

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.10.2018

CORAM
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.17538 of 2015
and W.M.P.Nos.1 & 2 of 2015

Bentinck Higher Secondary School for Girls
Rep by its. Correspondent
63, EVK Sampath Road,
Vepery, Chennai-7

... Petitioner

Versus

1. The Government of Tamil Nadu,
rep by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009
2. The Director of School Education,
D.P.I. Campus,
College Road,
Chennai-6
3. The Chief Educational Officer
Panagal Building
Saidapet
Chennai-600 015
4. District Educational Officer
Chennai North
Ambethkar School (upstairs)
Gandhi Irvin Bridge
Chennai-600 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order dated 03.11.2008 in G.O.(MS) No.214 School Education(X2) Department on the file of the first respondent and quash the same in respect of the petitioner school.

For Petitioner : Mr.FR.A.Xavier Arulraj, Senior Counsel
For Mrs.A.ArulMary

For Respondents : Tmt. Narmada Sampath
Additional Advocate General
Assisted by Mrs.V.Annalakshmi
Government Advocate

O R D E R

The Writ Petition has been filed for a issuance of Writ of Certiorari to quash the Government Order in G.O.(MS) No.214 School Education(X2) Department dated 03.11.2008, issued by the first respondent.

2. There is no factual controversy in this writ petition. The petitioner in this writ petition is a Girls School represented by its Correspondent. The petitioner school was established long back (1837) and the school was declared to be a minority school by this Court in a writ petition filed by the institution in W.P.No.522 of 1975 by order dated 24.09.1976. The educational authority viz., the Director of School Education, Chennai has also recognised the status of the Institution as a Christian Minority Institution by proceedings in RC.No.24541-G3/76 dated 20.11.1976. It is stated that a Division Bench of this Court has also reaffirmed the status of the petitioner by another order dated 10.10.2012.

3. It is not in dispute that the petitioner was treated as a minority religious institution. However the first respondent issued a Government order in G.O.MS.No.214, School Education(X2) Department dated 03.11.2008, framing certain additional guidelines for the conferment of minority status to the educational institutions in addition to the guidelines issued in G.O.Ms.No.375 Education dated 12.10.1998. By virtue of the impugned Government Order, the first respondent wanted to limit the validity of minority status of all institutions for a period of five years. The operative portion of the impugned Government Order reads as follow:

"i) Minority status for the first time may be given for five years from the date of issue of order.

ii) For those institutions, which have already been granted minority status extension of minority status may be given for five years from the date of order.

iii) If any of the minority institutions commits by commission or omission of any action or does anything against the minority status the Head of Department concerned shall bring it to the notice of the Government for the withdrawal of minority status and the Government may take further necessary action

for the withdrawal of minority status after giving an opportunity to the institution concerned.

iv) In respect of privately managed/ Teacher Training institutes under the control of the Director of Teachers education Research and Training the management should admit less than 50% of the students belonging to their own community.

v) The report of the Tahsildars concerned may be obtained to ascertain that the educational institutions satisfy those additional guidelines including the guidelines prescribed in the G.O.Ms.No. 375 School Education dated 12.10.1998."

Stating that the impugned Government Order is violative of several decisions of this Court and the decisions of the Hon'ble Supreme Court of India, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner submitted that the impugned Government order issued by the first respondent is in violation of Article 30(1) of the Constitution of India, in as much as, the status of the petitioner has been restricted for a period without any legal sanctity. It is further contented that the legality of such restrictions in individual orders passed by the authorities had been quashed by this Court in several writ petitions. It is further stated that the same Government Order has been quashed by this Court in the earlier judgement on merits also. The learned counsel for the petitioner made further submissions and this Court need not to be elaborately discuss the case further on merits, since the issue is no more res integra and it is covered by several decisions of this Court.

5. The learned counsel appearing for the petitioner relied upon the Judgment of learned single Judge of this Court in case of Asan Memorial Association, Cochin House vs. State of Tamilnadu reported in 2009 (6) CTC 579 wherein, the writ petitioner challenged the G.O.(MS).No.270 Education dated 17.06.1998 requiring issuance of minority status for each and every year was quashed. In the said judgment after referring to the fact that the petitioner Institution was recognised as a minority institution, it is held that there is no provision to grant minority status for a limited period. After considering the legal position that Article 30(1) is a fundamental right guaranteed under the Constitution and the Government is bound to recognise the said right, it is held that imposing condition to

get minority status every year is an unreasonable restriction, which cannot be permitted.

6. Similarly another Government order vide G.O.MS.No.363 Higher Education (E1) Department dated 08.10.2009 was challenged in yet another writ petition in W.P.No.24606 of 2012. The learned single Judge of this Court in the case of The Secretary, Loyala College(Autonomous) Vs. State of Tamilnadu represented by its Secretary, Department of Higher Education reported in 2012 Writ L.R.1078, set aside the Government order by which the status of the petitioner's college as a Minority Educational Institution was restricted for the limited period of five years. The judgment of the Division Bench of this Court in the case Thirumuruga Kirupananda Variyar, Thavathiru sundara swamigal, Medical, Educational and Charitable Trust, Salem Vs. State of Tamilnadu reported in (2001)3 M.L.J.433 and the previous judgment referred to above were relied upon by the learned single Judge and it is held that minority status already granted by the Government is valid without any restrictions. The Division Bench of this Court in the case Thirumuruga Kirupananda Variyar, Thavathiru sundara swamigal, Medical, Educational and Charitable Trust, Salem Vs. State of Tamilnadu reported in (2001)3 M.L.J.433 has held 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 licence. In our considered opinion, 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 the 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. It is not the Government's case that there is any suppression of any material facts or any 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 Art.30(1) of the Constitution of India, unless there is fundamental change of circumstances 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."

7. The position was once again reiterated by Division Bench of this Court in the case of Secretary, Jeyaraj Annapackiam College for Women (Autonomous), Managed by the Congregation of the Sisters of St. Anne, Tiruchirappalli Vs. State of Tamil nadu represented by its Secretary and others reported in 2013(8) MLJ 509. The Division Bench after referring to the consistent view taken by this Court earlier and the Judgement of the Division Bench in Thirumuruga Kirupananda Variyar's case has held that the minority status given to the institution will hold good without any restriction period. However, liberty was given to the official respondent to issue notice and take appropriate action in accordance with law, if there is any change in the constitution of educational agency or if the institution is run contrary to the memorandum of Association/Bye-laws of the society. The same view was taken subsequently in several decisions particularly in the case of Correspondent, St.Xavier's Catholic College of Engineering, Chunkankadai Vs. State of Tamilnadu rep by its secretary and other reported in 2015 Writ L.R.222.

8. The learned counsel appearing for the petitioner also relied upon the recent judgment of the Division Bench of this Court in Writ Appeal No.1130 of 2013 dated 11.09.2017, wherein the earlier two decisions of the Division Benches of this Court referred above have been followed. It is also brought to the notice of this Court that the very same Government Order namely G.O.MS.No.214, School Education (X2) Department dated 03.11.2008 was quashed by this Court in another writ petition in W.P.No.18318 of 2009 dated 24.07.2017.

9. However, the learned Additional Advocate General appearing for the respondents submitted that the learned single Judge of this Court, by order dated 17.07.2018 made in W.P.No.1775 of 2018, has taken a different view. As against the number of judgments in favour of the writ petitioner, the learned Additional Advocate General relied upon the judgement of learned single Judge of this Court in W.P. No.1775 of 2018 dated 17.07.2018, wherein it observed that the order dated 18.02.2013 made in C.A.No.6730 of 2004 in the case of State of Tamilnadu Vs. Thirumuruga Kirupananda Variyar, was not brought to the attention of the learned single Judge of this Court as also to the Division Bench of this Court and that the observation made in Thirumuruga Kirupananda Variyar's case has been interfered

with by Hon'ble Supreme Court and the matter was remitted back to the Government for reconsideration. The learned Additional Advocate General has also produced a copy of the judgment dated 18.02.2013 passed by Hon'ble Supreme Court of India in C.A. No 6730 of 2004, which reads as follows:

"In order to decide this appeal, it is not necessary for us to give the facts in detail. It is evident from the record that a Trust was created for imparting the education. Subsequently, an amendment was brought in the Trust Deed on the basis of which certain preference was given to the persons belonging to a particular community to which the Trustee belonged. A Certificate dated 27.10.1997 was granted by the revenue authorities conferring certain benefits under Article 30(1) of the constitution of India for the purpose of admission of medical students for the year 1997-98.

The said order was set aside by subsequent order which was challenged before the learned Single Judge. The main reason of challenge of the subsequent order of withdrawal of the minority certificate had been that the order was passed by the Government without giving any opportunity of hearing or issuing any show cause notice to the respondent or trust or trustees. However, the learned single judge dismissed the writ petition. The Division Bench. While dealing with the writ appeal, has not only allowed the writ appeal rather granted a minority community certificate to the respondent assessing the merit itself.

We have heard learned counsel for the parties at length and we are of the view that in such a fact situation, the Division Bench ought to have set aside the order of recall of the minority certificate and ask the Government to reconsider after giving opportunity of hearing to the parties concerned but it was certainly not permissible for it to take the task of Government upon itself and grant the minority certificate.

In view of the above, we set aside the judgment and orders passed by the Division Bench, learned Single Judge as well as by the State Government dated 29.09.1998. The State Government is directed to issue fresh show cause notice to the respondent within a period of four weeks from today and respondent is directed to submit the reply within a period of two weeks after receiving the said show cause notice. The Government will decide the same after considering the contents taken in the reply to the show cause and if considered necessary, after giving opportunity of hearing within a period of four weeks thereafter."

10. Relying upon the judgment of Hon'ble Supreme Court in C.A.No.6730 of 2004 dated 18.02.2013, the learned Additional Advocate General submitted that the several judgments cited and relied upon by the learned Senior Counsel appearing for the petitioner were based on the principles laid down in Thirumuruga Kirupananda Variyar's case and this Court has not taken into account the fact that the judgment of the Division Bench in Thirumuruga Kirupananda Variyar's case was set aside by the Hon'ble Supreme Court and the matter was remitted before the Government for fresh consideration regarding the minority status of the institution concerned.

11. Though it is true that the judgment of the Hon'ble Division Bench of this Court in Thirumuruga Kirupananda Variyar's case has been set aside, a close reading of the judgment of the Hon'ble Supreme Court in C.A.No.6730 of 2004 on 18.02.2013, would reveal that the principle or the law actually stated by the Division Bench was not altered or interfered with. However, the factual position with regard to the actual minority status of the institution concerned on account of certain change of circumstances was considered by the Hon'ble Supreme Court and that the decision declaring the status of the institution alone was set aside by the Hon'ble Supreme Court. If there is change of circumstances affecting the minority status or there is change in the educational agency, it is always open to the Government to take appropriate action. This is accepted in all the judgments above referred to. The legal position that has been considered and answered by this Court in all the judgments is to the effect that once a decision is taken declaring the status of an institution as a minority institution, that cannot be restricted for any period. This legal position has not been disturbed or altered by the Hon'ble Supreme Court in C.A.No.6730 of 2004. Hence the observation of the learned Judge in W.P. No. 1775 of 2018 dated 17.07.2018 may not be appropriate.

12. Then the learned Additional Advocate General has relied upon yet another judgment of Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 2934 of 2018 dated 05.03.2018. The Hon'ble Supreme Court of India while dismissing a Special Leave Petition preferred by the State of Tamilnadu as against the judgement of the Division Bench of this Court in W.A.No.1130 of 2013 dated 11.09.2017, has observed that it will be open to the petitioners to move the High Court for considering of the judgement of Hon'ble Supreme Court of India in C.A.No.6730 of 2004 in Thirumuruga Kirupananda Variyar's case in accordance with law. It is seen that the basis of the judgment impugned before Hon'ble Supreme Court is the judgment of Division Bench in Thirumuruga Kirupananda Variyar's case. However the observation of Hon'ble Supreme Court appears to be based on the plea put forth by the Senior Counsel appearing for the State. No legal issue is considered. The liberty given to the State, without expressing any view on merits, cannot be interpreted to mean that the Hon'ble Supreme Court has accepted the stand of the State.

13. This Court no doubt agrees with the learned Additional Advocate General's submission that it is open to the State Government to file a Review as against the order passed in Writ Appeal in W.A.No.1130 of 2013 dated 11.09.2017, on the basis of the order of the Hon'ble Supreme Court of India in C.A.No.6730 of 2004 i.e., Thirumuruga Kirupananda Variyar case. This Court has already seen that the order of Hon'ble Supreme Court in C.A.No.6730 of 2004, has nothing to do with the issue on hand. Once the religious institution has declared as a minority institution, it cannot be presumed for a limited period, unless the said declaration becomes questionable on the basis of any subsequent event or change in the constitution of the educational agency. The power of official respondents to initiate appropriate action as against any institution due to any change in constitution of educational agency has been recognised in all the cases referred to above.

14. Hence, this Court is of the firm view that no change in the legal position can be presumed, on account of the judgment of the Hon'ble Supreme Court of India either in the case of Thirumuruga Kirupananda Variyar in C.A.No.6730 of 2004 or on account of the Judgment of Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 2934 of 2018. In view of the consistent view taken by this Court in several judgments referred above, this Court has no hesitation to hold that the impugned Government Order is unconstitutional and invalid and hence it is liable to be quashed.

15. Accordingly, the writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mpa/rts

To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai-600 009
2. The Director of School Education,
D.P.I. Campus,
College Road,
Chennai-6
3. The Chief Educational Officer
Panagal Building
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4. District Educational Officer
Chennai North
Ambethkar School (upstairs)
Gandhi Irvin Bridge
Chennai-600 008.

+1cc to the Government Pleader, S.R.No.71469

rrs 12/11/2018

W.P.No.17538 of 2015 and
W.M.P.Nos. 1 & 2 of 2015

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