

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.A.No.1130 of 2013
and M.P.No.1 of 2013

1. The State of Tamil Nadu
Rep. by its Secretary,
Department of Higher Education,
Omandurar Govt. Estate,
Fort St. George, Chennai-600 006.
 2. The Director of Collegiate Education,
College Road, Chennai-6.
- .. Appellants/
Respondent 1 and 2

Vs.

- 1.The Secretary / Correspondent,
Loyola College (Autonomous),
Sterling Road, Nungambakkam,
Chennai-600 034.
 - 2.The University of Madras,
rep. by its Registrar,
University Centenary Building,
Chepauk, Chennai-5.
- .. Respondent/
Petitioner
.. Respondent/
Respondent 3

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 17.09.2012, made in W.P.No.24606 of 2012.

Prayer in Writ Petition:

Petition filed under Article 226 of constitution of India
Praying to issue writ of certiorari calling for the records relating to the impugned order issued by the 1st respondent state Government vide GO.MS.No.363 Higher Education (E1) Department dated 8.10.2009 quash the same in so far as it restricts the status of the petitioners college as a Minority Educational Institution to a limited period of 5 years from 2007 to 2012

For Appellants : Mr.P.S.Siva Shanmugasundaram
Special Government Pleader

For Respondents : Mr.P.Godson Swaminath for R1

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This appeal is directed against the judgement of the learned Single Judge dated 17.08.2012.

2. The appellant No.1, which is, effectively, the State of Tamilnadu, has filed the present appeal along with the Director of Collegiate Education, to impugn the judgement of the learned Single Judge, on the sole ground that the acceptance of prayer to quash the impugned Government Order, i.e., G.O.Ms.No.363, Higher Education (E1) Department, dated 08.10.2009 (in short, "the G.O."), which was issued to monitor and regulate the minority status of respondent No.1, i.e., Loyola College, would impact its rights to oversee and supervise, not only this particular institution, but all other institutions. It is pertinent to note that via the impugned judgement, appellant No.1, had limited the recognition of minority status of respondent No.1, to a defined period, that is, five years. The impugned G.O. indicates that respondent No.1 would enjoy minority status for the period spanning between 2007 and 2012.

2.1. Respondent No.1, being aggrieved by incorporation of a defined period in the impugned G.O., with regard to its minority status, had approached the learned Single Judge, via a writ petition under Article 226 of the Constitution. The learned Single Judge, as adverted to above, quashed the impugned G.O.

3. It is, in this background that the appellants have preferred the captioned appeal before us. Before we proceed further, we would like to allude to the relevant facts, which are, helpfully, etched out in paragraphs 4 to 7 of the impugned judgement :

"..... 4. The case of the petitioner is that the petitioner-College, namely, Loyola College, Chennai is one among the recognised educational institutions administered by the Loyola College Society formed by the members of the Congregation of Society of Jesus. The college was established by the St. Joseph's Society, Tiruchirappalli, a society registered under the Societies Act (Registration No.5228 of 1973) and for administrative convenience, a separate society namely, Loyola College Society was formed and it took over the College. The

Loyola College Society is a registered Society bearing Registration No.228 of 1973. It was originally registered under the Societies Registration Act No.XXI of 1860 and after the enactment of Societies Registration Act, 1975 which came into effect on 22.04.1978, the Society became deemed to be registered under the Societies Registration Act, 1975 by virtue of Section 53 thereof. The members of the Society of Jesus are popularly known as Jesuits in the State of Tamil Nadu. There are 480 Jesuits working in various schools and colleges, social services and social work centres in Parishes and in Mission Outreach Programmes. This Jesuit Province of Tamil Nadu is called the Jesuit Madurai Province. There are totally 5 Arts and Science Colleges including Loyola and 2 Colleges of Education under the Madurai Province. Some of the other premier institutions of higher education administered by the Jesuits in India are as follows:

- 1.Loyola-ICAM College of Engineering Technology (LICET), Chennai.
- 2.Loyola Institute of Business Administration (LIBA), Chennai.
- 3.Xavier Labour Research Institute (XLRI), Jamshedpur
- 4.Xavier Institute of Management (XIM), Bhubaneswar
- 5.Loyola College , Thiruvananthapuram
- 6.St.Xavier's College, Ahmedabad
- 7.St.Xavier's College, Mumbai
- 8.St.Xavier's College, Kolkata
- 9.St.Joseph's College, Bangalore
- 10.St.Joseph's College, Trichy
- 11.St.Joseph's College of Commerce, Bangalore
- 12.St.Aloysius College, Mangalore
- 13.Xavier Institute of Engineering, Mumbai
- 14.St.Xavier's College of Management and Research, Mumbai
- 15.St.Xavier's College of Education, Mumbai
- 16.St.Xavier's College, Thiruvananthapuram
- 17.Andhra Loyola College, Vijayawada
- 18.St.Joseph's College, Darjeeling
- 19.St.Xavier's College, Ranchi
- 20.Xavier Institute of Social Studies, Ranchi
- 21.St.Xavier's College, Palayamkottai
- 22.St.Xavier's College of Education, Palayamkottai
- 23.Arul Anandar College, Karumattur-Madurai
- 24.Vidyajoti College of Theology, Delhi
- 25.Loyola College, Thiruvannamalai
- 26.Loyola College of Education, Chennai.

5. The object of the Society is to provide education in all streams to all, especially to the Roman Catholic Christians of the State and to maintain the spiritual educational, cultural, social, industrial, technical, agricultural, benevolent and other interests of the Society. The Loyola College was established in the year 1925. It became an autonomous college in 1978. it continues to remain affiliated to the University of Madras. The University confers the degrees on the students passing the examinations held by the college and the name of the college will be indicated in the degrees. All along, the college was recognised as a Minority Institution by the Government. The Society is the Educational Agency of the college. Although it is a Christian Religious Minority College, admission is not denied to anyone only on the ground of caste, creed, religion or language.

6. The Government issued G.O.Ms.No.270 (Higher Education-J1) dated 17.06.1998, pursuant to which, the second respondent insisted the petitioner-college to get a separate order from the Government recognizing its status as a Minority. Accordingly, the petitioner-College applied to the first respondent through the second respondent requesting to recognize it as a Minority Institution. The college satisfied all the requirements contained in the said Government Order for the grant of minority status. The details are as under:

(i) The college has been established with the definite aim of promoting the educational interest and the social advancement of the Christian population.

(ii) The members of the Society which runs the college are all Christians by birth. They belong to the Roman Catholic order of Christianity.

(iii) The college has been functioning as a full-fledged Christian Minority Educational Institution.

(iv) The Educational Agency, namely, the Society is a Christian organisation.

(v) Christianity is a religion recognised and declared as Minority in the State of Tamil Nadu.

The first respondent issued orders recognizing the status of the college as Minority college for one year from 2004-2005. Every year applications were submitted by the petitioner and orders recognizing the college as Minority Institution were issued for the years 2005-2006

and 2006-2007.

7. The first respondent again issued an order in G.O.Ms.No.363 Higher Education (E1) Department dated 08.10.2009 granting recognition as Minority Institution from 2007-2008 to 2011-2012 for a period of five years. The restriction of recognition as minority college for a period of five years is challenged in this writ petition on the ground that there is no change in the membership of the society and constitution of the educational agency and its objects."

4. Pertinently, the learned Single Judge, after advertng to the aforementioned facts, posed the following issue for consideration, which according to him, needed determination : whether the appellants could grant minority status for a limited period ?. The grievance of respondent No.1, is that, each time the period prescribed for recognition of its minority status expires, it is required to approach the appellants, which involves having to tackle bureaucratic rigmarole.

4.1. The minority status of Loyola College was restricted, as noted above, to a period of five years spanning between 2007-2008 and 2011-2012.

4.2. The learned Single Judge, relying upon a Division Bench judgement in the case of : Thirumuruga Kirupanantha Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem V. State of Tamil Nadu, 2001 (3) MLJ 433, ruled against the appellants.

5. Mr.P.Siva Shanmugasundaram, learned Special Government Pleader, who appears for the appellants, says the impugned G.O. restricted the period of recognition as such a regime allows for oversight, supervision and regulation. It is the learned counsel's submission that, if, the appellants were to grant permanent recognition to minority institutions, then, aberrations, if any, which may arise, could go unnoticed.

6. On the other hand, learned counsel for respondent No.1 institute, says that, as and when, an infraction is noticed, the appellants would be free to take out proceedings against the concerned institution, and that, after hearing the concerned institution, orders of de-recognition, as a minority institution, can be passed. In support of his submissions, learned counsel relies upon a judgement of a Division Bench of this Court in the matter : Secretary, Jeyaraj Annapackiam College V. State of Tamil Nadu, (2013) 8 MLJ 509.

7. We heard the learned counsel for the parties and perused the record.

8. According to us, the approach adopted by the learned Single Judge does not call for any interference. As a matter of fact, the view taken by the learned Single Judge is based

on the judgement of the Division Bench in the matter of : Thirumuruga Kirupanantha Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust. Being a coordinate Bench, we are bound by the view of the Division Bench.

9. Moreover, the argument advanced by Mr.Siva Shanmugasundaram, that grant of permanent minority status does not allow monitoring and regulation, has been answered, as rightly argued by the learned counsel for respondent No.1, in paragraph 7 of the judgement rendered in : Jeyaraj Annapackiam College. For the sake of convenience, the relevant observations are extracted hereafter :

".... 7. We are in entire agreement with the Division Bench judgement of this Court reported in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem V. State of Tamil Nadu. 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."

10. Having regard to the aforesaid, we find no reason to interfere with the impugned judgement.

11. Accordingly, the captioned appeal is dismissed. Resultantly, pending application shall stand dismissed. There shall, however, be no order as to costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt.,
Dept of Higher Education
Omandur, Government Estate
Chennai-6.

2. The Director of College Education
College Road, Chennai-6.

W.A.No.1130 of 2013

CB(28/10/2017)



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