



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.09.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.(MD)No.4503 of 2019

and

WMP(MD) Nos.3578 and 3579 of 2019

The Correspondent,
Mahatma Gandhi College of Education,
V.R.Naidu Nagar, Solaiseri,
Sankarankovil, Tirunelveli District.

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
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,
Tirunelveli Region, Tirunelveli - 625 020.

4.The Tamil Nadu Teachers Education University,
represented by its Registrar,
Lady Willingdon College Campus,
Kamarajar Salai, Chennai-600 005.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order issued by the first respondent State Government GO(Ms) No.169 Higher Education (E1) Department, dated 29.09.2014 and quash the same insofar as it restricts the status of the petitioner's college namely Mahatma Gandhi College of Education, Sankarankovil, Tirunelveli as a Minority Educational Institution to a limited period of 5 years from 2014 to 2019.



For Petitioner : Ms.A.Amala

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader
for R.1 to R.3
: No Appearance
for R.4

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ORDER

Ms.A.Amala, learned Counsel on record for the writ petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader, on behalf of the respondents 1 to 3, are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. The entire matter is now simplified as it is submitted by both sides without any disputation or disagreement that the instant writ petition is directly and squarely covered by an order dated 01.10.2018 made by a Honourable Single Judge in W.P(MD) No.16006 of 2018.

4. This Court is also informed without any disputation or disagreement that the aforesaid order dated 01.10.2018 made by the Honourable Single Judge was carried in appeal by way of an intra Court appeal to a Honourable Division Bench of this Court vide W.A (MD) No. 670 of 2019 and the said writ appeal was dismissed vide order dated 05.07.2019 albeit with a clarification contained in paragraph No. 6 of the said order.

5. Therefore this writ petition stands covered by the order dated 01.10.2018 made in W.P(MD) No. 16006 of 2018 by a Honourable Single Judge as clarified by a Honourable Division Bench vide order dated 05.07.2019 in W.A(MD) No.670 of 2019, more particularly as clarified in paragraph 6 of the order of the Honourable Division Bench.

6. For the purpose of ease of reference, this Court deems it appropriate to extract the entire order of the Honourable Single Judge and paragraph No.6 of the order of the Honourable Division Bench, which read as follows:

'W.P. (MD)No.16006 of 2018:

The issue as raised in the writ petition is squarely covered by the earlier decision passed by the learned Single Judge of this Court as well as the Division Bench of this Court cited infra. The facts of the case, which are enough for adjudication of the present dispute in a nutshell, are as follows:

2. The petitioner School is admittedly a recognized



Christian Minority Institution and the civil Court to that effect has granted declaration in O.S.No.4189 of 1977, dated 23.11.1983. The competent civil Court has granted the judgment and decree recognizing the minority status of the petitioner School and also passed a decree restraining the educational authorities from implementing certain provisions of Tamil Nadu Recognized Private School Regulations, 1974 and Tamil Nadu Recognised Private School Rules, 1973.

3. In these circumstances, the petitioner has approached the Government seeking recognition of the minority status and in response to the representation, the Government has passed G.O.Ms.No.231, School Education Department, dated 08.11.2017 granting minority status for a limited period of 5 years from 2017-2018 to 2021-2022. The said Government Order is put to challenge by the petitioner School stating that the grant of minority status for the limited period is contrary to the law laid down by this Court in a number of decisions and also there is a violation of constitutional right under Article 30 of the Constitution of India.

4. The learned Counsel appearing for the petitioner would draw the attention of this Court to a decision in **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem Vs. State of Tamil Nadu and another** reported in (2001)3 MLJ, 433. The learned Division Bench of this Court, while dealing with the identical issue has held that the minority status cannot be conferred on the appellant therein for a particular period to be renewed periodically like a driving licence. According to the learned Division Bench of this Court, it is not open for the State Government to review its earlier order conferring minority status on the appellant unless it be shown by the appellant had suppressed any material fact or there is fundamental change of circumstances warranting cancellation of the earlier order. The learned Division Bench further held in the said judgment as follows:

"In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts, the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter



without being preceded by a fair hearing in conformity with the principles of natural justice."

5. Following the above Division Bench order, another decision was referred by yet another Division Bench in **Secretary, Jeyaraj Annapackiam College for Women (Autonomous), Managed by the Congregation of the Sisters of St. Anne, Tiruchirappalli Vs. State of Tamil Nadu represented by its Secretary and Others** reported in (2013)8 MLJ 509 holding that the grant of minority status for a limited period cannot be countenanced in law.

6. The learned Judge of this Court also held in a decision in **the Secretary, Loyala College (Autonomous), Chennai Vs. The State of Tamil Nadu** represented by **its Secretary, and others** reported in 2012(2) CWC 728, the learned Judge after following the Division Bench order, has held as follows:

"8. The issue as to whether the Minority status given to the Institutions are bound to be renewed periodically, was considered by a Division Bench of this in a decision in Thirumuruga Kirupanana Variyar Thvathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem Vs. State of Tamil Nadu reported in 2001(3) MLJ 433 wherein the Division Bench held that the minority status once granted need not be renewed periodically like a driving licence and once the Government, after satisfaction granted declaration, the same will hold good permanently. In paragraph 5 of the said Judgment it is held that "..... the Government while considering the application made by the appellant, duly took into account the fact that, (i) all the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date; (ii) the Trust has not included any new member in the Trust so far; (iii) the Trust has also stated that the Management is a registered Charitable Trust and the Board of Management belong to Ariya Vaisya Telugu speaking Chettiar; (iv) the additional deed executed by the Trust reflects the main objective of subserving the interests of the said minority community; (v) the Founders-Trustees, namely, (a) Thiru.A. Shanmugasundram (b) Tmt.S. Annapoorani and (c) Thiru. Saravanan who became a major at that time, belong to Telugu speaking Ariya Vaisya Chettiar Community and their mother-tongue is Telugu. By the aforesaid order dated 27.10.1997, the Government after verification of the documents



produced, issued orders in the name of the Governor declaring the medical college run by the appellant as a linguistic minority institution for the purpose of Art.30(1) of the Constitution of India. In the face of the uncontroverted facts and circumstances brought on record, we are of the considered opinion that this is a fit case where the appellant-Trust is entitled to its rights declared by the Government as a linguistic minority institution, as per G.O.Ms.No.532, dated 27.10.1997 and the appellant will be eligible to continue to exercise its constitutional rights as recognised by the Government and the same is not liable to be effaced by the subsequent letter of the Government which is impugned in the writ petition out of which the present writ appeal arises. In conclusion, we hold that if any entity is once declares minority entitling to the rights envisaged under Art.30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts, the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice".

The said decision was followed in the decision in C.S.I.Institute of Technology, Thovalai Vs. The Government of Tamil Nadu & another reported in 2004 WLR 202. In paragraph 6, it is held as follows:

"There is no provocation for the Government to insist on such renewal for every year when once the institution has been granted the Minority Status. Unless or otherwise, there is any change in the Constitution of the agency or any adverse information is received by the Government, which might lead to the conclusion that the declaration of the Institution is fraudulent and erroneous or the Management had undergone any change in its constitution, there is absolutely no need or necessity for the Government to expect such periodical renewal. Such requirement will unnecessarily lead to delay and red-tapism which is totally uncalled for. In the present case itself for the academic year 2001-2002 renewal is granted only on 20.11.2003, that too only because the petitioner has moved this Court. The administration of the school and the plight of the students cannot be kept under such unreasonable suspense and doubt which is totally unwarranted. Assuming that periodical check is necessary, the Government should evolve a methodology whereby renewal could be sought for once in five years



or more and in such a manner that renewal should be applied for and granted atleast three or four months prior to the lapse of the said period. The present requirement of annual renewal is neither reasonable nor warranted. As stated earlier, it is always open to the authorities to call upon the management to explain the position if any adverse information is received by the Government. It is totally unreasonable to expect all the minority schools in the State to be knocking at the doors of the authorities every year and the authorities would pass orders only after two years as in this case in spite of filing of a writ petition".

The same was again followed by me in the decision in Asan Memorial Association Vs. The State of Tamil Nadu reported in 2009 (6) CTC 579. In 2009 6 CTC 579 (Asan Memorial Association Vs. The State of Tamil Nadu) a writ of prohibition was issued prohibiting the respondents from demanding minority status every year and also held that the minority status already granted by the Government to the said petitioner institution for the year 2000-2001 is valid without any restriction and further held that if there is any change in the educational agency or if the institution is run contrary to the Memorandum of Association, it is open to the Government to issue notice and pass fresh orders in accordance with law.

9. Applying the said Judgment to the facts of this case, the writ petition stands allowed on the same terms. No costs. Consequently, connected miscellaneous petitions are closed.

7. The learned Counsel for the petitioner therefore submitted that the issue is no more res integra and squarely covered by the above decisions of the learned Single Judge and Division Bench of this Court.

8. At this juncture, the learned Special Government Pleader appearing for the respondents would submit that recently the Division Bench of this Court by order dated 24.11.2017 in W.A.No.1510 of 2017 has passed the following the following order, which is reproduced below:

"3. The short point that arises for consideration is whether the minority status given to the respondent-institution is bound to be renewed periodically or not. The similar facts have already been decided by the Division Bench of this Court in the case of Secretary, Jeyaraj Annapackiam College for Women Vs. State of



Tamil Nadu Rep. by its Secretary & Others [CDJ 2013 MHC 5667]. Subsequently, following the same, another judgment was rendered by the Division Bench of this Court dismissing the writ appeal in W.A.No.1130 of 2013, on 11.09.2017, wherein, it has been held that minority status need not be renewed periodically. However, a condition has been imposed as under:- "The minority status given to the appellant will hold good without any restriction period. However, 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." [emphasis supplied]

4. We are in agreement with the views expressed by the Division Bench cited supra. In view of the same, we do not find any merit in the writ appeal and hence, the same is liable to be dismissed. Accordingly, the Writ Appeal is dismissed confirming the order passed by the learned Single Judge in W.P.No.14123 of 2012 dated 17.3.2015, subject to the condition as indicated above. The connected miscellaneous petition is closed. No costs."

9. She would submit that the Division Bench while agreeing with the principles as laid down by the decisions as cited supra, has also upheld the conditions imposed by the Government as found in the above judgment. She would therefore submit that it is always open to the Government to issue order by imposing reasonable conditions, as it deemed fit, in respect of grant of minority status in terms of the constitutional scheme.

10. It is needless to mention that once the character of the education institution is changed, it is always open to the respondents to initiate further action as they may be advised for changing the status of the institution. Therefore, this Court need not to give any direction to that effect to the respondents, since even the decisions of the Division Benches and the learned Single Judge of this Court held that the minority status will continue as long as the institution retains the character of the minority and in case there is any fundamental change, it is always open to review by the educational authority.

11. Be that as it may, the Courts have consistently



held that it is not open to the educational authorities to grant minority status for a limited period as it would defeat the fundamental rights of the institution under Article 30 of the Constitution of India. In view of the same, the impugned order dated 08.11.2017 in G.O.Ms.No.231, School Education Department, insofar as the grant of minority status for a limited period of five years is hereby set aside. The first respondent is directed to pass fresh order granting minority status to the petitioner school without restricting to any particular period in view of the facts as stated above.

12. The first respondent is directed to pass orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

13. With the above directions, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

W.A. (MD)No.670 of 2019:

6. We do not think that the learned Special Government Pleader is justified in raising the very same contention, as raised in earlier cases to justify the restriction of the minority status for a limited period. Needless to state that once the Government has chosen to grant minority status, it cannot be restricted for a limited period. At the same time, this Court has also observed in number of cases that while granting such status, it is open to the Government to impose a condition that if the Government is 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. When such liberty is granted to the Government to impose such condition, We do not think that the apprehension expressed by the learned Special Government Pleader in this case is well founded.'

7. It follows as a sequiter, that the impugned order in the instant writ petition being order dated 29.09.2014 bearing reference G.O.(Ms) No.169 Higher Education (E1) Department is set aside insofar as it limits for a period of five years the status of writ petitioner's College as a linguistic minority educational institution albeit with a clarification that paragraph No.6 of the order of Honourable Division Bench extracted and reproduced supra



will govern the instant writ petition also. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (AS)

Sub Assistant Registrar (CS)

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To

1.The State of Tamil Nadu,
Rep. by its Secretary,
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,
Tirunelveli Region, Tirunelveli - 625 020.

+1 CC to M/s.A.AMALA, Advocate (SR-87750[F] dated 19/09/2019)

+1 CC to M/s.SPL GP (SR-87930[F] dated 19/09/2019)

W.P. (MD)No.4503 of 2019

and

WMP (MD) Nos.3578 and 3579 of 2019

18.09.2019

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