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W.P.No.18341 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.18341 of 2022
and
W.M.P.Nos.9204 of 2023 & 17683 of 2022

Scudder College of Nursing,
Rep. by its Medical Superintendent and
Convenor of Diocesan Medical Board,
Scudder Memorail Hospital,
Ranipet, Vellore-632 401.

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by Principal Secretary to Government,
Department of Health and Family Welfare Secretariat ,
Fort St. George, Chennai-600 009.
2. The Director,
The Directorate of Medical Education,
Chennai-600 010.
3. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
Guindy, Chennai-600 032.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned G.O(D).No.884 dated 17.05.2018, Health and Family Welfare (PME-2) Department, on the file of the 1st respondent and quash the same,



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insofar as it restricts the period to five years from 2018-2019 to 2022-2023, directing the 1st respondent to confer minority status without restricting the period, in respect of the petitioner college as per the ratio laid down in *Syed Ammal Engineering College case: (2020) 6 MLJ 351*.

For Petitioner : Mr.Xavier Arulraj, SC
for M/s. Father Xavier Associates

For Respondents : Mr.M.Alagu Goutham, GA, for R1 & R2
: Mr.R.Imayavarmban
for M/s. Ramlingam & Associates

ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent in G.O(D).No.884 dated 17.05.2018, Health and Family Welfare (PME-2) Department, insofar as it restricts the period to five years from 2018-2019 to 2022-2023, and to consequently direct the 1st respondent to confer minority status without restricting the period, in respect of the petitioner college as per the ratio laid down in *Syed Ammal Engineering College case: (2020) 6 MLJ 351*.

2. The case of the petitioner is that the petitioner college was established by the Church of South India-Diocese of Vellore, to serve the poor and marginalized with a special focus on Christian Minorities. All the



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institutions are established and administered by the Church of South India, which is a Christian denomination and the minority character of the said educational agency was declared by this Court, vide orders dated 24.09.1976 and 10.10.2012 made in W.P.No.4478 of 1974. The petitioner college conducts a Diploma in General Nursing and Midwifery and Post Basic Diploma in Orthopedics and Rehabilitation Nursing. While so, pursuant to the permission granted by the Tamil Nadu Health and Family Welfare Department to apply to the Indian Nursing Council to start B.Sc(N) Course, vide G.O.Ms.No.443, dated 30.11.2017, Health and Family (PME) Department, the petitioner college applied for the same. The petitioner college made an application before the 2nd respondent for the conferment of minority status, vide letter dated 28.12.2017 and though the petitioner college has satisfied the parameters for the conferment of minority status as stipulated in the G.O.Ms.No.270, Higher Education (J1) Department, dated 17.06.1998, the 1st respondent, vide G.O(D).No.884 dated 17.05.2018, Health and Family Welfare (PME-2) Department, conferred the Minority status of the petitioner college, however, restricted the same only for a period of five years i.e., from 2018-2019 to 2022-2023 with certain conditions. Hence, challenging the above said Government order dated



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17.05.2018, in respect of restricting the minority status for a period of five years, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, the issues which arise in this Writ petition is no longer *res integra* and the same was answered by the Hon'ble Division Bench of this Court in the case of ***State of Tamil Nadu Vs. Syed Ammal Engineering College*** reported in (2020) 6 ***MLJ*** 357, which is subsequently followed by a Co-ordinate Bench in W.A.No.899 of 2021, wherein, this Court held that, once an educational institution satisfies that it attains minority status, such a minority status certificate issued cannot be subjected to five years or ten years restriction period, however, if the authorities 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. Hence, he submitted that, it would suffice, if this Court issues direction to the respondents to grant permanent Minority status without restricting the period.



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4. Learned counsel appearing for the 1st respondent submitted that, for the purpose of maintaining the Minority status, the present impugned order has been passed by fixing the limitation for five years. However, the same will be subsequently extended, upon satisfaction of the conditions relating to grant of minority status.

5. Heard learned counsel on either side and perused the materials available on record.

6. Admittedly, the petitioner college made application for conferment of its minority status and upon satisfaction of the conditions imposed in G.O.Ms.No.270, Higher Education (J1) Department, dated 17.06.1998, the 1st respondent, vide G.O(D).No.884 dated 17.05.2018, Health and Family Welfare (PME-2) Department, conferred the Minority status of the petitioner college, however, only for a period of five years.

7. However, as rightly relied upon by the learned counsel for the petitioner, the very same issue was already decided by the Hon'ble Division Bench of this Court in the case of *State of Tamil Nadu Vs. Syed Ammal*



Engineering College reported in (2020) 6 MLJ 357. For better appreciation,

the relevant portion is 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, reported in MANU/TN/1877/2020.

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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



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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 circumstance

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23. 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. 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 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 Sabbai v. State of Gujarat [AIR 1963 SC 540 : 1962 Ker LT 135] and also by a nineJudge 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.”

24.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.

25. The State Government can exercise a reasonable control in the grant of certification or otherwise when the



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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.

26. 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.

27. Having considered the submissions raised and in view of what has been noted herein above, 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.”



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Further, the above said decision was subsequently followed by a Co-

ordinate Bench of this Court in the case of ***The Government of Tamil Nadu***

Vs. The Church of South India in W.A.No.899 of 2021 dated 06.07.2022.

“4. When the Division Bench in Thirumuruga Kirupanandavariyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem v. State of Tamil Nadu, 2001 (3) MLJ 433 has already held that the minority status once granted need not be renewed periodically like a driving licence and once the Government, after satisfaction, granted declaration, the same would hold permanently, in the case on hand, when the respondent/writ petitioner is running several institutions under one educational agency as religious and linguistic minority association, neither the appellants can single out any institution for the grant of permanent minority status nor can restrict the period of minority status, in the light of the settled legal position. Recently, in the case of State of Tamil Nadu represented by its Principal Secretary, Department of Higher Education v. Syed Ammal Engineering College represented by its Administrative Officer, (2020) 6 MLJ 357, while considering a similar issue, namely, can the status of recognition be limited by prescribing a tenure of five years to the validity of the certificate, answering the same in the negative, the Division Bench, in paragraph-24, has held as follows:-

“24. 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



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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.”

5. In our considered opinion, once an educational institution satisfies that it attains minority status, such a minority status certificate issued cannot be subjected to five years or ten years restriction period. Yet another Division Bench of this Court in its order dated 11.09.2017 passed in W.A.No.1130 of 2013 (The State of Tamil Nadu represented by its Secretary, Department of Higher Education and another v. The Secretary/Correspondent, Loyola College (Autonomous), Chennai and another) has held that the minority status given to the institution will hold good without any restriction period. However, if the authorities 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. 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 merits in the appeal filed by the State.”

8. In view of the above decisions, the impugned Government order



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dated 17.05.2018 issued by the 1st respondent is set aside and the 1st respondent is directed to issue a fresh government Order in favour of the petitioner college in terms of the decision of the Hon'ble Division Bench of this Court in the case of *State of Tamil Nadu Vs. Syed Ammal Engineering College* reported in (2020) 6 MLJ 357 within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that the Minority Status of the petitioner college has to be maintained without any restriction in terms with the aforesaid order of the Division Bench.

9. Accordingly, this Writ Petition stands disposed of with the aforesaid directions. No costs. Consequently, connected Miscellaneous petitions are closed.

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(1/2)

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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No



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skt

To

1. The District Collector cum Appellate Authority,
Under the Maintenance & Welfare of Parents and Senior Citizens Act
Chengalpattu District, Chengalpattu.
2. The District Revenue Officer cum Originally Authority,
Under the Maintenance and Welfare of Parents & Senior Citizens Act,
Chengalpattu District, Chengalpattu.

W.P.No.18341 of 2022

and

W.M.P.Nos.9204 of 2023 & 17683 of 2022

(1/2)

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W.M.P.No.17681 of 2022

in

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M.DHANDAPANI., J.

Dispense with ordered for the
present.

29.03.2023

(2/2)

skt