

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No. 8967 of 2018
and WMP.No.10813 of 2018

The Quaide Milleth Educational and Social Trust
Rep. by its Secretary and Correspondent
M.G. Dawood Miakhan,
S/o. J. M. Miakhan,
Tambaram Velachery Main Road,
Medavakkam, Chennai - 600 100. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Secretary,
Higher Education Department,
Fort St. George, Chennai.
2. The Director of Collegiate Education,
EVK Sampath Maligai, DPI campus,
College Road, Chennai - 6.
3. The Joint Director of Collegiate Education,
Chennai Region, Chennai - 15. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Prohibition, prohibiting the respondents from insisting the petitioner to seek declaration of its minority character every year or once in five years for Quaide Milleth College for Men, Medavakkam, Chennai run by the petitioner.

For Petitioner : M/s. N. A. Nissar Ahmed
For Respondents : M/s. V. Annalakshmi
Government Advocate

O R D E R

This petition is filed for issuance of a Writ of Prohibition, prohibiting the respondents from insisting the petitioner to seek declaration of its minority character every year or once in five years for Quaide Milleth College for Men, Medavakkam, Chennai.

2. The petitioner-Trust had established and administering Quaide Milleth College for Men, Medavakkam, Chennai, which had been conferred the status of religious minority for a period of five years from 2010-2011 by the 1st respondent herein, vide G.O.(Ms).No.308, Higher Education (E1) Department, dated 21.09.2010. The petitioner therefore submitted a representation for renewal of confirmation of permanent minority status. Despite several reminders, there was no response from the respondents and hence, the petitioner is constrained to file the present writ petition.

3. The contention of the petitioner in the Writ Petition is that there is no provision to grant minority status for a limited period and that the declaration of minority status relates to the establishment of the Institution and also there is no provision to insist on renewal of minority status every year.

4. The learned counsel for the petitioner submitted that the respondents cannot insist for renewal of minority status every year or once in five years. The matter is no more res-integra and there are several judgments of this Court clarifying this position.

5. The Division Bench of this Court in the case of Secretary, Jeyaraj Annapackiam College for Women Autonomous Vs. State of Tamil Nadu rep. by its Secretary and others, reported in 2013 Vol 8 MLJ 509, has held that the minority status cannot be given for a limited period. In another decision of the Division Bench of the Madurai Bench of this Court in the case of the State of Tamil Nadu vs. The Manager & Correspondent, Carpenter Street Middle School, Tuticorin, reported in CDJ 2018 MHC 1496, after considering earlier judgments, has held as follows:

"10. In the decision in the Secretary, Jeyaraj Annapackiam College for Women Autonomous Vs. State of Tamil Nadu rep. by its Secretary and others reported in 2013 Vol 8 MLJ 509, the Division Bench of this Court has considered the earlier decision, which has been subsequently followed in two other decisions, which in turn make a reference as well as to the earlier decision in C.S.L Institute of Technology, Thovalai Vs. The Government of Tamil Nadu reported in 2004 WLR 202 and in Asan Memorial Association Vs. The State of Tamil Nadu reported in 2009 (6) CTC 579 and found that in the guideline issued by the Government in G.O.Ms.270, Higher Education (J1) Department, dated 17.06.1998, nowhere, it has been stated that the minority status can be given for a limited period.

11. In the considered opinion of this Court, the said legal position is in subsistence, even as on today and the issue arose for consideration in this Writ Appeal is no longer *res integra*, in the light of the settled legal position. The learned Single Judge has correctly applied the same and quashed the impugned G.O in so far as restricting the minority status for a limited period of five years."

6. The Supreme Court in the case of N.Ammad vs. the Manager, Emjay High School, reported in CDJ 1998 SC 052, has held as follows:

"11. 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."

7. The Supreme Court in the case of Manager, Corporate Educational Agency vs. James Mathew & others, reported in CDJ 2017 SC 986 has held that as certificate of declaration of minority status is only declaration of existing status, there is no question of availability of status only from date of declaration. The relevant portion of the said decision is extracted as follows:

"6. As far as the validity of the declaration of minority status is concerned, this court in N. Ammed v. Manager, Emjay High School and Others, (1998) 6 SCC 674, has held that the certificate of the declaration of minority status is only a declaration of an existing status. Therefore, there is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence. Paras 12 and 13 of the Judgement are quoted hereunder :-

12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school. If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. Declaration by the Government is at best only a recognition of an existing fact. Article 30 (1) of the Constitution

reads thus :

"30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

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."

8. The Division Bench of this Court in yet another judgment in the case of the Secretary & Correspondent, Sri Kumaragurubara Swamigal Middle School, Thanjavur vs. B.Bhuvaneswari & others, reported in CDJ 208 MHC 2841, has held that even if the Government had not declared Institution as minority Institution, status of minority Institution will continue and effect of declaration is only recognition of its legal character.

9. From the judgments referred to above, it can be seen that when once the Government declared minority status to an Institution, such declaration will be effective from the date of establishment of the Institution and the declaration is valid till the same is modified by a subsequent order.

10. The learned Government Advocate appearing for the respondents submitted that a learned Single Judge of this Court has taken a different view, in view of the pendency of the SLP in few other cases. However, in the case cited by the learned Government Advocate, it is seen that the view reiterated in the earlier judgment of this Court was followed and it has been held that the minority status given to the appellant will hold good without any restriction period. Only in case where there is any change in the constitution of Educational Agency or if the Institution is run or administered contrary to the Bye-laws of the Society / Memorandum of Association, it is open to the Government to issue notice and take appropriate action to withdraw or vary the declaration of minority status given to that Institution. In view of the same, the submission of the learned Government Advocate for the respondent has no merit.

11. As a result, the Writ Petition is allowed as prayed for and the respondents are directed to refrain from insisting the petitioner-Trust to seek declaration of minority character every year or once in five years of their Institution, viz., Quaide Milleth College for Men, Medavakkam, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

pds/pvs

To

1. The Secretary,
The State of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai.
2. The Director of Collegiate Education,
EVK Sampath Maligai, DPI campus,
College Road, Chennai - 6.
3. The Joint Director of Collegiate Education,
Chennai Region, Chennai - 15.

+1cc to Mr.N.A.Nissar Ahmed,, Advocate, sr. no.60536

+1cc to The Government Pleader, High Court, Madras. sr.no.60854

W.P.No. 8967 of 2018

NMI (CO)

RMP (20/09/2018)

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