

(ii) They shall also be trained in providing emergency first aid treatment.

(iii) There shall be a School Safety Advisory Committee and an emergency response plan drafted by the Committee in approval and consultation with the Fire and Rescue Department concerned.

(iv) Emergency response drills conducted at regular intervals to train the students as well as the school staff.

(v) All schools to observe fire safety day on 14th of April every year with awareness programs and fire safety drills in collaboration with the Fire and Rescue Department.

3.3. School building specifications:

(i) The school buildings shall preferably be an A Class construction with brick/stone masonry walls with RCC roofing. Where it is not possible to provide RCC roofing only non-combustible fireproof heat resistant materials should be used.

(ii) The nursery and elementary schools should be housed in single storeyed buildings and the maximum number of floors in school buildings shall be restricted to three including the ground floor.

(iii) The school building shall be free from inflammable and toxic materials, which if necessary, should be stored away from the school building.

(iv) The staircases, which act as exits or escape routes, shall adhere to provisions specified in the National Building Code of India, 2005 to ensure quick evacuation of children.

(v) The orientation of the buildings shall be in such a way that proper air circulation and lighting is available with open space all round the building as far as possible.

(vi) Existing school buildings shall be provided with additional doors in the main entrances as well as the classrooms if required. The size of the main exit and classroom doors shall be enlarged if found inadequate.

(vii) School buildings have to be insured against fire and natural calamities with group insurance of school pupils.

(viii) Kitchen and other activities involving use of fire shall be carried out in a secure and safe location away from the main school building.

(ix) All schools shall have water storage tanks.

3.4. Clearances and certificates:

(i) Every school shall have a mandatory fire safety inspection by the Fire and Rescue Services Department followed by issuance of a "no-objection certificate" to the school as a mandatory requirement for granting permission for establishing or continuation of a school.

(ii) An inspection team consisting of experts like a civil engineer, a health officer, a Revenue Officer, a psychologist, a fire officer, a local body officer and a development officer besides the educational authorities shall carry inspection and assessment of infrastructural facilities before the commencement of each academic year. The team shall submit its inspection report to the District Chief Educational Officer concerned.

(iii) The building plans for schools shall be prepared only by a Government-certified engineer and the PWD Executive Engineer concerned should inspect the building and award a structural stability certificate. Stability certificates shall be issued by the State or Central Government engineers only and shall be mandatory for granting permission for establishing or continuation of a school.

(iv) In every district, one recognition committee headed by a retired Judge shall be constituted. Officials from the Revenue Department, Public Works Department, Fire Service, Electricity Board, Health and Education Department and a reputed NGO shall be members. They shall visit the schools periodically or at least the erring institutions as listed by the Chief Education Officer.

(v) Conditional recognition/approval shall never be resorted to for any school.

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47. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:

(i) Before granting recognition or affiliation, the State Government and Union Territories concerned are directed to ensure that the buildings are safe and secure from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing

equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the engineers and officials concerned must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the officials concerned.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments."

10. Clause 3.4 in paragraph 42, relates to clearances and certificates, which is more important in the field of school education. Clause 3.5 states that Conditional recognition/approval shall never be resorted to for any school, making it clear that unless all requirements are satisfied, conditional recognition or approval should never be granted. It is unfortunate, as pointed out, many schools are running without proper recognition and many schools are run with conditional recognition or approval, namely temporary recognition/approval. It is high time that the Secretary to government, School Education Department, wakes up to this issue and takes measures to ensure compliance of the directions of the Hon"ble Supreme Court in *Avinash Mehrotra vs. Union of India*, reported in (2007) 6 SCC 398.

11. Insofar as the present case is concerned, apart from the specific condition that approval from the Town and Country Planning Authorities, the respondent school has to comply with the directions issued by the Hon"ble Supreme Court in *Avinash Mehrotra vs. Union of India*, reported in (2007) 6 SCC 398, Government Orders in G.O.(Ms) No. 131, School Education (B) Department, dated 10.08.2006 and G.O.Ms. No. 270, School Education (X2) Department, dated 22.10.2012. While considering the case for permanent recognition, competent authority should go on each and every issue in a proper formatted manner and state which condition has been complied with and which has not been complied with. All that we seek from the educational authorities is that the form in which an application for recognition is granted should be comprehensive and in a proper format, taking note of each and every aspect, as pointed by the Government in various Government Orders and also by the Hon"ble Supreme Court in *Avinash Mehrotra vs. Union of India*, reported in (2007) 6 SCC 398. Such a procedure will eliminate shortcomings in the grant of recognition to schools and if such procedure is adopted, it may pave way for easy identification of the core and pragmatic area in the school education. We also deprecate the department in issuing letters in printed formats, without even indicating as to whether all conditions are to be complied with or a particular condition is to be complied with. Using printed format shows total non-application of mind to the issue in question. Following printed/formatted application/letter leads to unwarranted litigation and confusion

in the mind of the authorities as well as the person who seeks recognition or approval.

12. The order of the learned Single Judge, setting aside the entire impugned proceedings of the appellant, dated 18.11.2014, may not be justified. The only issue that has been addressed is whether a separate approval should be granted by the Town and Country Planning Authorities. Proviso to Rule 25 of the Rules makes it clear that executive authority, namely, village panchayat, should do an act in a particular manner. There is no prescription in the Rules that the school concerned should seek approval, directly, from the Town and Country Planning Authorities. Therefore, such a requirement in the impugned proceedings is unwarranted. That, however, does not preclude the Director of Matriculation Schools, the appellant herein, from asking relevant particulars from the Panchayat concerned or the Town and Country Planning Authorities and find out whether approval is granted, in the manner that law requires. In case, the village panchayat, for some reason, has not done its duty, the Director of Matriculation Schools can very well call upon the panchayat to get approval from the Town and Country Planning Authorities or write to the District Collector or any other competent authority to take action on the said person, in accordance with law, so that defects can be cured.

13. As has been pointed by Mr. B. Pugalendhi, learned Special Government Pleader appearing for the appellant, before grant of recognition, it is incumbent on the educational authorities to indicate what are all the requirements the law requires and the directions of the Hon'ble Supreme Court in Avinash Mehrotra, cited supra, have been complied with by the schools, while seeking recognition and what are the requirements/directions yet to be complied with by the schools. We expect the educational authorities that before granting recognition, they should be very clear whether all the requirements of law/defects pointed out have been complied with by the schools who seek approval and thereupon take a decision, in either way. We, therefore, modify the order of the learned Single Judge to the effect that the application of the respondent school for recognition should be considered in the parameters of the various guidelines issued by the Government and in the light of the decision of the Hon'ble Supreme Court in Avinash Mehrotra vs. Union of India, reported in (2007) 6 SCC 398 and after getting clarification from the concerned Panchayat or from the Town and Country Planning Authorities, whether building plan approval has been granted to the respondent school, as required under law. Therefore, the respondent school be informed about the status, so that they can workout their remedy. For compliance, the appellant is directed to clarify all these issues to the respondent school, by a letter, within two weeks from the date of receipt of a copy of this order and the respondent school shall comply the same within four weeks thereafter. On receipt of the reply, the appellant shall consider the same and pass appropriate orders, expeditiously. The writ appeal stands disposed of, with the above modification. No order as to costs. Connected miscellaneous petition is closed.