

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.1775 of 2018

The Society of the Bethel Educational Trust,
rep. By its Secretary,
Mr.Josewin Wesley
No.15, Sarathy Nagar, 2nd Street,
Velachery, Chennai 600 042.

...Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. By its Secretary,
School Education Department,
Fort St. George,
Chennai 600 009.
2. The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai 600 006.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, declaring the restriction of Minority Status to the Petitioner's Institutions namely, Bethel Matriculation Higher Secondary School at 15, Sarathy Nagar, 2nd Street, Velachery, Chennai 600 042 and Peniel Matriculation Higher Secondary School at No.1, Selva Nagar, Pallikaranai, Chennai 600 100 in G.O.(ID) No.133, School Education (X2) Department, dated 16.05.2013, relying on G.O.Ms.No.214, School Education (X2) Department, dated 03.11.2008 and the consequential proceedings issued by the 1st Respondent in Letter No.35231/Ms./2017-1, dated 27.12.2017 addressed to the 2nd Respondent are null and void, illegal and declare that the said Schools are to continue as Christian Minority Schools.

For Petitioner : Mr.P.Ebenezer Paul

For Respondents : Mrs.V.Annalakshmi,
Government Advocate

O R D E R

Petitioner has come up with this Writ Petition seeking to declare the restriction of Minority Status to their Institutions namely, Bethel Matriculation Higher Secondary School and Peniel Matriculation Higher Secondary School in G.O. (ID) No.133, School Education (X2) Department, dated 16.05.2013, relying on G.O.Ms.No.214, School Education (X2) Department, dated 03.11.2008 and the consequential proceedings issued by the 1st Respondent in Letter No.35231/Ms./2017-1, dated 27.12.2017 addressed to the 2nd Respondent as null and void, illegal and declare that the said Schools are to continue as Christian Minority Schools.

2. According to the Petitioner, their Society, which is a Public Charitable Trust, was incorporated in the year 1985 under the Tamil Nadu Societies Registration Act, 1975 and its bye-laws have been registered with the Statutory authorities and Registration Certificate has also been issued in the year 1985 vide Certificate No.11/1985. One of the important objects of the Petitioner/Society is to establish and administer educational institutions with the main object of promoting the interest of the Christian Minority Community. The Petitioner/Society is administering two educational Institutions viz. Bethel Matriculation Higher Secondary School at 15, Sarathy Nagar, 2nd Street, Velachery, Chennai 600 042 and Peniel Matriculation Higher Secondary School at No.1, Selva Nagar, Pallikaranai, Chennai 600 100, Kancheepuram District. Both the said Schools are being run by the Petitioner/Society itself under the same Management.

3. It is further stated by the Petitioner that in both the Schools at Velachery and Pallikaranai, the Management is giving preference to Christian students for admissions, though admissions are not denied to students of other faith and that the Management is not collecting any capitation fee while admitting students and the fee collected is minimum to meet the expenses for running the Schools. The Tahsildar of Mambalam and Guindy Taluk has issued a Certificate on 27.04.2012 and the Tahsildar of Sholinganallur has issued a Certificate on 07.09.2012, certifying that all the Trustees of the Petitioner/Society are Christians and the two Schools administered by them, are Christian Minority Institutions.

4. On 15.05.2012, the Petitioner applied for the grant of Minority status to both the Schools, to the competent authority, through the 2nd Respondent, with all the enclosures, viz. Articles of Association, Community Certificates of all the members of the Trust and the Recommendations made by the Tahsildars. The Inspector of Matriculation Schools, being

satisfied with the conditions stipulated in G.O.Ms.No.375, School Education Department, dated 12.10.1998, also recommended the claim of the Petitioner/Society. As there was no response from the 2nd Respondent on their application, the Petitioner/Society filed W.P.No.27849 of 2012 and this Court, by an order dated 29.10.2012, directed the competent authority viz. the 1st Respondent to pass orders within a period of three months.

5. Even after the expiry of three months, as no order was passed, the Petitioner filed Contempt Petition No.537 of 2013 and during the pendency of the Contempt Petition, the Government passed an order in G.O.(ID) No.133, School Education (X2) Department, dated 16.05.2013, granting minority status to the above said two Schools for a period of five years. Being aggrieved with the grant of minority status for a restricted period of 5 years, the Petitioner made representations to the 1st Respondent on 10.05.2017 and on 20.12.2017, stating that minority status cannot be given for a fixed time. But, the 1st Respondent vide communication dated 27.12.2017 again called for a fresh report from the 2nd Respondent, as if the Petitioner is claiming minority status for the first time. Hence, challenging the same, the Petitioner is before this Court.

6. In the counter affidavit filed by the Respondents, it is stated that the Government issued revised guidelines to confer minority status to educational institutions, vide G.O. (Ms) No.375, School Education Department, dated 12.10.1998. The power of Government to grant minority status flows from the interim order dated 18.08.1993 passed by the Apex Court in W.P. (C) Nos.598 of 1993 and 390 of 1993 (Shahal N.Musalia vs. State of Kerala and others), wherein, it was held that whether any Petitioner Institution is a minority educational Institution or not is a matter for the Government to verify and determine. Further, certain additional guidelines for grant of minority status to educational institutions, in supplementing the guidelines issued vide G.O.(Ms) No.375, dated 12.10.1998, were framed by the Government in G.O.(Ms) No.214 School Education (X2) Department, dated 03.11.2008, and the same reads as under:

(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 issue of order.

(iii) If any of the minority institutions commits any 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 Teacher Education Research and Training, the Management should admit not 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 these additional guidelines including the guidelines prescribed in G.O.(Ms) No.375, School Education Department, dated 12.10.1998."

7. It is the case of the Respondents that if permanent minority status is given, it may not be possible for the authorities to ascertain any changes in the constitution of an educational Agency or whether the Institution is run contrary to the Memorandum of Association/Bye-laws of the Society, unless the institution concerned notifies the authorities on its own violation, which is a rare occurrence. Hence, keeping this in view, the order is given for five years as laid down in G.O.(Ms) No.214, School Education (X2) Department, dated 03.11.2008.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. The issue for consideration in the present case is that whether the 1st Respondent is right in passing the impugned order, restricting the minority status of the two Schools run by the Petitioner/Society for a period of five years.

10. It is seen that G.O.(Ms) No.214, School Education (X2) Department, dated 03.11.2008, has been challenged in W.P.No.18318 of 2009 and the learned Single Judge of this Court, allowed the said Writ Petition. Further, a Division Bench of this Court in the case of Jeyaraj Annapackiam College vs. State of Tamil Nadu, (2013) 8 MLJ 509, had set aside the order of the learned Single Judge and held that minority status given to the Appellant will hold good without any restriction period. It was

made clear therein that if the Respondents are able to find 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, it is open to the Government to issue notice and take appropriate decision in accordance with law.

11. Further, it is represented by the learned counsel for the Petitioner that the order dated 18.02.2013 made in C.A.No.6730 of 2004 in the case of State of Tamil Nadu 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 Kirupananda Variyar's case has been interfered with by the Apex Court and the Petitioner has been permitted to move the High Court.

12. It is seen that the learned Single Judge of this Court and the Division Bench of this Court, in the decisions referred to supra, have proceeded on the basis of the ratio laid down in the case of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem vs. State of Tamil Nadu, 2001 (3) MLJ 433. Firstly, the judgment in Kirubananda Variyar's case is not holding the field. Secondly, the observation made by the Division Bench of this Court in the case of Jeyaraj Annapackiam College (cited supra) is in tune with G.O.(Ms) No.214, School Education (X2) Department, dated 03.11.2008.

13. The restriction of five years in respect of the minority status granted to the Schools run by the Petitioner/Society in G.O.(Ms) No.214, School Education (X2) Department, dated 03.11.2008, cannot be said to be arbitrary, as it may not be possible for the authorities concerned to ascertain as to whether the Institution is run contrary to the Memorandum of Association/Bye-laws of the Society or not.

14. However, as the Petitioner/Society has already made representations to the 1st Respondent in respect of their grievance, this Court directs the 1st Respondent herein to consider the representations of the Petitioner, dated 10.05.2017 and 20.12.2017 and pass appropriate orders in accordance with law within a period of two months from the date of receipt of a copy of this order, after affording an opportunity of hearing to the Petitioner.

15. Before parting with, this Court makes it clear that whenever an Institution like that of the Petitioner/Society seeks renewal of minority status, they need to apply at least six months in advance, for the authorities to process the same

and verify the records, conduct spot inspection and take a decision, before the expiry of the minority status period.

With the above direction and observation, this Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.No.2198 of 2018 and W.M.P.No.16424 of 2018 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai 600 009.
2. The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai 600 006.

+1cc to Mr.P.EBENEZER PAUL Advocate, S.R.No. 47326
+1cc to the Government Pleader, S.R.No.48055

Order in
W.P.No.1775 of 2018

SSV(CO)
TR(07/08/2018)

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