



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.03.2017

Pronounced on : 10.04.2017

Coram:

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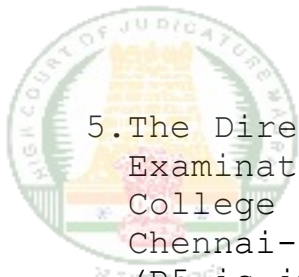
The Hon'ble Mr. Justice M.S.RAMESH

W.P. (MD) No. 9260 of 2013
and W.P. (MD) No. 7392 of 2014 &
M.P. (MD) Nos. 1 & 2/2013, M.P. (MD) Nos. 1 & 2/2014 &
M.P. (MD) Nos. 1 & 2/2015 and
MP (MD) No. 2/2014 & WMP. (MD) No. 74 of 2017

Esther Santham Higher Secondary
School rep. by its Manager &
Correspondent Pastor G.Nellaikumar,
(Founder & Managing Trustee-
International Youth Fellowship in Christ),
Old No.1/113-A, New No.1/197,
Kalvillai Road, Meignanapuram,
Tuticorin District. .. Petitioner in both WPs.

Vs.

- 1.The Director of School Education
(Higher Secondary School Education),
College Road, Chennai-600 006.
.. Respondents in both WPs.
- 2.The Chief Educational Officer,
C.V.Government Higher Secondary
School Campus,
Tuticorin, Tuticorin District.
.. Respondents in both WPs.
- 3.The District Educational Officer,
C.V. Government Higher Secondary
School Campus,
Tuticorin, Tuticorin District.
.. Respondents in both WPs.
- 4.The Government of Tamil Nadu
(Education Department)
rep. by its Secretary,
Fort St. George,
Chennai-600 009.
.. Respondents in both WPs.



5.The Director of Government
Examination, (School Education)
College Road,
Chennai-600 006.

(R5 is impleaded vide Court order
dt. 06.01.2017 in WMP.(MD).No.73/2017)

.. Respondent in W.P.No.9260/2013

Prayer in W.P.No.9260 of 2013: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent made in Mu.Mu.No.29207/G1/E1/2013 dated 29.04.2013 and quash the same and direct the respondents 1 & 4 to grant a declaration of religious minority status, recognition, attendant benefits to the petitioner Std. VI to XI Esther Santham Higher Secondary School, Kalvillai Road, Meignanapuram, Tuticorin District is concerned.

Prayer in W.P.No.7392 of 2014: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the fourth respondent made in Letter No.36031/CC1(3)/2013-3 dated 11.04.2014 and quash the same and direct the respondent-4 to declare the status of the petitioner Esther Santham Higher Secondary School, rep. by its Manager & Correspondent Pastor G.Nellaikumar, (Founder & Managing Trustee-International Youth Fellowship in Christ) Old No.1/113-A, New No.1/197, Kalvillai Road, Meignanapuram, Tuticorin District is concerned as a religious minority and Educational agency entitled to the rights and liberties under Article 30(1) of the Constitution of India by grant of necessary orders.

For Petitioner	: Mr.M.Joseph Thatheus Jerome in both W.Ps
For Respondent Nos.1 to 5	: Mr.Alagathevan Special Government Pleader

C O M M O N O R D E R

These writ petitions have been filed by the petitioner, challenging the order of the first respondent in his proceedings in Mu.Mu.No.29207/G1/E1/2013 dated 29.04.2013 and also the order of the fourth respondent made in Letter No.36031/CC1(3)/2013-3 dated 11.04.2014 and to quash the same with a consequent prayer for a direction to the respondents 1 & 4 to grant a declaration of religious minority status, recognition, attendant benefits to the School namely, Esther Santham Higher Secondary School, Kalvillai Road, Meignanapuram, Tuticorin District for Std. VI to XI.



2.The brief facts of the case of the petitioner is as follows:

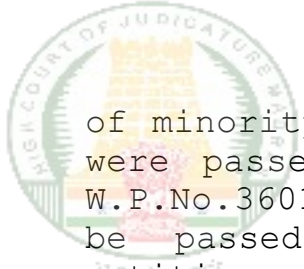
i)The petitioner had established a School during the academic year 2012-13 by obtaining a Structural stability certificate, Sanitary certificate, Fire safety certificate no objection certificate and Building completion certificate. According to the petitioner, the School is administered by an International Youth Fellowship in Christ, a Christian Religion Minority Trust, which claims allegiance to the Faith in Jesus Christ.

ii)On an objection petition dated 18.04.2012, sent by a competitive school in the vicinity, the third respondent had served a letter dated 30.08.2012, directing closure of the petitioner's school for having functioned without prior permission and further directed the students to be admitted in the nearby school.

iii)On the same day, the petitioner had presented an application to the first respondent, seeking for recognition with a further request to cancel the order dated 30.08.2012. In the said application, the petitioner had sought for an order to declare the school's status as a minority institution. However since the respondents 2 and 3 insisted for closure of the school, the petitioner had filed a writ petition in W.P.(MD) No.12577 of 2012 and by an order dated 07.01.2013, a learned Judge of this Court had held that the petitioner and his institution is undoubtedly a minority institution and prior permission is not necessary under Tamil Nadu Recognized Private Schools Regulation Act, 1973. The learned Judge while setting aside the impugned order of closure of the school, directed the first respondent to pass orders on the petitioner's application seeking for recognition and grant of minority status.

iv)As against the said order, the respondents had filed an appeal in W.A.(MD) No.306 of 2013. While the Writ Appeal was pending, the first respondent had sent a letter dated 18.04.2013, calling upon the petitioner to attend an enquiry, treating his school as a non minority school. Though the petitioner had replied to the said notice on 23.04.2013, the first respondent had passed the first impugned order dated 29.04.2013, holding that the petitioner's school was not a minority institution and, by treating the school as a non minority school, pointed out various irregularities in violation of the provisions of the Tamil Nadu recognized Private Schools Regulation Act. Challenging the same, the Writ Petition No.9320 of 2013 has been filed.

3.In the meantime, W.A.(MD) No.306 of 2013 came to be disposed of, when the management offered to apply for minority status with the first respondent. Accordingly, the petitioner had made applications dated 06.09.2013 & 07.10.2013 seeking for declaration



of minority status before the fourth respondent. Since no orders were passed in the said applications, the petitioner had filed W.P.No.36010 of 2013, in which, the order dated 26.11.2013 came to be passed directing the fourth respondent to consider the petitioner's applications within a period of two months.

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4. After the said order, the State Minority Commission had also recommended grant of minority status to the petitioner's school through their letter dated 19.12.2013. However, the fourth respondent failed to comply with the order of this Court dated 26.11.2013, which constrained the petitioner to file Contempt No.951 of 2014 in W.P.No.36010 of 2013. When this Court had ordered for statutory notice to the fourth respondent, the order dated 11.04.2014 came to be passed by the fourth respondent holding that for declaration of minority status, the institution should first be a recognized institution. Challenging the said order dated 11.04.2014, W.P.No.7392 of 2014 has been filed.

5. Since the cause of action and the issue involved in both the writ petitions are one and the same, they have been taken up together for hearing and disposed of by way of a common order.

6. Mr. Joseph Thatheus Jerome, learned counsel for the petitioner submitted that no prior permission is required for running a minority institution under the Act and as per well laid down judgments of the Hon'ble Supreme Court and this Court. The learned counsel for the petitioner submitted that the impugned order tantamounts to overruling the orders of this Court passed in W.P.(MD) No.12577 of 2012. The learned counsel also submitted that the impugned order violates the principles of natural justice since reference has been made to the proceedings of the respondents 2 & 3 which is not supplied to the petitioner.

7. On the other hand, the learned Special Government Pleader submitted that the Government is the competent authority to grant minority status and until the petitioner's school is granted with a minority status, the petitioner's school has to be treated as a non minority institution. In this background, he submitted that the impugned order has been rightly passed by treating the petitioner's school as a non minority institution and since no orders has been passed by the Government till date, to the effect that it is a minority institution, the requirements for running a non-minority school under the Act is mandatory of compliance.

8. I have carefully considered the respective submissions of the learned counsels and have also perused the materials available on record.

<https://hcservices.org/BadOnlineServices/> Inverting to the rival submissions made by both the learned counsels, it would be appropriate to traverse a glance on the following provisions of law:



a) Section 2(6) of the **Tamil Nadu Recognized Private Schools (Regulation) Act, 1973**, defines a minority school as follows:

"Minority school" means a private school of its choice established and administered, [the words 'or administer' were omitted by the Tamil Nadu Act 39 of 1987] by any such minority whether based on religion or language as has the right to do so under clause (1) of Article 30 of the Constitution;"

The above definition is unambiguous to include a Private School established and administered by a minority religion that derives a right under Article 30(1) of the Constitution of India.

b) **Article 30(1)** of the **Constitution of India** reads thus:

"Right of minorities to establish and administer educational institutions.--(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[inserted by the Constitution (44th Amendment) Act, 1978, S.4 (w.e.f.20.06.1979)-(1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]"

10. It is not in dispute that an educational institution established by a Christian Religious Trust is a minority institution. The respondents have not denied the status of the petitioner's school but have only been harping upon the stand that their minority status has not been declared by the Government and that no prior permission for starting a school has been obtained from the Education Department. The respondents in their counter affidavit have stated as follows:

"... only recognized schools under the control of School Education department are eligible to apply for minority status. Unrecognized schools have no such right to apply for the declaration of minority status. Rule 9 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 provides for conditions of recognition. An application for recognition shall arise only if the school has been started with permission as required in rule 5 of the said Rules, 1974. the petitioner has not obtained permission for starting his school. Rule 4(2)(a) of the Tamil Nadu Minority



Schools (Recognition and Payment of Grant) Rules, 1977 referred to by the petitioner relates to minority schools which have been granted permanent recognition and rule 4(3) of the said Rules relates to Minority Schools which have been newly opened. The said Rules are not relevant as the petitioner schools has not yet been declared minority status."

11. In the instant case, the basic notion upon which the impugned order is founded is that the petitioner has not obtained permission for starting their school. Before advertng to the various grounds raised by the petitioner as well as the learned Special Government Pleader, it would be appropriate at the outset to mention that the issue with regard to the requirement of prior permission for a minority institution has come up time and again before this Court and the Hon'ble Supreme Court of India and the issue has been answered in the negative. In all cases arising from the State of Tamil Nadu, the various authorities under the Department of School Education have always been arrayed as respondents therein. While that being so, the Education Department cannot be insensible to these well laid down law and be oblivious to the proposition. The law has been settled that when an Educational institution is established by a Trust, which is a minority trust, such a minority institution can be started without prior permission.

12. It is rather unfortunate that the respondents 1 to 3 herein were also the respondents in W.P.No.12577 of 2012 dated 07.01.2013, wherein the learned Single Judge has held as follows:

"6. The fact that the petitioner is the Christian, cannot be in doubt. He has started a Trust by name International Youth Fellowship in Christ. The objects of the Trust also indicated in the affidavit in support of the Writ Petition.

7. The law is well settled that if an educational institution is established by an Institution/Trust/Society, which is a religious minority institution, the said institution can be started without prior permission. Nevertheless, such an institution should also obtain recognition.

8. The academic year 2012-2013 commenced on 01.06.2012. Therefore, the petitioner had time up to 31.08.2012 to present an application for recognitions as well as a declaration of minority status. However, on an objection lodged by the fourth respondent an order for closure came to be passed even before the expiry of the period of 3 months statutorily prescribed. Therefore, the

impugned order is liable to be set aside.

9. According to the petitioner, the petitioner



has put in the necessary infrastructure for the grant of recognition. The petitioner has also submitted an application to the respondents 2 and 3, both for recognition and for declaration of minority status. It is needless to point out that though the petitioner is obliged to obtain a recognition and a declaration of minority status, the starting of the School by a religious minority group, is not prohibited, nor is declaration of status made a pre-condition for starting a School.

13. In spite of the aforesaid categorical finding that the petitioner's school which is run by a Religious Minority Trust is neither prohibited, nor is declaration of status made a precondition for starting a school, the respondent has chosen to issue the present impugned orders.

14. In yet another judgment of this Court in **M. Andiappan Vs. State of Tamil Nadu, rep. by its Secretary, Education Department, Chennai and others** reported in **2006 (4) MLJ 1337**, wherein, the respondents in the present writ petition were also the respondents therein, this Court had held as follows:

"11. On merits, the 7th respondent has obtained building approval plan from the Commissioner, Puliangudi Municipality on 19.04.2002 and also No Objection Certificates from the nearby 11 schools. The 7th respondent has also obtained the stability certificate for the building from the competent authority on 08.03.2006; the building licence from the Tahsildar on 20.03.2006; and Sanitation Certificate dated 21.04.2006 from the Sanitary Officer, Puliangudi Municipality on 28.04.2006. The District Educational Officer, Tenkasi in his inspection reports dated 24.09.1998 and 19.10.2000 recorded that the new building should be constructed in the nearby vacant site of the school with proper amenities. The 7th respondent school also received appreciation letters from the Education Minister for getting 100% results in SSLC examinations held in March 1995; from the Director of School Education for the year 1997; from the Education Minister for 1998; and from the District Collector, Tirunelveli and Education Minister for the years 1999 and 2000. Copies of all the above referred documents are filed in the typed set, filed by the 7th respondent.

12. As rightly argued by the learned counsel appearing for the 7th respondent, the 7th respondent school being a minority school, no permission need



be obtained, which is made clear in Section 9 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Act 29 of 1974), which reads thus:

"9.Minority School to be established without permission.-Any minority whether based on religion or language may establish and administer any private school without permission under Section 6."

Further, the recognition of minority schools are governed by the Tamil Nadu Minority Schools (Recognition & Payment of Grant) Rules, 1977). Particularly, as per Rule 4(4), the Department is bound to grant recognition as per the order of this Court dated 20.10.1981 made in W.P.No.4284 of 1979 (Roman Catholic Diocese of Palayamkottai V. Director of School Education, Madras and Another), as confirmed by the Division Bench in W.A.No.81 of 1982 by judgment dated 08.09.1988."

15.The **Hon'ble Supreme Court** in the decision in **Mark Netto V. Government of Kerala [AIR 1979 SC 83: 1979 (1) SCC 23]** has also held as follows:

"getting prior permission from the Department for starting a minority school is not required and any order passed to that effect is bad, invalid and must be quashed."

16.On a bare reading of Article 30(1) of the Constitution of India, it is seen that the right guaranteed therein is primarily meant to preserve the minority character of the school and to effectuate the guarantee made therein. In view of the right guaranteed under Article 30(1) of the Constitution of India, the Trust is enabled to establish institution of their choice for the purpose of conserving their religion as well as providing standard education to their children and also to the children of all other religions. As such, when it is established that the institution is run by a Christian Religious Minority Trust, it would suffice for the petitioner to claim their fundamental right guaranteed under Article 30(1) of the Constitution of India.

17.It is rather disappointing to note that when the petitioner's school sought for their recognition as a minority institution, the same was declined on the ground that the status of the Trust as a minority Trust should be declared by the Government. But when the petitioner had sought for a declaration from the Government to declare their minority status, their request was also rejected on the ground that the school was not a recognised institution. The petitioner has been made to run from pillar to post for a rightful claim and to establish their right.



The petitioner's claim of minority status as projected before me is as follows:

a) The petitioner's school has been established and administered by the International Youth Fellowship in Christ which is a Christian Religious Minority Trust proclaiming the mission of Evangelism and proclaiming the Gospel and otherwise, wherein witness to the Love of Jesus Christ.

b) Among the various objects of the Trust, one of the major object as evidenced in the Trust Deed dated 05.12.1995 is as follows:

"OBJECTS OF THE TRUST:

1) To promote the spiritual advancement of the people through the Gospel of the Lord Jesus Christ by emphasizing the need for spiritual regeneration in each individual and make disciples of all over India irrespective of caste, community, religious, nationality, sex or language or any other consideration."

The Trust also undertakes social service projects relating to education and to run such institutions without any intention of earning profit.

c) The statement in the petitioner's affidavit, that the School is providing secular education, free of costs, without any government assistance, from and out of the Church Trust and that the School is intended for all children irrespective of caste, creed, status, language and cultural differences, is not disputed by the respondents in their counter affidavit.

18. It is with this noble object that the Trust has established the School and has been administering the same. In view of the objects of the Trust, I have no difficulty in holding that the International Youth Fellowship in Christ is a Religious Minority Trust and that the petitioner's school is indeed, a minority school.

19. In view of the categorical pronouncements referred above and in the light of the observations made by me in this order, the impugned orders treating the petitioner's school as a Non Minority School is unconstitutional and illegal and hence, the consequent remarks made therein are liable to be set aside.

20. In the result, the impugned order of the first respondent made in Mu.Mu.No.29207/G1/E1/2013 dated 29.04.2013 and the impugned order of the fourth respondent made in Letter No.36031/CC1(3)/2013-3 dated 11.04.2014 are quashed. Consequently, the first respondent is directed to declare religious minority status as well as grant recognition to the petitioner's school along with all other attendant benefits, within a period of six weeks from the date of receipt of a copy of this order.



21. With the aforesaid observations and directions, the Writ Petitions stand allowed. Consequently, connected Miscellaneous Petitions are also closed. There shall be no order as to costs.

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Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Director of School Education
(Higher Secondary School Education),
College Road, Chennai-600 006.

2. The Chief Educational Officer,
C.V. Government Higher Secondary
School Campus,
Tuticorin, Tuticorin District.

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4. The Government of Tamil Nadu
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Chennai-600 009.

5. The Director of Government
Examination, (School Education)
College Road, Chennai.
Chennai-600 006.

+2cc to M/S. Joseph Jerome Thetheus, 51611, 51612

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.51249

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10.04.2017

DP