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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

W.P.No. 19507 of 2021

Rabiammal Ahamed Maideen College for Women,
(Administered by Rabiamman Ahamed Maideen Educational Trust)
rep. by its Secretary A.Feroze Sha,
"White House", No.55A,
South Main Street,
Tiruvarur - 610 001. ..Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Higher Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Collegiate Education,
DPI Campus,
College Road, Nungambakkam,
Chennai - 600 034. ..Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to call for records relating to the impugned order issued by the 1st respondent vide G.O.(Ms). No.126 Higher Education (E1) Department dated 30.04.2021, quash the same insofar as it restricts the status of the petitioner's college as a Minority Educational Institutions to a limited period of five years from 2018-19.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondents: Mr.A.Selvendran
Government Advocate

O R D E R

Considering the fact that the issue involved in the present case is squarely covered by the Division Bench Judgment of this Court in State of Tamil Nadu, represented by its Principal Secretary versus Syed Ammal Engineering College, reported in 2020 SCC Online Mad 13411, the main writ petition itself is taken up for final hearing.



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2. The present writ petition challenges the impugned Government Order issued by the 1st respondent dated 30.04.2021 and for a consequential direction to the 1st respondent to issue a fresh Government Order by not restricting the status of the petitioner College as a minority institution for any particular period.

3. The case of the petitioner is that the institution had made an application before the respondents seeking for the grant of minority status. The process commenced seven years back and ultimately it has culminated in the issuance of the impugned Government Order dated 30.04.2021. By virtue of this Government Order, the 1st respondent has recognized the minority status of the petitioner's institution. However, while granting such a status, the 1st respondent has limited the period for conferring such a status to five years starting from the academic year 2018-19. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.M.Mohamed Riyaz, the learned counsel for the petitioner and Mr.A.Selvendran, the learned Government counsel for the respondents.

5. The ground raised by the petitioner is squarely covered by the judgment of the Division Bench of this Court in State of Tamil Nadu, represented by its Principal Secretary versus Syed Ammal Engineering College, reported in 2020 SCC Online Mad 13411. For proper appreciation, the relevant portions in the judgment are extracted hereunder:

"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, 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.

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(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] Mad LJ 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] Mad LJ 509 [Secretary, Jeyaraj Annapackiam College V. State of Tamil Nadu]. The learned Additional Advocate General has invited the attention of



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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 Kirupananda Variyar's case reported in AIR 2002



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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 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.

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(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.'

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(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



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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.



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(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 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



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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 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."

21. 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. 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



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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.

23. 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.

24. 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.



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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



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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 Society v. 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."

25. 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.

26. 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



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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.

27. 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.

28. 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."

6. It is clear from the above judgment that the Division Bench in no uncertain terms has held that the minority status of an institution cannot be restricted for a particular period and at the best the Government can impose such conditions, which can be monitored and seen if it is being complied with, failing which, appropriate action can be initiated against the institution. This Court held that there is absolutely no rationale in fixing a particular period to recognize the minority status of the institution and such a prescription is not sustainable under the Constitutional mandate conferred under Article 30 of the Constitution of India.

7. In view of the above, the impugned Government Order issued by the 1st respondent requires the interference of this



Court insofar as it restricts the status of the petitioner College as a minority institution for a limited period of five years. This particular prescription imposed in the impugned Government Order is set aside and the matter is once again remanded back to the file of the 1st respondent with a direction to pass a fresh Government Order by determining the minority status of the petitioner institution without limiting it to any period, within a period of eight weeks from the date of receipt of copy of this order. It is also made clear that the 1st respondent can impose conditions, which will be complied with by the petitioner institution.

8. This writ petition is allowed accordingly. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

RAP/RR

To

1. The Secretary to Government
The Government of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Collegiate Education,
DPI Campus,
College Road, Nungambakkam,
Chennai - 600 034.

+3ccs to Mr.M.Mohamed Riyaz, Advocate SR.No.47648, 46832

+1cc to Government Pleader SR.No.47190

W.P.No. 19507 of 2021

SR II(CO)
GMY(11/10/2021)