

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

W.P.No.2727 of 2016
and
W.M.P.Nos.2278 & 2279 of 2016

St.Louis College for the Deaf and Blind,
rep. by The Secretary,
Canal Bank Road,
Gandhi Nagar, Adyar,
Chennai-600 020. Petitioner

Vs.,

1. The Government of Tamil Nadu,
rep. by the Principal Secretary to Government,
Welfare of Differently Abled Person,
Fort St.George, Secretariat,
Chennai-9,
2. The State Commissioner for the Different Abled
Commissionerate for the Welfare of the Differently Abled
Jawaharlal Nehru Inner Ring Road,
K.K.Nagar,
Chennai-600 078.
3. The Secretary,
Department of Higher Education,
Fort St. George, Secretariat,
Chennai-9. Respondents

Prayer: Writ Petition has been filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned G.O.Ms.No.41, dated 24.07.2014, Welfare of Differently Abled Persons (DAP-1) Department, on the file of the 1st respondent and to quash the same, insofar as it restricts the period to five years from 2014-2015 to 2018-2019 and to direct the 1st respondent to confer minority status without restricting the period, in respect of the petitioner-college.

For Petitioner : Dr.Fr.A.Xavier Arulraj

For Respondent : Mr.V.Jayaprakash Narayanan, Spl. GP.

* * * * *

ORDER

This writ petition has been filed by the petitioner praying to call for the records pertaining to the Government Order in G.O.Ms.No.41, Welfare of Differently Abled Persons (DAP-1) Department, dated 24.07.2014, passed by the 1st respondent and to quash the same, insofar as it restricts the minority status of the petitioner-College for a period of five years from 2014-2015 to 2018-2019 and to direct the 1st respondent to confer minority status without restricting the period, in respect of the petitioner-college.

2.The brief facts of the case are as follows:- The petitioner-College was established by the Society of Brothers of St.Gabiral, in the year 1993-1994, after obtaining permission from the Government vide G.O.Ms.No.191, Social Welfare and Nutritious Programme Department, dated 21.07.1993. It is an Unaided Arts and Science College for the Deaf and the Blind. In the year 1995, the Government of Tamil Nadu issued G.O.Ms.No.371, Education, Science and Technology, dated 10.05.1995, whereby it was ordered that the Government will verify and determine whether the Educational Institution is a minority institution within the meaning of Article 30(1) of the Constitution of India. Subsequently, the Government superseded G.O.Ms.No.371, dated 10.05.1995, by issuing G.O.Ms.No.270, dated 17.06.1998, by giving certain guidelines for determining the minority status. The petitioner-College made an application to the 1st respondent through the 2nd respondent seeking conferment of minority status, based on religion of Christianity. Having been satisfied with the complinace to the norms of the minority institutions, the 1st respondent vide G.O.Ms.No.41, Welfare of the Differently Abled Persons (DAP-1) Department, dated 24.07.2014, has conferred minority status on the petitioner-college, for limited period of five years, from 2014-2015 to 2018-2019. Challenging the restriction on the minority status of the petitioner-college for the five years, the petitioner-College has come forward with the present writ petition.

3.Heard both sides and perused the materials available on record.

4.It is submitted by the learned counsel for the petitioner that in similar case in W.P.No.25045 of 2015, by relying upon the judgment of the Division Bench reported in 2013(8) MLJ 509 [Secretary, Jeyaraj Annapackiam Collegevs. State of Tamil Nadu], this Court has held as follows_

"2.This Court after taking note of the earlier Division Bench judgment referred supra has held as follows in W.P.No.14454 of 2014:

"5.In the above referred matters, this Court considered the similar contentions raised as to whether the Government was justified in restricting the recognition granted recognizing the Institution as a minority institution for a specified period. Accepting the contention of the Institution and repelling the contention raised by the Government, the orders rejecting the recognition of the minority Institution for a specified period was held to be unsustainable.

6.At this stage, it would be beneficial to refer to the operative portion of the Judgment of the Hon'ble Division Bench reported in (2013) 8 MLJ 509, cited supra, which read thus:-

"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 particulars 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 Sundra Swamigal, Medical, Educational and Charitable Trust, Salem Vs. 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."

7.The learned counsel appearing for the respondents are not able to distinguish the decisions referred supra nor able to produce any record to show that the petitioner Institution has to be treated differently.

8.In the light of the above, following the decisions referred supra, the writ petition is allowed as prayed for and that portion of the impugned letter limiting the recognition of the status of the petitioner Institutions as to the Christian Minority Educational Institution only for 5 years is set aside and the Institution shall be treated as a Christian Minority Educational Institution without any restriction.

No costs. Connected miscellaneous petition is closed.

3.Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that certain clarification /queries have been sought for by the respondents. Therefore, the petitioner will have to respond and comply with the same.

4.This Court is of the view that the said issue constitute a separate cause of action. Thus, while it is always open to the respondents to take appropriate action as per law, and the same cannot be a ground to support the impugned order passed on 20.05.2009. Accordingly, the impugned order dated 20.05.2009 is set aside insofar as the restriction of five years is concerned, consequently the limitation of five years as mentioned is hereby set aside and the petitioner's institution shall be treated as minority educational institution without any restrictions. However, this order is passed without prejudice to the right of the first respondent to proceed in accordance with law in pursuant to the letters dated 12.07.2013 and 07.11.2013. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed."

For the same proposition, a reference could be made in another judgment reported in 2009(6) CTC 579 [Asan Memorial Association Vs. The State of Tamil Nadu], wherein this court has observed as follows_

"14.A Division Bench of this Court in the decision reported in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem Vs. State of Tamil Nadu, [2001 (3) MLJ 433], took a view that there is no provision for the Government to insist on renewal of minority status every year. When once the institution has been granted minority status, unless there is any change in the constitution of the agency or any adverse information is received by the Government, there is absolutely no need or necessity for the Government to expect such periodical renewal. SLP filed against the said judgment was also dismissed by the Honourable Supreme Court. The said Division Bench decision was followed by this Court subsequently in the decision reported in C.S.I. Institute of Technology, Thovalai Vs. The Government of Tamil Nadu & another, [2004 WLR 202], and this Court held that requiring renewal of minority status every year will unnecessarily lead to delay and red-tapism, which is totally uncalled for. By requiring such declaration every year, the administration of the institution and the plight of the students will be kept under unreasonable suspense and doubt which is totally unwarranted. This Court held that is totally unreasonable to expect all the minority institutions in the State be knocking at the doors of the Government every year and the authorities pass orders only after some years."

The dictum laid down in the above said judgments is squarely applicable to the present facts of the case also. Hence, I am of the opinion, by following the dictum laid down in the above said judgments, the present writ petition could also be allowed.

5. Accordingly, the writ petition is allowed and the impugned order dated 16.07.2012 is set aside, insofar as the restriction of five years is concerned and consequently the limitation of five years as mentioned is hereby set aside and the petitioner-

College shall be treated as minority educational institution without any restrictions. Connected Miscellaneous Petitions are closed. No costs.

ssv

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Welfare of Differently Abled Person,
Fort St.George, Secretariat,
Chennai-9,
2. The State Commissioner for the Different Abled
Commissionerate for the Welfare of the Differently Abled
Jawaharlal Nehru Inner Ring Road,
K.K.Nagar,
Chennai-600 078.
3. The Secretary,
Department of Higher Education,
Fort St. George, Secretariat,
Chennai-9.

+ 3 cc to M/s.Dr.Fr.A.Xavier Arul Raj, Advocate SR 15500

+ 1 cc to the Govt.Pleader SR 15675

ala(co)
prk6/4

W.P.No.2727 of 2016and
W.M.P.Nos.2278 & 2279 of 2016

सत्यमेव जयते

WEB COPY