

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition No.18318 of 2009

& MP.No.2 of 2009

The Church of South India
Trust Association,
Rep by Most Rev.Dr.Devasahayem
No.226, Cathedral Road,
Chennai - 600 086.

... Petitioner

vs

1. The Govt of Tamil Nadu,
rep by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
D.P.I. Campus,
College Road,
Chennai-6.
3. The Director of Elementary Education,
D.P.I. Campus,
College Road,
Chennai-6.
4. The Director of Matriculation Schools,
D.P.I. Campus,
College Road,
Chennai-6
5. The Director of Teacher Education, Research and Training
D.P.I. Campus,
College Road,
Chennai-6

... Respondents

Prayer:- Writ Petition has been filed under Section 226 of the Constitution of India seeking for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order dated 03.11.2008 in G.O.(MS)No.214, School Education (X2) Department on the file of the 1st respondent and quash the same insofar as the educational institutions of the petitioner educational agency are concerned.

For Petitioner : Mr.A.Xavier Arulraj

For Respondents: Mr.V.Anandhamoorthy
Additional Government Pleader

O R D E R

Writ petition has been filed seeking for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order dated 03.11.2008 in G.O.(MS)No.214, School Education (X2) Department on the file of the 1st respondent and quash the same insofar as the educational institutions of the petitioner educational agency are concerned.

2.The petitioner has challenged G.O.Ms.No.375, School Education (X) Department dated 12.10.1998, by which the Educational institutions are given minority status only for a limited period. The issue is already covered by the judgment of the Hon'ble Division Bench of this Court reported in (2001) 3 MLJ, 433(Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal, Medical, Educational and Charitable Trust, Salem, represented by its Chairman Vs. State of Tamil Nadu and another). The relevant paragraph Nos.4 & 5 of the above judgment, are extracted below:

'4. In our considered opinion, the appellant is well founded in its submission. It is on record that the appellant submitted an application claiming minority status, giving the following declarations :--

(1) All the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date.

(2) The Trust has not included any new member in the Trust so far.

(3) 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.

(4) The additional Deed executed by the Trust reflects the main objective of subserving the interests of the said Minority community.

(5) The Founders Trustees, namely,

(a) Thiru. A. Shanmughasundaram S/o late Arunachalam

(b) Tmt. Annapoorni, W/o Thiru. A. Shanmughasundaram and

(c) Thiru. Saravanan, S/o Thiru. A. Shanmughasundaram belong to Telugu speaking Ariya Vaisya Chettiar community and their mother-tongue is Telugu.

It is only after verification of the documents produced by the appellant including the additional Deed, which reflects the main objectives of subserving the interest of the minority community, that the Government issued the declaration in G.O. Ms. No. 532, dated 27-10-1997 that the educational institutions run by the appellant are eligible for minority status on linguistic basis. Accordingly, the Government declared as follows :--

"4. Accordingly, the Government declare the Vinayaka Missions, Kripananda Variyar Medical College, run by the Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical, Educational and Charitable Trust, Salem as Linguistic Minority institution for the purposes of Article 30(1) of the Constitution of India for the purpose of admission of medical students for 1997-98.

5. The Government also direct the Chairman of the Vinayaka Missions' Kirupananda Variyar Medical College run by Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical, Educational and Charitable Trust, Salem to admit students in Medical College for the year 1997-98 in the ratio of 50 : 50, keeping in view the orders of the High Court, Chennai dated 27-3-1997 in W.M.R No. 9703 of 1996 in W.P. No. 6252 of 1996 to convert 15 payment seats into that of free seats.

(By order of Governor)

Sd/- S. Ramakrishnan,
Secretary to Government."

A cursory look at the aforesaid Government Order dated 27-10-1997 would reveal that the application for minority status preferred by the appellant had been finally disposed of by the Government and the order was also issued duly authenticated according to the Rules of Procedure

and Conduct of Business of the Government in the name of the Governor. It was only after reaching the requisite satisfaction about the minority status of the appellant, taking into consideration all relevant facts including the language, the persons who established the institution and the persons who are administering the institutions, that the Government passed the order declaring the educational institutions established and administered by the appellant as linguistic minority institutions for the purpose of Article 30(1) of the Constitution of India. Though the declaratioin was confined for the year 1997-98, it is clear from paragraphs 3 and 4 of G.O.Ms. No. 532, dated 27-10-1997, namely, "3. The Government after verification of the documents produced, consider that Vinayaka Missions, Kirupananda Variyar Medical College run by

the Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical, Educational and Charitable Trust, Salem is eligible for Minority status on linguistic basis.

4. Accordingly, the Government declare the Vinayaka Missions Kirupananda Variyar Medical College, run by the Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust, Salem as Linguistic Minority institution for the purposes of Article 30(1) of the Constitution of India for the purpose of admission of medical students for 1997-98." that the minority status have been conferred taking into consideration all material and relevant facts which have a bearing on the subject. We fail to appreciate how the minority status can be conferred on the appellant for a particular period to be renewed periodically like a driving licence. In our considered opinion, it is not open for the State Government to review its earlier order conferring linguistic minority status on the appellant unless it be shown that the appellant had suppressed any material fact while passing the earlier order dated 27-10-1997 or there is fundamental change of circumstances warranting cancellation of the earlier order. It is not the Government's case that there is any suppression of any material facts or any fundamental change of circumstances warranting cancellation of the earlier order. The Government's contention appears to be that in the light of the new guidelines issued by it in G.O. Ms. No. 270, Higher Education (J1) Department, dated 17-6-1998, modifying the guidelines issued on 10-5-1995 (based on which the linguistic minority status was given to the appellant), the appellant is not eligible to linguistic minority status. However, paragraph 8 of the said Government Order dated 17-6-1998 makes the position abundantly clear that the new guidelines were to apply only to pending applications claiming minority status and also to applications which will be received in Future from educational institutions. On a reading of the said Government Order dated 17-6-1998 itself, it is evident that the appellant had also complied with the conditions therein, and in particular, Clause 8 (vii) thereof, which states that insofar as the State of Tamil Nadu is concerned, any person whose mother-tongue is any language other than Tamil, shall be considered as linguistic minority in the State and in respect of religious minority, any person whose religion is other than Hinduism, shall be considered as religious minority in the State.

5. To recapitulate, the appellant had made an application to the Government for being recognised as a linguistic minority in terms of the guidelines as laid down in G.O. Ms. No. 371, Education, Science and Technology Department, dated 10-5-1995 and the appellant was granted linguistic minority status by executive order in G.O. Ms. No. 532, Health and Family Welfare Department, dated 27-10-1997 issued in the name of the Governor after being fully satisfied that the appellant had fulfilled all the conditions prescribed in the guidelines by the Government in G.O.Ms. No. 371, dated 10-5-1995 for being recognised as a linguistic minority institution. The Government had also duly taken into account the additional Deed executed by the appellant before granting minority status as would be evident from paragraph 2(iv) of G.O.Ms. No. 532, dated 27-10-1997. By the said Government Order dated 27-10-1997, 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. Shanmugasundaram (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 effeced 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 or 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.''

3. In view of the above judgment, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
The Govt of Tamil Nadu,
Department of School Education,
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+1 cc to the Government Pleader sr 52541
+2 ccs to Ms.A.Arul Mary Advocate sr 52898

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