

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.27997 of 2018, 860 & 1010 of 2019

Regular Tertiary Franciscans Sisters
of Our Lady of Bon Secours-Society No.XIV
represented by its President
Bon Secours Convent
North Gate
Thanjavur 613 008
Thanjavur District ... Petitioner in W.P.No.27997 of 2018

The Social Service Society of
the Sisters of St.John the Baptist
represented by its President
Plot No.341, Anna Nagar
Madurai 625 020 ... Petitioner in W.P.No.860 of 2019

Asha Deep Society
represented by its Vice President
Snehalayam, Navallur Kuttapattu
Ramji Nagar
Trichy 620 009 ... Petitioner in W.P.No.1010 of 2019

1. The Government of Tamil Nadu
represented by the Principal Secretary
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of School Education
DPI Campus, College Road
Chennai 600 006 .. Respondents 1 & 2 in all the W.P's
3. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006 .. Respondent No.3 in WP 27997/18

4. The Director of Matriculation Schools

DPI Campus,
College Road
Chennai 600 006

Respondent No.4 in WP 27997/18 &
.. Respondent No.3 in WP 860,1010/19

Petitions under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned G.O.(Ms.) No.65, School Education (MS) Department dated 05.04.2018 on the file of the first respondent, in respect of the member educational institutions of the petitioners' societies' as mentioned in the Annexure in the above writ petitions and quash the same.

For Petitioners :: Ms.A.Arul Mary for
M/s Father Xavier Associates

For Respondents :: Mr.C.Munusamy
Special Government Pleader

ORDER

These writ petitions have been filed questioning the correctness of the G.O.(Ms.)No.65, School Education (MS) Department dated 5.4.2018 issued by the Principal Secretary to Government, Department of School Education, the first respondent herein framing additional guidelines for grant of minority status to the educational institutions, stipulating that the educational agency of all educational institutions claiming minority status shall admit not less than 50% of the students belonging to the minority community in every academic year, while fixing the upper limit of 75% in respect of the aided institutions. The impugned Government Order also further stipulates that the educational agency of such minority educational institutions have to file their returns regarding the details of admissions and the percentage of minority students by the end of September every year, in order to retain their minority status.

2. Ms.A.Arul Mary, learned counsel for the petitioners and Mr.C.Munusamy, learned Special Government Pleader for the respondents jointly submitted that the issue raised in these writ petitions is covered by the order passed by this Court in W.P.Nos.23789 of 2018 etc. batch dated 30.1.2019.

3. By order dated 30.1.2019 passed in W.P.Nos.23789 of 2018 etc., batch, this Court held as follows:-

"17. Since Section 11(f) of the National Commission for Minority Educational Institutions Act, 2004 confers jurisdiction on the NCMEI to issue a certificate regarding the status of the minority educational institution, the first respondent cannot seek to decide the minority status of the petitioners institutions, in the event of not securing admission of not less than 50% of students in the unaided minority institutions and 75% of students in the aided minority institutions every academic year from the minority community.

20. Therefore, it is made clear that the interference by the Government in any manner regarding the seat sharing in minority educational institutions, both aided and unaided, is unjustified, unlawful and unconstitutional. This position also has been restated by the Division Bench of this Court in the judgment dated 7.1.2014 passed in W.P.No.14734 of 2012 (The Federation of the Catholic Faithful represented by its General Secretary, Chennai v. The Government of Tamil Nadu represented by its Secretary, Higher Education Department and others).

22. Since the first respondent has also taken a stand that the percentage of 50% is not rigid and in case of non-availability of minority students, the minority status will not be withdrawn on the ground of non-achievement of 50% target for new admissions and it is only when admission to minority student is denied within 50% limit, action will be taken against the institution for withdrawal of minority status on grounds of not promoting the interests of minority students, the writ petitions deserve to be allowed recording the undertaking given by the petitioners institutions that they will not deny admission to the minority students, subject to their fulfilling the eligibility criteria and also the availability of vacancies.

23. For all the foregoing reasons, in the light of the ratio laid down by the Apex Court in Pramathi Educational and Cultural Trust, Asoka Kumar Thakur and in Sisters of St. Joseph

of Cluny cases, the impugned G.O.(Ms.) No.65, School Education (MS) Department dated 5.4.2018 is set aside, recording the undertaking given by the petitioners institutions that all the minority educational institutions shall not deny admission to the eligible candidates of the minority community, subject to the eligibility of the students and availability of accommodation in the schools. However, it is made clear that if any complaint is given that a minority candidate of any sex is denied admission by a minority educational institution in spite of establishing the eligibility and the availability of seats, it is open to the respondents to ventilate the grievance before the National Commission for Minority Educational Institutions under Section 11(f) of the National Commission for Minority Educational Institutions Act, 2004. With this observation, all the writ petitions are allowed. Consequently, all the connected writ miscellaneous petitions are closed. There is no order as to costs."

4. In the light of the above, these writ petitions stand allowed on similar terms. Consequently, W.M.P.Nos.32567 of 2018, 947, 948, 1127, 1131 of 2019 are closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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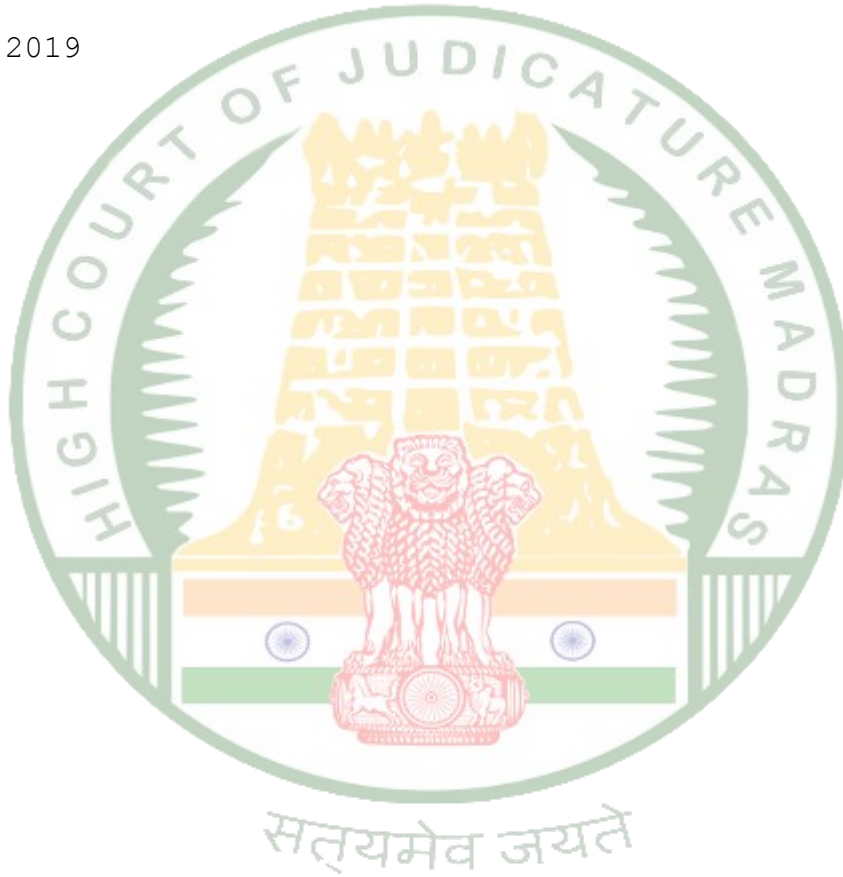
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+3 cc's to M/s.Father Xavier Associates, Advocate Sr.No.8834

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RSV(CO)
CSL/01.03.2019



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