

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2016

Delivered on : 20.07.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANANARAYANAN

WP.Nos.18063 of 2016 and 18484 of 2016
and

WMP.Nos.15848 & 15849 of 2016 in WP.No.18063 of 2016
and

WMP.Nos.16187 & 16188 of 2016 in WP.No.18484 of 2016

The Secretary
Rajiv Gandhi College of Arts and Science
Nemili, Sriperumbudur 602 105. ... Petitioner in both WPs

Versus

1. The Secretary,
State of Tamil Nadu
Department of Higher Education,
Fort St George, Chennai 600 009.
2. The Director of Collegiate Education
College Road, Chennai 600 006.
3. The Joint Director of Collegiate Education,
Chennai Region, Saidapet, Chennai 600 015.
4. The Registrar
University of Madras, Centenary Building
Chepauk, Chennai 600 005. ... Respondents in both the WPs

Prayer in W.P.No.18063 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the impugned order issued by the 2nd respondent, Director of Collegiate Education, vide proceedings RC No.46786/R1/2015 dated 09.02.2016 refusing Minority Status for petitioner's college and quash the same and further direct the 1st respondent herein to recognize forthwith the status of the petitioner as a Christian Minority Educational Institution.

Prayer in W.P.NO.18484 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the impugned order issued by the 4th respondent University vide Letter No.A1/New College.2016-2017/133 dated 18.03.2016 insisting the petitioner to obtain Government Order [granting permission/NOC] from the 1st respondent State Government for considering petitioner's application for affiliation, quash the same and further direct the 4th respondent University to consider petitioner's application dated 29.10.2015 for affiliation to offer the requested courses from the academic year 2016-2017.

For Petitioner in : Mr.Issac Mohanlal
both the writ petitions Senior Counsel assisted by
Mr.P.Godson Swaminath

For RR 1 to 3 in : Mr.T.N.Rajagopalan,
both the writ petitions Special Government Pleader

For R4 in both the : Mrs.G.Thilakavathy
writ petitions

COMMON ORDER

The question arise for adjudication in these writ petitions is common. Therefore, both the writ petitions are disposed of by this common order.

2.W.P.No.18063/2016:-

[A] The petitioner, viz., the Rajiv Gandhi College of Arts and Science, Nemili, Sriperumbudur, Kancheepuram District, is one of the two educational institutions founded and administered by "The Gulf Returnees Education Society" formed by Indians and Non-Resident Indians, professing Christianity and it is a registered Society under the Tamil Nadu Societies Registration Act, 1975, bearing Registration No.194/1998. The chief object of the Society, according to the petitioner, is to provide education in all streams of Engineering to students belonging to all Christian Minority Groups [denominations].

[B] The said Society is also running Rajiv Gandhi College of Engineering and it has been recognised by the 1st respondent as a Christian Religious Minority Institution in terms Article 30[1] of the Constitution of India, vide G.O.Ms.No.207, Higher Education [J1] Department, dated 11.06.2002 and it was extended by Government Letter Ms.No.67, of the very same Department, dated 28.08.2009.

[C] The petitioner would further aver that the 1st respondent, on an earlier occasion, had restricted the status of the Rajiv Gandhi College of Engineering as a Christian Minority Institution to a limited period of five years from 2007-2008 to 2011-2012 and it was put to challenge in WP.No.14454/2014. This Court, upon hearing the rival submissions made on behalf of the petitioner and the official respondents, vide order dated 13.04.2015, has allowed the writ petition and quashed the portion of the impugned letter, limiting the period of status of the petitioner and further declared that the Institution shall be treated as Christian Minority Educational Institution without any restriction.

[D] The above said Society, considering the need of the population and also with the aim of promoting the educational interest and social advancement of the rural population, decided to establish an Arts and Science College in the name of Rajiv Gandhi College of Arts and Science, from the academic year 2016-17 and accordingly, submitted an application to the 4th respondent on 29.10.2015 for the grant of affiliation to the said College from the academic year 2016-17 onwards for the following courses:-

S.No	Courses	Intake
1	B.Com [Corporate Secretary]	70
2	B.Com [General]	70
3	B.Com [Accounting & Finance]	70
4	B.B.A.	70
5	B.Sc [Computer Science]	50

[E] The Society also submitted an application on 07.11.2015 to the respondents 1 and 2, praying for recognition of Minority Status for the said College and simultaneously, submitted the statement to the 2nd respondent on 07.11.2015 as contemplated under section 9 of the Tamil Nadu Private Colleges [Regulation] Act, 1976, read with Rule 6 of the Rules framed thereunder and by way of abundant caution, also vide letter dated 28.09.2015 sought for permission to start the institution, though there is no statutory requirement. The 2nd respondent, vide letter dated 01.03.2016, sought for certain clarification and they have answered along with necessary supporting documents by letter dated 15.03.2016. However, to the shock and surprise of the petitioner, the 2nd respondent, vide impugned communication dated 09.02.2016, informed the petitioner that the Minority Status is given only to Educational Institutions which

is already functioning and administering by the Educational Agency and the petitioner may apply for the Minority Status after the commencement of the College. The petitioner, challenging the legality of the above said impugned communication of the 2nd respondent dated 09.02.2016, had filed the present writ petition.

3. WP.No.18484/2016:-

The petitioner, apart from challenging the impugned communication of the 2nd respondent, had also challenged the communication dated 18.03.2016 of the 4th respondent by filing this writ petition, in and by which the petitioner was informed that the proposal to start a new Self Financing Arts and Science College in the name of "Rajiv Gandhi College of Arts and Science" will be taken up for consideration only on receipt of Government Order issued by the Government of Tamil Nadu and therefore, the petitioner was requested to obtain the said order from the Government of Tamil Nadu and submit the same to the 4th respondent / University on or before 31.03.2016 to consider their request to start a new Self Financing Arts and Science College for the academic year 2016-2017.

4. Mr.Issac Mohanlal, learned Senior Counsel appearing for the petitioner assisted by Mr.P.Godson Swaminath, learned counsel, has drawn the attention of this Court to section 2[4][a] and 2[4][7] of the Tamil Nadu Private Colleges [Regulation] Act, 1976, [in short, "the Act"] and would submit that as per sub-section [a] of Section 2[4], an educational agency, in relation to any Minority College means any person who, or body of persons which, has established or administered and is administering or proposes to establish and administer such Minority College and as per sub-section [7] of section 2 [4], a Minority College means a private college of its choice established and administered, or administered by any such minority whether based on religion or language as has the right to do so under clause [1] of Article 30[1] of the Constitution and it is not at all in dispute that the Gulf Returnees Educational Society was formed by Indians and Non-resident Indians belonging to Christianity and one of the Colleges, viz., Rajiv Gandhi College of Engineering, run by them, was initially granted Minority Status for a limited period and it was put to challenge in WP.No.14454/2014 and the said writ petition was allowed and it has been declared that the said Institution shall be treated as Christian Minority Educational Institution without any restriction and in the light of the said fact, the impugned communications sent by the respondents 2 and 4 dated 09.02.2016 and 18.03.2016 respectively, are contrary to the well established legal principles. Therefore, the petitioner is

entitled to either Minority Status or to get No Objection Certificate from the 1st respondent and therefore, prays for quashment of the above said proceedings of the respondents 2 and 4.

5. The learned Senior Counsel has also invited the attention of this Court to the decision reported in 2015 [1] CWC 557 [The Secretary, Immaculate College for Women, Pudupalayam, Cuddalore 607002 Vs. The State of Tamil Nadu rep. By its Secretary, Department of Higher Education, Fort St.George, Chennai-600 009 and others] and would submit that in similar facts and circumstances, this Court has upheld the case of the Secretary, Immaculate College for Women and quashed the impugned order, directing the very same official respondents 1 and 2 to take into account of the fact that originally the Educational Agency, viz., the Society, registered under the Tamil Nadu Societies Registration Act, has already been conferred with Minority Status and they are running several institutions.

6. Per contra, Mr.T.N.Rajagopalan, learned Special Government Pleader, appearing for the respondents 1 to 3, has invited the attention of this Court to the Counter Affidavit filed by the 2nd respondent and would that as per G.O.Ms.No.270 of the 1st respondent dated 17.01.1998, Minority Status is being given only to the educational institution already in existence and the Minority Status would not be conferred to a College proposed to be started and since the Rajiv Gandhi College of Arts and Science is yet to obtain permission from 1st respondent for starting the College and affiliation for the courses offered, their Minority Status claim will be considered only when the educational institution is actually established and continuously maintained by the Educational Agency. It is also submission of the learned Special Government Pleader that the petitioner / College is yet to submit the details with regard to the members of the Trust, especially with regard to the Minority Status and in the absence of such details, the 1st respondent is not in a position to scrutinise and ascertain the minority character of the Institution and therefore, the impugned order passed by the 2nd respondent is in order and prays for dismissal of the writ petitions.

7. Mrs.G.Thilakavathy, learned Standing Counsel appearing for the 4th respondent / University in these writ petitions, has drawn the attention of this Court to the Counter Affidavit and would submit that as per the provisions of the Statute of Madras University Act, any Educational Agency which proposes to start an Arts and Science College, shall on affiliation or obtain orders from the State Government permitting the approved Agency to start the College as per the

provision of the Tamil Nadu Private Colleges [Regulation] Act, and once the Government grants such a permission, the question of deciding what Courses should be sanctioned in future is purely an academic exercise falling within the purview of the University and still such an order has not been obtained by the petitioner from the Government. It was informed that their request will be processed only on the receipt of the Government Order from the State Government.

8. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

9. As per section 2[4][a], an Educational Agency in relation to any Minority College means any person who, or body of persons which, has established or administered and is administering or proposes to establish and administer such minority college and as per sub-section 7 of section 2[4], a Minority College means a private college of its choice established and administered, or administered by any such minority whether based on religion or language It is very pertinent to point out at this juncture that the Society is also running Rajiv Gandhi College of Engineering and the 1st respondent, vide letter in Govt.Lr.No.200, dated 28.08.2009, had conveyed the approval of the Government for continuance of the Minority Status already conferred to the said Institution, for a period of five years from 2007-08 to 2011-12 and a challenge was made to the said restriction of the Minority Status by the said Institution in WP.No.14454/2014. A Learned Single Judge, after taking note of the decision reported in 2013 [8] MLJ 509 [The Secretary, Jeyaraj Annapackiam College for Women Vs. State of Tamil Nadu], has stated that such a restriction is invalid and allowed the said writ petition and according to the learned Senior Counsel appearing for the petitioner, no further challenge has been made to the said order.

10. It is also pertinent to point out at this juncture that the religious Minority Status of the Society was not in dispute and an objection would have been raised by the official respondents 1 and 2 even at that point of time. But, they did not do so and in the light of the same, the stand of the 2nd respondent that the petitioner / College did not submit the details with regard to the members of the Trust and also the requirement as to whether the Trust is originally started by the members of the Minority Community and the Community Certificates of the Trust members issued by the Revenue Authority and the number of students of the Minority College, is unsustainable.

11. In the case of Immaculate College for Women [cited supra], the facts of the case would disclose that a Society by

name "Immaculate Heart of Mary's Society, Cuddalore" was registered under the Tamil Nadu Societies Registration Act, 1975 and it was founded by a Roman Catholic Congregation of the order of "Immaculate Heart of Mary, Pondicherry" and it was recognised as a Religious Minority by a decision of this Court in WP.No.652 of 1975 dated 24.09.1976 and the proceedings of the Director of School Education dated 20.11.1976 and the said Congregation is running very many institutions and with an intention to start an Arts and Science College for Women at Pudupalayam in Cuddalore, during the academic year 2015-16, the petitioner therein submitted statements to the 2nd respondent herein as well as made an application to the Thiruvalluvar University for grant of affiliation and to consider and dispose of both the applications, the petitioner therein filed two writ petitions in WP.Nos.12417 and 12418/2014 and pendency of the same, the 2nd respondent herein sent a communication dated 27.05.2014, informing the petitioner therein that their office was processing the applications for affiliation of Minority Status of existing institutions alone and that, as and when the petitioner therein starts a College, its application will be considered and the Thiruvalluvar University had also sent a communication, directing the petitioner therein to obtain either a No Objection Certificate from the State Government or a Declaration that the petitioner therein is a Minority Institution to enable the University to consider the question of affiliation. The 1st respondent, vide letter dated 24.06.2014, also issued a Show Cause Notice as to why the request of conferment of Minority Status should not be rejected and after eliciting the petitioner's reply, the 1st respondent issued an order dated 28.07.2014, rejecting the request of the petitioner therein and a challenge was also made by filing a writ petition. The Government in their Counter Affidavit, took a stand that the applications of only those Institutions which have already established Colleges alone, are taken up for consideration and since the petitioner therein has not started a College, they are not entitled to affiliation of Minority Status and it was further contended that the petitioner has not submitted the Community Certificates of all the Trust members and there is no proof to show that the petitioner fulfills the twin objectives of Article 30[1] of the Constitution as mandated in the Judgment rendered by the Hon'ble Apex Court reported in 2015 [6] SCC 537 [P.A.Inamdar Vs. State of Maharashtra]. The learned Judge, after considering the rival submissions, has held in favour of the petitioner therein and it is relevant to extract the following paragraphs:-

".....

19. Section 2[4][a] of the Tamil Nadu Private Colleges [Regulation] Act, 1976 defines and Educational Agency in relation to any Minority

College means any person who, or body of persons which, has established or administered and is administering or proposes to establish and administer such Minority College. When the definition of the Educational Agency includes any person who proposes to establish and administer such Minority College, the respondents cannot reject permission on the ground that the College is not yet been established. The first reason stated in the impugned order goes contrary to the very definition available in Section 2[4][a] of the Act. The second reason stated in the impugned order goes contrary to section 5[3] of the Act.

20. On the reliance placed upon the decision in P.A. Inamdar Vs. State of Maharashtra, 2005 [4] CTC 81 [SC] : 2005 [6] SCC 537, it is to be pointed out that today, without even processing the Application of the Petitioner, the Respondents cannot come to a conclusion that the twin objects are not satisfied. The original Society, has already got it registered under the Tamil Nadu Societies Registration Act, 1976. Under the provisions of the Act, the Society is obliged to file forms periodically, indicating the details of the office bearers on whom the Management of the Society is vested. Therefore, the details about the persons who constitute the Managing Committee of the Society are always available with the Government, in a different department. So far, there is no allegation that any person belonging to a non-minority, has been elected or at least has become a member of the Society in question. Therefore, the stand taken in the Counter Affidavit that Community Certificates have not been produced, cannot be accepted."

12. This Court, in the earlier paragraphs has indicated that the Religious Minority Status of the Society is not in dispute at all for the reason, such an objection was not raised even in WP.No.14454/2014 and the definition of section 2 [4][a] also comes to their aid. The Engineering College run by the same Society was conferred with Minority Status for a limited period and it was put to challenge in the above said writ petition and it was allowed and declared that the said Institution shall be treated as Christian Minority Educational Institution without any restriction and admittedly, no challenge

has been made to the said order and it has become final. Though it is vehemently contended by the learned Special Government Pleader that as per G.O.Ms.No.270, Higher Education [J1] Department, dated 17.06.1998, the Minority Status claim of the Educational Institution will be considered only when the Institution is actually established and continuously maintained by the Educational Agency and the Minority Status would not be granted to an Educational Institution proposed to be started, the said stand was repelled in the above cited order and the respondents 1 and 2, being parties to the above said writ petition, cannot take a contra stand. In the considered opinion of the Court, the reasons assigned in the impugned orders are per se unsustainable and therefore, warrants interference.

13. In the result,

[A] WP.No.18063/2016 is partly allowed and the impugned order passed by the 2nd respondent in proceedings RC No.46786/R1/2015 dated 09.02.2016 is hereby set aside. The 1st respondent is directed to process the application of the petitioner in the light of the observations made in these writ petitions and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

[B] WP.No.18484/2016:- In the light of the orders passed in WP.No.18063/2016, the petitioner, on receipt of the communication from the 1st respondent, shall approach the 4th respondent in terms of the order passed in WP.No.18063/2016. The 4th respondent is directed to consider the petitioner's application dated 29.10.2015 and pass orders in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

AP

To

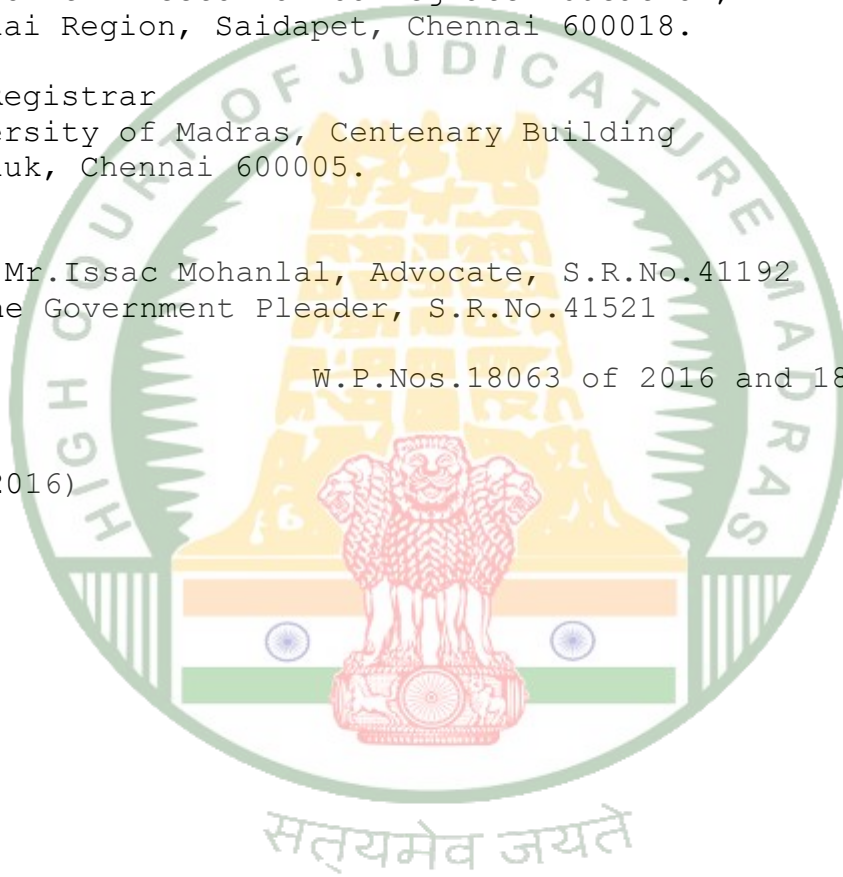
1. The Secretary,
State of Tamil Nadu
Department of Higher Education,
Fort St George, Chennai 600 009.
2. The Director of Collegiate Education
College Road, Chennai 600 006.
3. The Joint Director of Collegiate Education,
Chennai Region, Saidapet, Chennai 600018.
4. The Registrar
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+2cc's to Mr.Issac Mohanlal, Advocate, S.R.No.41192

+1cc to the Government Pleader, S.R.No.41521

W.P.Nos.18063 of 2016 and 18484 of 2016

SSK(CO)
CA(25/07/2016)



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