

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2022

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.10322 of 2012

and

M.P.(MD)No.2 of 2012

C.S.I.College of Dental Sciences and Research,
represented by its Principal,
129, East Veli Street,
Madurai-625 001.

... Petitioner

Vs.

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Chennai.

2.The Additional Director Medical
Education/Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.

3.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned G.O.(D).No.763, Health and Family

Welfare (MCA 2) Department, dated 27.06.2008, passed by the 1st respondent in so far as restricting the minority status of the petitioner institution for a limited period of 5 years read with impugned order, dated 21.07.2012, in Ref.No.563/SCS(1)/2/2012, passed by the 2nd respondent and to quash the same.

(Prayer amended, vide Court order, dated 06.07.2022, in W.M.P. (MD)No.10331 of 2022 in W.P.(MD)No.10322 of 2012)

For Petitioners : Mr.S.Anwar Sameem
For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The present writ petition has been filed challenging an order passed by the 1st respondent herein under which minority status of the College run by the petitioner was restricted to a period of 5 years from the academic year 2007-2008.

2.According to the petitioner, the C.S.I. Diocese of Madurai-Ramnad had started Dental College at Madurai and the Government of Tamil Nadu after careful consideration of the proposal has issued an Essentiality Certificate for the establishment of the Dental College by an order, dated 26.09.2006. The Registrar of Tamil Nadu Doctor M.G.R.

Medical University has also issued a consent for starting the above said Dental College. The Government of India, Ministry of Health and Family Welfare, New Delhi, has also granted permission under section 10 (A) of the Dentist Act, 1948. After fulfillment of the formalities, the College got commenced from the academic year 2007-2008. According to the petitioner, since the college was established by the C.S.I. Diocese of Madurai-Ramnad, the petitioners have approached the 1st respondent herein for conferment of minority status. By the impugned proceedings, dated 27.06.2008, the 1st respondent herein has passed an order confirming minority status upon the petitioner association. But it has restricted the said status for a period of 5 years from the academic year 2007-2008. The said portion of the order which restricts the period of minority status to 5 years is under challenge in the present writ petition.

3. According to the learned Counsel appearing for the petitioner, the institution has been established and administered not by any individual or any Society. On the other hand, the said Dental College has been established by none other than the C.S.I. Diocese of Madurai-

Ramnad. Hence, there cannot be any doubt that it is a minority institution. However, the Government has chosen to restrict the status to a period of 5 years on the ground that they will have to periodically check the minority status of the petitioner institution.

4.The learned Counsel appearing for the petitioner relied upon the judgment of this Court reported in **2009 (6) CTC 579**, wherein a learned Single Judge of this Court has held that there cannot be any time restriction with regard to the minority status conferred upon an institution. However, it is always open to the Government to reverse the minority status as and when there is any change in the educational agency or on any complaint from the concerned parties. The said judgment has been followed by a learned Single Judge in W.P.No.9570 of 2021, dated 15.09.2021, in ***Rabiammal Ahamed Miadeen College for Women Vs. The Government of Tamil Nadu and another.*** This Court again in W.P.No.19918 of 2019, dated 05.04.2022, in ***Dharamamurthi Rao Bahadur Calavala Cunnan Chetty's Hindu College Vs. State of Tamil Nadu and others,*** this Court has followed the judgment in **2009**

(6) CTC 579. In both of these judgments, this Court has arrived at a finding that a minority status of an institution cannot be restricted for 5 years.

5.The learned Counsel appearing for the petitioner also brought to the notice of this Court a judgment of Division Bench reported in ***State of Tamil Nadu Vs. Syed Ammal Engineering College***, reported in, **2020 SCC OnLine Mad 13411**, wherein it is held as follows:

“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 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.

...

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 or conversly 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 loose 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..”

The said Division Bench judgment has been followed by another Division Bench in W.A.No.899 of 2021, dated 06.07.2022, in ***Government of Tamil Vs.The Church of South India.***

6.In view of the above said Division Bench judgments and the judgments of this Court by learned Single Judges, this Court is of the view that once a minority status is conferred upon an institution, it is forever and the State Government can interfere in the said status only when the status undergoes a transformation. The State Government can also interfere in cases where the minority status gets transformed in such a way so as to loose its basic character, minority or otherwise. Hence, in view of the above said Division Bench judgment, the order impugned in the writ petition is not sustainable in the eye of law.

7.The learned Additional Government Pleader relied upon the counter affidavit that the restriction in the period relating to the minority status is required in order to have a periodical check over the status cannot be countenanced in view of the fact that the said issue has already been considered by this Court in the Division Bench judgment reported in **2020 6 MLJ 357**.

8.In view of the said judgments, the order impugned in the writ petition is set aside in so far as it restricts the period of the minority status to 5 years is concerned. In other respects conferring the minority status upon the writ petitioner, the impugned order is sustained.

9.With the above said observation, the writ petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2022

Index : Yes / No
Internet : Yes / No

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To

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
Chennai.
- 2.The Additional Director Medical
Education/Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 3.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.

W.P.(MD).No.10322 of 2012

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R.VIJAYAKUMAR ,J.

Tmg

Order made in
W.P.(MD).No.10322 of 2012

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