

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

C O R A M

THE HON'BLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.43331 of 2016
and
W.M.P.Nos.37204 of 2016

The Secretary,
St.Theresa's Arts and Science College for Women,
Santhangudi,
Tharngambadi,
Nagapattinam District - 609 313.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,
Tiruchirappalli Region,
Tiruchirappalli - 620 0002,
Tiruchirappalli District.
4. The Bharathidhasan University,
Rep. by its Registrar,
Palkalaiperur,
Tiruchurapalli - 620 024.Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Mandamus calling for the records relating to the impugned order issued by the 2nd respondent, Director of Collegiate Education vide proceedings RC.No.15424/R4/2016 dated 02.05.2016 refusing Minority Status for the petitioner's College, quash the same and further direct the 1st respondent herein to recognize forthwith the status of the petitioner as a Christian Minority Educational Institute.

For Petitioner : Mr.P.Godson Swaminath
For Respondents 1-3 : Mr.A.Kumar
Special Government Pleader
For Respondent 4 : Mr.V.Govardhanan
Standing Counsel

O R D E R

The petitioner is aggrieved against the order of the second respondent dated 02.05.2016 refusing Minority Status to the petitioner's College. Further direction is sought for to recognise the petitioner with such status forthwith.

2. The case of the petitioner in short is as follows.

The petitioner's College, namely, St.Theresa's Arts and Science College for Women, Santhangudi, Tharangambadi, Nagapattinam District, is one among the several Educational Institutions founded and administered by the Society known as "Society of Mary Immaculate, Chennai". The members of the said Society are Roman Catholic Nuns belonging to the Congregation of "Salesian Missionaries of Mary Immaculate". The said congregation has been recognised as a Minority under Article 30 (1) of the Constitution of India, vide order dated 24.09.1976 made in Writ Petition No.702 of 1975 by the Division Bench of this Court. The Government of Tamil Nadu also announced the said Congregation and Institutions under it as minority, through proceedings of the Director of School Education dated 20.11.1976. There are 387 institutions under the said Congregation like Colleges, Schools, Technical Schools and Training Institutes, apart from Hospitals, Homes etc. With an aim to promote the educational interest and social advancement of women, the said Congregation decided to establish the petitioner's college from the academic year 2016-2017 onwards. Necessary infrastructure was put up for starting the new college. The petitioner submitted an application to the 4th respondent University on 03.05.2016 seeking affiliation for five courses. The University did not consider the application for long and on enquiry, the petitioner was given to understand that the University is not considering the application, since the petitioner has not produced an order from the State Government recognising the petitioner College as a Minority Educational Institution. Though the Congregation was already declared as Minority Institution, no separate order is required in the name of the College. However, since the 4th respondent University insisted for getting such order, the petitioner filed an application before the second respondent, who in turn, passed

the present impugned order by rejecting the request, mainly on the reason that the petitioner has not started the College already and therefore, the minority status cannot be granted for the Institution which is proposed to be established.

3. A counter affidavit is filed by the second respondent wherein it is stated as follows:

The petitioner Institution has not been started so far and therefore, the minority status cannot be granted. No students have been admitted nor the affiliation of the University has been obtained. The Educational Agency has not produced Community Certificate of all the Trustee Members from the Revenue Authorities so as to prove that the members of the Trust belong to Minority Community. The petitioner's College has not furnished the required details.

4. Mr.P.Godson Swaminath, learned counsel appearing for the petitioner submitted that all the required documents were already furnished to the second respondent through a communication dated 06.04.2016 and therefore, the second respondent is not justified in contending otherwise. Insofar as the reason stated in the impugned order that the petitioner is yet to start the College, is concerned, the learned counsel submitted that the said issue is no more res integra, in view of the decisions made by this Court in W.P.No.12418 of 2014 etc., dated 10.09.2014 in the case of Secretary, Immaculate College for Women, Pudupallyam, Cuddalore Vs State of Tamil Nadu reported in 2015(1) Volume of CWC 557. Thus, the learned counsel submitted that in view of the categorical pronouncement made by this Court in the above said decision stating that the respondents cannot reject the request for minority status on the ground that the College has not yet been established, the very same reason stated in the present impugned order cannot be sustained.

5. On the other hand the learned Special Government Pleader appearing for the respondents 1 to 3 reiterated the contentions raised in the counter affidavit and submitted that the petitioner can very well approach the authorities concerned and seek the minority status, after commencing the functioning of the College.

6. Heard both sides.

7. There is no dispute to the fact the the petitioner's College is one among the Educational Institutions founded and administered by the Society namely, Society of Mary Immaculate, Chennai, belonging to the Congregation of "Salesian Missionaries of Mary Immaculate" and such Congregation has been recognised as Minority under Article 30(1) of the Constitution

of India by the order made by this Court in Writ Petition No.702 of 1975 dated 24.09.1976. Therefore, it is evident that the Educational Agency which is seeking to start the present petitioner's College was already declared with minority status. Now, the very same minority status is sought for to the petitioner College and such request is rejected by the 2nd respondent on the reason that the petitioner College is yet to be established or started. Whether such reasoning for rejection is permissible or not has already been considered by this Court in the above said decision reported in 2015(1) CWC 557 (Secretary, Immaculate College for Women, Pudupallyam, Cuddalore Vs State of Tamil Nadu) wherein the learned Judge, after considering the relevant provisions under the Tamil Nadu Private Colleges (Regulation) Act, 1976, has observed in paragraph Nos.11 to 21 as follows:

11. I have carefully considered the objections of the respondents. I do not think that the rejection of the request of the Petitioner by the Government, is for any bona fide reason.
12. In the order impugned in the Writ Petition, the Government stated two reasons namely: (a) that the petitioner is yet to start a College and (b) that the petitioner has not so far obtained affiliation. Both these reasons are highly untenable.
13. Section 5 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, prescribes the procedure for the grant of permission for starting a new Private College, Sub-section (1) details the procedure to be followed by the Government on receipt of an application. Sub-section (2) declares that the decision of the Government under sub-section (1) shall be final. Sub-section(3) prohibits a University from granting affiliation to any private college unless permission has been granted under sub-section (1).
14. Since, the petitioner claims to be a Minority Educational Institutions some of the provisions of the 1976 Act do not apply. This is seen from Section 8 of the Act. Section 8 stipulates that any minority, whether based on religion or not, may establish and administer any Private College without permission under sub-section 1 of section 5 stipulates that any minority, whether based on religion or not, may establish and administer any Private College without permission under sub-section (1) of Section 5 read with Sections 3 & 4. The effect of Section 8 is that there is no need for a minority, to take permission for establishing and administering a Private College under section 5 (1).
15. But, unfortunately, there is no reference to sub-section (3) of Section 5 in section 8. Therefore,

- the mandate in sub-section (3) of section 5, may stay. This is why the Petitioner, despite being a minority, has applied for conferment of status.
16. Moreover, the question of conferment of Minority status, is not dealt with by 1976 Act. Therefore, the field is now governed only by the Government Order issued following the decision of the Supreme Court in T.M.A.Pai Foundation Vs State of Karnataka, 2002 (5) CTC 201 (SC) AIR 2003 SC 35.
 17. As I have stated earlier, the respondents have given two reasons in the impugned order for rejecting the request. The first is that the petitioner has not started the College and the second is that the University has not yet granted Affiliation. But, both these reasons tantamount to putting the cart before the horses. Before conferment of Minority status, if the respondents want the petitioner to start a College, then, they will be obliged to obtain permission under section 5 (1), in which case, automatically sub-section(3) of section 5 will prohibit the University from granting affiliation. The respondents cannot put an institution in a vicious cycle, out of which they cannot escape at any point of time.
 18. It is admitted that the trust, which was established in 1992, had obtained Minority status. The trust is running about 312 Institutions, some of which are Colleges and some of which are Schools. In other words, the Educational Agency of the Petitioner-College will only be the society which is known as Immaculate Heart of Mary's Society registered under the Tamil Nadu Societies Registration Act.
 19. Section 2(4) (a) of the Tamil Nadu Private College (Regulation) Act, 1976 defines an Educational Agency in relation to any Minority College to mean a body of persons established and administered or proposes to establish and administer such Minority College. When the definition of the Educational Agency includes any person who proposed to establish and administer such Minority College, the respondents cannot reject permission on the ground that the College is not yet been established. The first reason stated in the impugned Order goes contrary to the very definition available in Section 2(4) (a) of the Act. The second reason stated in the impugned Order goes contrary to section 5(3) of the Act.
 20. On the reliance placed upon the decision in P.A.Inamdar Vs. State of Maharashtra, 2005(4) CTC 81 (SC): 2005 (6) SCC 537, it is to be pointed out that today, without even processing the Application of

the Petitioner, the Respondents cannot come to a conclusion that the twin objects are not satisfied. The original society, has already got it registered under the Tamil Nadu Societies Registration Act, 1976. Under the provisions of the Act, the society is obliged to file forms periodically, indicating the details of the office bearers on whom the management of the society is vested. Therefore, the details about the persons who constitute the Managing Committee of the Society are always available with the Government, in a different department. So far, there is no allegation that any person belonging to a non-minority, has been elected or at least has become a member of the Society in question. Therefore, the stand taken in the Counter Affidavit that Community Certificates, have not been produced, cannot be accepted.

21. In K.M.Benedict Crizal Vs. Secretary to Government, decided on 11.07.2007, by K.Chandru, J., in W.P.(MD) No.9424 of 2006, the learned Judge rejected a very identical contention raised by the respondents. Therefore, I am of the view that the stand taken by the respondents either in the impugned Order or in the Counter Affidavit cannot be sustained. Hence, W.P.No.22376 of 2014 is allowed, the impugned order is set aside and the respondents are directed to pass appropriate orders in accordance with law, within a period of eight weeks, taking into account the fact that the original Educational Agency, namely, the society registered under the Tamil Nadu Societies Registration Act, has already been conferred with Minority status and that they are also running several Institutions. After the First Respondent passes an order, the University shall take up the Application and pass consequential orders. The other Writ petitions are closed, in view of the fact that the last writ petition is for a larger relief and it has been disposed of as above. Consequently, connected M.P.s are closed.

8. It is stated that the above said order passed by the learned single Judge has become final and the said order has also been given effect to.

9. Perusal of the said order, more particularly, the categorical observation made at paragraph Nos.19 and 21 would show that the issue involved in the present case is squarely covered by the observation made therein, as this Court has

categorically found in that case that the respondents cannot reject the application on the ground that the College has not yet been established. As rightly pointed out by the learned counsel for the petitioner, there is no necessity for getting permission to establish and administer a private College by the Minority Educational Agency. Therefore, when the minority educational agency is entitled to establish and administer an educational institution without prior permission of the authorities concerned, the question of insisting such minority educational agency to start such educational institution first and thereafter to seek minority status later, does not arise. In other words, if no minority status is granted to such proposed institution, the very establishment and commencement of the said institution are not possible since in the absence of any such minority status at the very establishment and commencement, such institution will have to be treated as a non-minority institution, for which purpose prior permission is necessary from the competent authorities. Therefore, the condition imposed by the 2nd respondent in this case goes against the very object of Article 30(1) of the Constitution of India. In this case, admittedly, the educational agency which proposes to establish the petitioner College is enjoying minority status. Therefore, if the other relevant documents are placed by the said educational agency, the respondents shall have to consider the claim for minority status for the petitioner institution without insisting for establishment and commencement of the same first. In this case, it is stated that the petitioner has already filed necessary documents. Still, if the second respondent requires another set of documents, the petitioner has to comply with such requirement. In any event, as the main reason stated in the impugned order that the petitioner's College has not yet established, cannot be sustained, this Court is of the view that the matter needs to go back to the second respondent for re-considering the application of the petitioner afresh and to pass appropriate orders, based on the documents already furnished or the documents which are to be furnished by the petitioner, in pursuant to the present order. Certainly, the respondents 1 to 3 cannot insist upon the petitioner to start the College first and apply for minority status thereafter, in view of the above referred decision made by this Court.

10. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the second respondent for considering the claim of the petitioner in the light of the order passed by this Court in the present writ petition. The petitioner is also directed to furnish the necessary documents once again before the second respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of those documents and after

giving due opportunity of hearing to the petitioner as well, the second respondent shall pass appropriate orders within a period of six weeks thereafter. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi/sm

To

1. The Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 006.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Tiruchirappalli Region,
Tiruchirapalli - 620 0002,
Tiruchirapalli District.
4. The Registrar,
Bharathidhasan University,
Palkalaiperur,
Tiruchurapalli - 620 024.

+1 cc to M/s.P.Godson Swaminath Advocate sr 47149

+1 cc to M/s.V.Govardhanan Advocate sr 47903

+1 cc to the Government Pleader sr 47254

W.P.No.43331 of 2016

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