

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2020

DELIVERED ON : 13.08.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.M.P.No.5028 of 2020

and W.A.SR.No.7173 of 2019

The State of Tamil Nadu,
rep. By its Principal Secretary,
Dept. of Higher Education,
Fort St. George, Chennai 600 009. Petitioner

-VS-

Syed Ammal Engineering College,
Rep. By its Administrative Officer,
Dr.E.M.Abdullah Campus, Lanthai,
Ramanathapuram 623 502. Respondent

Petition filed under Order IV Rules 9 (4) of AS Rules to condone the delay of 253 days in re-presenting the W.A.SR.No.7173 of 2019 filed under Clause 15 of the Letters Patent against the order dated 10.03.2016 made in W.P.No.3011 of 2016.

For Petitioner	: Mr.E.Manoharan Spl.G.P.
For Respondent	: Mr.Kandan Duraisami

JUDGMENT

The Hon'ble Chief Justice

This appeal once again raises the continuing legal strife on behalf of the minority institutions claiming protection under Article 30 of the Constitution of India to urge that their inviolable protected rights are being infringed by an effort of the State by impinging upon their existing rights to continue to enjoy the status of a minority institution established and administered by a religious minority, without there being any violation of law or mismanagement or any concern of public or national interest. The litigation again brings to the fore an assertion of such rights by educational institutions claiming protection under Article 30 of the Constitution of India as against State control being imposed in the manner of recognition and continuing recognition of minority status of such institutions.

2. A learned single Judge allowed the petition of the respondent institution assailing the time limit of five years fixed by the State in the Government Order dated 16-07-2012 to the validity of a certificate recognising the minority status of the institution. This appeal has been preferred by the State, assailing the judgment dated 10.03.2016 of the learned single Judge, which is also excessively barred by time,

that was noted in our order dated 09.07.2020 extracted hereinunder:-

" We have heard learned Special Government Pleader and we have also perused the order dated 18.02.2013 passed by the Apex Court in the case of State of Tamil Nadu and another v. Thirumuruga Kirupananda Variyar.

2. The issue raised is about virtually granting a temporary recognition of minority status of an institution, which claims to have established itself as a minority institution and is also administering the same as such. The concept of such temporary status does not appeal to reason and the same also prima facie cannot be a ground to urge that this is a reasonable restriction, even if the rights secured under Part III of the Constitution may not be absolute vis-a-vis the controversy in question. We are, therefore, yet to find out as to how the State can grant a temporary minority status which does not appear to be emanating from any of the fundamental rights pertaining to the minorities under Part III of the Constitution of India.

3. Learned counsel for the State has urged that this recognition and any order passed by the State authority can be taken up in an appeal as per the judgment of the Apex Court in the case of **Sisters of St. Joseph of Cluny and others v. State of West Bengal and others**, reported in (2018) 6 SCC 772, para 19 onwards. He prays that he may be granted some more time to further study the matter in depth and then assist the Court.

4. We may also point out that there is a delay in presentation of the appeal of 978 days and then again a delay in the re-presentation of 253 days, which shall also be dealt with whenever the matter is taken up next.

List on 06.08.2020, as prayed for."

3. A preliminary objection raised by the State to the maintainability of the writ petition is based on the pronouncement of the Apex Court in the case of ***Sisters of St. Joseph of Cluny*** (supra), to contend that any such dispute pertaining to the claim of an institution to be treated as a minority institution on a permanent basis has to go before the National Commission for Minority Educational Institutions under the 2004 Act and therefore, the writ petition ought to have been dismissed.

4. The second contention on merits is that the exercise of power by the State by limiting the recognition of a status to a certain period is only regulatory in nature, and not prohibitory, so as to impinge upon fundamental rights guaranteed under Article 30 of the Constitution of India. It is submitted that it is in the nature of a reasonable restriction to supervise, control and monitor the administrative set up of such a college so as to prevent any mal-administration or mis-management. It is urged that it is to ensure that there is no deviation in the standards of education and the regulatory control over such institutions is necessary so as to prevent the institutions from impinging any facet of the purposes for which such educational institutions have been set up. The control of the Government being

necessary to that extent, the same does not amount to an interference with the minority status of the institution. The contention raised is that by issuing the Government Order to certify the minority status of an institution for a particular period of time is to extend the benefit and not to restrict the same and therefore, it is a reasonable provision which does not amount to any interference with the status of minority of the institution. Consequently, the conclusion drawn by the learned single Judge that too even based on judgments which no longer hold the field vitiates the impugned judgment.

5. The respondent petitioner, however, refuted the said contentions and urged that none of the arguments are now sustainable keeping in view the final decision of this Court rendered in the case of ***State of Tamil Nadu and Another vs. The Secretary, Loyola College and Others, (MANU/TN/5158/2017)***, wherein, vide judgment dated 11.09.2017, it has been held that placing of any restriction on the period of recognition infringes the fundamental rights guaranteed under Article 30 of the Constitution of India. A Review Application No.236 of 2019 was filed in the same judgment which has again been repelled on 21.02.2020 and the position of law has been reaffirmed holding that the minority status given to an institution will hold good without any restriction period, but if the State is able to find

any change in the constitution of educational agency or if the institution is run contrary to the Memorandum of Association / By-laws of the Society, it would be open to the Government to issue notice and take appropriate steps in accordance with law.

6. It is urged that the said judgments have considered take care of the Apex Court judgments that have been pronounced from time to time, and accordingly the issue raised having been answered by this Court, there is no occasion for the answering respondent to have gone to the National Commission for Minority Educational Institutions.

7. It is also urged that the huge delay caused in the filing of the appeal is inordinate and unexplained and therefore, the appeal deserves to be rejected on this ground alone. It is, therefore, urged on behalf of the respondent petitioner that the appeal does not require any consideration and should be rejected outright.

8. We may proceed to consider the issue of limitation first. As recorded in our order dated 09.07.2020, there was a delay in the presentation of the appeal by 978 days, whereafter certain defects were pointed out and it was re-presented after another delay of 253 days. Thus, there is a delay of almost four years. The explanation

given in the affidavit sought for condonation of delay is that the delay had occurred on account of the fact that the request to the Government Pleader for giving his opinion was moved on 23.05.2017, which opinion was rendered on 31.05.2017. The preparation of the appeal and the delay condonation application were vetted on 01.11.2017 and have been finally approved in December, 2017.

9. The affidavit on behalf of the State is by the Additional Secretary to the Government, Higher Education Department, further states that since the officials are incharge of various administrative and quasi-judicial functions including initiating policy decision and disposal of other matters including day-to-day administration, could not file the appeal in time and it came to be preferred in February, 2020. The appeal was presented on 21.02.2020. We do not find any appropriate explanation much less day-to-day explanation for the delay between 2017 to 2020 and the affidavit of the official has been presented with a totally non-serious approach. In the absence of any plausible explanation for the inordinate delay except for the general observations made in the affidavit, we are not impressed by the explanation given. There is no sufficient cause therefore available to condone the said unexplained delay. We are supported in our view by the Apex Court judgment in the case of **ESHA BHATTACHARJEE v.**

MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS, reported in **(2013) 12 SCC 649**. But, in order to give a quietus to the matter, we find it more appropriate to say a few words on the merits of the appeal as well.

10. The contention of the appellant State that the respondent petitioner Institute ought to have approached the National Commission for Minority Educational Institutions for redressal of its grievance against the Government Order impugned in the writ petition dated 16.07.2012, does not appeal to us keeping in view the pronouncement of the Apex Court in the case of **Sisters of St. Joseph of Cluny** (supra) read with the judgment in the case of **Governing Body of Paramveer Albert Ekka Memorial College vs. State of Jharkhand, (2018) 6 SCC 788**. The said decision has clearly explained that Section 11(f) of the 2004 Act empowers the Commission to decide all questions relating to the **Status** of any institution as a minority educational institution and declare its status as such. Section 12-B provides for an appeal under the said provision to be preferred against an order of rejection of an application for grant of such status. Thus, the provisions therein do indicate a procedure with regard to grant of status or rejection of an application for granting such status.

11. In the instant case, the status is already recognised and it is the tenure of the period of certification of such status which was restricted to five years. In our opinion this was not a case of rejection, but of continuing the grant of status which was limited to five years. In this background, there is no occasion for the institution to file an appeal as there is no rejection by the State Government. The institution was aggrieved only on account of the infringement of its fundamental rights as alleged under Article 30 of the Constitution of India on the ground that the State did not have an authority to limit the grant of certification for a period of five years. We, therefore, do not find any strength in the arguments of the learned counsel for the State that the respondent petitioner should be compelled to file an appeal before the National Commission for Minority Educational Institution.

12. The State has not disputed the minority status of the institution at all. The question is, can the status of recognition be limited by prescribing a tenure of five years to the validity of the certificate ?

13. Before we proceed any further to examine the said question, it would be apt to mention that the issue which was raised before the

Eleven Judges Bench of the Apex Court in ***T.M.Pai Foundation and Others vs. State of Karnataka, (2002) 8 SCC 481***, was answered by indicating minimal of interference in administrative affairs, but approved regulatory measures that could be put into place for regulating the standards of education in the institution. The Apex Court in the Five Judges Bench decision that was constituted to explain the Eleven Judges Bench, in the case of ***Islamic Academy of Education and Another vs. State of Karnataka and Others, (2003) 6 SCC 697***, held that Article 30 is not absolute, however, the right under Article 30 was preserved and all minorities continue to have fundamental rights to establish and administer educational institutions of their choice. It further went on to hold that the management of a minority educational institution cannot be taken over, but at the same time, entered in a caveat that the Court should not be understood to mean that even in national interest, a minority institute cannot be closed down. In sum and substance, any conditions that would completely destroy the autonomous administration of an educational institution would be *ultra vires* the provisions of Article 30 of the Constitution of India.

14. In a separate judgment delivered by Hon'ble Justice S.B.Sinha, in the ***Islamic Academy of Education*** case (supra), it

was observed that minorities may have a right to establish and administer institutions of their own choice, but they do not have any fundamental right of recognition or affiliation for the said purpose. They must fulfil the requirements of law as also other conditions which may reasonably be fixed by the appropriate Government or the University. The issue of national interest and public interest were also taken to be relevant factors while granting recognition or affiliation.

15. It may further be pointed out that such reasonable restrictions to the extent of permissible closure, if the running of the institution is against public or national interest is established, has been considered in the case of ***Sindhi Education Society and Another vs. Chief Secretary, Govt. of NCT of Delhi and Others, (2010) 8 SCC 49.***

16. The question in the present case is as to whether a recognition already granted under the Government Order dated 16.07.2012 did require any limitation being prescribed for the continuing recognised minority status of the institution. The respondents are right in their submissions that the issue has been directly answered in ***W.A. No.1130 of 2013 (between State of Tamil Nadu and Another vs. The Secretary /Correspondent, Loyola College***

(Autonomous) and Another, decided on **11.09.2017**
(MANU/TN/5158/2017), which is extracted hereinunder:-

"1. This appeal is directed against the judgement of the learned Single Judge dated 17.08.2012.

2. The appellant No.1, which is, effectively, the State of Tamilnadu, has filed the present appeal along with the Director of Collegiate Education, to impugn the judgement of the learned Single Judge, on the sole ground that the acceptance of prayer to quash the impugned Government Order, i.e., G.O.Ms.No.363, Higher Education (E1) Department, dated 08.10.2009 (in short, "the G.O."), which was issued to monitor and regulate the minority status of respondent No.1, i.e., Loyola College, would impact its rights to oversee and supervise, not only this particular institution, but all other institutions. It is pertinent to note that via the impugned judgement, appellant No.1, had limited the recognition of minority status of respondent No.1, to a defined period, that is, five years. The impugned G.O. indicates that respondent No.1 would enjoy minority status for the period spanning between 2007 and 2012.

2.1. Respondent No.1, being aggrieved by incorporation of a defined period in the impugned G.O., with regard to its minority status, had approached the learned Single Judge, via a writ petition under Article 226 of the Constitution. The learned Single Judge, as adverted to above, quashed the impugned G.O.

3. It is, in this background that the appellants have preferred the captioned appeal before us. Before we proceed further, we would like to allude to the relevant facts, which are, helpfully, etched out in paragraphs 4 to 7 of the impugned judgement :

"..... 4. The case of the petitioner is that the petitioner-College, namely, Loyola College, Chennai is one among the recognised educational institutions administered by the Loyola College Society formed by the members of the Congregation of Society of Jesus. The college was established by the St. Joseph's Society, Tiruchirappalli, a society registered under the Societies Act (Registration No.5228 of 1973) and for administrative convenience, a separate society namely, Loyola College Society was formed and it took over the College. The Loyola College Society is a registered Society bearing Registration No.228 of 1973. It was originally registered under the Societies Registration Act No.XXI of 1860 and after the enactment of Societies Registration Act, 1975 which came into effect on 22.04.1978, the Society became deemed to be registered under the Societies Registration Act, 1975 by virtue of Section 53 thereof. The members of the Society of Jesus are popularly known as Jesuits in the State of Tamil Nadu. There are 480 Jesuits working in various schools and colleges, social services and social work centres in Parishes and in Mission Outreach Programmes. This Jesuit Province of Tamil Nadu is called the Jesuit Madurai Province. There are totally 5 Arts and Science Colleges including Loyola and 2 Colleges of Education under the Madurai Province. Some of the other premier institutions of higher education administered by the Jesuits in India are as follows:

- 1.Loyola-ICAM College of Engineering Technology (LICET),Chennai.
- 2.Loyola Institute of Business Administration (LIBA), Chennai.
- 3.Xavier Labour Research Institute (XLRI), Jamshedpur
- 4.Xavier Institute of Management (XIM), Bhubaneswar
- 5.Loyola College , Thiruvananthapuram
- 6.St.Xavier's College, Ahmedabad
- 7.St.Xavier's College, Mumbai
- 8.St.Xavier's College, Kolkata
- 9.St.Joseph's College, Bangalore
- 10.St.Joseph's College, Trichy
- 11.St.Joseph's College of Commerce, Bangalore
- 12.St.Aloysius College, Mangalore
- 13.Xavier Institute of Engineering, Mumbai
- 14.St.Xavier's College of Management and Research, Mumbai
- 15.St.Xavier's College of Education, Mumbai
- 16.St.Xavier's College, Thiruvananthapuram
- 17.Andhra Loyola College,Vijayawada
- 18.St.Joseph's College, Darjeeling
- 19.St.Xavier's College, Ranchi
- 20.Xavier Institute of Social Studies, Ranchi
- 21.St.Xavier's College, Palayamkottai
- 22.St.Xavier;s College of Education, Palayamkottai
- 23.Arul Anandar College, Karumattur-Madurai
- 24.Vidyajoti College of Theology, Delhi

25.Loyola College, Thiruvannamalai

26.Loyola College of Education, Chennai.

5. The object of the Society is to provide education in all streams to all, especially to the Roman Catholic Christians of the State and to maintain the spiritual educational, cultural, social, industrial, technical, agricultural, benevolent and other interests of the Society. The Loyola College was established in the year 1925. It became an autonomous college in 1978. it continues to remain affiliated to the University of Madras. The University confers the degrees on the students passing the examinations held by the college and the name of the college will be indicated in the degrees. All along, the college was recognised as a Minority Institution by the Government. The Society is the Educational Agency of the college. Although it is a Christian Religious Minority College, admission is not denied to anyone only on the ground of caste, creed, religion or language.

6. The Government issued G.O.Ms.No.270 (Higher Education-J1) dated 17.06.1998, pursuant to which, the second respondent insisted the petitioner college to get a separate order from the Government recognizing its status as a Minority. Accordingly, the petitioner-College applied to the first respondent through the second respondent requesting to recognize it as a Minority Institution. The college satisfied all the requirements contained in the said

Government Order for the grant of minority status. The details are as under:

(i) The college has been established with the definite aim of promoting the educational interest and the social advancement of the Christian population.

(ii) The members of the Society which runs the college are all Christians by birth. They belong to the Roman Catholic order of Christianity.

(iii) The college has been functioning as a fullfledged Christian Minority Educational Institution.

(iv) The Educational Agency, namely, the Society is a Christian organisation.

(v) Christianity is a religion recognised and declared as Minority in the State of Tamil Nadu.

The first respondent issued orders recognizing the status of the college as Minority college for one year from 2004-2005. Every year applications were submitted by the petitioner and orders recognizing the college as Minority Institution were issued for the years 2005-2006 and 2006-2007.

7. The first respondent again issued an order in G.O.Ms.No.363 Higher Education (E1) Department dated 08.10.2009 granting recognition as Minority Institution from 2007-2008 to 2011-2012 for a period of five years. The restriction of recognition as minority college for a period of five years is challenged in this writ petition on the ground that there is no change in the membership of the society and constitution of the

educational agency and its objects.”

4. Pertinently, the learned Single Judge, after adverting to the aforementioned facts, posed the following issue for consideration, which according to him, needed determination : whether the appellants could grant minority status for a limited period ?. The grievance of respondent No.1, is that, each time the 7 period prescribed for recognition of its minority status expires, it is required to approach the appellants, which involves having to tackle bureaucratic rigmarole.

4.1. The minority status of Loyola College was restricted, as noted above, to a period of five years spanning between 2007-2008 and 2011-2012.

4.2. The learned Single Judge, relying upon a Division Bench judgement in the case of : **Thirumuruga Kirupanantha Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem V. State of Tamil Nadu, 2001 (3) MLJ 433**, ruled against the appellants.

5. Mr.P.Siva Shanmugasundaram, learned Special Government Pleader, who appears for the appellants, says the impugned G.O. restricted the period of recognition as such a regime allows for oversight, supervision and regulation. It is the learned counsel's submission that, if, the appellants were to grant permanent recognition to minority institutions, then, aberrations, if any, which may arise, could go unnoticed.

6. On the other hand, learned counsel for respondent No.1 institute, says that, as and when, an infraction is noticed, the appellants would be free to take out proceedings against the concerned institution, and that, after hearing the concerned 8

*institution, orders of de-recognition, as a minority institution, can be passed. In support of his submissions, learned counsel relies upon a judgement of a Division Bench of this Court in the matter : **Secretary, Jeyaraj Annapackiam College V. State of Tamil Nadu, (2013) 8 MLJ 509.***

7. We heard the learned counsel for the parties and perused the record.

8. According to us, the approach adopted by the learned Single Judge does not call for any interference. As a matter of fact, the view taken by the learned Single Judge is based on the judgement of the Division Bench in the matter of : **Thirumuruga Kirupanantha Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust.** Being a coordinate Bench, we are bound by the view of the Division Bench.

9. Moreover, the argument advanced by Mr.Siva Shanmugasundaram, that grant of permanent minority status does not allow monitoring and regulation, has been answered, as rightly argued by the learned counsel for respondent No.1, in paragraph 7 of the judgement rendered in : **Jeyaraj Annapackiam College.** For the sake of convenience, the relevant observations are extracted hereafter :

".... 7. We are in entire agreement with 9 the Division Bench judgement of this Court reported in **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem V. State of Tamil Nadu.** Accordingly, the order of the learned Single Judge is set aside. 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."

10. Having regard to the aforesaid, we find no reason to interfere with the impugned judgement.

11. Accordingly, the captioned appeal is dismissed. Resultantly, pending application shall stand dismissed. There shall, however, be no order as to costs. "

17. An appeal was filed against the aforesaid judgment before the Apex Court contending that the Division Bench had relied on the judgment in the case of **Thirumuruga Kirupanantha Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem V. State of Tamil Nadu, 2001 (3) MLJ 433**, which had already been set aside on 18.02.2013. We find that the aforesaid submission is correct. The judgment in the case of **Thirumuruga Kirupanantha Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem** (surpra) was taken up in appeal before the Apex Court in the case of **State of Tamil Nadu vs Thirumuruga Kirupanantha Variyar**, Civil Appeal No.6730 of 2004 and the ground on which it was set aside is worth noticing. The judgment dated 18.02.2013 is extracted hereinunder:-

This appeal has been preferred against the impugned judgment and order dated 31.7.2001 passed by the High Court of Judicature at Madras in Writ Appeal No. 815 of 1999 by which it has set aside the judgment and order of the learned Single Judge dated 30.1.1999 by which the learned Single Judge has dismissed the writ petition filed by the respondent challenging the order dated 29.9.1998 by which the Government of Tamil Nadu has cancelled the linguistic minority certificate issued in respect of the educational institution for the year 1997-98.

In order to decide this appeal, it is not necessary for us to give the facts in detail. It is evident from the record that a Trust was created for imparting the education. Subsequently, an amendment was brought in the Trust Deed on the basis of which certain preference was given to the persons belonging to a particular community to which the Trustee belonged. A certificate dated 27.10.1997 was granted by the revenue authorities conferring certain benefits under Article 30(1) of the Constitution of India for the purpose of admission of medical students for the year 1997-98.

*The said order was set aside by subsequent order which was challenged before the learned Single Judge. The main reason of challenge of the subsequent order of withdrawal of the minority certificate had been that the order was passed by the Government without giving any opportunity of hearing or issuing any show cause notice to the respondent or trust or trustees. However, the learned Single Judge dismissed the writ petition. **The Division Bench, while dealing with the writ appeal, has not only allowed the writ appeal rather granted a minority community certificate to the respondent assessing the***

merit itself.

We have heard learned counsel for the parties at length and we are of the view that in such a fact situation, the Division Bench ought to have set aside the order of recall of the minority certificate and ask the Government to reconsider after giving opportunity of hearing to the parties concerned but it was certainly not permissible for it to take the task of Government upon itself and grant the minority certificate.

In view of the above, we set aside the judgment and orders passed by the Division Bench, learned Single Judge as well as by the State Government dated 29.9.1998. The State Government is directed to issue fresh show cause notice to the respondent within a period of four weeks from today and respondent is directed to submit the reply within a period of two weeks after receiving the said show cause notice. The Government will decide the same after considering the contents taken in the reply to the show cause and if considered necessary, after giving opportunity of hearing within a period of four weeks thereafter.

The appeal is allowed accordingly.

18. The Apex Court was of the opinion that the High Court had erroneously itself taken up the task of giving a declaration of minority status to the institution and should have remitted the matter back to the State Government to reconsider it as to whether the certificate should be granted to the institution or not. It was only on this short ground that the appeal was allowed, without touching upon the issue

presently involved, namely, the period for which a certificate should be issued.

19. The appeal against the judgment dated 11.09.2017 in the Loyala College case before the Apex Court was disposed of on 05.03.2018 granting liberty to the State to take appropriate steps against the judgment dated 11.09.2017 and if they are still not satisfied, they will be at liberty to seek further remedy. The order of the Apex Court dated 05.03.2018 is extracted hereinunder:-

"Heard learned counsel for the petitioner and perused the record.

Delay condoned.

It is stated that the judgment, which is the basis of the impugned judgment, was set aside by this Court on 18.02.2013 in C.A. No.6730/2004, titled "State of Tamil Nadu & Anr. Vs. Thirumuruga Kirupananda Vairyar".

In view of above, it will be open to the petitioners to move the High Court for consideration of this aspect in accordance with law.

If the petitioners are not satisfied with the order which may be passed, they will be at liberty to take remedy against the same.

The special leave petitions are disposed of in above terms.

Pending applications, if any, are also stand disposed of. "

20. Accordingly, the State moved a Review Application No.236 of

2019 in W.A.No.1130 of 2013, and the Division Bench after hearing the review application and taking notice of these developments and other judgments, held that the State authorities have a right to monitor and regulate, but the view taken by the Division Bench in the judgment dated 11.09.2017 did not suffer from any infirmity. It was again observed that the State has been authorised under the Government orders to take appropriate action if any infraction as to the minority status of the institution comes to their knowledge but limiting the period of certification was unconstitutional. Thus, the final tally is still in favour of the respondent institution by the Coordinate Bench in the judgment dated 21.02.2020, reported in **MANU/TN/1877/2020**, which is extracted hereinunder:-

- (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 1 st 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 1 st 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 1*

st 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, 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 1 st 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 Madarasa 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 13 <http://www.judis.nic.in> Rev.Appln.No.236 of 2019 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."

Thus, the prescription of limitation of certification of minority rights guaranteed under Article 30 of the Constitution of India may not be permissible in these circumstances.

21. The contention of the State that such restrictions on the period of certification of minority status is necessary to monitor in our opinion also is not logically made out, inasmuch as, the State can take appropriate steps if it finds any deviation in the status of minority or otherwise of the institution for the limited purpose of certification and recognition granted by it. However, the issuance of the certificate for five years in the present case does not indicate any reason not to continue it beyond five years. Even in the affidavit filed in support of the appeal or before the learned single Judge, no material was brought forth to even remotely suggest that the institution had violated any regulation or norms so as to disentitle it to continue to claim recognition as an institution having minority status. This is a case where there is no such material and therefore, there cannot be any justification for making a provision so as to limit recognition. On the other hand, putting a limitation would not serve any such purpose inasmuch as even during the pendency or continuance of a certificate,

the State is not denuded by the power of withdrawing any such recognition if any violation is established upon a due consideration of

the facts by following the procedure prescribed by law. There is no rationale decipherable in restricting the period so as to connect it with the power of withdrawal of recognition of the State Government. If the power of the State Government can be exercised reasonably, there is no rational nexus between the object of limiting the period of certification with the object of exercising control or the power of withdrawal of recognition. The status of minority of an institution and the power to withdraw the recognition or certification though connected with each other, are differently placed. The power of withdrawal of recognition or certification is still there with the Government even if the recognition or certification is for an unlimited period. Accordingly, the limitation prescribed does not pass the test of Article 14 of the Constitution of India or reasonableness as well. Thus, the prescription of limitation of certification of minority rights guaranteed under Article 30 of the Constitution of India may not be permissible in these circumstances.

22. We say this because the rights under Part III of the Constitution of India are there to protect existing rights. The recognition of the status of the institution as a minority status does

not amount to conferment of a minority status and is rather a recognition and acknowledgment of the existing minority status of an institution. The existence, therefore, of such a fundamental right is not dependent upon certification, but is dependent upon the ingredients of the establishment and administration of an educational institution, which, in the present case, has not been disputed by the State at all.

23. In this regard, it will be apt to quote a couple of paragraphs of the judgment of the Apex Court in the case of **N.Ammad vs. Manager, Emjay High School and Others, (1998) 6 SCC 674**. Paragraphs 12, 13 and 15 to 17 are extracted hereinunder:-

*"12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school. If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. **Declaration by the Government is at best only a recognition of an existing fact.** Article 30(1) of the Constitution reads thus:*

"30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

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 2-8-1994.

..

15. A Constitution Bench of seven Judges of this Court in **Kerala Education Bill, 1957, Re [AIR 1958 SC 956]** has examined the constitutional validity of the Bill which was the precursor to the Act when the President of India had sought the advice of the Supreme Court under Article 143 of the Constitution. **One of the propositions laid down by the said Constitution Bench in the said decision is this: the right guaranteed under Article 30(1) is a right that is absolute and any law or executive direction which infringes the substance of that right is void to the extent of infringement. But the absolute character of the right will not preclude making of regulations in the true interests of efficiency or instruction, discipline, health, sanitation, morality, public order and the like, as such regulations are not restrictions on the substance of the right guaranteed by the Constitution.**

16. The aforesaid proposition was approved by another Constitution Bench of this Court in *Sidhrajibhai Sabbaiv.State of Gujarat [AIR 1963 SC 540 : 1962 Ker LT 135]* and also by a nine-Judge Bench of this Court in *Ahmedabad St. Xavier's College Societyv.State of Gujarat [(1974) 1 SCC 717]* .

17. Thus the legal position adumbrated in *Kerala Education Bill, Re [AIR 1958 SC 956]* remains unchanged now. "

24.It has to be kept in mind that in such matters, one is dealing with fundamental rights guaranteed under Part III and not with a lease or a licence or a privilege at the pleasure of the Government. A periodical renewal of a Certificate by limiting its validity may not be necessary for an existing status of minority protected as a fundamental right under Art.30 of the Constitution of India, it is not something akin to the extension of a beneficial social scheme which may require a periodical physical verification of the living status of a human being or like renewal of a gun licence which is also a privilege, or in the like manner a driving licence. The principles of administrative law, therefore, while being pressed into service, in the mechanism of granting of certificates and its continuance or otherwise have to be subservient to the constitutional mandate preserved under Art.30 of the Constitution of India.

25. The State Government can exercise a reasonable control in the grant of certification or otherwise when the legal character of the minority status of an institution on its own undergoes a transformation. For example, an institution initially established as a secular institution or conversly as a minority institution can undergo such a fundamental change so as to destroy its basic character. It is trite to remember Heraclitus who said - "There is nothing permanent

except change". Thus a living nature of the status of minority unless duly transformed in a way so as to loose its basic character, minority or otherwise, cannot be deprived of its status which is not dependent upon a certification. The certification or its withdrawal may have an impact upon rights and privileges that may be available to such institutions from the Government and therefore, the Government can exercise control to that extent by imposing regulatory conditions which do not impinge upon the administration of the institution.

26. It is also stated by the learned Government Pleader that there are other States throughout the country that have restricted the life of certificates of recognition to minority institutions providing for renewal after three years or even annually. Thus the prescription of five years in this State is justified. The illustrations of other States may not be of any avail once we have found no rationale in the prescription to make it constitutionally sustainable.

27. Having considered the submissions raised and in view of what has been noted hereinabove, there being no further challenge at present to the Division Bench judgment dated 21.02.2020, we see no reason to differ from the view taken by the Coordinate Bench and finding ourselves in agreement with the same, we find no merit in the

arguments advanced on behalf of the State even in this appeal.

For all the foregoing reasons, we are neither satisfied with the explanation on delay nor on the merits of the submissions and hence, the appeal as well as the condone delay application are dismissed. No costs.

(A.P.S., C.J.) (S.K.R., J.)
13.08.2020

Index : Yes

sra

To



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The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.

(sra)

To

The State of Tamil Nadu,
rep. By its Principal Secretary,
Dept. of Higher Education,
Fort St. George, Chennai 600 009.



CMP.No.5028 of 2020 and
WA.No.SR 7173 of 2019

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13.08.2020