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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.19918 of 2019

Dharamamurthi Rao Bahadur Calavala Cunnan Chetty's  
Hindu College, Pattabiram,  
Chennai - 600 072.  
Represented by its Honorary Secretary,  
Mr.M.Venkateasaperumal

...Petitioner

Vs.

1. State Of Tamil Nadu,  
Represented by its Principal Secretary.  
Higher Education Department,  
Fort St.George,  
Chennai - 600 009.
2. The Director of Collegiate Education,  
DPI Campus, College Road,  
Chennai - 600 006.
3. The Joint Director of Collegiate Education,  
Chennai Region, Saidapet,  
Chennai - 600 015.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order issued by the 1<sup>st</sup> Respondent State Government in GO(MS) No.89 dated 27.05.2019 Higher Education Department and quash the same in so far as it relates to the status of the petitioner college as the minority education institution to a limited period of five years from 2018-19 to 2022-23.

For Petitioner : Mr.RS.Jeevarathinam  
for Basu.K.Balaiyanantham

For Respondents : Mr.D.Ravichander  
Special Government Pleader.



## O R D E R

Read this order in conjunction with earlier order dated 25.03.2022 that reads as follows:

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"The issue raised in this writ petition is as to the continuance of Minority Status granted to the Dharmamurthi Rao Behadur Calavala Cunnan Chetty's Hindu College, Pattabiram, vide G.O.(Ms).No.89 of Higher Education Department, dated 27.05.2019. The Authority has granted recognition of minority status only for a period of five years, and the Institution challenges it on the ground that the Authority ought not to have restricted the minority status for the limited period.

2. Prima facie, this issue appears to be covered by a decision of the First Bench of this Court, in Writ Appeal SR.No.7173 of 2019 dated 13.08.2020, in the case of State of Tamil Nadu Vs Syed Ammal Engineering College. Paragraph Nos. 21 and 22 of the said decision is extracted hereunder:-

'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, <http://www.judis.nic.in> CMP.No.5028 of 2020 and WA.No.SR 7173 of 2019 the state is not denuded by the power of withdrawing any such recognition if any violation is established upon a due consideration of



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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 <http://www.judis.nic.in> CMP.No.5028 of 2020 and WA.No.SR 7173 of 2019 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."

3. Learned counsel appearing for the petitioner also refers to the judgment of Hon'ble Supreme Court, in the case of N.Ammad Vs. Manager, Emjay High School and Others, reported in (1998) 6 SCC 674 and paragraphs 12,13,15 to 17 are extracted hereinbelow.

'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:

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'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 <http://www.judis.nie.in> CMP.No.5028 of 2020 and WA.No.SR 7173 of 2019 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. ''

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5. At request of Mr.D.Ravichander, learned Special Government Pleader, list on 05.04.2022."

2. This matter was adjourned to enable Mr.D.Ravichander to peruse the decisions as aforesaid. Today, he fairly states that upon perusal thereof, the same are applicable on all fours to the petitioner's case.

3. This writ petition is thus allowed and GO(MS) 89 dated 27.05.2019, Higher Education Department stands quashed, qua condition of five years stated therein, in regard to the minority status of the petitioner. No costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nst/sl

To

1. The Principal Secretary,  
Higher Education Department,  
Fort St.George, Chennai - 600 009.
2. The Director of Collegiate Education,  
DPI Campus, College Road,  
Chennai - 600 006.
3. The Joint Director of Collegiate Education,  
Chennai Region, Saidapet,  
Chennai - 600 015.

+1cc to M/s.Madhuri Donti Reddy, Advocate, S.R.No.23047  
+1cc to the Government Pleader, S.R.No.24107

W.P.No.19918 of 2019

SJ[co]  
NSK 20/04/2022