

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 1806 of 2013

&

M.P. Nos.2 of 2013 & 1 of 2014

Nirmalamatha Convent Matric Hr.

Secondary School,

Rev.Sr. Roslin

Kuniamuthur,

Coimbatore - 641 008.

..Petitioner

Vs.

1. The Government of Tamil Nadu,
represented by the Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai - 600 006.
3. Inspector of Matriculation Schools,
Ramanathapuram,
Coimbatore - 45.
4. The National Commission for
Minority Educational Institutions,
First Floor, Jeevan Tara Building,
NO.5, Sansadh Patel Chowk,
New Delhi - 110.

(R4 suo motu impleaded as per order dated
14.07.2017 in W.P.1806/13)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorarified Mandamus to call
for the records of the impugned proceedings dated 26.10.2012 in
Na.Ka.No. 1272/A3/12 on the file of the 2nd respondent and quash
the same directing the respondents to grant recognition for a
period of three years, from 01.02.2012 to 31.03.2015 under the
Code of Regulations of Matriculation Schools, for Nirmalamatha
Matric Hr.Sec. School.

For Petitioner ::Dr.Fr.A. Xavier Arulraj,
Senior Counsel for
M/s. A. Arul Mary

For Respondents::Mr.V. Anandhamoorthy,
Addl. Govt. Pleader for R1 to R3
Mr.Su. Srinivasan
Assistant Solicitor General for R4

O R D E R

The petitioner school was established in the year 1993 and is being administred by "The Adoration Congregation Educational Society". It is a society being run for the improvement of religious minorities. The petitioner school was recognised by the Tamil Nadu Matriculation Board on 25.07.1995 upto Elementary School and as on date, it has been upgraded as Higher Secondary School. As far as recognition is concerned, it is being periodically renewed. One such recognition is dated 26.10.2012. While renewing the recognition to the petitioner school, 24 conditions have been imposed. One of the conditions is that the School has to be governed by the provisions of Right of Children to Free and Compulsory Education Act, 2009 (RTE Act in short). Aggrieved over the said conditions only, the present writ petition has been filed.

2. Heard Dr.Fr. A. Xavier Arulraj, Senior Counsel for Ms.A. Arul Mary, learned counsel for the petitioner, who would submit that the petitioner is a minority school having obtained recognition from the 4th respondent namely, National Commission for Minority Educational Institutions, New Delhi, by order dated 08.05.2008. Therefore, such a condition cannot be imposed while granting recognition or renewal.

3. On the other hand, Mr.V. Anandhamoorthy, learned Additional Government Pleader appearing for respondents 1 to 3 would submit that when the Government grants recognition, it has got right to impose conditions. That apart, minority status has been obtained by the petitioner directly from the National Commission for Minority Institutions. Hence, he justifies the impugned order.

4. Mr.Su. Srinivasan, learned Assistant Solicitor General appearing on behalf of the 4th respondent would submit that Section 11(f) of National Commission for Minority Educational Institutions Act, 2004 as well as Section 12(B) of the Amended Act empowers the Commission to grant minority status to an educational institution either as an Appellate Authority or as an

Original Authority. In this regard, the judgment of the Honourable Supreme Court in Governing Body of P.A.E.M College and another V. State of Jharkhand and Others in Civil Appeal No. 3070 of 2004 dated 06.12.2012 has been relied upon.

5. The only issue to be decided in this writ petition is whether the State Government has got the power and authority to impose a condition on the petitioner school, which is a minority institution to abide by the provisions of the RTE Act. The Honourable Supreme Court in the judgment reported in 2014 6 SCC Pg.1 held that RTE Act is not applicable to minority institutions. When the Apex Court has already held that RTE Act is not applicable to minority institutions, under Article 141 of the Constitution of India, the said judgment is binding on the State Government. Therefore, the State Government has got no power to impose such a condition contrary to the judgment of the Honourable Apex Court.

6. With regard to the powers of the National Commission for Minority Educational Institutions to grant minority status to educational institutions is concerned, as rightly contended by the learned Assistant Solicitor General, there are two provisions, namely, Section 11(f) of The National Commission for Minority Educational Institutions Act, 2004 and Section 12B(1) of the Amended Act, which are extracted as follows:

"11. Functions of Commission:

...

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;"

"12B. Power of the Commission to decide on the minority status of an educational institution - (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission."

A perusal of the above provisions would, undoubtedly, make it clear that under Section 11(f) of the said Act, the Commission has to decide about the minority status of an educational institution as the Original Authority. The powers conferred under Section 12B(1) of the Amended Act is, as that of an Appellate Authority against the order passed by the Central Government or State Government. Therefore, the National Commission for Minority Educational Institutions is clothed with the powers as an Original Authority as well, as an Appellate Authority.

7. Though there are two contra judgments, one by the Division Bench of Allahabad High Court in Special Appeal. No. 552/2015 dated 26.11.2015, wherein it was held that the Commission has got powers both as an Original Authority and as an Appellate Authority, and another by the Division Bench of Calcutta High Court in FMA No. 3579 of 2013 by order dated 13.07.2016, wherein it was held that Commission has got only Appellate Jurisdiction and not Original Jurisdiction, however, the issue was finally settled by the Honourable Supreme Court in Governing Body of P.A.E.M College and another V. State of Jharkhand and Others in Civil Appeal No. 3070 of 2004 dated 06.12.2012 wherein it was held that the Commission has got powers both as Original and Appellate Authority, namely, Sections 11(f) and 12B of the Act and concurred with the judgment of the Allahabad High Court. Paragraph 6 of the said judgment is extracted as follows:

"6. From the above provisions, it is clear that the Commission has the power to decide all questions relating to the status of any institution as minority educational institution and declare its status as such. Moreover under Section 12B, where an authority established by the Central Government or any State Government has rejected the application for grant of minority status to any educational institution, the aggrieved person may appeal against such order of the authority to the Commission. The provisions contained in Section 11(f) of 2004 Act and Section 12B of the Amendment Act are, thus, wholesome provisions for deciding all questions relating to the status of any institution as minority educational institution and for declaration of such status."

8. In view of the above settled position of law, the National Commission for Minority Educational Institutions has got jurisdiction and the petitioner's school having obtained minority status from the said Commission is entitled to recognition without being governed by the provisions of the RTE Act. Therefore, the conditions, which have been prescribed by the authority, while granting recognition/while extending recognition, that the petitioner's school has to abide by the RTE Act, has to be set aside and it is accordingly set aside. Accordingly, the writ petition is allowed. No costs. Connected M.Ps are closed.

s/d-

Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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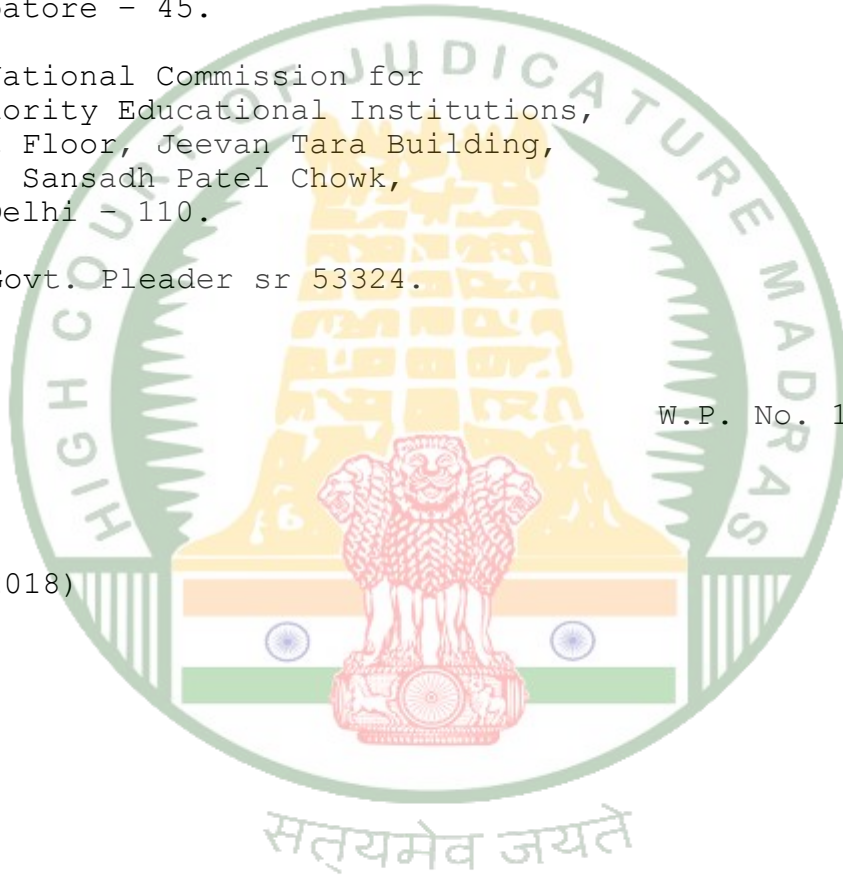
To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of Matriculation Schools,
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New Delhi - 110.

+1 CC to Govt. Pleader sr 53324.

W.P. No. 1806 of 2013

EV(CO)
SP(25/06/2018)



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