

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.532 of 2017 & CMP No.7594 of 2017
and WA No.638 of 2017 & CMP No.8850 of 2017

1. The Secretary,
State of Tamil Nadu,
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,
Chennai Region, Saidapet, Chennai 600 015.
- ... Appellants
in both the Appeals

versus

1. The Secretary,
Rajiv Gandhi College of Arts and Science,
Nemili, Sriperumbudur 602 105.
 2. The Registrar,
University of Madras, Centenary Building,
Chepauk, Chennai 600 005.
- ... Respondents
in both the Appeals

Appeals filed against the order passed by this Court dated 20.07.2016 passed in W.P.Nos. 18063 & 18484 of 2016 respectively.

Prayers in W.P.Nos. 18063 & 18484 of 2016:-
WP.No.18063 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus Calling for the records relating to the impugned order issued by the 2nd respondent Director of Collegiate Education vide proceedings RC No.46786/ R1/ 2015 dated 09.02.2016 refusing Minority Status for 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 Educaitional Institution.

WP.No.18484 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus Calling for the records relating to the impugned order issued by the 4th respondent University vide Letter No.A1/New College/2016-2017/133 dated 18.03.2016 insisting the petitioner to obtain Government order (granting permission / NOC) from the 1st respondent State Government for considering petitioners application for affiliation quash the same and further direct the 4th respondent University to consider petitioners application dated 29.10.2015 for affiliation to offer the requested courses from the academic year 2016-2017

For Appellants : Mr.K.Karthikeyan
Government Advocate

For Respondents : Mr. Issac Mohanlal, Senior Counsel
for M/s.P.Godson Swaminathan for R1

Mr. Manisundar Gopal for R2

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in these intra Court Appeals is to the common judgment of the learned Single Judge made in WP No.18063 of 2016 and 18484 of 2016 dated 20.07.2016, in and by which, the learned Single Judge while quashing the rejection of the application seeking Minority Status to the Rajiv Gandhi College of Arts and Science to be started by the Gulf Returnees Educational Society had directed the appellants to consider the application on merits in WP No.18063 of 2016 and directing the 2nd respondent viz. The University of Madras, to consider the application of the Society for affiliation of the College, on the basis of the decision arrived at by the Government pursuant to the directions issued in WP No.18063 of 2016 in WP No.18484 of 2016.

The facts that led to the filing of the Writ Petition are as follows:

2. The 1st respondent Society called the Gulf Returnees Educational Society, a society registered under the Tamil Nadu Societies Registration Act, has been running an Engineering College as in the name and style of Rajiv Gandhi Engineering College. It is not in dispute that the said College has been recognised as a minority institution by the Government of Tamil

Nadu by G.O.Ms.No.207, Higher Education (J1) Department, dated 11.06.2002. Though the minority status was conferred on the said College for a period of one year from 11.06.2002 later it was extended up to 28.08.2009. This Court declared that the said Rajiv Gandhi Engineering College run by the Gulf Returnees Educational Society will be recognised as a minority institution permanently, by its order dated 13.04.2015 made in WP No.14454 of 2014.

3. The said Society with a view to start Arts and Science College applied for grant of minority status to the said College. The said application was rejected by the Director of College Education on the ground that the minority status could be granted only to a Educational Institution, which is already functioning and administered by the Educational Agency. It is this rejection that was challenged in the Writ Petition in WP No.18063 of 2016.

4. The respondents 1 to 3/ appellants herein resisted the said writ petition contending that in view of G.O.Ms.No.270, Higher Education (J1) Department dated 17.06.1998, Minority Status could be conferred only on institutions which are already functioning and not for a proposed institution.

5. The learned Single Judge, who heard the Writ Petition rejected the contentions of the respondents 1 to 3/appellants herein and directed them to consider the application of the Society for grant of minority status to the Arts and Science College proposed to be started by the Society on merits. The learned Single Judge also took note of the provisions of the Tamil Nadu Private School (Regulation) Act, 1976, particularly, the definition of an "Educational Agency" under Section 2(4) of the said Act. The learned Single Judge was of the view that even a person, who proposes to establish a minority college falls within the definition of an "Educational Agency" and therefore the rejection of the request of the Educational Agency for granting minority status to the college it proposes to start on the ground that it could be given only to existing colleges is not justified. The learned Single Judge also referred to the decision of this court in Secretary, Immaculate College for Women, Puducpalayam, Cuddalore 607 002 v. The State of Tamil Nadu rep. by its Secretary, Department of Higher Education, Fort St.George, Chennai 600 009 and others reported in 2015 (1) CWC 557. Upon allowing the Writ Petition No.18063 of 2016, the learned Single Judge issued the consequential directions in WP No.18484 of 2016, wherein the communication issued by the University of Madras directing the Gulf Returnees Educational Society to apply for affiliation after obtaining G.O. regarding Minority Status for the proposed College, was under challenge.

6. Aggrieved, the respondents 1 to 3 in the Writ Petitions have come forward with these Writ Appeals.

7. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants, Mr.Issac Mohanlal, Senior Counsel appearing for M/s.P.Godson Swaminathan, for the 1st respondent and Mr.Manisundar Gopal, learned counsel appearing for the 2nd respondent.

8. The learned counsel for the appellants would contend that G.O.Ms.270, Higher Education (J1) Department, dated 17.06.1998 provides that Minority Status could be granted only to such Educational Institutions that have been established and are continuously administered only by the members of that minority. He would also point out that there are several other conditions enumerated in the said G.O. A minority Institution is required to admit at least 50% of the students from the religious or linguistic minority to which it belongs. Therefore, according to Mr.K.Karthikeyan, unless those conditions are fulfilled Minority's Status cannot be granted. It is only with a view to ensure compliance of all the conditions set out in G.O.Ms.No.270 dated 17.06.1998, the appellants had required the college to start the institution and thereafter apply for minority status.

9. Per contra, Mr. Issac Mohanlal, learned Senior Counsel appearing for the 1st respondent would contend that in view of the provisions of the Tamil Nadu Private Colleges (Regulation) Act 1976, it is wholly impossible for the Society/Educational Agency to start the college without a declaration of its minority status. He would draw our attention to the definition of "Educational Agency" in Section 2(4)(a) of the said Act, which reads as follows:

2. (4) "Educational agency", in relation to-
- (a) any minority college, means any person who, or body of persons which, has established and is administering or proposes to establish and administer such minority college; and
 - (b) any other private college, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain such other private college ;

Mr. Issac Mohanlal, Senior Counsel would also invite our attention to Section 3 and Section 8 of the Act, which read as follows:

Section 3: New Private colleges to obtain permission .-

Save as otherwise expressly provided in

this Act, no person shall, without the permission of the Government and except in accordance with the terms and conditions specified in such permission, establish, on or after the date of commencement of this Act, any private college:

Provided that it shall also be necessary to obtain affiliation of such college to a University.

Section 8. Minority College to be established without permissions .-

Any minority, whether based on religion or language, may establish and administer any private college without permission under sub-section (1) of section 5 read with sections 3 and 4.

10. A combined reading of the above provisions would show that an Educational Agency would mean and include a person or a Society, who proposes to establish and administer such minority college. While Section 3 prohibits establishment of a college without permission of the Government, Section 8 permits a minority college to be established without permission. Therefore, in order to establish a college without permission of the Government the Educational Agency must first possess a declaration that it is a minority.

11. No doubt true G.O.Ms.No.270 provides that Minority Status could be granted only to Educational Institution established by the minority and managed continuously by such minority. But the same will not afford a ground, to the appellants to reject an application by a society to seeking a declaration of a Minority Status for the college it proposes to start, more so where a college which has been established by the very same society has been conferred the Minority Status by the appellants themselves as early as in 2002.

12. Mr.K.Karthikeyan, learned Government Advocate would also contend that in view of the provisions for National Commission for Minority Educational Institutions Act 2004, any dispute relating to minority status should be challenged only before the Commission and hence the Writ Petition itself was not maintainable. Section 11 of the said Act, provides Functions of Commission and Sub Section (b) of Section 11 provides that it has the power to enquire regarding the deprivation or violation of rights of minority to establish and administer Educational Institution of their choice. Section 12-A provides for appeal to the Appellate Authority against the orders passed by the said Commission.

13. We are unable to countenance the said submission of

Mr.K.Karthikeyan, as we are of the considered opinion that the said stage has not reached here. The request of the first respondent College for conferment of Minority Status has not been examined on merits as of today. The sole ground on which it has been rejected is that it is premature. The availability of alternative remedy is not absolute bar for exercise of jurisdiction under Article 226 of the Constitution of India, more so, when the said objection has not been raised before the Writ Court and it is raised for the first time in the Appeal before this Court.

14. We are therefore of the considered opinion that the learned Single Judge was right in directing the appellants to consider the claim of the 1st respondent for Minority Status without insisting on the starting of the College. We therefore do not see any reason to interfere with the conclusions of the learned Single Judge. The Writ Appeals are disposed of with the following direction.

1. The appellants shall consider the application for the Minority Status filed by the 1st respondent and decide the same on merits within a period of three months from the date of receipt of a copy of the order.

2. On receipt of the orders from the Government, the University of Madras, the 2nd respondent in these Appeals is directed to consider the application for affiliation made by the 1st respondent and decide the same within a period of one month thereafter.

In the circumstances of the case the parties are directed to bear their own costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jv

To

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

WEB COPY

2. The Director of Collegiate Education,
College Road, Chennai 600 006.
3. The Joint Director of Collegiate Education,
Chennai Region, Saidapet,
Chennai 600 015.
4. The Registrar,
University of Madras, Centenary Building,
Chepauk, Chennai 600 005.

+1cc to M/s.P.Godson Swaminathan, Advocate, S.R.No.42916

+2cc to Mr.Manisundar Gopal, Advocate, S.R.No.47829, 27830

W.A.No.532 of 2017 & CMP No.7594 of 2017
and WA No.638 of 2017 & CMP No.8850 of 2017

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