

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.42316 of 2016
and
W.M.P.No.36222 of 2016
and
W.M.P.No.20477 of 2017

The Secretary,
Voorheese College, Vellore,
Vellore District - 632 001.

..Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Secretary,
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,
Vellore Region, Vellore District.
- 4.Dr.S.EzhilChristadoss,
Principal (in-charge) cum,
Head of the Department of Chemistry,
Voorhees College, Vellore,
Vellore District - 632 001.
(R-4 impleaded as per order dated
31.01.2017 in WMP.No.2360/2017 in
W.P.No.42316/2016)

.. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned proceeding issued by the 2nd respondent Director of Collegiate Education in R.C.No.48166/G4/2016 dated 26.11.2016 and quash the same.

For Petitioner : Mr.Issac Mohanlal, Senior Counsel
for M/s.P.Godson Swaminath

For Respondents: Mr.K.Venkata Ramani
Additional Advocate General-VII
Assisted by
Mrs.K.Bhuvaneswari
Government Advocate for R1 to R3
Mr.S.Sathia chandran for R4
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O R D E R

The Secretary of Voorhees College, Vellore, is the petitioner in this writ petition and the order dated 26.11.2016, directing the Governing Board to relieve the Secretary from the post on account of certain serious allegations and registration of a criminal case is under challenge in this writ petition.

2.The writ petitioner is presently holding the post of Secretary of Voorhees College, Vellore and he is Rt.Rev.Bishop of the Church of South India, Diocese of Vellore. The college is owned by the Diocese of Vellore. For the purpose of administering the said college, a separate society was established namely, Church of South India Voorhees College, Vellore. It is registered under the provisions of the Societies Registration Act. The college is a recognised aided institution and more so, a minority educational institution constituted and administered in terms of Article 30 (1) of the Constitution of India. The petitioner claims that the college is one of the oldest and most reputed colleges in the State. The college offers general and secular education at Graduate, Pre-Doctoral and Doctoral levels. It is a minority institution and admissions are not denied to anyone on the ground of religion, caste or creed. However, the admissions are strictly made in accordance with the Norms and Guidelines prescribed by the University Grants Commission(UGC). The college is receiving grant-in-aid from the Government of Tamil Nadu. The petitioner states that there are 66 teaching staffs and 55 non-teaching staffs are working in the aided section and 55 teaching staffs and 12 non-teaching staffs in the unaided section of the college. The college offers 10 UG Courses and 4 PG Courses under the aided stream. Apart from that, the college offers 7 UG Courses, 9 PG courses and 9 Pre-doctoral courses under the self financed stream.

3.The 2nd respondent/Director of Collegiate Education permitted the college to fill up 26 posts of Assistant Professors vide his proceedings in Na.Ka.No.21663/G3/2011 dated 19.09.2014. Pursuant to the permission, the college invited eligible candidates through news paper notification in Tamil Daily "Daily Thanthi" on 23.07.2014 and in English Daily "The

Hindu" on 24.07.2014. The interview for the said posts were held from 23.09.2014 to 25.09.2014. Based on the Oral interview and written test, the college selected 26 eligible candidates and issued appointment orders in respect of selected candidates. All the 26 candidates possess the requisite qualifications as prescribed by the competent authorities and they were recruited purely on merit. The Joint Director of Collegiate Education also granted an approval for all the appointments and all the 26 candidates recruited are receiving grant-in-aid towards their salary.

4. Under these circumstances, one Mr.N.Surendhra Kumar, Advocate, preferred a complaint to the respondents 2 & 3 and also to the Additional Superintendent of Police, Vigilance and Anti-Corruption, Vellore, alleging that all the appointments for the post of Assistant Professors were made by getting gratification and no merit and rule was followed. He preferred a complaint against the Secretary of the College, Rev.Fr.D.A.Rajavel, Dr.S.EzhilChristadoss, Principal (in-charge) of the college and few others. Since the complaint preferred by Mr.N.Surendra Kumar, has not been registered, he filed C.M.P.306 of 2015 before the Chief Judicial Magistrate and Special Judge, Vellore and the Chief Judicial Magistrate, Vellore, by order dated 13.05.2015, forwarded the complaint to the Director of Vigilance and Anti-Corruption. Then, the Director of Vigilance and Anti-Corruption forwarded the same to the Additional Superintendent of Police, Vigilance and Anti-Corruption, Vellore, to take necessary action and pursuant to that direction, a criminal case was registered against the writ petitioner and other persons in FIR No.3/2016 dated 21.03.2016. The writ petitioner states that the selection of the Secretary Rev.Fr.D.A.Rajavel was duly registered by the 2nd respondent for the tenure from 16.07.2015 to 15.07.2018 in proceedings dated 29.07.2015. Thus, the Secretaryship has not been cancelled and even at the time of filing of the writ petition and even now, it is continuing.

5. The learned senior counsel appearing on behalf of the writ petitioner states that the impugned order was passed without any power or authority under the Tamil Nadu Private Colleges Regulations Act. Secondly, the learned senior counsel is of the opinion that a mere registration of a FIR cannot be a ground for issuing direction to relieve the Secretary from the post. The allegations in the FIR remain only as an allegation and even, the Tamil Nadu Private Colleges Regulations Rules, No.8, Sub clause (6) (c) states that "a person convicted for criminal offence involving moral turpitude" alone, shall not be eligible to become a member of the committee. Thus, the learned senior counsel relying on the above rule reiterated that only after conviction such an action, can be taken against the Secretary of

the college and a mere registration of the FIR cannot constitute a ground to relieve the Secretary from the post. Thirdly, the learned senior counsel is of the opinion that the allegations are false and the complainant was a legal practitioner and on account of certain personal animosities, the said complaint was preferred.

6.The learned Additional Advocate General appearing on behalf of the respondents strenuously opposed the contentions of the learned senior counsel for the petitioner, by stating that the college is fully functioning under grant-in-aid by the Government under the provisions of the Tamil Nadu Private Colleges Regulations Act, 1976 and the rules framed thereunder:

"The petitioner's Colleges is receiving 100% grant-in-aid from the Government of Tamil Nadu for the aided courses. The said college is administered by the South India, Diocese of Vellore and it is registered under the Societies Registration Act."

7.The learned Additional Advocate General made a submission that the FIR was not registered immediately on the complaint made by Thiru.N.Surendra Kumar, Advocate. In fact, the police authorities have not registered the case at the first instance and he filed a petition before the Chief Judicial Magistrate, Vellore and the Chief Judicial Magistrate, Vellore, directed the Inspector of Police, Vigilance and Anti-Corruption to conduct a preliminary enquiry as enumerated in the Manual of Vigilance and Anti-Corruption and further directed if warranted, register the case and file a final report. Based on the above orders of the learned Chief Judicial Magistrate, Vellore, a preliminary enquiry was conducted in PE 143/2015/EDN/VL. The enquiry report revealed that there is a prima-facie case is made out against the accused officials and accordingly, a case was registered by the Department of Vigilance and Anti Corruption, Vellore, detachment Crime No.3/2016 under section 13(2) r/w 13(1) (c) and (d) of PC Act, 1988 and 120(B), 109 IPC has also been registered and the same was communicated to the 1st respondent namely, the Director of Vigilance and Anti Corruption vide their proceedings No.Rc.46/201/EDN/VL dated 01.11.2016.

8.The report of the Directorate of Vigilance and Anti Corruption, Chennai - 16 through their letter dated 16.11.2016 have informed the 2nd respondent/Director of Collegiate Education that Dr.S.Ezhil Christudoss(A.O.2), Bursar and Head of the Department of Chemistry, Voorhees College, Vellore, is due to retire from service on 30.11.2016 and requested the appropriate decision on his retirement as per Tamil Nadu Private Colleges, (Regulation) Act, 1976. However, the learned Additional Advocate General states that since the Secretary of the College Dr.A.Rajavelu, is one of the accused in the Vigilance and Anti-

Corruption case, he should be relieved from the Secretary post immediately. As per the Bye- Laws, the Secretary of the College shall be the Bishop of the C.S.I, Vellore Diocese or his Commissary or the moderator's commissary as the case may be. The member of the Governing Board should immediately replace Dr.A.Rajavelu with a new Secretary of the College at once.

9.In respect of the grounds raised by the learned senior counsel for the petitioner, it is contended by the Additional Advocate General that as per Rule 9 of the Private Colleges Regulations Rules, 1976, the following duties and responsibilities are entrusted to the Secretary of an Education Agency is as follows:-

"The Secretary shall function for and on behalf of the committee and educational agency.

The Secretary shall act according to the resolutions passed at the meeting of the committee.

The Secretary shall not interfere in the internal administration of the college such as admission, examination, promotion of student and other academic matters as also the administration of the special fee funds, which shall be made the exclusive responsibility of the Principal.

The Secretary shall be responsible for the maintenance of proper and accurate accounts and the administration of college funds except special fee funds."

10.Further, it is submitted that as per the bye-laws of the Church of South India, Voorhees College, Vellore, among other things the following duties have been assigned to the Secretary to the College is as follows:-

"(d)The Secretary of the College shall be the person to receive the Grant-in-Aid on behalf of the Association/Governing Board and other grants and shall be responsible for the maintenance of proper and accurate accounts of all funds of the College, except the Special Fee funds. He shall operate on the Salary and Non-Salary accounts of the College.

(e) He shall make all appointments to the Staff of the College on the basis of recommendations made by an Appointment Committee appointed by the Governing Board which shall include the Principal, Vice Principals and concerned heads of the departments.

(f) He shall sign the salary and other bills, sanction increments and all leave other than the casual leave to the teaching to the teaching and non-teaching staff of the College.

(g) He shall operate on all Management Accounts and the Account of the Evening College and Self Financing

Courses jointly with the Bursar of the College.

(h) He shall be official Correspondent on behalf of the Association/Governing Board on matters relating to the College, except on academic and other matters required to be dealt by the Principal.

(i) He shall act as the official representative of the Governing Board and the Association in legal and other capacities."

11.The learned Additional Advocate General reiterated that the Secretary of a College must be free from any criminal complaints. In the instant case, grave charges have been levelled against the petitioner and the preliminary enquiry revealed prima-facie information of cognizable offence by the petitioner u/s 120(B), 420 IPC r/w 109 IPC and u/s 7, 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988. Therefore, in the interest of public, the 2nd respondent has issued the impugned proceedings dated 26.11.2016 and requested the College committee to replace Dr.A.Rajavelu, the Accused Officer-1, and the petitioner in this writ petition.

12.The learned Additional Advocate General cited the judgment of the Hon'ble Supreme Court of India in the case of Bihar Christian Schools Association Vs. State of Bihar, 1988 (1) S.C.C. 206, which states that the educational institutions of the minorities have no right to mal administration. Any rule or direction issued by the Government to prevent mal administration would be valid.

13.Relying on the said decision, this Court is of the opinion that the writ petition deserves to be rejected.

14.Considering the arguments and the counter arguments as advanced by the learned senior counsel appearing on behalf of the petitioner as well as the learned Additional Advocate general, this Court is of the opinion that the case against the present Secretary, Dr.A.Rajavelu is of corruption and a criminal case is already registered under the Provisions of Prevention of Corruption act. Further, the registration of the criminal case against the Secretary of the College was done only after conducting a preliminary enquiry by the Department of Vigilance and Anti-corruption. The preliminary enquiry report revealed that there is a prima-facie case made out against the Secretary and other officials of the said college. The Secretary has arrayed as Accused officer-1 and the criminal case is pending for further adjudication.

15.Thus, this Court has to take serious note of the fact that the Secretary being an administrator and more so, he is an important person in the college committee. He must be free from

all such kind of corruption allegations. The Tamil Nadu Private Colleges Regulations Act 1976 applies to all Private Colleges.

16. Section 12 of the Act provides the Secretary of the college committee, Section 12(1) enumerates that every college committee shall have a secretary who shall exercise such powers and perform such functions as may be prescribed.

17. Section 14(A) denotes appointment of special officer in certain cases and provision is extracted hereunder:

"14.A. Appointment of special officer in certain cases-(1) (a) Where the Government, on receipt of a report from the Director of Collegiate Education or otherwise, are satisfied that the management of any private college-

(i) is responsible, whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools (Regulation) and Private Colleges (Regulation) Amendment Act, 1982, for the maladministration, lapses or irregularities of such private college; or

(ii) has neglected whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools (Regulation) and Private Colleges (Regulation) Amendment Act, 1982 to discharge any of the duties imposed on, or to perform any of the functions entrusted to such management by or under this Act, or any rule or order made or direction issued thereunder, the Government may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing, by an order, suspend and the management and appoint a special officer for a period not exceeding one year or till the reconstitution of the management (in accordance with the law applicable to the reconstitution of such management), whichever is later:

Provided that in no case the maximum period of such suspension of management shall exceed two years irrespective of the reconstitution of the management in accordance with the law applicable to the reconstitution of such management:

Provided further that where, the management of any minority college is suspended, the Government shall appoint a special officer belonging to that minority which has been administering the said minority college immediately preceding such suspension.

(b) On the making of an order under clause (a) suspending the management of a private college,-

(i) the management shall cease to discharge the duties imposed on, and to perform the functions

entrusted to it; and

(ii) the special officer-

(A) shall take all such steps as may be necessary to efficiently manage and run the private college in accordance with any law applicable to the private college in so far as such law is not inconsistent with this Act; and

(B) may afford such special educational facilities as were immediately before the making of the order under clause(a), afforded at the private college."

18. Now, it is relevant to refer the duties and responsibilities enumerated in Rule (9) of the Tamil Nadu Private Regulations Rules 1976. It is the Secretary, who has to act on the resolutions passed by the Committee. The Secretary shall be responsible for the maintenance of proper and accurate accounts and the administration of the college funds. When the rules provides that the Secretary is responsible for the maintenance of proper and accurate accounts of the administration of the college, certainly, this Court is of the opinion that he is a person, who has to administer and maintain the accounts of the college funds. When there is allegation of corruption, certainly it relates to the functioning of the Secretary and more so, the Secretary has been included as a Accused officer-1 in the criminal case. The copy of the FIR registered by the Department of Vigilance and Anti-Corruption sets out serious allegations of corruption against various officials.

19. On a perusal of the copy of the FIR, this Court is of the opinion that a full fledged trial is certainly required and it is for the petitioner/Secretary to participate in the trial and prove his innocence. Since it remains as an allegation at this point of time, this Court is not inclined to adjudicate the merits and demerits of the allegations set out in the FIR. However, a plain reading of the FIR reveals that certain serious allegations regarding the corrupt practices were found during the preliminary investigation conducted by the Department of Vigilance and Anti-Corruption.

20. Undoubtedly, an educational institution is performing the public duty towards the general public. Large number of students from various sections of the society are being admitted and undergoing various courses in the institution like of this nature and certainly they are performing the public duty in this regard. This apart, the writ petitioner is receiving the grant-in-aid from the Government and the tax payers money is being spent for the administration and for the development of the institution in respect of the payment of salary to the teaching

and non-teaching staff of the college.

21. This Court is of the opinion that payment of salary by the Government, certainly provides a power for the Government to inspect and initiate action against any mal administration by the management. One step further, this Court would like to place on record that even in case there is no grant, then also under law, the State is the authority to maintain the activities of every organization in this great nation. There are various legislations in this regard even an unrecognised or if there is no grant, then also, the State has got duty to see that if any violation of law or crime is committed against the society at large. Thus, the college which is receiving grant-in-aid from the Government is certainly amenable and, the Government has got every power to initiate appropriate actions.

22. Section 14(A) provides power for the Government to provide special officer in certain cases states that "Where the Government, on receipt of a report from the Director of Collegiate Education or otherwise, are satisfied that the management of any private college.

(i) is responsible, whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools (Regulation) and Private Colleges (Regulation) Amendment Act, 1982, for the maladministration, lapses or irregularities of such private college.

23. Thus, it is unambiguously stated that if the Director of Collegiate Education has noticed mal administration or lapses or irregularities in a Private College, then he is empowered to appoint a special officer to administer the college. In the case on hand, the Director of Collegiate Education had not gone to such a level and, he has issued the order in proceedings dated 26.11.2016 to relieve the person/Secretary Dr.A.Rajavelu and directed the Governing Body to replace the person/Secretary. This Court is of the opinion that this is the minimum action warranted under the present circumstances and further, a propriety requires that the college Secretary should himself get relieved from the post till the criminal case is disposed of.

24. This Court is of the opinion that the order impugned in this writ petition is only to relieve the present Secretary from the post till the criminal case is over and therefore, there is no irregularity or illegality in respect of the directions issued by the Director of college education in this regard.

25. If no actions are taken for relieving the present Secretary, then it is for the competent authority to invoke the provisions of the Private Colleges Regulation Act and appoint a special officer, if such circumstance arise and by considering

the other aspects of the matter. However, the question does not arise in view of the fact that already the Director of Collegiate Education issued a direction to relieve the present Secretary from the post and to appoint any other person as a Secretary of the college. Under these circumstances, this Court is not inclined to entertain the writ petition.

26. While considering the writ petition, this Court found that the Secretary, Voorhees College, Vellore has filed the present writ petition. This Court raised a question, how a writ petition can be filed in the name of the Secretary when a direction was issued against Dr.A.Rajavelu, who is holding the post of Secretary. A distinction is to be drawn in this regard by the Court when a person, who is holding a public post is directed to be relieved, then the writ petition is to be filed in his name and not in the name of the Secretary. If the issues relating to the administration or otherwise is to be adjudicated, then it would be proper to file a writ petition in the name of the Secretary. In the present writ petition, the order challenged was issued against the present Secretary Dr.A.Rajavelu, who is holding the post and therefore, this Court is of the opinion that filing a writ petition in the name of the Secretary, Voorhees College, Vellore, is improper. However, the writ petition was admitted and now finally taken up for arguments, this Court is not inclined to dismiss this writ petition on this ground.

27. Having considered the grounds raised on merits by the learned counsel for the petitioner, this Court is of the firm view that the Voorhees College, Vellore, is receiving grant-in-aid from the Government. When the Grant-in-aid is received from the Government, they are accountable to the Government as well as to the public. When the college is performing a public duty also by admitting large number of students and imparting higher education, then they are bound by the provisions of the Act. The Director is certainly competent to over see the activities of the private colleges under the Act and while doing so, it was brought to the notice that the criminal case of serious allegations of corruptions are registered against the Secretary of the Voorhees College, Vellore. When the Director is of the opinion that the allegations are relating to corruption, more so, the corruption regarding the appointment of 26 Assistant Professors, which was approved by the Director of collegiate education certainly, this Court is of the opinion that it relates to the Grant-in-aid sanctioned by the Government. The allegation of corruption is partly relating to the appointment of Assistant Professors and their appointments were already approved by the department. When unqualified persons are appointed as Assistant Professors by way of corrupt practices, then it requires serious action and any of the appointed persons

are found guilty of any such involvement in corrupt activities, then they also to be punished under the law. However, the question does not arise at this point of time since the matter is pending before the competent criminal Court and all these points shall be adjudicated by the competent criminal Court in the criminal case and it is for the parties to brought to the notice of these aspects at the time of trial before the criminal Court of law.

28. Without going into the merits and demerits of this case, it is left open to the present Secretary and other officials to prove their innocence before the competent Court of law. This Court is of the considered opinion that the order passed by the Director of Collegiate Education is in accordance with the provisions of the Private Colleges Regulations Act and the rules and there is no infirmity and it is further directed that the present Secretary Dr.A.Rajavelu to be relieved forthwith from the post and any other suitable person to be appointed without any further delay.

29. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. Secretary,
The 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,
Vellore Region, Vellore District.

4.Principal (in-charge) cum,
Head of the Department of Chemistry,
Voorhees College, Vellore,
Vellore District - 632 001.

+1 CC to M/s. T. Isaac Chambers, Advocate sr 89096.
+1 CC to Mr.S. Sathiachandran, Advocate sr 90030.
+1 cC to The Govt. Pleader sr 90624.

W.P.No. 42316 of 2016

SP(08/01/2018)



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