



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.07.2019	Pronounced on: 17.07.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.34146 of 2018
& W.M.P.Nos.1636 of 2019, 39676 & 39677 of 2018

Dr.A.Chandran,
S/o.Late Athayee,
No.18, J.V.Nagar,
Vinayagapuram, V.K.Road,
Coimbatore - 641 035.

... Petitioner

/versus/

1. Chief Educational Officer,
Raja Street,
Coimbatore - 641 001.
2. District Educational Officer,
Raja Street,
Coimbatore - 641 001.
3. CSI Boys Higher Secondary School,
Rep. by its Correspondent,
Coimbatore - 641 001.
4. Bishop,
CSI Coimbatore Diocese,
No.256, Race Course Road,
Coimbatore - 641 018.
5. Mr.K.C.Richard Durai,
CSI Coimbatore Diocese,
No.256, Race Course Road,
Coimbatore - 641 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records in Letter No.CDC/BO/2609/2018, dated 05.12.2018 on the file of the fourth respondent.

For Petitioner : Mr.A.Immanuvel
For R1 & R2 : Mrs.P.Kavitha
Government Advocate

For R3 to R5 : Mr.V.Selvaraj
for Mr.S.Bharathirajan

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner herein is Convenor of Joint Education Board of CSI, Coimbatore Diocese. As per the constitution of the CSI, Coimbatore Diocese, the Convenor of Joint Education Board, is the Convenor of Higher Education Committee also. There are about 160 Educational Institutions under the control of CSI, Coimbatore Diocese and those Educational Institutions are religious minority Institutions. As a Convenor of the Higher Education Committee, he has to recommend candidates for the post of Headmaster, whenever, the said post fall vacant in the school under their Control. Hence, when the post of Headmaster of CSI Boys Higher Secondary School, Coimbatore, fell vacant, on superannuation of Mr.Wilson with effect from 01.07.2018, he was appointed as Convenor of the Selection Committee. But suddenly the Bishop of CSI, Coimbatore Diocese, has illegally usurping the powers of the Convenor and has constituted a fresh Selection Committee appointing the 5th respondent/Mr.K.C.Richard Durai, as its Convenor superseding the earlier selection committee.

3. The letter of appointing 5th respondent as Convenor by the 4th respondent and fixing the date of selection as 20.12.2018 is challenged in this Writ Petition on the ground that the CSI Boys Higher Secondary School, Coimbatore, is minority aided Institute, administered by CSI, Coimbatore Diocese, for which the appointment of Headmaster should be based on the recommendation of the Convenor Higher Education Committee, CSI, Coimbatore. The Bishop of the CSI has no power to constitute Selection committee. The said appointment of Selection Committee by the Bishop vide impugned order No.CDC/BO/2609/2018, dated 05.12.2018 is contrary to Chapter II (D) of Diocesan Constitution.

4. On notice, the respondent has filed counter, wherein, he has stated that the writ petition is not maintainable. The communication of the Bishop is in respect of internal administration of the Diocese Constitution. Being a minority Institution, administration of the Institute cannot be interfered. The communication of Bishop dated 05.12.2018 does not give any cause of action for the relief sought by the petitioner under Article 226 of the Constitution.

5. Even assuming, the writ petition is maintainable,

the powers of Bishop as a Chairman of the Executive Committee and the Chairman of Joint Education Board under the constitution of CSI cannot be questioned by the petitioner herein. As far as, appointment of Headmaster in the schools administered by CSI, Coimbatore Diocese, there is no selection process contemplated under its constitution. The Bishop being the Chairman of the Executive Committee, by invoking his powers under the Constitution of CSI, the Selection Committee was appointed to select the Headmaster of CSI Girls Higher Secondary School and CSI Higher Education, Nonsuch. The petitioner was appointed as Convenor of the said selection committee. Similarly, the Selection Committee and the Scrutiny committee for selection of Headmaster in CSI Boys Higher Secondary School, Coimbatore was constituted by the Executive Committee, in which the petitioner was appointed as Convenor of the Selection Committee.

6. In the selection, of Head Master of CSI Girls Higher Secondary School, Coimbatore and CSI Higher School, Nonsuch, various complaints were brought to the notice of the Bishop. Therefore, invoking the powers under Chapter-III of the Constitution of the CSI, Coimbatore Diocese, it was resolved in the meeting held by the Bishop with the Diocese Office bearers, to appoint a fact finding committee to submit report. From the report of the fact finding Committee presented on 24.11.2018, the Bishop noticed the discrepancies in the selection process and it was resolved by the Officer bearers not to proceed with the selection of Headmaster and further resolved to accept the new norms for selection as suggested by the fact finding Committee members. Based on the report of the fact finding committee, the resolution was passed by the Officer bearers and same was communicated to the newly constituted selection Committee members on 05.12.2018, to meet on 20.12.2018 for selecting Headmaster for CSI Boys School, Coimbatore. This communication is challenged in this Writ Petition without any base.

7. The short point involved in this Writ Petition is that, the petitioner herein claims exclusively right to decide about the appointment of Headmasters in the Institute as a Convenor of Higher Education Committee of the Dioceses. Whereas, the 4th respondent as a Bishop of the Diocese contents that the issue of selecting Headmasters of a minority Institute does not fall within the preview of under Article 226 of the Constitution and further as a Bishop of CSI, Coimbatore, he has the power to constitute Selection Committee and appoint its Convenor.

Maintainability:

The petitioner claims that he is the Convenor of the Higher Education Committee of CSI, Coimbatore Diocese. It is minority Institution and its administration are Governed by the Constitution of the CSI Coimbatore Diocesan Council. Since the letter of the 4th respondent is in violation of CSI Constitution amounts to maladministration, the Writ is maintainable.

8. The Learned Counsel appearing for the Petitioner has relied upon the judgments of various High Courts as well as Hon'ble Supreme Court, wherein, the right of minority Institution to appoint Headmasters of its choice has been considered and broadly held that right of minority Institution to administer does not include the right of maladministration, at the same time merely receiving grand-in-aid from the State will not make the minority Institution a state within the Article 12 of the Constitution.

9. As far as the facts of the case in hand, the process of selection and the person who has the authority to select is under question. Such issues will not fall within the domain of Writ jurisdiction. They are exclusively Governed by the CSI, Constitution. Only after a person is appointed as Headmasters, teacher or staff of the minority Institute and his appointment is sought for approval by the State, the roll of the state to ascertain whether the person so recommended for the post is qualified and eligible to hold the post as per the Act, Rules and Regulations arises. Till then it is the internal management of the minority Institution and if there is any refraction of the provisions, the remedy of the parties is to work out before a Civil Court.

10. Particularly, in this case, the petitioner herein relying upon the chapter II (D-1) of the Diocese Constitution and contend that the power of the Convenor of the Higher Education Committee cannot be usurped by the Bishop. Whereas, the Bishop would contend that he is vested with the power to deal with any matters which is not provided under this Constitution and take necessary action.

11. This Court has no doubt in the preposition of law that even in case of minority Institution, if maladministration and infringement of fundamental rights are brought to the notice of this Court, particularly in selection and appointment of teachers, the Court can interfere exercising its Writ Jurisdiction. It is held that selection and appointment of teachers in a school are importance in administration of the Education Institutions, it is an essential element of right to administer. However, the methodology for selection to make the said appointment must be rational and transparent. As per the chapter II (D) of the bylaw, whenever vacancies arises for the

post of Headmasters, Diocese Higher Education Committee has to recommend to Diocesan Committee for appointment of Headmaster.

12. The Higher Education Committee met under the Presidentship of 4th respondent/Bishop on 17.07.2018, appointed a selection committee consisting of following persons.

1. Bishop (4th respondent)
2. Convenor of Joint Board of Education (the Writ Petitioner)
3. Diocesan Education Officer
4. Beulah Ruby (Headmistress)
5. Rev. Jebez John Asis
6. Rev. Stanley Kumar
7. Salem Area Higher Education Committee Member and
8. Tirupur Area Higher Education Committee Member

13. The Three persons were appointed as members of Scrutiny Committee, to scrutinize the application and to submit the same to the Selection Committee. While the above Committees were approved by the Executive Committee in its meeting held on 18th & 19th July 2018, the 4th respondent has constituted a fresh Selection Committee on 05.12.2018 appointing the 5th respondent as its Convenor and eight others as members of the Committee. The allegation of the petitioner that such an act is illegal is refuted by the Bishop and he has given the reason why the Committee headed by the petitioner was superseded by a fresh Committee. The allegations against the Committee headed by the petitioner has led to appointment of fact finding Committee. The report of the fact finding Committee has disclosed that gross abuse of power and irregularity has been Committee, while scrutinizing the application.

14. In T.M.A.Pai Foundation Vs. State of Karnataka reported in (2002) 8 SCC 481 at paragraphs 136 and 137, the Hon'ble Supreme Court has held that:

136. Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order

and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30 (1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

15. In paragraph No.161 of the above judgment, the Constitution Bench of the Hon'ble Supreme Court framed questions and answered about the Rights and Privileges of Minority Institutions the reasonable restrictions, what the State can impose on such Institutions.

Q.5(c) is "Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?"

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom

and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. (Emphasis added).

16. Later the question what is the purpose of granting protection or privilege to the minorities in terms of Article 29 and at the same time, applying negative language in Article 30 (2) in relation to state action for releasing grant-in-aid as well as the provisions of the DSE Act 1973 and rules framed thereunder came up for consideration before the Hon'ble Supreme Court in *Sindhi Education Society Vs. Chief Secretary, Government of NCT of Delhi* and others reported in 2010 (8) SCC 49. In this judgment the Hon'ble Supreme Court held that;

92. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. Regulation can also be framed to prevent mal-administration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority education institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right in Article 30 (1) is not substantially impaired and further, the citizen's right under Article 29 (2) is not infringed.

93. A minority institution may have its own procedure and method of admission as well as the selection of students but it has to be a fair and transparent method. The State has the power to frame regulations which are reasonable and do not impinge upon the basic character of the minority institutions. This Court, in some of the decisions, has taken the view that the width of the rights and limitations thereof of unaided institutions,

whether run by a majority or by a minority, must conform to the maintenance of excellence and with a view to achieve the said goal indisputably, the regulations can be made by the State.

17. Thus, it is clear from these judicial pronouncements that unless in case of patent maladministration or breach of Education standards prescribed under regulations by the state, the scope of interfering in the affairs of a minority Education Institute is restricted.

18. The facts of this case is that the Bishop of the CSI, Coimbatore Diocese has usurped the power of the petitioner who was earlier appointed as Convenor of the Higher Education Committee by the Executive Committee. Any such dispute fall within the scope of internal administration of the minority Institute. Only if the said act falls within the meaning of maladministration, Court can interfere or otherwise cannot.

19. Now the test is whether the impugned letter of the Bishop dated 05.12.2018, constituting a selection Committee, appointing the 5th respondent as its Convenor to select Headmaster for CSI Boys Higher Secondary School, Coimbatore replacing the petitioner amounts to maladministration.

20. The Learned Counsel for the 4th respondent would state that, as per constitution the Bishop is the Chairman of the Diocesan Executive Committee. The Higher Education Committee is the appropriate Committee to recommend the appointment of Headmasters/Headmistresses of Higher Secondary/High School, of the Institutes run by CSI, Coimbatore Diocese. The Diocesan Executive Council shall elect the Convenor of the Education Board and such Convenor shall be the Convenor of all the three committees namely i). Higher Education Committee, ii). the Elementary Education Committee and iii). Nursery and Preparatory Schools Committee. The Bishop is the Chairman of the Education Board and its three committees.

21. It is also brought to the notice of this Court by the Counsel for the 4th respondent that under Chapter III of the Constitution Bishop has right to suspend the operation or decision of any Council or Board or Committee which directly concern with the matters specifically mentioned in the CSI Constitution and shall deal with any other matter which is not provided in the Constitution and shall take such action as its necessary and report the action taken to the Executive Committee.

22. According to the 4th respondent in view of the

allegation of favouritism, nepotism in the selection of Headmaster of CSI Girls Higher Secondary School, Coimbatore and CSI High School, Nonsuch by the Committee under the Convenorship of the petitioner, the Bishop as Chairman of the Executive Committee appointed a fact finding Committee. Based on the fact finding committee report presented on 24.11.2018, the Diocesan Office Bearers resolved not to proceed with the appointments recommended by the Committee headed by the petitioner and for future selections new norms were adopted. The impugned communication dated 05.12.2018 is the consequence of the said resolution.

23. The letter of the 4th respondent, which is impugned in this Writ Petition reads as under:-

The Diocesan Executive Committee met on 17th & 18th July 2018 has appointed you as members of the Selection Committee to propose a panel of three candidates to the Higher Education Committee in order to select one among them and submit it to the Executive Committee for appointment as HM of CSI Boys Higher Secondary School, Coimbatore.

You are requested to attend this meeting on Thursday the 20th December 2018, at 10.30 a.m. in the Secretarial Training Centre, Coimbatore, interview the candidate and prepare a panel as mentioned above. Rev.K.C.Richard Durai will act as Convenor of this Meeting.

24. The Diocesan Executive Committee meeting minutes of 18th and 19th July 2018 reveals that on that day the Executive Committee has constituted a Selection Committee for selecting Headmasters for CSI Boys Higher Secondary School, Coimbatore. The following persons are the members of the Selection Committee. CSI Boys Higher Secondary School, Coimbatore.

1. Bishop - Chairman.
2. Dr.A.Chandran, Convenor - Joint Board of Education.
3. Rev.J.Shanthi Premkumar, Member, Higher Education Committee.
4. Rev.J.Edwin Rajkumar, Member, Higher Education Committee Member.
5. Rev.A.Stanley Kumar, Correspondent, CSI Girls Hr. Sec.School, Erode.
- 6.Rev.D.Jebez John Asir, Member, Higher Education Committee.

7. Mrs.Beulah Ruby, HM, CSI Boys Hr. Sec. Shool, Salem.

25. The fact finding committee appointed by the Bishop (4th respondent) has given its report in 23.11.2018, concluding that;

1. The marks awarded by most of the selection committee members in assessing the merits of the candidates, the norms were not strictly followed by at random and irrational.

2. Due weightage was not given for the age and experience of the candidates.

26. This fact finding Committee has arrived at the above conclusion after finding that the Selection Committee members while awarding marks to the candidates on various heads to assess the merits of the candidates have not followed common yardstick. The marks were awarded at random and not rational.

27. The Diocesan Office Bearers when they met on 24.11.2018 after considering the report of the fact finding committee had resolved as below:-

HM Selection - CSI Girls Hr.Sec.School, Coimbatore, CSI High School, Nonsuch and CSI Boys Higher Secondary School, Coimbatore: The Bishop presented the interim and final reports of the Fact Finding Committee to the Office Bearers which states that the norms and procedures were not duly followed in the selection of HMs for CSI Girls Higher Secondary School, Coimbatore and CSI High School, Nonsuch. As it was found that there were so much of discrepancies, it was resolved not to proceed with the appointment of HMs. Further, it was resolved to accept the new norms prepared by the Fact Finding Committee Members and the same pattern to be followed from the forthcoming interview onwards. In view of this, being the Office Bearers, the Bishop authorised the Vice President as Convenor and the Secretary as Member in all the Selection Panels henceforth including the CSI Boys Higher Secondary School, Coimbatore.

28. The letter of the 4th respondent/Bishop is consequence to the Diocesan Office bearers resolution dated 24.11.2018. The powers of the Bishop enumerated in Chapter III of the CSI Constitution. Clause 5 in Chapter III reads as below:-

5. The Bishop of the Diocese shall deal with any other matter which is not provided for in this Constitution and shall take such action as its necessary. In major matters he shall consult the Executive Committee. When it is not possible to consult the Executive committee, he is authorized in consultation with the Officers of the Diocesan Council, to take action and to report the action taken to the Executive Committee.

29. The letter of the Bishop dated 05.12.2018 by exercising his power under Chapter III (5) for the reasons discussed and considered by the Diocesan Office Bearers is well within his powers. It does not fall in the category of maladministration. In fact the Bishop has acted upon the fact finding committee report to prevent meritorious persons getting eliminated due to irrational assessment. Therefore, this Court find no merit in this Writ petition. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

bsm
To

1. The Chief Educational Officer,
Raja Street,
Coimbatore - 641 001.
2. The District Educational Officer,
Raja Street,
Coimbatore - 641 001.

+2 Ccs to Mr.S. Bharathi Rajan, Advocate sr 60805.
+1 CC to Mr.A. Immanuvel, Advocate sr 60898.

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SP(19/07/2019)