



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.08.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.A. (MD) No.323 of 2015
and
M.P. (MD) No. 1 of 2015
and
W.P (MD) No.5456 of 2015
and
M.P (MD) No.3 of 2015**

W.A. (MD) No.323 of 2015

The Trustee of Diocese of Thuckalay,
represented by its Correspondent,
Thuckalay,
Kanyakumari District.

: Appellant/4th Respondent

Vs.

1. Dr.C.Radhakrishnan Nair,
Son of K.Chandrasekaran Nair,
Syndicate Member,
Manonmaniam Sundaranar University,
Tirunelveli. : Respondent/Ist Petitioner
2. V.A.Radhakrishnan,
Son of V.Amirthanayagam,
Syndicate Member,
Manonmaniam Sundaranar University,
Tirunelveli. : Respondent/2nd Petitioner
3. The Government of Tamil Nadu,
represented by its Principal Secretary,
Higher Education Department,
Fort St.George, Secretariat,
Chennai - 600 009.
4. Manonmaniam Sundaranar University,
represented by its Registrar,
Tirunelveli.
5. The Vice Chancellor,
<https://hcservices.ecourts.gov.in/hcservices/>
Manonmaniam Sundaranar University,
Tirunelveli. : Respondents/Respondents 1 to 3

**W.P(MD)No.5456 of 2015**

1. Dr.C.Radhakrishnan Nair,
Son of K.Chandrasekaran Nair,
Syndicate Member,
Manonmaniam Sundaranar University,
Tirunelveli.

2. V.A.Radhakrishnan,
Son of V.Amirthanayagam,
Syndicate Member,
Manonmaniam Sundaranar University,
Tirunelveli.

:Petitioners.

.vs.

1. The Government of Tamil Nadu,
represented by its Principal Secretary,
Higher Education Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. Manonmaniam Sundaranar University,
represented by its Registrar,
Tirunelveli.

3. The Vice Chancellor,
Manonmaniam Sundaranar University,
Tirunelveli.

4. The Trustee of Diocese of Thuckalay,
represented by its Correspondent,
Thuckalay,
Kanyakumari District.

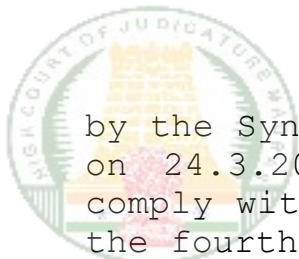
... Respondents

PRAYER IN THE W.A(MD)NO.323 OF 2015 Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order made in M.P(MD)No.3 of 2015 in W.P(MD)No.5456 of 2015, dated 10.4.2015 passed by this Court.

Prayer in MP(MD). 3/ 2015 in WP(MD).5456/2015 :

Petition filed praying to Stay the operation of the impugned resolution in item No. 4 passed by the Syndicate of the 2nd respondent in its 156th meeting held on 24.03.2015 pending disposal of the above WP.

PRAYER IN THE W.PMD)NO.5456 OF 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court for ~~the~~ Writ of Certiorari and Mandamus calling for the records pertaining to the impugned Resolution in Item No.4 passed



by the Syndicate of the second respondent in its 156th Meeting held on 24.3.2015, quash the same and to direct the University to comply with the statutory requirements for grant of affiliation to the fourth respondent.

W.A(MD)NO.323 OF 2015

For Appellant : M/s.T.P.Prabhakaran
For Respondents : M/s.M.Saravanan
1 and 2
For Respondent-3 : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents : Mr.M.Mahaboob Athiff
4 and 5 for M/s.Ajmal Associates

W.P(MD)NO.5456 OF 2015

For Petitioners : M/s.M.Saravanan
For Respondent-1 : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents : Mr.M.Mahaboob Athiff
2 and 3 for Ajmal Associates
For Respondent-4 : No appearance.

COMMON JUDGMENT

[Judgment of the Court was made by **M.M.SUNDRESH, J.**]

This Writ Petition has been filed by the Petitioner, who was a member of the Syndicate of the respondent-University, challenging the resolution passed, by which, affiliation was directed to be given in favour of a minority educational institution.

2.The Petitioners are the two, among others, who put up a dissenting note. The learned counsel for the Petitioners would submit that there is no provision for retrospective affiliation. The resolution is contrary to law. Inasmuch as the resolution is one without jurisdiction, the Writ Petition is maintainable. Similarly the resolution being illegal, is liable to be set aside.

3.The learned counsel for the respondents would submit that it is not factually correct to state that the resolution gave retrospective affiliation. The affiliation is to be made for the academic year 2014-2015, the college in whose favour the resolution was passed, is not a party before us. The students who are admitted in the college for the said academic year, since passed out, after successful completion of the course. There



cannot be any challenge to the resolution by way of Writ Petition. Such resolution cannot also be challenged at the instance of a member, who is a party to the resolution. In support of the aforesaid contention, the following decisions are referred:

1. **1994 Supp(3) Supreme Court Cases** (Bihar Public Service Commission and another .vs. Dr. Shiva Jatan Thakur and others)

2. **2006(4) CTC 460** (Secretary to Government, Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodhi Marg, New Delhi .vs. Member Secretary, Chennai Metropolitan Development Authority, Gandhi Irwin Road, Egmore, Chennai - 600 008 and another).

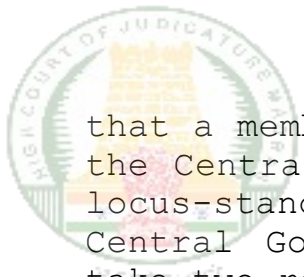
3. **2015 (2) CWC 366** (Shantha Srinivasan .Vs. The Secretary to Government, Housing and Urban Development Department, Chennai-9 and others).

4. We are of the view that the Writ Petition is liable to be dismissed, both on merits and on maintainability.

5. The Apex Court in **Bihar Public Service Commission and another .vs. Dr. Shiva Jatan Thakur and others** reported in **1994 Supp(3) Supreme Court Cases** dealing with the cases pertaining to Public Service Commission, was pleased to hold that a member cannot question the resolution made, though he has put a dissenting note. Such a decision made is also not to be adjudicated under Article 226 of the Constitution of India being discretionary in nature.

''28.....Whatever that be, no member of a Public Service Commission, in our considered view, could be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member. It ought be so for the simple reason that such member must be regarded to be a party to the function required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged.....''

6. The Full Bench of this Court in **The Union of India represented by its Secretary to Government, Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodhi Marg, New Delhi .vs. Member Secretary, Chennai Metropolitan Development Authority, Gandhi Irwin Road, Egmore, Chennai - 600 008 and another** reported in **2006(4) CTC 460** has also given a view



that a member Secretary cannot question the notification issued by the Central Government. Accordingly, it was held that there is no locus-standi for the members to challenge the decision of the Central Government. In other words, the Member Secretary cannot take two roles.

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7.A Division Bench of this Court in **Shantha Srinivasan .vs. The Secretary to Government, Housing and Urban Development Department, Chennai-9 and others** reported in **2015 (2) CWC 366** has held that a resolution by itself cannot be construed as an order and therefore, any challenge made to it is not maintainable. In other words, a resolution has to be transformed itself to an order and only that order can be put into challenge and not otherwise.

8.In the light of the above, we are of the view that there is no violation involved, since affiliation has been sought for, only for the academic year 2014-2015. Furthermore, the Petitioners have not arrayed the institution in whose favour the affiliation was granted as party-respondent in the Writ Petition which is a necessary and proper party for adjudication. In the event of Writ Petition being allowed, the affected party would be the said institution. Admittedly, the said institution has admitted the students and the students have also successfully completed the course and left the institution. Even the students are not parties before this Court. Hence looking from any perspective, we find no merit in the Writ Petition and the same fails.

9.Accordingly, the Writ Petition stands dismissed. Consequently, the Writ Appeal stands dismissed. The connected Miscellaneous Petitions are also dismissed. No costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu,
Higher Education Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. The Registrar,
<https://hcservices.ecourts.gov.in/hcservices/>
Manonmaniam Sundaranar University,
Tirunelveli.



3. The Vice-Chancellor,
Manonmaniam Sundaranar University,
Tirunelveli.

+1 cc to Mr.R.Subramanian , Advocate in SR.No. 74501
+1 cc to Mr.D.Ramesh kumar , Advocate in SR.No. 74312
+1 cc to M/S.Ajmal Associates , Advocate in SR.No. 74122
+1 cc to The Special Government Pleader in SR.No.74693

vsn

AE/SV MMS/SAR3/11.09.2017/6P/8C

COMMON JUDGMENT MADE IN
W.A. (MD) No.323 of 2015
and
M.P. (MD) No. 1 of 2015
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W.P (MD) No.5456 of 2015
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