



W.A.No.3309 of 2019 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

W.A.No.3309 of 2019 and W.P.Nos.2019, 2022, 2024, 2025, 2027, 2072, 2077, 2080, 2143, 2134 and 2146 of 2020

W.A.No.3309 of 2019

1.The Government of Tamil Nadu,
Represented by the Principal Secretary,
Department of School Education,
For St.George,
Chennai- 600009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai- 600 006.

3.The Director of Elementary Education,
DPI Campus, College Road,
Chennai- 600 006.

4.The Joint Director (Higher Secondary)
DPI Campus, College Road,
Chennai - 600 006.

... Appellants

versus



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The Institute of the Franciscan
Missionaries of Mary
represented by its President
St.Thomas Convent
Mylapore
Chennai - 600004

... Respondent

For Appellants : Mr.U.M.Ravichandran
Special Government Pleader

For Respondent : Dr.Francis Xavier Arulra
Senior Counsel
for Ms.Arul Mary

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 30.01.2019 in W.P. No.23789 of 2018.

W.P.No.2019 of 2020

Tamil Nadu & Pondichery Fransalian Society
Represented by its Secretary,
M.S.F.S. Provincialate,
Kunnathur Post,
Pudukottai District-621 316.

...Petitioner

versus

1.The Government of Tamil Nadu,
Represented by the Principal Secretary,
Department of School Education,
For St.George,
Chennai- 600009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai- 600 006.



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3.The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai-600 006.

...Respondents

For Petitioner	: Dr.Francis Xavier Arulra Senior Counsel for Ms.Arul Mary (in all WPs)
For Respondents	: Mr.U.M.Ravichandran Special Government Pleader (in all WPs)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records, pertaining to the impugned G.O.(Ms.) No.65, School Education (MS) Department, dated 05.04.2018, on the file of the first respondent, in respect of the member educational institutions of the petitioner society as mentioned in the Annexure in the above writ petition, and quash the same.

COMMON JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The Department has preferred the present appeal before this Court challenging the order passed by the writ court dated 30.01.2019 in WP.No.23789 of 2018 in a batch of cases.



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2. The appellant has issued impugned G.O.(Ms)No.65, School Education (MS) Department, dated 05.04.2018 and in the said Government Order, additional guidelines have been framed by the Government for admission of students in the minority institutions for every academic year. As per the guidelines, the educational agency of all educational institutions, coming under the purview of the School Education Department including Teacher Training Institute, claiming minority status, shall admit not less than 50% of the students belonging to the minority community in every academic year and in case of aided institutions, the educational institutions coming under the purview of the School Education Department including the Teacher Training Institute claiming minority status shall admit not more than 75 % of the students belonging to the minority community in every academic year. This clause in the aforesaid Government Order has been challenged in the batch of writ petitions filed before this Court.

3. The Writ Court has considered various decisions of the Hon'ble Supreme Court and also considered the decision rendered by the Hon'ble Supreme Court in the case of ***Pramati Educational and Cultural Trust and Others vs Union of India and others reported***



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in (2014) 4 MLJ 486 and held that the aforesaid instructions of the Department were in violation of Article 30(1) of the Constitution of India. The learned Single Judge has further held that interference by the Government in any manner regarding the admission of students in minority educational institutions, both aided and unaided, is unjustified, unlawful and unconstitutional.

4. The Government has filed a counter-affidavit in the aforesaid writ petitions and in paragraph 9 of the counter-affidavit, the appellant/respondent has clearly stated as follows:

9. Moreover, the percentage of 50 % is not rigid as averred by the petitioner. It is submitted that in case of non-availability of minority students, the minority status shall not be withdrawn on the grounds of non-achievement of 50 % target for new admissions. It is only when admission to a minority student is denied within 50% limit, action may be initiated against the institute for withdrawal of minority status on grounds of not promoting the interests of minority students."

5. The Writ Court, by order, dated 30.01.2019 allowed the writ petitions with the following observation, as extracted hereunder:



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23. For all the foregoing reasons, in the light of the ratio laid down by the Apex Court in *Pramati Educational and Cultural Trust, Asoka Kumar Thakur* and in *Sisters of St. Joseph of Cluny* cases, the impugned G.O.(Ms.) No.65, School Education (MS) Department dated 05.04.2018 is set aside, recording the undertaking given by the petitioners institutions that all the minority educational institutions shall not deny admission to the eligible candidates of the minority community, subject to the eligibility of the students and availability of accommodation in the schools. However, it is made clear that if any complaint is given that a minority candidate of any sex is denied admission by a minority educational institution of seats, it is open to the respondents to ventilate the grievance before the National Commission for Minority Educational Institutions under Section 11(f) of the National Commission for Minority Educational Institutions Act, 2004. With this observations, all the writ petitions are allowed. Consequently, all the connected writ miscellaneous petitions are closed. There will be no order as to costs."

6. Challenging the aforesaid order, the appellant Department has filed the present intra court appeal before this Court.

7. For the sake of convenience hereinafter the appellants will be referred as Department and the respondent as the institution.



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8. Learned Government Pleader appearing for the appellant Department has submitted before this Court that the allegation made in the affidavit of the respondent institution has been fairly meted out in the counter-affidavit by the Department. He also submits that in case if any institution denies admission to a minority student within 50% of the seats earmarked for them, then action may be taken against such institution for withdrawal of minority status on the ground of not promoting the interests of minority students under the provisions of law. The learned Government Pleader further submits that when the counter-affidavit has clarified all the allegations in the affidavit, even having taken note of the clarifications made in the counter-affidavit, the order of the learned Single Judge to set aside the Government Order in G.O.(Ms.) No.65, School Education (MS) Department, dated 05.04.2018, is unjustified and unsustainable and therefore prays for setting aside of the order of the writ court.

9. We have carefully perused the materials on record and the order passed by the learned Single Judge.



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10. The Department has filed counter-affidavit, wherein it has been categorically stated that the averments of the institution are not correct as action will be taken only when the concerned institution denies admission to the minority students within the 50 % of the seats allotted to the minor students. According to the learned Government Pleader, in view of the clarification made in the counter-affidavit filed by the Department, quashing of the aforesaid impugned Government Order as a whole is unnecessary and unwarranted.

11. Further learned counsel for the respondent has brought to the notice of this Court G.O.(Ms).No.109, Backward Classes, Most Backward Classes and Minorities Welfare (MW1) Department dated 29.12.2022, wherein the Government has ordered to constitute Empowered Committee for conferment of Minority status to Educational Institutions by Directorate of Minorities Welfare. It has been further stated in the said Government Order that *"in the case of self-financing Educational Institutions imparting professional courses of education established and administered by any minority they shall admit students of that minority alone, not exceeding 50 % of the*



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sanctioned strength. If there is any vacancy not filled as above, such vacancy in that 50 % shall be filled up only on the basis of merit and from common merit list prepared by the competent authority".

12. The learned Special Government Pleader would submit that G.O.Ms.No.109 dated 29.12.2022 relied upon by the respondent is not the subject matter of the instant writ petitions and writ appeal and therefore, it need not be gone into to decide the issue on hand. Now coming back to the present case on hand, the Writ Court while allowing the writ petitions has reiterated the stand taken by the appellant and issued directions in the writ petitions. Therefore, the said directions may not be required to be interfered with in view of the categorical submission made in the counter-affidavit. The learned counsel for the respondent also has not controverted the said submission of the appellant.

13. Therefore, in view of the above submissions and recording the statement of the Department in paragraph 9 of the counter-affidavit, this Court is of the considered opinion that there is no necessity for quashing the impugned Government Order in



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G.O.(Ms)No.65, School Education (MS) Department, dated 05.04.2018.

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14. Accordingly, the Writ Appeal No.3309 of 2019 is partly allowed only to the extent of setting aside the order dated 30.01.2019 in W.P.No.23789 of 2018 batch in quashing the Government Order in G.O.(Ms) No.65, School Education (MS) Department, dated 05.04.2018, in other respects all the other directions issued by the Writ Court stand valid. Connected CMP.No.21246 of 2019 is closed.

15. In view of the above decision taken by this Court, the writ petition Nos.W.P.Nos.2019, 2022, 2024, 2025, 2027, 2072, 2077, 2080, 2143, 2134 and 2146 of 2020, are disposed of on the above terms. There will be no order as to costs. Consequently, W.M.P.Nos.2352, 2354, 2359, 2361, 2362, 2365, 2416, 2420, 2427, 2494, 2198, 2364, 2414, 2418, 2426, 2490, 2497, 2500 and 2501 of 2020 are closed.

[D.K.K., J.] [P.B.B., J.]
27.07.2023

Index : Yes/No
Neutral Citation : Yes/No
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D.KRISHNAKUMAR, J.
and
P.B. BALAJI, J.

(mrn)

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