

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14123 of 2012
and
M.P.Nos.1 & 2 of 2012

The Secretary,
Stella Maris College (Autonomous)
No.17, Cathedral Road,
Chennai - 600 086.

...Petitioner

vs.

1. The State of Tamil Nadu
Represented by its Secretary,
Department of Higher Education,
Omandurar Govt. Estate,
Chennai-600 006.
2. The Director of Collegiate Education
College Road,
Chennai - 600 006.
3. The University of Madras,
Rep. by its Registrar,
University Centenary Building,
Chennai - 600 005.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order issued by the 1st respondent State Government in G.O.Ms.No.125 Higher Education (E1) Department dated 20.05.2009, quash the same in so far as it restricts the status of the petitioner's college as a Minority Educational Institution to a limited period of 5 years from 2007 to 2012.

For Petitioner : Mr.Isaac Mohanlal

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader
[R1 & R2]
Ms.G.Thilakavathi [R3]

O R D E R

Heard Mr.Isaac Mohanlal, learned counsel for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents 1 and 2 and Ms.G.Thilakavathi, learned counsel for third respondent.

2. The petitioner seeks quash of the order passed by first respondent State Government in G.O.Ms.No.125 Higher Education (E1) Department dated 20.05.2009 insofar as it restricts the status of the petitioner's college as a Minority Educational Institution to a limited period of 5 years from 2007 to 2012.

3. According to the petitioner, the petitioner college was recognized as a Minority Institution by the Government. After coming into force of G.O.Ms.No.270 (Higher Education - J1) dated 17.06.1998, the respondents 1 and 2 insisted the petitioner college to obtain a separate order from the Government recognizing its status as a minority. Therefore, the petitioner college submitted application to the first respondent through the second respondent requesting to recognize it as a minority institution. The first respondent issued orders recognizing the status of the college as minority institution for a period of one year from 2004-2005. Likewise, the first respondent issued G.O.Ms.No.125 Higher Education (E1) Department dated 20.05.2009 recognizing the college as a minority institution from 2007-2008 to 2011-2012 for a period of five years. Challenging the restriction for a period of 5 years, the present writ petition has been filed.

4. Learned counsel for the petitioner, learned Additional Government Pleader and learned counsel for third respondent agree that the legal issue raised in this Writ Petition is squarely covered by the decision of the Honourable Division Bench of this Court in The Secretary, Jeyaraj Annapackiam College for Women (Autonomous) Vs. State of Tamil Nadu Represented by its Secretary and Others [2013 (8)

MLJ 509] and the decision of this Court in The Secretary, Loyala College Vs. The State of Tamil Nadu [2012(2) CWC 728].

5. The legal issue is as to whether the respondents can insist upon the petitioner, a minority institution, to renew the minority status once in a year or periodically. The Hon'ble Division Bench, after considering series of decisions, held that the minority status given to an institution will hold good without any restriction of period. At this stage, it would be worthwhile to refer to the operative portion of the judgment of the Hon'ble Division Bench which reads as follows :

"4. The issue as to whether the appellant / Society which was already declared by this Court as minority Society / Institution, which was granted minority declaration by the Government for a minimum period, has to be directed to approach the Government for continuing the minority status was considered by this Court by one of us (N. Paul Vasantha Kumar, J.), in W.P.No.24606 of 2012 reported in Secretary, Loyala College v. The State of Tamil Nadu, 2012 (2) CWC 728 LNIND 2012 MAD 3839. In the said judgment, a Division Bench judgment of this Court reported in Thirumuruga Kirupananda Variyar Tha - vathiru Sundara Swamingal, Medical, Educational and Charitable Trust, Salem v. State of Tamil Nadu, (2001) 3 MLJ 433 : LNIND 2001 MAD 725 was followed. Paragraph-5 of the said judgment reported in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamingal, Medical, Educational and Charitable Trust, Salem v. State of Tamil Nadu (supra) runs thus:

"... the Government while considering the Application made by the Appellant, duly took into account the fact that, (i) all the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date; (ii) the Trust has not included any new member in the Trust so far; (iii) the Trust has also stated that the Management is a registered Charitable Trust and the Board of Management belong to Ariya Vaisya Telugu speaking Chettiar; (iv) the additional deed executed by the Trust reflects the main objective of subserving the interests of the said minority community; (v) the Founders -Trustees, namely, (a) Thiru. A.Shanmughasundram (b) Tmt.S.Annapoorani and (c) Thiru.Saravanan who became a major at that time, belong to Telugu speaking Ariya Vaisya Chettiar Community and

their mother - tongue is Telugu. By the aforesaid order dated 27.10.1997, the Government after verification of the documents produced, issued orders in the name of the Governor declaring the Medical College run by the Appellant as a linguistic minority institution for the purpose of Article 30(1) of the Constitution of India. In the face of the uncontroverted facts and circumstances brought on record, we are of the considered opinion that this is a fit case where the Appellant -Trust is entitled to its rights declared by the Government as a linguistic minority institution, as per G.O.Ms.No.532, dated 27.10.1997 and the Appellant will be eligible to continue to exercise its constitutional rights as recognised by the Government and the same is not liable to be effaced by the subsequent letter of the Government which is impugned in the Writ Petition out of which the present Writ Appeal arises. In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances of suppression of facts, the Government has no power to take away that cherished Constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice."

5. The said judgment was also followed by the subsequent decisions of this Court in 2004 WLR 202 and again in the decision reported in (2009) 6 CTC 579.

6. The reason given by the learned single Judge for distinguishing the said judgment is that the matter is pending before the Hon'ble Supreme Court regarding the issue of grant of minority status to linguistic minorities. It is relevant to note herein that the appellant College is a religious minority institution, viz. Christian religion. It may be noted that Christians are minorities not only throughout India but also in the State of Tamil Nadu. The same is also made clear in the Government Order issued in G.O. Ms.No.270, Higher Education (J1) Department, dated 17.06.1998. In paragraph 8(vi), it is stated that to decide whether an applicant is a minority or not based on

religion or language, the total population of that minority in the State of Tamil Nadu shall be taken into consideration and not the population of that minority in any particular region where the educational institution is situated. Therefore, it is evident that the impugned order restricting minority status which was upheld by the learned single Judge is without noticing the said guidelines issued by the Government itself in G.O.Ms.No.270, Higher Education (J1) Department, dated 17.06.1998. It is also to be noted that the said Government Order, nowhere states that minority status can be given to a limited period. The Government is also not doubting the claim of minority status of the appellant-College. Hence the order restricting the period is without any rhyme or reason.

7. We are in entire agreement with the Division Bench judgment of this Court reported in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal, Medical, Educational and Charitable Trust, Salem v. State of Tamil Nadu stated supra. Accordingly, the order of the learned single Judge is set aside. The minority status given to the appellant will hold good without any restriction period. However, if the respondents are able to find any change in the constitution of educational agency or if the institution is run contrary to the Memorandum of Association/Bye-laws of the Society, it is open to the Government to issue notice and take appropriate decision in accordance with law."

In the light of the above decision of the Hon'ble Division Bench, the Writ Petition is allowed and the impugned order insofar as it restricts the minority status of the petitioner for five years alone is quashed. The respondents are directed not to insist upon renewal of the minority institution of the petitioner once in a year or periodically and there shall be no time restriction for such declaration issued by the Government in G.O.(Ms) No.125 Higher Education (E1) Department dated 20.05.2009. In all other respects, the impugned Government Order is valid. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gm/ds

To

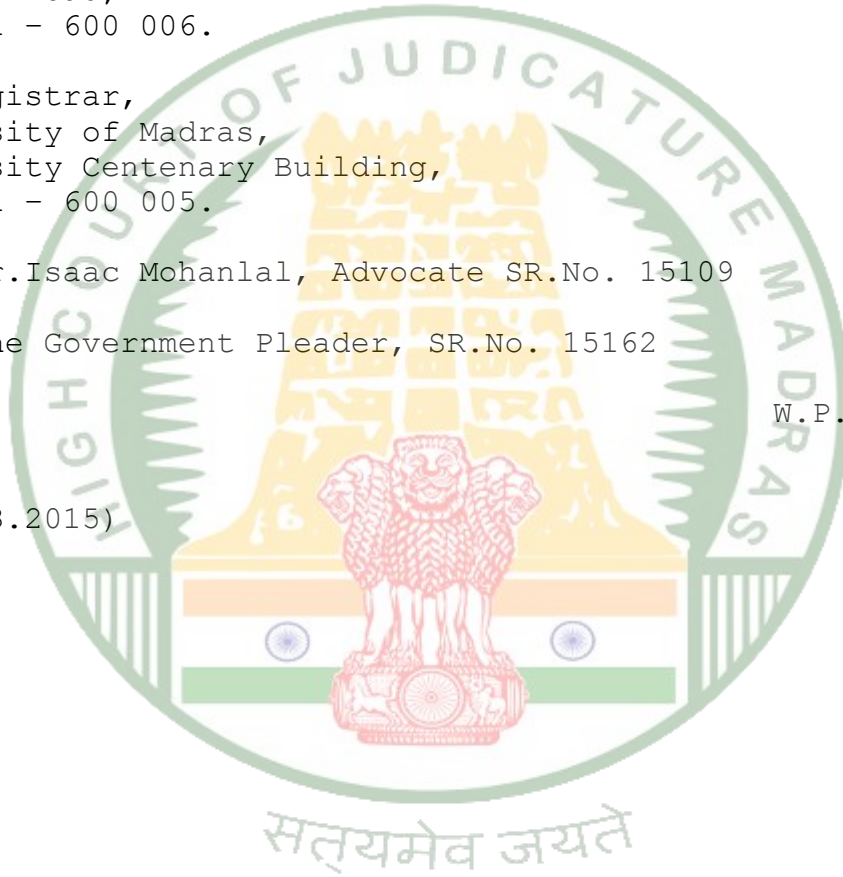
1. The Secretary,
Department of Higher Education,
Omandurar Govt. Estate,
Chennai-600 006.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Registrar,
University of Madras,
University Centenary Building,
Chennai - 600 005.

1 CC to Mr.Isaac Mohanlal, Advocate SR.No. 15109

1 CC to the Government Pleader, SR.No. 15162

W.P.No.14123 of 2012

CA (CO)
PSI (27.03.2015)



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