

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.NO.19041 of 2006 and
M.P.Nos.1 of 2006 & 1 of 2007

Mangaiyarkarasi Aided Middle School,
rep. by its Manager & Correspondent,
Sundaresapuram, Venmankondan Post,
Udayarpalayam Taluk,
Perambalur District. .. Petitioner

vs.

1. The Director of School Education,
Chennai-6.

2. The District Elementary Educational Officer,
Ariyalur,
Perambalur District.

3. The District Educational Officer,
Udayarpalayam,
Perambalur District.

4. The Assistant Elementary Educational Officer,
Tha.Pazhur,
Perambalur District.

5. The Manager,
Jayam Primary & High School,
Sundaresapuram, Venmankondan Post,
Udayarpalayam Taluk,
Perambalur District. .. Respondents

Writ Petition filed under Article 226 of Constitution of India seeking issuance of a Writ of Mandamus as stated therein.

For Petitioner : Mr.T.Sellapandian

For RR1 to 4 : Mr.V.Vivekanandan
Addl. Government Pleader

Mr.K.Alagirisamy, Senior Counsel,
for Mr.R.Balasubramanian

O R D E R

This writ petition has been filed by the Manager and Correspondent of an aided Middle School seeking a mandamus to forbear the respondents 1 to 4 from allowing the 5th respondent to run Jayam Primary & High School at Sundaresapuram, Venmankondan Post, Udayarpalayam Taluk, Perambalur District.

2. The case of the petitioner school, in brief, is as under:

The petitioner school has been functioning as an aided Middle School at Sundaresapuram Village, Venmankondan Post, Udayarpalayam Taluk, Perambalur District since 1956 with 112 students on its rolls at present and there are also three Government High Schools and two Panchayat Union Middle Schools within the radius of 2-3 kms and while this being the case, the fifth respondent has started a school from the academic year 2006-2007 even without recognition, thereby inducing the parents of the wards studying in the petitioner school to get Transfer Certificate and to admit their wards in the fifth respondent school. In this regard, the petitioner school has made a representation dated 06.02.2006 raising its objection to the first respondent; but, there has been no action from the respondent. In these circumstances, the petitioner has filed the present writ petition.

3. On 22.06.2006, when this writ petition was taken up for admission, this Court had granted interim injunction and on 21.07.2006, notice had been ordered to the fifth respondent.

4. Counter has not been filed by the respondents 1 to 4; but the fifth respondent school has filed its counter.

5. According to the fifth respondent school, since there are a number of boys and girls aspiring to receive quality education and the schools are situated at far-off places at Udayarpalayam Taluk, it was thought fit to open a Primary and High School and hence, the fifth respondent created necessary infrastructure including building with RCC roofing and with proper ventilation and lighting arrangements; it has been inspected by the Deputy Director of Health Services, Perambalur and Fire Services and Rescue Operations Department has also given No Objection Certificate and the Tahsildar too has given permission to accommodate the building for the purpose of conduct of classes; thus, making available all the required infrastructure, it had applied to the respondents 1 to 4 seeking approval; since the petitioner has sent objections on the starting of the fifth respondent school, the proposal is yet to be considered for approval and its application has been returned. The main contention of the petitioner school is that it has every right to carry on business being a fundamental right conferred under Article 19(1)(g) of the Constitution of India and the petitioner school has no locus standi to question establishment of the fifth respondent school.

6. Heard Mr.T.Sellapandian, learned counsel for the petitioner, Mr.V.Vivekanandan, Additional Government Pleader for the respondents 1 to 4 and Mr.K.Alagirisamy, learned Senior Counsel appearing for the fifth respondent.

7. The learned counsel for the petitioner has contended that:

a. the petitioner school was established in the year 1949 as an Elementary School and if the fifth respondent is allowed to be started, there will be a disturbance to the petitioner school as the parents of its wards may be induced to admit their wards in the fifth respondent school;

b. as per Rule 4(b) of the Tamil Nadu Elementary Education Act and the Rules, 1920, (in short "the Act and Rules"), no new school shall be permitted to be opened by a private management in a locality which is adequately served by the schools already existing in the locality and thus, without considering the relevant provision, the respondents 1 to 4 cannot approve the proposal sent by the

fifth respondent and if at all the proposal is approved by the respondents 1 to 4, the peaceful running of the petitioner school will be affected;

c. the petitioner school has submitted its objection to the respondents 1 to 4 with regard to giving approval to the fifth respondent school and the same is under consideration by them.

8. The learned Additional Government Pleader for the respondents 1 to 4, on instructions, has submitted that the fifth respondent school is without recognition as on date and it cannot be run without proper recognition and approval and the authorities have taken appropriate action in the light of the Act and Rules.

9. On the other hand, the learned Senior Counsel appearing for the fifth respondent school has contended that only after complying with the necessary formalities, the fifth respondent has sent a proposal to start a school to the respondents 1 to 4 as per the guidelines prescribed by the Government and has sought approval but the same has been returned to the fifth respondent. He has further contended that while the petitioner is an aided school, the matter of giving approval to start a new school is the concern of the respondents 1 to 4 and if at all the petitioner school is aggrieved by the starting of the fifth respondent school, it can only raise its grievance only before the appropriate authorities and it cannot be by way of filing a writ petition, particularly when there is no infringement of its fundamental right.

10. In support of his contentions, the learned Senior Counsel appearing for the fifth respondent has relief on :

a. a decision of this Court reported in 1986 Law Weekly 401 in the case of State of Tamil Nadu vs. Savari Cruz and the relevant para reads as under:

"17. ... from the mere fact that by opening of another school, some of the students of the writ petitioner's school, may seek admission in the new school, it cannot be said that any of the writ petitioner's legal rights have been infringed. It would indeed be sordid to equate the management of an educational institution with the conduct of a business or a commercial concern, though some Correspondents of private management schools seem inclined to do so. Assuming that such an equation is permissible, the right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, the exercise of that right is subject only to the restrictions imposed by law in the interest of the general public under Art.19 (6) (i)."

b. another decision of this Court reported in 1999 (1) MLJ 468 in the case of Hindu Harijan Elementary School Vadanththampatti Village v. The Secretary to Government, Education, Science and Technology Department, Chennai, wherein it was held in paragraphs 9 and 11 as follows:-

"Sec.8(3)(c) is merely regulatory; if it is not complied with, the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regarded as a new rice mill competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the state by a law enacted in the interests of the general public under Art.19(c), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely.... Even assuming that no previous permission was obtained the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed."

c. yet another recent decision of this Court reported in 2007 WLR 351 in the case of M.Andiappan v. State of Tamil Nadu, wherein it has been held as follows:-

"8. Similar issue with regard to locus standi was considered by a Division Bench of this Court in the decision reported in 2005 (1) CTC 394 and held that the rival businessman cannot file writ petition

on the ground that establishing rival business venture in his place violates provisions of law as there is no vested right in the applicant which can be enforced in law. ... Here in this case, the petitioner is running a rival school near the 7th Respondent School and as per the above pronouncements I hold that the petitioner has no locus standi to file this writ petition".

11. I have given heedful consideration to the submissions made by the learned counsel for the parties.

12. The main grievance of the petitioner is that if the fifth respondent is given approval to run the school, its functioning may be affected by reduction in student as well as staff strength. But, one important aspect that needs to be looked into is that there are other schools in the locality which are running peacefully and they have not approached this Court questioning the establishment of the fifth respondent school. Admittedly, in connection with its grievance, the petitioner school has also raised an objection to granting of approval by the respondents 1 to 4 to the fifth respondent school since the functioning of the latter within a radius of 2 kms. would affect its rights and this objection is pending consideration by the respondents 1 to 4 and the same has to be considered by them in the light of the provisions of the Act and the Rules.

13. Even according to the petitioner, the proposal of the fifth respondent has been returned by the respondents 1 to 4 and the fundamental right of the fifth respondent, i.e. to establish its school and run the same, has to be considered by the authorities concerned in the light of the provisions of the Act and Rules. A competitor in the business cannot prevent the Correspondent of a particular school from exercising his right to carry on business merely on the ground that there will be some likelihood of some disturbance to him. Even if the Government refuses to give recognition to the institution, it is open to the Correspondent of the particular school to proceed further to redress his grievance before the appropriate forum or the authorities concerned. Thus, when the fact remains that when the establishment of the fifth respondent school has not yet been approved by the Government and the petitioner's objection is also pending consideration before the respondents 1 to 4, it is not proper on the part of the petitioner to approach this Court with the present writ petition. Thus, taking all these factors into consideration, I am of the considered view that based on a mere apprehension that there will be reduction of student and staff strength in its school and without making a *prima facie* case and particularly when no right vested in it has been infringed, the petitioner has approached this Court prematurely by way of this writ petition. Therefore, this writ petition which is devoid of any merit is liable to be dismissed and it is accordingly dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

31.08.2007

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Index : Yes

Internet: Yes

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V.DHANAPALAN,J

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