

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.04.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.P. No.26831 of 2008
& M.P.No.1 of 2008

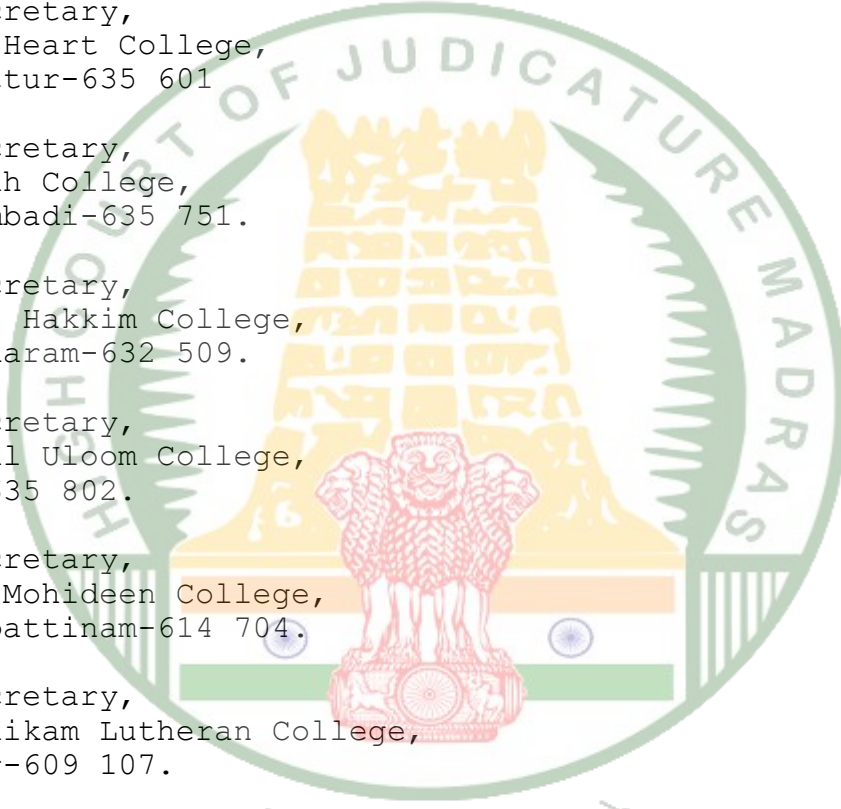
Prof.I.Elangovan

... Petitioner

Versus

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai-600 009.
2. The Director of Collegiate Education,
College Road,
Chennai-600 009.
3. The Secretary,
New College,
Chennai-600 014.
4. The Secretary,
Loyola College,
Chennai-600 034.
5. The Secretary,
D.D.G.D. Vaishnav College,
Chennai-600 106.
6. The Secretary,
D.B.Jain College,
Thoraipakkam,
Chennai-600 042.
7. The Secretary,
Madras Christian College,
Chennai-600 096.

8. The Secretary,
A.M.Jain College,
Chennai-600 114.
9. The Secretary,
The Quaid-e-Milleth College,
Chennai-601 302.
- 10.The Secretary,
Voorhees College,
Vellore-632 001.
- 11.The Secretary,
Sacred Heart College,
Tirupattur-635 601
- 12.The Secretary,
Islamiah College,
Vaniyambadi-635 751.
- 13.The Secretary,
C.Abdul Hakkim College,
Melvisharam-632 509.
- 14.The Secretary,
Mazharul Uloom College,
Ambur-635 802.
- 15.The Secretary,
Khadir Mohideen College,
Adirampattinam-614 704.
- 16.The Secretary,
T.B.Manikam Lutheran College,
Porayar-609 107.
- 17.The Secretary,
St. Joseph's College,
Tiruchy-620 002.
- 18.The Secretary,
Jamal Mohamed College,
Tiruchy-620 020.
- 19.The Secretary,
Bishop Heber College,
Tiruchi-620 017.



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- 20.The Secretary,
American College,
Madurai-625 002.
- 21.The Secretary,
Sourashtra College,
Madurai-625 004.
- 22.The Secretary,
M.S.S. Wakf Board College,
Madurai-625 020.
- 23.The Secretary,
Mannar Thirumalai Naicker College,
Pasumalai, Madurai-625 004.
- 24.The Secretary,
Arulanandar College,
Karumathur-621 514.
- 25.The Secretary,
H.K.R. Howdia College,
Uthamapalayam-626 533.
- 26.The Secretary,
Devanga Arts Colelge,
Aruppukottai-626 101.
- 27.The Secretary,
Dr. Zakir Hussain College,
Ilanyankudi-623 762.
- 28.The Secretary,
St. Xaviers College,
Tirunelveli-627 002.
- 29.The Secretary,
St. John's College, Palayankottai,
Tirunelveli-627 002.
- 30.The Secretary,
Sadhakathullah Appa College,
Palayamkottai, Tirunelveli-627 001.
- 31.The Secretary,
Nazareth Margosisis College,
Nazareth-628 617.

- 32.The Secretary,
Pope's College,
Sayarpuram-628 251.
- 33.The Secretary,
Scot Christian College,
Nagarcoil-629 003.
- 34.The Secretary,
Nesamony Memorial Christian College,
Marthandam-629 165.
- 35.The Secretary,
St. Jude's College,
Thoothoor-629 176.
- 36.The Secretary,
Sri Kumaragurupara Swamigal Arts College,
Srivaikuntam-628 619.
- 37.The Secretary,
Stella Maris College,
Chennai-600 086.
- 38.The Secretary,
Justice Basheer Ahamed Syed Women's College,
Chennai-600 018.
- 39.The Secretary,
The Women's Christian College,
Chennai-600 006.
- 40.The Secretary,
Auxillium College for Women,
Vellore-632 006.
- 41.The Secretary,
Nirmala College for Women,
Coimbatore-641 018.
- 42.The Secretary,
Providence College for Women,
Coonoor-643 104.
- 43.The Secretary,
Holy Cross College,
Trichy-620 002.

- 44.The Secretary,
Fatima College,
Madurai-625 018.
- 45.The Secretary,
Ladu Doak College,
Madurai-625 002.
- 46.The Secretary,
Jayaraj Annapackiam College for Women,
Periakulam-626 501.
- 47.The Secretary,
Sarah Tucker College,
Tirunelveli- 627 007.
- 48.The Secretary,
St. Mary's College,
Tuticorin-628 001.
- 49.The Secretary,
Holy Cross College,
Nagercoil-629 001.
- 50.The Secretary,
Women's Christian College,
Nagercoil-629 001.
- 51.The Secretary,
Sree Ayyappa College for Women,
Nagercoil-629 807.
- 52.The Secretary,
Sree Devikumari Women's College,
Kuzhithurai-639 163.
- 53.The Secretary,
Meston College of Education,
Chennai-600 014.
- 54.The Secretary,
St. Xavier's College of Education,
Palayamkottai,
Tirunelveli-627 002.

- 55.The Secretary,
NVKSD College of Education,
Thiruvattar-629 191.
- 56.The Secretary,
Stella Matutuna College of Education,
Chennai-600 083.
- 57.The Secretary,
St. Christopher's College of Education,
Chennai-600 007.
- 58.The Secretary,
St. Justin's Teacher's of College for Women,
Madurai-625 009.
- 59.The Secretary,
St. Ignatius College of Education,
Palayamkottai- 627 002.
- 60.The Secretary,
Jamia Darusalam Arabic College,
Omerabad-635 808.
- 61.The Secretary,
Sri K.V.S.S. Arts College,
Tirupanandal-612 504.
- 62.The Secretary,
Y.M.C.A. College of Physical Education,
Chennai-600 035.

Prayer: Writ Petition filed under Article 227 of the Constitution of India seeking for the relief of writ of declaration to declare that Rule 11(1-A) of the Tamilnadu Private Colleges (Regulation) At, 1976 in so far as exempting minority aided colleges from the Rule of reservation in appointments to SCs and STs as illegal and ultra vires of Art.16(4) and 46 of the Constitution, and consequently direct the respondent colleges R3 to R62 to appoint 19% of SC/ST Teachers and non-teaching staff against the total number of sanctioned posts.

For Petitioner : Mr.V.Ajay Khose

For Respondents : Mr.S.T.S.Moorthy, Govt.Pleader for
RR.1 and 2

Mr.S.Vijayaraghavan for R.5

Mr.S.T.Madusudana Reddy for R.7

Mr.Isaac Mohanlal and
Mr.P.Godson Swaminath for R4,10,17,19,
24,34,35,37,39,40 to 44,48,49,56,57 and 62
Mr.Krishna Ravindran for R.21 and R.23

Mr.G.R.Swaminathan for R.36

Mr.K.Sathish Kumar for R.50

Mr.Devadasan & Sages for R.53

Others - No Appearance

ORDER

The petitioner, being the Head of the Department in the Subject of English at Voorhees College, Vellore, has filed this public interest litigation seeking to declare Rule 11(1-A) of the Tamilnadu Private Colleges (Regulation) Act, 1976 insofar as exempting minority aided colleges from the Rule of reservation in appointments to SCs and STs is illegal and ultra vires of Art.16(4) and 46 of the Constitution, and consequently direct the respondent colleges R3 to R62 to appoint 19% of SC/ST Teachers and non-teaching staff against the total number of sanctioned posts.

2. The sum and substance of the petitioner's case is that the Minority Colleges, which are receiving aid, cannot be given any exemption from Rule 11(1-A) of the Tamilnadu Private Colleges (Regulation) Act, 1976. Thus, the exemption granted to the Minority Aided Colleges qua communal reservation to Scheduled Castes and Scheduled Tribes is put into challenge in this writ petition.

3. The issue involved in the writ petition is no longer res integra. In T.M.A.Pai Foundation Vs. State of Karnataka, ((2002) 8 SCC 481), the Supreme Court was pleased to hold qua the right to establish and administer educational institutions by minorities. The following paragraphs of the said decision are apposite:

'50. The right to establish and administer broadly comprises the following rights:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching);

and

(e) to take action if there is dereliction of duty on the part of any employees.

.....

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

.....

254. The expression to establish means to set up on permanent basis. The expression to administer means to manage or to attend to the running of the affairs. A lucid connotation of this expression was given by Ray, C.J., in *St. Xavier's case*, (1974(1) SCC 717), as under: (SCC pp. 745-46, para 19)

'The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.'

255. In none of the subsequent decisions of this Court, this exposition was departed from.

4. The said view was reiterated by the Supreme Court in *Secretary, Malankara Syrian Catholic College v. T. Jose and others*, ((2007) 1 SCC 386) and *Sindhi Education Society and another vs. Chief*

Secretary, Government of NCTG of Delhi and others, ((2010) 8 SCC 49). The said decisions rendered by the Apex Court were also followed by a Division Bench of this Court in The Forum of Minority Institutions and Associations v. The State of Tamil Nadu, ((2011(1) CTC 162).

5. In Federation of the Catholic Faithful Vs. Government of Tamil Nadu, (2014(4) CTC 432), while dealing with the challenge made to the guidelines issued by the State of Tamil Nadu imposing rule of reservation in aided and unaided minority institutions, a Division Bench of this Court was pleased to hold as follows:-

'17. As per Section 4 of Tamil Nadu Act 45 of 1994, reservation of seats in educational institutions is provided and it included any College or other educational institution maintained by the State or receiving aid out of State funds or affiliated to any University established by law including a constituent College. After 93rd amendment which came into being with effect from 21.01.2006, Tamil Nadu Act 12 of 2006 came to be passed. As per Section 2(d), private educational institution is defined and it excludes Minority Educational Institutions referred to in Article 30(1) of the Constitution of India. Section 3 speaks about reservation of seats in private educational institutions. By virtue of Article 15(5) of the Constitution of India r/w. Section 2(d) of the Tamil Nadu Act 12 of 2006, the reservation of seats for Backward Classes, Scheduled Castes or Scheduled Tribes for admission to private educational institutions cannot be made applicable to the Minority Educational institutions referred to in Article 30(1) of the Constitution of India''

6. The Apex Court in Pramati Educational and Cultural Trust (Registered) and others VS. Union of India and others, ((2014) 8 SCC 1), considering the object of Article 15(5) of the Constitution of India, while holding that it is not an exception or proviso overriding Article 15, being an enabling provision to effectuate equality of opportunity has held in the following manner:

'54. Thus, the power under Article 21-A of the Constitution vesting in the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice.

.....

55. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in

clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. ((2012) 6 SCC 1) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.''

7. Accordingly, it was held that the Right to Education Act, 2009, insofar as it applies to minority institutions is ultra vires the Article 30(1) of the Constitution of India.

8. In the light of the aforesaid decisions, we do not find any unconstitutionality involved in the impugned Rule qua exemption granted to the private minority aided colleges from the Rule of reservation in appointments to Scheduled Castes and Scheduled Tribes.

9. Accordingly, the writ petition is dismissed. However, there is no order as to costs. Consequently the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Department of Higher Education,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
2. The Director of Collegiate Education,
College Road, Chennai-600 009.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.18555
+1cc to M/s.Devadason & Sagar, Advocate, S.R.No.18838
+1cc to M/s.Isaac Mohanlal, Advocate, S.R.No.19139
+2cc's to the Government Pleader, S.R.No.18693,18692

W.P.No.26831 of 2008

BR(CO)
CA(09/04/2015)