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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 5.7.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.11864 of 2021
and W.M.P.No.12617 of 2021

The Secretary
Loyola College Vettavalam 606 754
Tiruvannamalai District. ...Petitioner

Vs.

- 1 The State of Tamil Nadu
Rep. by its Principal Secretary to Govt.,
Department of Higher Education (E1),
Fort St. Geroge Chennai 600 006.
- 2 The Director of Collegiate Education,
College Road, Chennai 600 006.
- 3 The Joint Director of Collegiate Education,
Vellore Region, Vellore District 632 004
- 4 Thiruvalluvar University
Rep. by its Registrar,
Vellore District. ...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order issued by the 1st respondent State Government in GO. (Ms) No. 178 Higher Education (E1) Department dated 7.12.2020 quash the same in so far as it restricts the status of the petitioner college as a Christian Minority Educational Institution to a limited period of 5 years from 2016-2017 to 2020-2021.

For Petitioner : Mr.Ms.H.Mary Sowmi Rexl for
M/s.Isaac Chambers.

For Respondents : Mr.M.R.Gokulkrishanan
1 to 3 Government Advocate



O R D E R



Department of Higher Education and another vs. The Secretary/Correspondent, Loyola College (Autonomous) in Rev. Appln. No.236 of 2019 in W.A.No.1130 of 2013, dated 21.2.2020, has clearly held that the said restriction cannot be imposed by the Government. In yet another decision rendered by this Court in the case of The State of Tamil Nadu rep. By its Principal Secretary, Dept. of Higher Education vs. Syed Ammal Engineering College rep. By its Administrative Officer [C.M.P.No.5028 of 2020 and W.A.SR No.7173 of 2019, dated 13.8.2020] the Division Bench has taken a same stand and confirmed the order passed by the writ Court that the said restriction cannot be imposed by the Government and also concurred with the earlier decision of this Court in W.A.No.1130 of 2013, dated 11.9.2017. Therefore, the impugned order passed by the Government in G.O. (Ms) No.178 Higher Education (El) Department, dated 7.12.2020 is liable to be quashed.

3. The learned Government Advocate appearing for the respondents would submit that the issue in hand is already legally settled by this Court and this Court may pass appropriate orders.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials on record.

5. The writ petitioner placing reliance on the judgment of this court in W.A.No.1130 of 2013, dated 11.9.2017, has filed the present writ petition. The relevant portion of the judgment reads as follows:

"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 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



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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.''

6. The Division Bench of this Court in The State of Tamil Nadu rep. by its Secretary, Department of Higher Education and another vs. The Secretary/Correspondent, Loyola College (Autonomous) [Rev.Appln. No.236 of 2019 in W.A.No.1130 of 2013, dated 21.2.2020], considering the ratio laid down in various judgments, has held as follows:

“(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.



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(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.

7. Yet another decision of the Division Bench of this Court in The State of Tamil Nadu rep. By its Principal Secretary, Dept. of Higher Education vs. Syed Ammal Engineering College rep. By its Administrative Officer [C.M.P.No.5028 of 2020 and W.A.SR.No.7173 of 2019], this Court held as under:

"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



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initially established as a secular institution or conversely 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 lose 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.

8. In the light of catena of judgments delivered by the Division Bench of this Court and the same is squarely applied to the facts of the case in hand, this Court is bound to follow the said decisions. Therefore, the impugned order passed by the first respondent in GO. (Ms) No. 178 Higher Education (E1)



Department dated 7.12.2020 insofar as restriction for the period of 5 years is liable to be quashed and accordingly quashed. The petitioner is entitled for grant of minority status without restricting the period, but subject to the direction passed by this Court in Review Appln. No.236 of 2019 in W.A.No.1130 of 2017. The first respondent is directed to issue the revised G.O. within a period of 12 weeks from the date of receipt of copy of this order.

9. In fine, the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

- 1 The Principal Secretary to Govt.,
State of Tamil Nadu, Department of Higher Education (E1),
Fort St. George Chennai 600 006.
- 2 The Director of Collegiate Education,
College Road, Chennai 600 006.
- 3 The Joint Director of Collegiate Education,
Vellore Region, Vellore District 632 004.

+1 cc to Government Pleader, Sr.No.31417.

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PL[co]
Nsk 29/07/2021