

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 06.02.2020

PRONOUNCED ON 21.02.2020

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Rev.Appln.No.236/2019 in WA.No.1130/2013

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.

.. Petitioners

vs.

1.The Secretary / Correspondent

Loyola College [Autonomous]

Sterling Road, Nungambakkam

Chennai 600 034.

2.The University of Madras,

rep.by its Registrar,

University Centenary Building

Chepauk, Chennai-5.

.. Respondents

WEB COPY

Prayer: Review Application filed under Order 47 Rule 1 and 2 of the Code of Civil Procedure read with Section 114 of CPC to review the Writ Appeal Order dated 11.09.2017 made in WA.No.1130/2013 on the file of this Court.

For Petitioners : Mrs.Narmadha Sampath
Additional Advocate General
assisted by Mr.V.Kathirvelu
Spl.Govt.Pleader [Edn]

For Respondents : Mr.Issac Mohanlal, Senior Counsel
assisted by Mr.P.Godson Swaminathan
for M/s.Isaac Associates

ORDER

M.SATHYANARAYANAN, J.

(1)The 1st respondent/College filed WP.No.24606 of 2012, praying for issuance of a writ of certiorari, to quash GO.Ms.NO.363, Higher Education [E1] Department dated 08.10.2009, in and by which, the extension of Religious Minority Status, already granted to the said College for earlier years, have been extended for a further period of five years from 2007-08 to 2011-12.

(2)The learned Single Judge, vide final order dated 17.09.2012, had taken into consideration, various Educational Institutions run by the Loyola College Society and also various judgments and held that the impugned order, restricting the 1st respondent/College - Writ Petitioner in WP.No.24606 of 2012, as a Minority Educational Institution, warrants

interference and accordingly, allowed the writ petition and quashed the said impugned Government Order.

- (3)The official respondents 1 and 2 in the writ petition, aggrieved by the order dated 17.09.2012 made in WP.No.24606 of 2012, in allowing the writ petition, filed an Appeal in WA.No.1130 of 2013. A Division Bench of this Court, vide judgment dated 11.09.2017, found that there is no reason to interfere with the said order and accordingly, dismissed the writ appeal.
- (4)The appellants/official respondents 1 and 2 in the writ petition, had filed the present Review Application to review the said judgment dated 11.09.2017.
- (5)The facts leading to the present round of litigation have been narrated in detail and in extenso in the order dated 17.09.2012 in WP.NO.24606 of 2012 as well as in the judgment dated 11.09.2017 in WA.No.1130 of 2013 and hence, it is unnecessary to restate the facts once again.
- (6)Mrs.Narmadha Sampath, learned Additional Advocate General assisted by Mr.V.Kathirvelu, learned Special Government Pleader [Edn] has drawn the attention of this Court to the judgment in WA.No.1130 of 2013 and would submit that the Division Bench of this Court has placed heavy reliance upon the judgment reported in **2001 [3] MLJ 433 [Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem Vs. The State of Tamil Nadu]** and it was

followed in a subsequent decision / judgment reported in **2013 [8] MLJ 509 [Secretary, Jeyaraj Annapackiam College V. State of Tamil Nadu]**.

The learned Additional Advocate General has invited the attention of this Court to the judgment dated 18.12.2013 made in **Civil Appeal No.6730 of 2004 [State of Tamil Nadu and Another Vs. Thirumuruga Kirupananda Variyar]** and would submit that the judgment in Thirumuruga Kirupananda Variyar's case has been set aside by the Hon'ble Supreme Court of India in the above cited judgment and as such, it is not open to the 1st respondent/College to claim Minority Status without any restriction of the period. It is also pointed out by the learned Additional Advocate General, by drawing the attention of this Court to various Government Orders, dated 17.06.1998 ; 06.05.2003 ; 11.12.2006 ; 12.03.2007 as well as the impugned Government Order No.363 dated 08.10.2009, which was quashed by the order passed in WP/NO.24606 of 2012 and would submit that in the judgment reported in **2002 [8] SCC 481 [T.M.A.Pai Foundation V. State of Karnataka and others]**, it was observed that as regards framing of "*indicia*" for treating an educational institution as a Minority Institution, it was held that the said issue will be dealt with by a Regular Bench and since the Regular Bench is yet to be constituted, the Government, through various orders, had fixed the criteria/conditions for extension of the Religious Minority Status already granted to the Minority

Colleges and the conditions are only minimal and only for the purpose of regulating it without appending the Constitution Right to Religious Minority and it cannot be faulted with.

(7) It is also urged by the learned Additional Advocate General that once the Minority Status, as pleaded by the 1st respondent/College - writ petitioner in the writ petition, is permitted without any restriction, in the event of mal / mis-administration and other shortcomings, it will be extremely difficult to set right the same. Therefore, there is nothing wrong in imposing reasonable and minimal restrictions to monitor such institutions, especially, in the context of students welfare. Hence, prays for allowing of the Review application.

(8) *Per contra*, Mr.Issac Mohanlal, learned Senior Counsel assisted by Mr.P.Godson Swaminathan, learned counsel appearing for the 1st respondent/College, has drawn the attention of this Court to ***Thirumuruga Kirubananda Variyar's case*** reported in ***AIR 2002 Mad 42*** and would submit that the Hon'ble Supreme Court of India, thought fit to interfere with the said judgment only for the reason that the Division Bench, in the said judgment, rather granted a Minority Community Certificate to the appellant/respondent therein assessing the merit itself and therefore, only for the said reason, had remanded the matter to the State Government to decide the said issue and therefore, the learned Additional Advocate

General is not correct in making submission that the reasons given in the said judgment has been set aside in toto. The learned Senior Counsel appearing for the 1st respondent/College has also placed heavy reliance upon the judgment reported in **1998 [6] SCC 674 [N.Ammad Vs. Manager, Emjay High School and Others]** and would submit that as per the said decision, when a declaration to the effect that an Institution is a Minority Institution, the recognition pertains to a factual position that the said Institution was established and is being administered by a Minority Community and such a declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration and the said decision has also been subsequently referred to and reiterated in the decision reported in **2017 [8] SCALE 364 [Manager, Corporate Educational Agency V. James Mathew and Others]**.

- (9)The learned Senior Counsel appearing for the 1st respondent/College has also placed reliance upon the judgment rendered in **2020 SCC OnLine SC 4 [Sk.Md.Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and Others]** and would submit that in the said decision, some important decisions pertain to Right of Minority to establish educational institutions, have been referred to. In paragraph No.108, it is held that "*so long as the principles laid down in TMA Pai Foundation's case, are satisfied, it is permissible that any regulations seek to ensure the standard*

of excellence of the institutions while preserving the right of the minorities to establish and administer their educational institutions." It is also argued by the learned Senior Counsel that though reasonable restrictions can be imposed, especially in the interest of the students, the impugned Government Order, restricting the period of Minority Status, which also results in a Minority Institution compelling to approach the concerned authority for extension of Minority Status, *per se*, offends the Right guaranteed under the Constitution of India.

(10)The learned Senior counsel appearing for the 1st respondent/College further submitted that insofar as the 1st respondent/College is concerned, it is one of the premier Educational Institutions in India and its Minority Status is never in doubt and the Government Orders referred to by the learned Additional Advocate General also provides for withdrawal of Minority Status by the said Institution, is guilty of commission or omission of any action which is against the Minority Status and as such, there is no necessity to restrict the Minority Status insofar as the 1st respondent/College is concerned and prays for dismissal of the review application.

(11)This Court paid its best attention to the rival submissions and also perused the materials placed before it.

(12)In the decision reported in **1998 [6] SCC 674 [Ammad's case] [cited supra]**, the question that arose for consideration was that whether the Management of a Minority School, free to choose and appoint any qualified person as Headmaster of the school or whether such Management is hedged by any legislative edict or executive fiat in doing so?

(13)It was argued before the Hon'ble Supreme Court of India in the said decision that there is no provision in the Kerala Education Act and Rules directing the Government to declare a School as a Minority School. The Hon'ble Apex Court, after referring to Article 30[1] of the Constitution of India, observed in paragraph No.13 as follows:-

"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."

(14)In the judgment reported in **2013 [4] SCC 14 [Dayanand Anglo Vedic [DAV] College Trust and Management Society V. State of Maharashtra and Another]**, challenge was made to the withdrawal of the recommendation for DAV Society as a Linguistic Minority Institution on the ground that the earlier order, granting recommendation was under the mistake that the trustees of the appellant were residing in the State of Maharashtra. A question was posed in the said decision "*whether a member of linguistic non-minority in one State can establish a trust or society in another State and claim minority status in that State where speakers of the language, establishing the Trust or Society were a minority?*" The Hon'ble Apex Court, in Paragraphs No.28 to 32, had dealt with rights conferred by Article 30 of the Constitution of India to the Minority Educational Institutions and in the said paragraphs, it is observed as follows:-

"The rights conferred by Article 30 of the Constitution of to minorities are in two parts. The first part is the right to establish the institution of the minority's choice and the second part relates to the right to administration of such institution. The word "establishment" herein means bringing into being of an institution and it must be by minority community.

"Administration" means management of the affairs of the institution. Minorities in India have a right to establish and administer educational institutions of their choice and the State Government or the Universities cannot interfere with the day-to-day management of such institutions by the members of minority community. Though Article 30 itself does not lay down any limitation upon the right of a minority to administer its educational institution, but this right is not absolute. This is subject to reasonable regulations regulations for the benefit of the institution and the State Government and Universities can issue directions from time to time for the maintenance of standards and excellence of such institution, which is necessary in the national interest."

(15) Thus, the rights conferred upon the Minority Educational Institutions are not absolute and are subject to reasonable Regulations/restrictions especially for the benefit of the students and it is always open to the State and Universities to issue appropriate direction from time to time for the maintenance of standards and excellence of such institution, especially, from the angle of career and welfare of the students which is necessary in

the national interest. Thus, the rights conferred upon the Minorities guaranteed under Article 30[1] of the Constitution of India are not absolute and are immuned from any reasonable restrictions.

(16) In the decision reported in **2017 [18] SCALE 364 [cited supra]**, the issue arose for consideration was, as to the right of the management of the Minority Educational Institution to appoint a person of their choice. The Hon'ble Apex Court, in the said decision, after referring to its earlier decisions, had also placed reliance upon the judgment reported in **1998 [6] SCC 674 [Ammad's case] [cited supra]** and in paragraph No.6, it is observed that "*therefore, there is no question of availability of the status only from the date of declaration and what is declared is a status which was already in existence.*"

(17) The learned Additional Advocate General has placed heavy reliance upon the judgment dated 18.02.2013 made in Civil Appeal No.6730 of 2004 for the proposition that the judgment in Thirumuruga Kirubananda Variyar's case has been set aside. A perusal of the said judgment would disclose that the Division Bench took upon the task of granting Minority Community Certificate to the respondent therein by assessing the merit and only for that reason, had set aside the order and remanded the matter to the State Government.

(18)The judgment relied on by the learned Senior counsel appearing for the 1st respondent/College reported in **2020 SCC OnLine SC 4 [Rafique's case] [cited supra]**, also reiterates the settled position that admission to the Aided Institutions, whether awarded Minority or Non-Minority, students, cannot be at the absolute, sweet will and pleasure of the management of minority educational institutions and the Regulations to promote academic excellence and standards and laid down the proposition that the Right guaranteed under Article 30[1] of the Constitution of India, is not absolute or above the law and that the conditions considering the welfare of the students and teachers must apply in order to provide proper academic atmosphere so long as the conditions did not interfere with the right of administration or management. **[paragraph No.106]**. The Hon'ble Apex Court of India, in the said decision, has also upheld the vires of certain provisions of West Bengal Madarasih Service Commission Act, 2008.

(19)Now, coming to the facts of the instant case, it is not in serious dispute that Loyola College is one of the premier Institutions administered by the 1st respondent and the learned Single Judge, in the order dated 17.09.2012 in WP.No.24606 of 2012 as well as the Division Bench of this Court in paragraph No.3 of judgment dated 11.09.2017 made in WA.No.1130 of 2017, had also taken into consideration the fact that very

many number of Institutions are run and administered by the said Trust/Society in India. It is to be reiterated at this juncture that the said important fact remains undisputed.

(20)The various Government Orders [cited supra] issued in this regard, also gives a leverage to the concerned authorities to take necessary action in the event of materials/information come to their knowledge for withdrawal of Minority Status after affording an opportunity to the concerned Institution. Therefore, the review applicants have been granted such a power in the Government Orders, to take appropriate action if any infraction as to the Minority Status come to their knowledge.

(21)A perusal of the Government Order dated 08.10.2009 in G.O.Ms.No.363, which had been quashed in the writ petition and confirmed in the writ appeal, which is the subject matter of review, would also disclose that by the said order, extension of the Religious Minority Status sought for by the 1st respondent/Society for the years 2004-05 ; 2005-06 ; 2006-07 and for a further period of five years from 2007-08 to 2011-12, have been granted and a call as to the extension of new Religious Minority Status at an appropriate time, have not been taken by the said Department.

(22)As rightly observed in the judgment, which is the subject matter of review, since the power to take appropriate action, is vested with the

concerned authorities in the form of monitoring and regulation, this Court is of the considered view that no grounds have been made out for reviewing the said impugned judgment dated 11.09.2017.

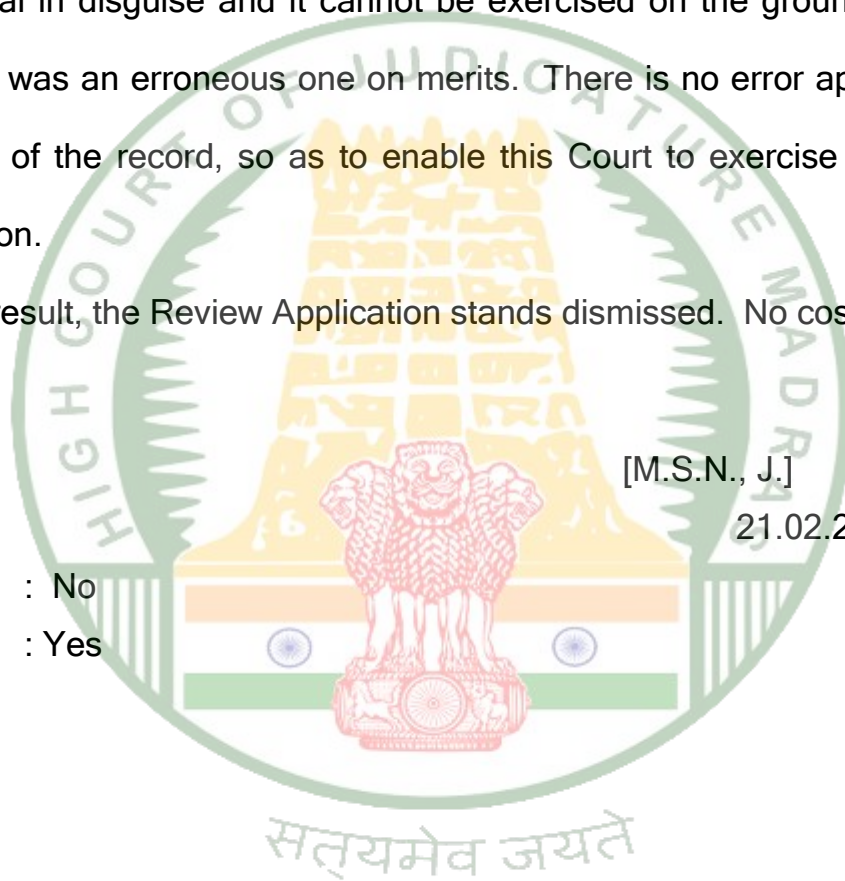
(23)It is also a well settled position of law that the Review Application is not an appeal in disguise and it cannot be exercised on the ground that the decision was an erroneous one on merits. There is no error apparent on the face of the record, so as to enable this Court to exercise its review jurisdiction.

(24)In the result, the Review Application stands dismissed. No costs.

[M.S.N., J.] [A.Q., J.]

21.02.2020

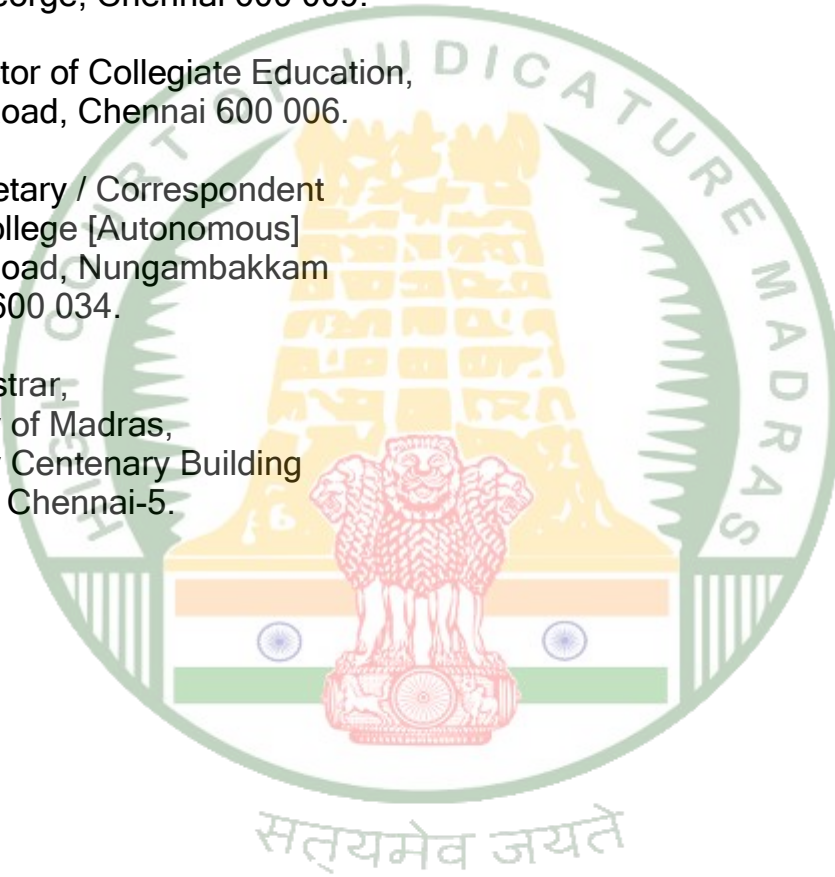
Index : No
Internet : Yes
AP



WEB COPY

To

- 1.The Secretary
State of Tamil Nadu
Department of Higher Education
Fort St George, Chennai 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai 600 006.
- 3.The Secretary / Correspondent
Loyola College [Autonomous]
Sterling Road, Nungambakkam
Chennai 600 034.
- 4.The Registrar,
University of Madras,
University Centenary Building
Chepauk, Chennai-5.

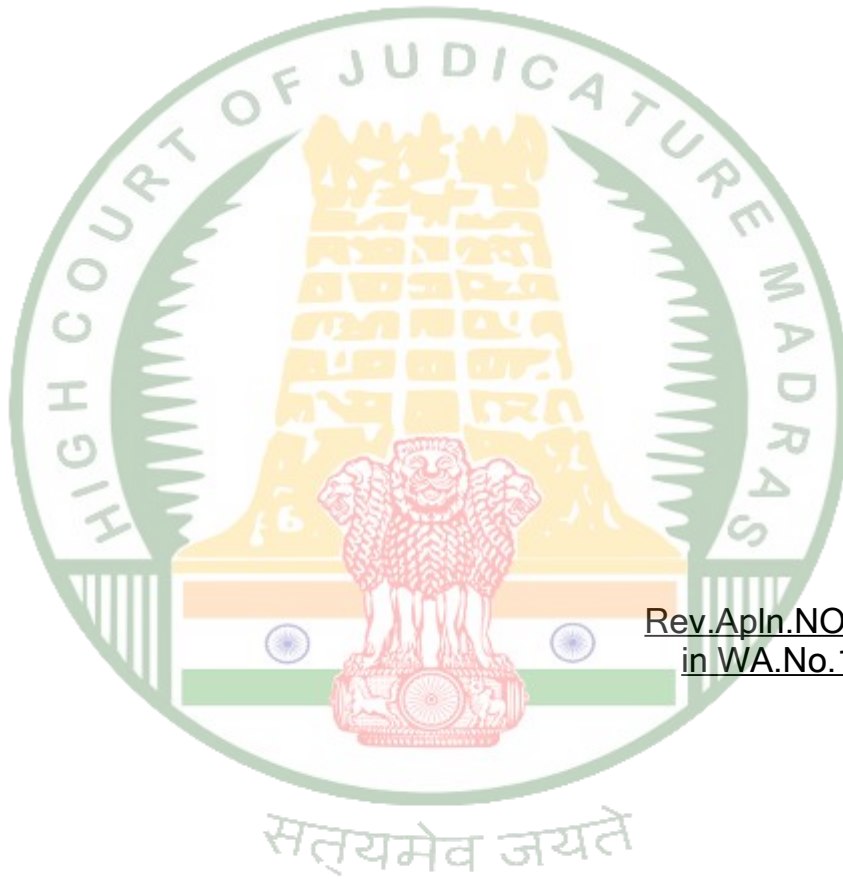


WEB COPY

Rev.Appln.No.236 of 2019

M.SATHYANARAYANAN, J.,
and
ABDUL QUDDHOSE, J.

AP



Order in
Rev.Appln.NO.236/2019
in WA.No.1130/2017

WEB COPY

21.02.2020