

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2021

PRONOUNCED ON : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34622 of 2018
and WMP.Nos.40133 & 40135/2018

The Secretary
St.Anne's College of Engineering & Technology
Anguchettipalayam,
Panruti Taluk,
Cuddalore District. ... Petitioner

vs

- 1.The State of Tamil Nadu
Rep.by its Secretary,
Department of Higher Education,
Fort St.George, Chennai 600 009.
- 2.The Commissioner/Director of Technical
Education,
Directorate of Technical Education,
Guindy, Chennai 600 025. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, to call for the records relating to the impugned order issued by the 1st respondent State Government in G.O.(D)No.149 Higher Education (J2) Department dated 18.06.2012, quash the same insofar as it restricts the status of the petitioner's college as a Christian Minority Educational Institution to a limited period of 5 years from 2009-2010 to 2-013-2014.

For Petitioner : Mr.Godson Swaminathan for
M/s.Isaach Chambers

For Respondents : Mr.Karthigai Balan
Addl.Govt.Pleader

O R D E R

The petitioner has challenged the impugned order in G.O(D). No.149, Higher Education (J2) Department, dated 18.06.2012, whereby, the Government of Tamil Nadu/1st respondent herein has restricted the recognition of the petitioner as a Minority Educational Institution only for a period of five years commencing from 2009-2010 to 2013-2014.

2. After the period expired, the petitioner realized that the minority status granted to the petitioner was confined only for a period of five years and therefore based on certain decisions of this Court and that of the Hon'ble Supreme Court, the petitioner has approached this Court now in this writ petition to quash that portion of the impugned order insofar as the status of the petitioner is restricted for a period between 2009-2010 and 2013-2014 as a minority institutions.

3. The impugned order (G.O(D).No.149, Higher Education (J2) Department) is assailed by placing heavy reliance on the decision of the Division Bench of this Court in The State of Tamil Nadu Vs The Secretary/Correspondent, Loyola College, Chennai, wherein, the Division Bench of this Court by its order dated 11.09.2017 had dismissed the appeal filed by the State Government in W.A.No.1130 of 2013. The said writ appeal was filed against the order of a learned single Judge of this Court in The Secretary, Loyola College, Chennai Vs State of Tamil Nadu vide order dated 17.09.2012 in W.P.No.24606 of 2012. The learned single Judge there had placed heavy reliance on the decision of this Court in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal, Medical, Educational and Charitable Trust, Salem Vs State of Tamil Nadu and another, (2001) 3 M.L.J 433, which was followed by the Division Bench of this Court while dismissing the State Government's appeal in W.A.No.1130 of 2013 vide order dated 11.09.2017. Relevant portion of the order dated 11.09.2017 of the Division Bench of this Court, reads as under:-

"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 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."

4. However, a review was filed before the Division Bench of this Court in Rev.Appln.No.236 of 2019 against the above decision of this Court in W.A.No.1130 2013. By an order 21.02.2020, the review application filed by the State Government was dismissed by a Division Bench of this Court with the following observations:-

"(17)The learned Additional Advocate General has placed heavy reliance upon the judgment dated 18.02.2013 made in Civil Appeal No.6730 of 2004 for the proposition that the judgment in Thirumuruga

Kirubananda Variyar's case has been set aside. A perusal of the said judgment would disclose that the Division Bench took upon the task of granting Minority Community Certificate to the respondent therein by assessing the merit and only for that reason, had set aside the order and remanded the matter to the State Government.

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

(19)Now, coming to the facts of the instant case, it is not in serious dispute that Loyola College is one of the premier Institutions administered by the 1st respondent and the learned Single Judge, in the order dated 17.09.2012 in WP.No.24606 of 2012 as well as the Division Bench of this Court in paragraph No.3 of judgment dated 11.09.2017 made in WA.No.1130 of 2017, had also taken into consideration the fact that very many number of Institutions are run and administered by the said Trust/Society in India. It is to be reiterated at this juncture that the said important fact remains undisputed.

(20)The various Government Orders [cited supra] issued in this regard, also gives a leverage to the concerned authorities to take necessary action in the event of materials/information come to their knowledge for withdrawal of Minority Status after affording an opportunity to the concerned

Institution. Therefore, the review applicants have been granted such a power in the Government Orders, to take appropriate action if any infraction as to the Minority Status come to their knowledge.

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

(22)As rightly observed in the judgment, which is the subject matter of review, since the power to take appropriate action, is vested with the concerned authorities in the form of monitoring and regulation, this Court is of the considered view that no grounds have been made out for reviewing the said impugned judgment dated 11.09.2017.

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

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

Further reliance is also placed on the decision of the Division Bench of this Court rendered in W.A(SR)No.7173 of 2019. While dismissing C.M.P.No.5028 of 2020 on 13.08.2020, at the stage of condonation of delay, the appeal filed by the State Government was dismissed on merits.

5. Though the Division Bench dealt with certain case laws cited in support of the appeal ultimately, the Division Bench of this Court dismissed the application filed by the State Government for condonation of the delay in filing the writ petition with the following observations:-

"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."

[* order passed (in C.M.P.No.5028 of 2020) in W.A.(SR)No.7173 of 2019]".

6. The learned counsel for the petitioner further placed reliance on the decision of the Hon'ble Supreme Court rendered in Manager, Corporate Educational Agency Vs James Mathew and others, arising out of the order of the Division Bench of the Kerala High Court in M.M.L.P. School Vs V.B.Sajitha , 2014 (2) KLT 367, wherein, the Hon'ble Supreme Court took note of the development in the form of statutory management with the enactment of National Commission for Minority Educational Institutions Act, 2004. He therefore submits that the Hon'ble Supreme Court has recognized that there is a dual method of recognition both by the Government and by the National Commission for Minority Educational Institutions and therefore once the status of minority is determined, there is no question of putting any embargo by minority status for a period of five years and therefore submits that the writ petition was liable to be allowed.

7. The learned counsel for the petitioner also placed reliance on the decision of the Hon'ble Supreme Court in N.Ammad Vs Manager, Emjay High School and others, (1998) 6 SCC 674, wherein, a reference was made to the decision of the Hon'ble Supreme Court in Paragraph 13, which reads as under:-

"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."

8. Defending the impugned order, the learned counsel for the respondents further submits that the entire exercise of granting minority status emanates from the interim order of the Hon'ble Supreme Court in T.M.A.Pal Foundation and Others Vs State of Karnataka and Others, wherein, certain guidelines were laid down by the Hon'ble Supreme Court in I.A.No.20 in W.P(C)No.317 of 1993 by its order dated 17.10.1994 which stipulated certain conditions for granting minority status to an educational institutions.

9. He submits that much water has flown after the Hon'ble Supreme Court gave its interim guidelines inasmuch as, the Parliament has enacted the National Commission for Minority Educational Institutions Act, 2004. He submits that under Chapter IV of the said Act, the Functions and Powers of the Commission has been prescribed.

10. He submits that under Section 11(f) of the said Act, the National Commission for Minority Educational Institutions Act, 2004 constituted under Section 3 of the aforesaid Act, is the sole authority to decide all questions relating to grant of status of any institutions as a minority educational institution and declare it and submits that only the said Commission is empowered to grant such certificate.

11. It has the power to decide on the minority status of an educational institution. He further submits that the said authority is also the appellate authority under the provisions of the National Commission for Minorities Act, 1992, if an application for grant of minority status was rejected. The aggrieved person could file an appeal against such order of the authority before the said Commission.

12. He therefore submits that though the impugned Government Order was issued earlier granting minority status to the petitioner by the Government, it is the National Commission for Minority Educational Institutions which was the competent authority to issue appropriate certificate for granting of minority institutions to the petitioner and therefore submits that the present writ petition is liable to be dismissed.

13. I have heard the learned counsel for the petitioner and the respondents. I have perused the records and the case laws and the provisions of the National Commission for Minority Educational Institutions Act, 2004 .

14. The said Act has been enacted with a view to implement the avowed purpose under Article 30 of the Constitution of India.

15. The practice of granting minority status to an educational institution within the meaning of Article 30(1) of the Constitution of India by the State Government was pursuant to interim order dated 17.10.1994 passed by the Hon'ble Supreme Court in I.A.No. 20 in W.P (C) No. 3179/93 in the case of the T.M.A Pai Foundation and Others Vs State of Karnataka.

16. As an interim measure, the Hon'ble Supreme Court laid down certain guidelines to be followed during the interregnum. Clause (ii) the said order made it very clear that "The educational institutions claiming minority status should approach the State Government and till the State Government issues an order declaring an Institution to be a minority institution, it cannot operate as such".

17. The Government of Tamil Nadu as a matter of fact also issued G.O.Ms.No.270 dated 17.6.1998 in compliance of the above interim order of the Hon'ble Supreme Court.

18. Subsequently, the larger bench of the Hon'ble Supreme Court has passed the final order dated 31.10.2002 in TMA Pai Foundation and Others Vs State of Karnataka (2002)8SCC481.

19. While disposing the case, the Hon'ble Supreme Court observed that the issue regarding framing of "Indicia" for treating an educational institution as a "minority institution" stated that it will be dealt with by the Regular Bench".

20. Meanwhile, the Parliament enacted National Commission for Minority educational Institutions Act, 2004. The said enactment was subsequently amended in the year 2006 and 2010.

21. The Act defines the expression "appropriate Government", "competent authority" and "commission" in section 2 (aa) section 2(c) and section 2(ca) as follows:-

2. Definitions.- In this Act, unless the context otherwise requires-

(aa) "appropriate Government" means-

(i) in relation to an educational institution recognised for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational

institution recognised for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;

(c) "Commission" means the National Commission for Minority Educational Institutions constituted under Section 3;

(ca) "competent authority" means the authority appointed by the appropriate Government to grant no-objection certificate for the establishment of any educational institution of their choice by the minorities."

22. This court has competence to entertain this W.P. Courts other than Supreme Court and the High Court Section do not have jurisdiction to entertain case as is evident from a reading of Section 12-F of the Act which reads as under:-

" 12-F.Bar of jurisdiction.—No court (except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Chapter."

23. At the time of the enactment of the Act in the year 2004, a minority educational institution could seek only affiliation of the college to a Scheduled University of its choice under section 10.

24. However, after the amendment in 2006, Section 10 the said enactment was amended in the year 2006 and later in the year 2010. Under Section 10 of the Act, any person who desires to establish a Minority Educational Institution may apply to the "Competent authority" for the grant of no objection certificate for the said purpose. For easy reference, Section 10 of the said enactment Act is reproduced below:-

Section 10 of the National Commission for Minority educational institutions Act, 2004 after its amendment in the year 2006.

Section 10 of the National Commission for Minority educational institutions Act, 2004 after its amendment in the year 2010.

Right to establish a Minority Educational Institution.-

(1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub- section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub- section (1) for the grant of no objection certificate,-

(a) the Competent authority does not grant such certificate; or

(b) where an application

Right to establish a Minority Educational Institution.-

(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose."

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub- section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of

24. Section 10 does not stipulate that the "No objection Certificate" is to be granted by the "competent authority" for a specified period and will be limited for a period and is to be renewed from time to time.

25. Learned Counsel for the respondents has also not brought to the attention of the Court of any regulations or rules framed under the Act which empowers the competent authority to issue certificate of recognition/no objection certificate for a limited period.

26. In fact, reading of Section 12-C of the Act makes it clear. It contemplates power to cancel the minority status granted by the authority or the commission as the case may be under specified circumstances. They under the following circumstances:-

" (a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year".

27. Thus, only power has been vested with the Commission to cancel minority status under Section 12C of the Act. The above provision necessarily obviates the necessity for renewal of the "No Objection Certificate"/ Status of as a minority institution at the end of a period even if such a period is specified by mistake.

28. Therefore, there is merits in the arguments of the learned counsel that once status has been accorded, it is perennial and cannot be for a limited period.

29. The Supreme Court in while disposing a batch of cases in Sisters of St Joseph of Cluny versus State of West Bengal and Others (2018) 6 SCC 772 has noted the changes brought to the said enactment and has observed as follows:-

" 24. However, Section 10(1), which was introduced at the same time as Section 11(f) by the Amendment Act of 2006, carves out one facet of the aforesaid power contained in Section 11 (f), namely, the grant of a no-objection certificate to a minority educational institution at its inception. Thus, any person who desires to establish a minority educational institution after the Amendment Act of 2006 came into force, must apply only to the competent authority for the grant of a no-objection certificate for the said purpose. It is a little difficult to subscribe to Shri Hegde's argument that the said powers are concurrent. Harmoniously read, all applications for the establishment of a minority educational institution after the Amendment Act of 2006 must go only to the competent authority set up under the statute. On the other hand, for the declaration of its status as a minority educational institution at any stage post establishment, NCMEI would have the power to decide the question and declare such institution's minority status.

Thus, only for the declaration of its status as a minority educational institution at any stage post establishment, the National Commission for Minority Education (NCMEI) would have the power to decide the question and declare such institution's minority status. In fact, the Hon'ble Supreme Court in Paramveer Albert Ekka Memorial College versus State of the Jharkhand (2018) 6 SCC 788 observed as under:-

"7. From the above provisions, it is clear that the Commission has the power to decide all questions relating to the status of any institution as minority educational institution and declare its status as such. Moreover under Section 12-B, where an authority established by the Central Government or any State Government has rejected the application for grant of minority status to any educational institution, the aggrieved person may appeal against such

order of the authority to the Commission. The provisions contained in Section 11(f) of the 2004 Act and Section 12-B of the Amendment Act are, thus, wholesome provisions for deciding all questions relating to the status of any institution as minority educational institution and for declaration of such status."

30. Therefore, the impugned GO (D) No. 149 dated 18.6.2012 of the Government of Tamil Nadu restricting the recognition for a period of 5 years was in contravention of the provisions of the said Act and is liable to be quashed as prayed for.

31. Therefore, the relief sought for by the petitioner in this writ petition deserves to be allowed and is accordingly allowed. No Cost. Consequently, Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jen/kkd
To

1.The Secretary,
Department of Higher Education,
Fort St.George, Chennai 600 009.

2.The Commissioner/Director of Technical
Education,
Directorate of Technical Education,
Guindy, Chennai 600 025.

+1cc to M/s.P.Godson Swaminath, Advocate Sr.25231
+1cc to the Government Pleader Sr.25704

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and
WMP.Nos.40133 & 40135/2018

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