

(2011) 01 MAD CK 0396

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 11948 of 2010 and M.P. (MD) No. I of 2010

Rajan Primary School

APPELLANT

Vs

The Director of Elementary
Education, The District
Elementary Educational Officer
and The Assistant Elementary
Educational Officer

RESPONDENT

Date of Decision: Jan. 31, 2011

Acts Referred:

- Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Section 34, 41

Citation: (2011) 2 CTC 856

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: D. Sadiq Raja, for the Appellant; V. Rajasekaran, Special Government Pleader,
for the Respondent

Judgement

V. Dhanapalan, J.

By consent of both sides, the Writ Petition itself is taken up for disposal.

2. What is challenged in this Writ Petition a communication dated 06.04.2010 passed by the 2nd Respondent in a proceeding in She. Oo. Mu. No. 8297/Aa1/2009 seeking to quash the same, the present Writ Petition is filed.

3. According to the Petitioner, the Petitioner/School is a Government Aided Recognised School functioning since 1914. Initially, recognition was granted upto 3rd standard and subsequently, in the year 1940, recognition was granted upto 5th standard. The Deputy Inspector of School, Puliangudi, vide Memo dated 28.07.1951 asked the Petitioner to change the name of the school according to the street or ward in which the school is situated. Accordingly, the name of the school was changed as Rajan. Since then, the subject school is called as Rajan Primary School.

4. While that being so, there are two sanctioned posts were given for the said school namely, a Headmaster and a Secondary Grade Teacher. One teacher by name Veillumuthu, who was working as a Secondary Grade Teacher, attained the age of superannuation on 31.05.2008 and therefore, only one teacher is taking care of the entire school, where more than 80 students are studying. Therefore, the Petitioner finds it difficult to run the school, especially after introduction of new educational scheme launched by the Government of Tamil Nadu. Hence, he constrained to make a representation to the 2nd Respondent to give prior permission to appoint a Secondary Grade Teacher for the existing sanctioned post in accordance with Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (herein after referred as "Act" and "Rules").

5. During the year 2007, there was an audit report and it was informed by the authorities to the effect that the subject school, which was earlier functioning at 1st ward Ramanathapuram Panchayat was at a dilapidated condition with unclean environment. Hence, a new building was put up for said school in the same ward, Ramanathapuram Panchayat Aathuvali (via) Sivagiri Taluk, Tirunelveli District and representations were also sent to the authorities concerned for approval. There were exchange of communications with respect to getting of approval. Under these circumstances, the subject school started functioning from the new building expecting approval for the same.

6. In the said situation, the 2nd Respondent sent a communication on 17.02.2010 permitting the Petitioner/School to appoint a teacher under general category for the post of the Secondary Grade Teacher as per the provisions of the Act and Rule. Pursuant to that, a paper publication was made on 31.03.2010, calling eligible candidates to attend an interview on 09.04.2010 for the post of Secondary Grade Teacher for the subject school. An intimation was also given to the concerned Employment Exchange to provide list of candidates eligible for appointment to the post of Secondary Grade Teacher.

7. However, the 2nd Respondent vide proceedings dated 06.04.2010 temporarily withheld the permission already granted on 17.02.2010 and further informed the Petitioner that permission for appointment of the Secondary Grade Teacher for the sanctioned post would be considered after getting approval from the 1st Respondent with respect to the change of place of the subject school. Aggrieved by the same, the Petitioner has moved this Court, seeking to quash the communication dated 06.04.2010.

8. The 2nd Respondent/District Elementary Educational Officer, Tirunelveli has filed a Counter Affidavit stating that there is no provision in the Act and Rules to shift a school from the place of functioning since its opening. Therefore, the 1st Respondent in his proceedings dated 30.01.1996 prescribed guidelines to get prior permission for shifting primary and middle schools. But, the Petitioner without obtaining prior permission from the 1st Respondent, shifted the school to a new

place in the same ward and then applied for ratification for his illegal action. While that being so, the Petitioner applied for prior permission to fill up the vacancy of the Secondary Grade Teacher post caused by the retirement of one Veilumuthu on 31.05.2008 and permission was granted by the 2nd Respondent on 17.02.2010. Since ratification from the 1st Respondent for shifting the school, without prior permission is not received so far, the 2nd Respondent in his proceedings dated 06.04.2010 passed an order withholding his previous order, granting permission to fill up the vacancy in his proceedings dated 17.02.2010.

9. It is also stated in the counter that the School Committee is not empowered to act on its own by constructing a new building by replacing the existing building in the original place of its functioning. If it was not feasible, the Petitioner ought to have obtained prior permission to shift his school. Since no ratification order for shifting the school from the original place is obtained from the 1st Respondent, the functioning of the school committee regarding new appointment could not be allowed.

10. Mr. D. Sadiq Raja, learned Counsel for the Petitioner submits that the 2nd Respondent has no jurisdiction to cancel the order of permission to fill up the post of Secondary Grade Teacher. He would further contend that pending approval from the 1st Respondent, considering the condition of the school, it would be necessary to permit the Petitioner to fill up the said post.

11. Mr. V. Rajasekaran, learned Special Government Pleader appearing for the Respondent after going through the material documents submits that till the ratification is granted, the permission to fill up the post cannot be considered by the authorities.

12. I have heard Mr. D. Sadiq Raja, learned Counsel for the Petitioner and Mr. V. Rajasekaran, learned Special Government Pleader for the Respondents.

13. Admittedly, it is not in dispute that the Petitioner-School is a Government Aided Recognised School functioning since 1914 granting recognition upto 3rd standard and subsequently, it was granted upto 5th standard in the year 1940. Thereafter, the name of the school was changed as Rajan as per the direction of the Deputy Inspector of School, Puliangudi, dated 28.07.1951. Since then the subject school is called as Rajan Primary School. It is seen that as per the audit report during the year 2007, the subject school, which was earlier functioning at 1st ward Ramanathapuram Panchayat was at a dilapidated condition with unclean environment and based on which, a new building was put up for the said school in the same ward, Ramanathapuram Panchayat Aathuvali (via) Sivagiri Taluk, Tirunelveli District and ratification was also sent to the authorities concerned for approval and the subject school started functioning from the new building expecting approval for the same. Since no ratification order for shifting the school from the original place is received from the 1st Respondent, the functioning of the

School Committee regarding new appointment to the post of Secondary Grade Teacher post caused by the retirement of one Veilumuthu on 31.05.2008 could not be allowed.

14. As per Rule 29, any person aggrieved by any order, decision or direction of the Competent Authority under any provision (other than Section 34) of the Act may prefer an Appeal u/s 41 of the Act against such orders, decision or direction to the authorities namely, the Joint Director of School Education (Elementary Education) in the category of Pre-Primary, Primary and Middle Schools.

15. It is the ordained principle and consistent legal position that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction and therefore, it has been held in several decisions that the Writ Petition will be entertained only on the following contingencies, namely, if the Writ Petition is filed for enforcement of any of the fundamental rights, or when there has been violation of Principles of Natural Justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the absence of any such contingency, it may not be proper for this Court to entertain this Writ Petition.

16. In effect, when there is an effective statutory remedy is available and the same is not availed by the Petitioner, on the other hand, the Petitioner has hastily approached this Court by challenging the above order, it goes without saying that Petitioner has to exhaust the Appellate remedy as referred to above.

17. In the light of the foregoing discussion, this Writ Petition is disposed of with a direction to the Petitioner to exhaust the statutory Appellate remedy by preferring an Appeal to the Joint Director of School Education (Elementary Education) within a period of two weeks from the date of receipt of a copy of this order. If such an Appeal is made, the Joint Director of School Education (Elementary Education), is directed to dispose of the same in accordance with law and on merits after affording an opportunity of hearing to the Petitioner and pass appropriate orders within a period of six weeks thereafter. No costs. Consequently, connected M.P. is closed.