

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30805 of 2012

Madras Christian College Higher Secondary School,
rep. by its Head Master,
46, Harrington Road,
Chetpet,
Chennai - 600 031.

..Petitioner

vs.

1. The Secretary to Government,
Govt. of Tamilnadu,
School Education (C2) Department,
Fort St. George,
Chennai.
 2. Director of School Education,
Directorate of School Education College Road,
Nungambakkam, Chennai - 600 006.
 3. The Chief Educational Officer,
Panagal Building, 1st floor, Saidapet,
Chennai - 600 015.
 4. The District Educational Officer,
Chennai South, Egmore, Chennai - 600 008.
- Respondents

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PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a writ of declaration declaring the impugned Government Order G.O.Ms.No.213 School Education (C2) Department dated 26.12.2011 issued by the First Respondent is inapplicable and unenforceable to and on religious minority educational institutions such as the petitioner and consequently, forbear the respondents from directing the petitioner a Christian minority to comply with the said G.O. in so far as the petitioners educational institution is concerned.

For Petitioner : Ms.Safuna Amin
for M/s.S.Ramasubramaniam
For Respondents : Mr.K.S.Suresh Kumar,

Additional Government Pleader

O R D E R

This Writ petition has been filed by the aided minority institution to declare G.O.Ms.No.213 School Education (C2) Department dated 26.12.2011 issued by the first respondent is inapplicable and unenforceable on the petitioner and to forbear the respondents from insisting upon the petitioner to comply with the impugned Government Order.

2. The impugned Government Order refers to the Right of Children to free and Compulsory Education Act 2009 enacted by the Government of India wherein it is mandated to form School Management Committees in all schools to follow and abide by the rules and responsibilities under the Act. The rules in this regard was notified in RTE Rules 2011 and G.O.Ms.No.173, School Education Department Dated 08.11.2011 was issued laying down the responsibilities. The Government after referring to the funds sanctioned by the Government of India as part of the Annual Work Plan & Budget 2011 - 12 of Sarva Shiksha Abhiyan an amount of Rs.27.00 crores for School Management Committee and related whole School Development Plan, informed the formation of School Management Committee in all Schools are mandatory as per the RTE Act 2009 and RTE Rules 2011. The Government has examined the proposals of the Principal Secretary/State Project Director, Sarva Shiksha Abhiyan and decided to constitute a School Management Committee in each school for planning, monitoring and implementation of Sarva Shiksha Abhiyan schemes as per the RTE Act 2009.

3. The petitioner has impugned the said Government Order on the ground that the petitioner being a minority educational institution is entitled for protection under Article 30 (1) of the Constitution of India which is the constitutional right and the same cannot be interfered with by the respondents and if it is done, it is illegal and unjustified.

4. Ms.Safuna Amin, learned counsel for the petitioner relying upon the decision in 2012 (6) SCC 1 submitted that it has been held that Section 21 of the RTE Act is not applicable to a minority educational institution whether it is aided or unaided and the petitioner institution, being an aided minority educational institution recognized by the Government of Tamil Nadu, Section 21 of the RTE Act is not applicable. Therefore, the learned counsel submits that the petitioner institute cannot be compelled to constitute a School Management Committee as mandated under the impugned order. Further, it is submitted that by implementation of the impugned order, it would introduces an alien entity into the administration of the minority educational

institution which opposes its autonomous and which stands protected under Article 30(1) of the Constitution of India.

5. At the time when the writ petition was admitted on 21.11.2012, an order of interim stay was granted.

6. The learned Additional Government Pleader appearing for the respondents reiterated the stand taken by the second respondent in the counter affidavit wherein it has been stated that the RTE Act came into force with effect from 01.04.2010 which mandates community participation in preparing school development plan, monitoring the constitution of School Management and supervision of all activities of schools. Further it is submitted that the right guaranteed under Article 30(1) is not absolute and subject to regulations and restrictions to be imposed.

7. The respondents would refer to the decision of the Hon'ble Supreme Court in Society for un-aided private schools of Rajasthan vs. Union of India dated 12.04.2012. Referring to the said decision, it is submitted that the constitutional validity of the RTE Act was upheld and it was held that schools established, owned or controlled by the appropriate Government or a local authority; an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; a school belonging to specified category; and an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from appropriate Government or the local authority would stand covered.

8. So far as the petitioner institution is concerned, the respondents have taken a stand that the petitioner is receiving aid from the Government and therefore, the impugned Government Order is applicable to the petitioner school. Thus the counter affidavit rests solely on the decision of the Hon'ble Supreme court in Society for un-aided private schools of Rajasthan vs. Union of India rendered on 12.04.2012. The correctness of the said decision was referred by a Three Judge Bench of the Supreme Court to a Constitution Bench vide reference dated 06.09.2010 (2012-6 SCC 102). The Hon'ble Constitution Bench was called upon to decide on the validity of Clause (5) of Article 15 of the Constitution inserted by the Constitution (Ninety-third Amendment) Act, 2005 with effect from 20.01.2006 and on the validity of Article 21A of the Constitution inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002 with effect from 01.04.2010. It was argued before the Hon'ble Constitution Bench that clause (5) of Article 15 of the Constitution as its very language indicates does not apply to minority educational institutions referred to in Clause (1) of Article 30 of the Constitution. It was further submitted that Article 14 of the

Constitution is thus violated because aided minority institutions and unaided minority institutions cannot be treated alike.

9. It was further contended by the petitioner who had filed writ petition before the Apex Court on behalf of the minority school management association that under Article 30(1) of the Constitution all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It was submitted that the State while making the law to provide free and compulsory education to all children of the age from six to fourteen years cannot be allowed to encroach on this right of the minority institution under Article 30(1) of the Constitution.

10. The Hon'ble Constitution Bench in the case of *Pramati Educational and Cultural Trust and Ors. vs. Union of India (UOI) and Ors.* answered the reference in the following terms:

"47. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As. stand disposed of. The parties, however, shall bear their own costs."

11. Thus the above reference is the answer to the case on hand and the petitioner would be entitled to the relief sought for in the writ petition as the Hon'ble Supreme Court has held that the majority judgment of the *Society for unaided private schools of Rajasthan v. Union of India and Anr.* (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

12. In the result, the writ petition is allowed by holding

that the impugned Government Order in G.O.Ms.No. would not applicable to the petitioner in the light of the decision of the Hon'ble Supreme Court in the case of Pramati Educational and Cultural Trust and Ors. vs. Union of India (UOI) and Ors.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
School Education (C2) Department,
Fort St. George,
Chennai.
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Chennai South, Egmore, Chennai - 600 008.

+1cc to Mr.S.Ramasubramanian, Advocate, S.R.No.20775

+1cc to the Government Pleader, S.R.No.21187

सत्यमेव जयते

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PP(CO)
KKV/10/06/2020

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