



GOVERNMENT OF KERALA

Abstract

General Education Department - No Objection Certificate for CBSE Affiliation to St.Joseph's Public School, Njarackal, Ernakulam Dt. - Granted - Judgment dated 12.04.2011 in W.A No.69/2011 and connected cases - complied with - Orders issued.

GENERAL EDUCATION (N) DEPARTMENT

G.O.(MS)No.62/2014/G.Edn. Thiruvananthapuram, Dated 20.03.2014

- Read:
1. G.O.(MS)No.18/88/G.Edn. dated 12.01.1988.
 2. Order dated 18.7.2011 of the Hon'ble Supreme Court of India in SLP No.11666-11667/2009.
 3. G.O.(MS)No.202/11/G.Edn. dated 07.10.2011.
 4. G.O.(MS)No.384/12/G.Edn. dated 07.12.2012.
 5. Judgment dated 12.4.2011 of the Hon'ble High Court of Kerala in W.A No.69/2011 and connected cases.
 6. Letter No: NS(2)/47868/12/DPI, dated 31.07.2012 & 23.04.2013 from the Director of Public Instruction, Thiruvananthapuram.

ORDER

Government have issued new guidelines for the issuance of NOC for CBSE/ICSE affiliation of Schools as per G.O. read as as 3rd & 4th paper above. The application for NOC in respect of St.Joseph's Public School, Njarackal was recommended and forwarded by the Director of Public Instruction vide letter No.NS(2)/47868/12/DPI dated 31.7.2012 in the light of the judgment dated 12.6.2012 in WP(C) No.13524/12(M). The proposal was deferred due to the defects pointed out by the DPI which are given below:

- (1). The Management could not submit documents to prove that the school is managed by a registered society or trust, Details of governing body, GPS Map, Possession Certificate, Location Certificate, Certificate from PF Authorities, Certificate from the Bank proving financial stability of the Management to run the school, Audit report of CA for the year 2009, 2010 & 2011, Declaration regarding payment of salary to teachers and staff at government

rate, Agreement regarding inspection of schools, Declaration that no unrecognized classes/branches shall be run within the premises of the school. Photo ID of all students and copy of admission register etc.

- (2). 2 Acre lease deed to school for 30 years. As per guidelines minimum 3 Acres of land required.
- (3). Latest Building Fitness Certificate and Health and Sanitation Certificate in original not produced.
- (4). Agreement as specified in Clause X of the GO and Certificate from local body/educational authority proving the school has been in existence for more than 5 years in original required.
- (5). Specific recommendation of DEO not recorded.

As per DEO's report there is an aided school following state syllabus, owned by the same management which is separated by a compound wall from this new school, ie. St. Joseph Public School. The DPI was requested to get the defects rectified and to furnish report. In the meantime the School authorities filed CC(C)No.979/2013 and Government have filed Counter Affidavit based on the Stay obtained in the SLP filed before the Supreme Court. Further the defects have been rectified and the DPI has furnished the report vide letter dated 23.4.2013. Government have found that the proposal was again defective since the school has a land area of 2 Acre only. Afterwards, the school authorities have leased another 1.27 Acres of land and produced the lease deed along with a fresh visit report of the District Educational Officer, Ernakulam. The DEO has reported that the leased land is located 3 KMs away from the school and is seen to be a brackish water paddy field filled with 90% brackish water at present. Moreover the land is sandwiched with private properties denying free access. The lease deed was registered on 25.10.2013. Government thereafter decided to grant NOC to St. Joseph's Public School since the school is in possession of more than 3 acres of land.

2. In the meantime there was a property dispute between the Management of St. Joseph's Public School, Njarackal and the Management of St. Mary's UPS, Njarackal. The Manager St. Mary's UPS, Njarackal has raised objection in granting NOC to St. Joseph's Public School. The Hon'ble High Court vide judgment dated 12.4.2011 in WA No.69/2011 filed by Sr. Jessy, Manager, St. Joseph Public School, directed the Government to consider 1st respondent's (St. Mary's UPS) objection if any, raised against the issue of NOC. The Vicar, St. Mary's Church, Njarackal has filed another WP(C) No.28050/13 in which it is stated that the church and congregation owns 2.65 acres of property, out of which 1.05 acres has already set apart for the Little Flower High School (aided), the remaining 1.6 acres is utilized for a Chapel and Convent. The petitioner claims that St. Joseph's school is not having any property for conducting a school following CBSE syllabus. A Civil case is

pending with regard to the above said property dispute before the Sub Court, Cochin as OS No.121/2010 and if in the meanwhile, Government consider the application for NOC disregarding the civil dispute, it will adversely affect the petitioner and Parish members. Hence the petitioner prays for a direction from the Hon'ble Court directing Government, DPI and DEO to refrain from taking any action to grant NOC for CBSE/ICSE affiliation to St.Joseph's Public School, Njarackal.

3. Considering the facts pointed out in the above para, Government have given an opportunity for hearing to both the parties. The Special Secretary, General Education heard the parties in person on 16.1.2014 and 18.2.2014 in his Chamber in the Government Secretariat. The argument of the Manager, St.Mary's UPS, Njarackal is as follows:

(a) Petitioner (Fr.Paul Kallookkaran) is the Vicar of St.Mary's Church, Njarackal and the Manager of St.Mary's UPS. Petitioner has challenged the application for NOC submitted by Sr.Jessy, Mother Superior, Little Flower Convent for CBSE affiliation to St.Joseph's Public School.

(b). Little Flower Convent, a Chapel, Little Flower High School (Aided School) and St.Joseph's Public School (Unaided school) are housed in a total extent of 265 cents of property. Out of which 203 cents were purchased by the Vicar of St.Mary's Church, Njarackal and 61 cents was purchased by CMC Congregation Little Flower convent is a limb of CMC Congregation. The Nuns and Mother Superior in Little Flower Convent are posted there by CMC Congregation.

(c). Sr.Jessy has submitted application for NOC without having the required property. Out of the 265 Cents of property, 105 cents is set apart for the Little Flower High School. There remains only 160 cents in which besides St.Joseph's Public School, a Convent and a Chapel are housed.

(d). The Little Flower Convent has claimed possession of 3.69 Acres of property vide deed Nos.652/1101, 661/1101, 1522/1101, 1523/1101, 621/1102, 157/1104, 574/1106, 324/1120 and 213/1150. But they have no bonafide in claiming 3.69 Acres relying on the deeds mentioned above. Document No.652/1101, 661/1101, 621/1102, 1522/1101 and 1523/1101 are lease deed and Deed No.574/1106 was the Janmam for the said property. It would cover an extent of 99 cents (copy of deed No.574/1106 produced).

(e). Little Flower HS, Little Flower Convent and St.Joseph's Public School are functioning in an extent of 2.64 Acres (as per Resurvey 2.59 Acre) out of which 105 cents is set apart for Little Flower HS. The remaining property is only 155 cents. Sr.Jessy has created a lease deed for an extent of 2 Acres of property in favour of St.Joseph's Trust for obtaining NOC from Govt. Transferring of property of an aided school to a Trust is patently illegal.

(f). The property now in possession of St.Joseph's Trust is illegal. St.Mary's Church Njarackal claimed the ownership of an extent of 203.8 cents, for which they

have moved the District Collector, Ernakulam. Sr.Jessy has also filed OS.No.121/2010 before the Sub Court Kochi claiming the said property. (True copy of plaint produced). CMC congregation has also filed written statement contending that the Little Flower convent is only a limb of the CMC congregation and the convent has no independent ownership over the property.

(g). The property leased by St.Joseph's Trust as per lease deed No.2200/13 in Nayarambalam Panchayath is situated 5 KMs away from St.Joseph's Public School, Njarackal. The said property has no proper road access and it is a wet land (Chemmeenketu). A copy of the Gazette Notification No.515(12) dated 6.3.2010 and BTR records produced).

For all these reasons, the petitioner submits Government to decline NOC for CBSE affiliation to St.Joseph's Public School.

4. The argument of the Manager (Sr.Jessy) St.Joseph's Public School. Njarackal is as follows:-

(a) The Manager of St.Joseph's Public School is the Mother Superior of Little Flower Convent, Njarckal established in 1101 ME as an autonomous body. She is also the Manager of Little Flower High School, Njarckal of which Little Flower Convent Njarackal is the educational agency.

(b). The convent is the absolute owner in Possession of 3.69 acres in Sy.No.212/0, 1; 211/1,, 215/0, 1, 2, 3, 5 ; 214/0,2,3,4; 213/2, 3,5,6,7 and 216/0. (A list of properties survey numbers and title deeds are produced). All these properties are lying contiguous as a single block within four boundary walls. As per judgment dated 9.5.2012 in WP(C) No.11081/2012 filed by the Manager, St.Mary's UPS, the properties were measured by the Addl.Tahsildar, Kochi with the assistance of the Head Surveyor and submitted a report dated 06.11.2013 together with survey sketches of properties of Old Age Home and Convent (copy of the report No.S6-7875/12 dated 06.03.2011 and survey sketches are produced). The Tahsildar has certified that as per the documents, the convent has title and possession of 3.69 Acres. This is undisputed. Moreover, before survey was conducted, the District Collector, Ernakulam convened the meeting of both parties twice and modalities of survey as agreed was adopted.

(c). Out of 3.69 Acres a Convent was established in 64 cents. In 1 Acre 5 cents the Little Flower Girls High School was established in 1945. The balance 2 Acres was earmarked for St.Joseph's Public School which was established in 2001. The said 2 acres of land is having compound walls on four sides and separated from the rest of the properties.

(d). The Vicar of St.Mary's Church got a bye-law approved for Little Flower Girls High School by order No.K.Dis G4-23491/71 dated 05.10.1971 of Regional Deputy Director, Ernakulam whereby the Vicar was shown as the Manager of Little Flower Girls High School. At the instance of the Convent, Government vide

G.O(Rt) No.4363/08/G.Edn. dated 30.9.2008 have set aside the order of the Deputy DPI and held that the Mother Superior is the Manager of the Little Flower Girls HS and St. Little Flower Teresa's Convent, Njarackal. The above said Government Order was confirmed in a common judgment dated 12.4.2011 of the Division Bench of the Hon'ble High Court in WA No.69/2011 and connected cases and confirmed by the Hon'ble Supreme Court. (copy of the common judgment in WA 69/11 produced). In view of the Common judgment coupled with the report of the Deputy Tahsildar, unequivocally prove the title of 3.69 Acres of land by the convent.

(e). The convent leased out 2 acres of land in favour of St.Joseph's Public School as per lease deed No.3819/2007 dated 14.11.2007 and rectification deed No.1243/11 dated 04.06.2011 (True copies are produced). As per the approval of the Council of Province in the meeting held on 04.01.2008, St.Joseph's educational & Charitable Trust was created vide document No.28/2008 dated 22.02.2008 of Njarackal Sub Registry. There is no dispute with regard to the validity of this document. (copy of Trust deed produced). The possession certificate dated 21.12.2012 issued by the Village Officer, Njarackal certifying that the Trust is the owner of 81.31 Ares (2 acres) in Sy No.165/5 obtained as per document Nos. 661, 662/1101 ME; 1157, 324, 1457, 1523. 1522 of 1101 ME and 621/1102 ME of Njarackal Sub Registry (copy of possession certificate dated 21.12.2012 issued by the Village Officer, Njarackal produced).

(f). The St.Joseph's Public School obtained 51 Ares 45 Sq.mtrs (1 acre 27 cents) in Sy.No.933,934/2 (ReSy.No.381/5) at Nayarambalam Village by way of lease deed No.2200/2013 dated 19.10.2013 (copy produced). Since St.Mary's Church raised a dispute that this property is Water logged, eventhough not water logged, but entered as wet land in revenue records, St.Joseph's Public School obtained an additional extent of 1.02 acres of landed property by virtue of lease deed No.206/2014 dated 27.01.2014 (copy of the lease deed produced). Thus St.Joseph's Public School has a total extent of 4 acres and 29 cents.

(g). The Manager, St.Joseph's Public School has also submitted that while calculating the extent of the property owned by the Convent as 3.69 Acres, the properties in which the Orphanage is situated is not included. The building in which Little Flower Therasas Poor Home according to St.Mary's Church is in the land purchased as per 786/1951, 644/1970 and 1417/1973. As per document No.644/1970 the extent of property is 40 Sq.mtrs. As per document No.786/1951 the extent of the property is 18.300 cents. Thus the total extent of the property purchased in the name of the Orphanage is only 24.56 cents. The said 24.56 cents belongs to the Convent in which the Orphanage, Little Flower Poor Home is situated. The convent is the owner of the building in which the old age Home situates. (True copy of the relevant page of the building tax register produced)

5. Government have verified the documentary evidence submitted by both the parties. The Manager, St.Joseph's Public School has produced the documents in original to prove the ownership of the land. Government had also confirmed the managership of Little Flower Girls High School and the Hon'ble High Court and Supreme Court have also confirmed the position. The petitioner Fr. Paul, Kallookkaran could not produce sufficient evidence to prove his claim. As long as he has no contention that the possession certificate, survey report with sketch and title deeds are bogus, the claim of the Manager, St.Joseph's Public School holds good and the Government have to confirm the ownership, Civil cases filed by both the rival parties are pending is not a valid reason for denying the NOC to the School. The school has satisfied all the conditions stipulated in the guidelines.

6. In the above circumstances, Government are pleased to issue NOC for CBSE affiliation to **St.Joseph's Public School, Njarackal.P.O, Ernakulam Dt. - 682 505** on the specific condition that the NOC will not be considered as permission for conversion of the wet land in possession of the School as per lease deed No.2200/2013 dated 19.10.2013. The NOC is issued subject to the execution of agreement with Government in the prescribed format.

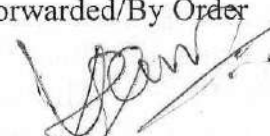
The judgment read as 5th paper above is thus complied with.

(By Order of the Governor)
GEORGE THOMAS
 Deputy Secretary to Govt.

To

✓ The Manager, St.Joseph's Public School, Njarackal.P.O, Ernakulam Dt. - 682 505.
 The Director of Public Instruction, Thiruvananthapuram,
 The Advocate General, Ernakulam (with C/L)
 The Secretary, CBSE, New Delhi (with covering letter)
 The Deputy Director of Education, Ernakulam through the DPI, Thiruvananthapuram
 The District Educational Officer, Ernakulam through the DPI, Thiruvananthapuram.
 Stock File/Office Copy.

Forwarded/By Order


 Section Officer.