

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :08.03.2018
CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN
W.P.No.2051 of 2018
and W.M.P.No.2566 of 2018

Sayar Devi Dhanmuli Sowcar Educational Trust,
Rep. by its Managing Trustee
running Sri VDS Jain Higher Secondary School,
Gandhi Nagar, 9th Street, Tiruvannamalai - 606 601.
..Petitioner

vs

- 1.The State of Tamil Nadu,
Rep.by its Secretary,
Government of Tamil Nadu,
Education Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
Nungambakkam, College Road,
Chennai.
- 3.The Chief Educational Officer,
Tiruvannamalai.
- 4.The District Educational Officer,
Tiruvannamalai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to forthwith issue orders for continuance of the minority status of the petitioner school from the year 2007-2008 onwards by passing orders on the petitioner application dated 22.12.2011 forwarded through the 3rd respondent herein.

For Petitioner : M/s.A.R.L.Sundaresan, Senior Counsel
for M/s.M.K.Vijayaraghavan

For Respondents : M/s.C.Munusamy, Spl GP

O R D E R

This writ petition has been filed for a Mandamus, directing the respondents herein to forthwith issue orders for continuance of the minority status of the petitioner school from the year 2007-2008 onwards by considering the petitioner's application dated 22.12.2011 which was forwarded through the 3rd respondent.

2. When the matter was taken up for consideration, the learned senior counsel for the petitioner submitted that the issue involved herein had already been considered by this Court, by order dated 23.07.2010 in WP.No.957 of 2010, wherein, in para 14, this Court had passed an order of a Writ of Prohibition, forbearing the respondents from insisting the petitioner therein to seek declaration of minority status every year. Therefore, the learned senior counsel submitted that the application of the petitioner seeking continuance of the minority status, may be directed to be considered by the respondents, in the light of the earlier order of this Court as referred to above.

3. This Court perused the earlier order of this Court dated 23.07.2010 made in WP.No.957 of 2010, which was allowed, after analysing the legal and factual aspects in detail, which, for better appreciation, are extracted hereunder:

"9. It is admitted position that the petitioner school has been granted minority status by 3rd respondent order with effect from 01.06.2003. Civil Court also declared minority status of the petitioner in O.S.No.57 of 1995. Subsequently by G.O.Ms.No.35 (School Education (T1) Department, dated 22.02.2006, petitioner's linguistic minority status has been declared. The communications of the respondents would reveal that the petitioner's character as "minority."

10. The Judgment of the Hon'ble Supreme Court in N.Ammad Vs. Manager, Emjay High School and others reported in (1998) 6 SCC 674 wherein it has been declared that, the declaration of minority status is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Paragraph 13 of the said Judgment is extracted as follows:-

"13. When the Government declared the school as a minority school it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only after the Government declared it as a minority school on 02.08.1994."

11. Paragraphs 4 & 5 of Judgment of the Division Bench of this Court in W.A.No.1714 of 1999 passed on 31.07.2001 are referred as follows:-

"4.....We fail to appreciate how the minority status can be conferred on the appellant for a particular period to be renewed periodically like a driving license. In our considered opinion, the appellant it is not open for the State Government to review its earlier order conferring linguistic minority status on the appellant unless it be shown that appellant had suppressed any material fact while passing the earlier order dated 27.10.1997 or there is fundamental change of circumstances warranting cancellation of the earlier order.

5. In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstance or suppression of facts, the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice. "

12. Mr.Justice N.Paul Vasanthakumar by order dated 18.08.2009 passed in W.P.No.13632 of 2001 in Asan Memorial Association Vs. The State of Tamil Nadu and Another in paragraphs 13, 14 and 15 has held as follows:-

"13. Similar issue was decided by the Supreme Court in the decision reported in (1998) 6 SCC 674 (N.Ammad Vs. Manager, Emjay High School and Others) wherein it is held that a school which is otherwise a minority school would continue to be so whether the Government declare it as such or not. When the Government declare a school as minority school, it has recognised the factual position that the school was established and is being administered by a minority community. The declaration is the open acceptance of the legal character, which should necessarily

have existed antecedent to such declaration. As per the above Judgment of the Supreme Court, the declaration of the minority status will relate back to the establishment of the institution.

14. A Division Bench of this Court in the decision reported in (2001) 3 MLJ 433 (Thirumuruga Kriupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem Vs. State of Tamil Nadu) took a view that there is no provision for the Government to insist on renewal of minority status every year. When once the institution has been granted minority status, unless there is any change in the constitution of the agency or any adverse information is received by the Government, there is absolutely no need or necessity for the Government to expect such periodical renewal. SLP filed against the said Judgment was also dismissed by the Honourable Supreme Court. The said Division Bench decision was followed by this Court subsequently in the decision reported in 2004 WLR 202 (C.S.I. Institute of Technology, Thovalai Vs. The Government of Tamil Nadu & Another) and this Court held that requiring renewal of minority status every year will unnecessarily lead to delay and red-tapism, which is totally uncalled for. By requiring such declaration every year, the administration of the institution and the plight of the students will be kept under unreasonable suspense and doubt which is totally unwarranted. This Court held that it is totally unreasonable to expect all the minority institutions in the State be knocking at the doors of the Government every year and the authorities pass orders only after some years.

15. Article 30 (1) is a fundamental right guaranteed under the Constitution and it is a right which confers certain privileges to minority institutions. The Government is bound to recognise the said right and imposing condition to get minority status every year is an unreasonable restriction and the same cannot be permitted. If the

procedure now followed by the Government is permitted, i.e, no order is passed by the Government even after the beginning of the academic year, the fundamental right guaranteed to minority institutions would be a promise of unreality."

From the above, it is very clear once the minority status is already given to the petitioner's school that there is no necessity for the institution to go for renewal every year. The minority status will be in force unless there is circumstances for reviewing it or altering it. This is the dictum laid down by Mr.Justice K.P.Sivasubramanian in C.S.L.Institute of Technology, Thovalai Vs. The Government of Tamil Nadu and another reported in 2004 Writ L.R. 202.

13. The facts of the case would show that there is any circumstances as on date for change or review the order already granted. Therefore, the minority status of the petitioner continues.

14. In view of the settled position of law and facts of the petitioner's case, there will be an order of a Writ of Prohibition, forbearing the respondents from insisting the petitioner to seek declaration of minority status every year for the petitioner school. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

4.This Court is of the opinion that as the petitioner school has already been granted minority status, the application of the petitioner seeking continuance of the same, will have to be considered in the light of the aforesaid order.

5.At this juncture, the learned Special Government Pleader appearing for the respondents fairly submitted that in the event of the petitioner being approached the respondents by way of a fresh representation, the same shall be considered, in the light of the aforesaid order of this Court.

6.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court directs the petitioner to submit a fresh representation to the respondents within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondents shall consider the same and pass appropriate orders on merits and in accordance with law and also in the light of the order dated 23.07.2010 made in WP.No.957 of

2010, within a period of four weeks thereafter.

7. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

kak/rk

To

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

2. The Director of School Education,
Nungambakkam, College Road,
Chennai.

3. The Chief Educational Officer,
Tiruvannamalai.

4. The District Educational Officer,
Tiruvannamalai.

+1 cc to Mr. M. K. Vijayaraghavan Advocate sr 17601

+1 cc to the Govt Pleader sr 18472

W.P.No.2051 of 2018

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