



W.P.Nos.29293, 29030, 29041, 29048, 29070, 29075, 29081, 30255 & 31166 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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

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31166 of 2018

and

WMP.Nos.33950, 33965, 33979, 33996, 34004, 34008, 34239, 35312 &
36370 of 2018

W.P.No.29293 of 2018:

The Principal,
Nirmala College for Women (Autonomous),
Red Fields, Coimbatore,
Coimbatore District - 641 018.

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Coimbatore Region,
Race Course Road, Coimbatore - 641 018.
4. State Minority Commission,
Rep. by its Member Secretary,
No.735, Anna Salai, L.L.A. Building,
Chennai - 600 002.

...Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned proceedings issued by the 4th respondent State Minorities Commission in R.C.No.A1/408/2018 dated 16.10.2018, quash the same.

For Petitioner : Mr.Godson Swaminath
for M/s.Isaac Chambers
(in W.P.Nos.29293, 29030, 29041, 29048, 29070,
29075 & 29081 of 2018)

: Dr.Fr.A.Xavier Arul Raj, Senior Counsel
for M/s.Father Xavier Associates
(in W.P.Nos.30255 & 31166 of 2018)

For Respondents : Mr.U.Baranidharan, AGP, for R1 & R3
: Mr.J.Ravindran, AAG,
Assisted by Mr.S.Ravikumar, Spl.GP, for R4
(in all W.P's.)

COMMON ORDER

Since the issue involved in all these Writ petitions are similar in nature, they are disposed of by way of this common order.

2. The case of the petitioners is that they are the Minority Institutions formed under Article 30 (1) of the Constitution of India which have been recognized vide various orders passed by this Court. It is the further case of



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the impugned notice, details are called for from the minority educational institutions with regard to the filling up of the seats. It is the case of the petitioners that the 4th respondent has no power to issue the aforesaid notice and, therefore, challenging the said notice, these Writ petitions have been filed.

4. Learned counsel for the petitioners submitted that, in respect of the reservation of seats in the minority colleges, the same has already been decided by this Court in the case of ***Federation of the Catholic Faithful Vs. Government of Tamil Nadu*** reported in **2014 (4) CTC 432**. For better appreciation, the relevant portion is extracted hereunder:-

“17. As per Section 4 of Tamil Nadu Act 45 of 1994, reservation of seats in educational institutions is provided and it included any College or other educational institution maintained by the State or receiving aid out of State funds or affiliated to any University established by law including a constituent College. After 93rd amendment which came into being with effect from 21.01.2006, Tamil Nadu Act 12 of 2006 came to be passed. As per Section 2(d), private educational institution is defined and it excludes Minority Educational Institutions referred to in Article 30(1) of the Constitution of India. Section 3 speaks about reservation of seats in private educational institutions. By virtue of Article 15(5) of the Constitution of India r/w. Section 2(d) of the Tamil Nadu Act 12 of 2006, the reservation of seats for Backward Classes,



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Scheduled Castes or Scheduled Tribes for admission to private educational institutions cannot be made applicable to the Minority Educational institutions referred to in Article 30(1) of the Constitution of India.

18. The impugned Government Order in G.O.(ID).No.127, Higher Education (G1) Department dated 23.05.2012 is in the form of guidelines for admission to students to UG/PG courses in Government/Aided/Unaided Arts and Science Colleges for the academic year 2012-13 and the said guidelines cannot override the mother of all laws, namely, Constitution of India, more particularly Article 15(5) of the Constitution of India and the Statute, namely, the Tamil Nadu Act 12 of 2006.

19. On facts of the case, the Loyola College in its counter affidavit in M.P.No.2/2012 in W.P.No.14734/2012 took a specific stand that insofar as Aided Courses are concerned, it has provided 50% of seats in admission by following rule of reservation viz., 18% Scheduled Caste, 1% Scheduled Tribe, 31% OBC, 10% Christians and 40% Non-Christians and remaining 50% seats are filled up with 40% Christian candidates and 10% Non-Christian candidates, who are selected based on their academic merit plus other factors viz., First Generation Learners, Dalit Christians, Orphans, Dalit of other communities, Widow's children, Economically Poor, Neighbourhood children and Sportsmen. The above said course adopted by the Loyola College is also in compliance of T.M.A. Pai case (cited supra). It is also the stand of the petitioner in W.P.No.16791/2012 that while releasing the final results, all details will be provided and it has also been indicated that for further details the college website www.loyolacollege.edu is to be visited."



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5. Learned counsel further submits that the issue with regard to the filling up of seats vis-a-vis the orders of the Government with regard to grant, has been decided by this Court, which has upheld that all the laws and guidelines cannot override the Constitutional Mandate under Article 15 (5). Such being the case, the 4th respondent having no jurisdiction to issue the notice, issuing the present impugned notice is wholly perverse and illegal.

6. Per contra learned Additional Advocate General appearing for the 4th respondent, basing his arguments on the counter submitted that, the 4th respondent has merely directed the petitioners to appear with the admission records which is in line with Proviso to Rule 8 (1) of Chapter III of Tamil Nadu State Minorities Commission Act and Section 9 of the Central Minorities Commissions Act. It is the further submission of the learned Additional Advocate General that the National Commission has been vested with the powers to cancel the minority status, on verification of the records, if it is found that the minority educational institutions have failed to admit students belonging to the minority community as per rules. Therefore, the order calling upon the petitioners to produce the records relating to the admission of students cannot be said to be without jurisdiction.



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

8. Before advertng to the issue as to whether the 4th respondent is vested with jurisdiction, it is necessary to have a clear picture of the various provisions of law relating to the power, functions and jurisdiction of the 4th respondent. For better understanding, Section 8 of the Tamil Nadu State Minorities Commission Act, 2010 is extracted hereunder:-

“Functions of the Commission.

8. (1) Subject to the performance of the functions of the National Commission for Minorities under section 9 of the National Commission for Minorities Act, 1992, the functions of the Commission shall be as follows:-

(a) to examine the working of various safeguards provided in the Constitution and in the laws made by the State Legislature for the protection of minorities;

(b) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards;

(c) to monitor the working of the safeguards provided in the Constitution, laws enacted by the State Legislature and policies and schemes of the Government for minorities;

(d) to conduct studies, research and analysis on the questions of avoidance of discriminations against minorities;



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(e) to make a factual assessment of the representation on minorities in the services of the Government undertakings, Government and quasi-Government bodies and in case the representation is inadequate, to suggest ways and means to achieve the desired level;

(f) to make recommendations for ensuring, maintaining and promoting communal harmony in the State;

(g) to make periodical reports at prescribed intervals to the Government;

(h) to study any other matter which in the opinion of the Commission is important from the point of view of the welfare and development of minorities and to make appropriate recommendation;

(i) to consider the grievances of the minorities and to suggest appropriate solution, from time to time;

(j) to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matter with the appropriate authorities, and

(k) any other matter which may be referred to it by the Government.

(2) The Commission shall, while performing any of these functions, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;



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*(e) Issuing commissions for the examination of witnesses and documents; and
(f) any other matter which may be prescribed.*

(3) The Government shall cause the recommendations of the Commission to be laid before the Legislative Assembly along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of any of such recommendations.”

9. Admittedly, the petitioners are Minority institutions recognised by the State Government and the admission matters are governed by the regulation issued by the respective universities and after completion of admission, the respective colleges have to forward the admission status to the university for further action.

10. In the above backdrop, a perusal of the impugned order reveals that, the minority commission has called for details with regard to admission of students, who are the beneficiary of the the minority community, for the purpose of verification as to the fulfillment of guidelines being followed by minority institutions as per the Government orders. However, it is to be pointed out that the functions of the 4th respondent is governed by Section



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8(1) of the Tamil Nadu Minorities Commission Act, 2010, which have been extracted supra.

11. A careful perusal of the aforesaid provision reveals that none of the provisions confer power on the 4th respondent to issue notice calling upon the petitioners to furnish details. In fact, Section 8 (1) of the Act provides the Commission to make recommendations for effective implementation and enforcement of the safeguards provided to minorities by making factual assessment. In fact the functions relate to the safeguards provided and the representation of the minorities in various Government undertakings and quasi-Government bodies, etc.

12. Further, the Commission is empowered to give suggestions and also see to it that the rights of the minorities are not deprived. However, in the case on hand, the institutions are minority institutions, which are run for the welfare of minorities. It is open to the Commission to make periodical reports to the Government, which would be for the effective implementation of the safeguards provided for minorities. However, there is no power



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vested in the Commission to issue any notice calling for any particulars from the institutions. No provision in the Act provides for issuance of notice by the Commission. It is to be pointed out here that the Commission is vested with power to oversee the manner in which the seats in the minority institutions are filled so as to ensure effective implementation of the safeguards in respect of the minorities. But it is not within the domain of the Commission to issue any notice and what is not provided under the Act cannot be usurped by the Commission in a different form.

13. From the above it is evident that none of the provisions confer the power on the 4th respondent to issue show cause notice calling upon the petitioners to furnish the aforesaid details. In the absence of any provision, which clothes power on the 4th respondent to issue a show cause notice, calling upon the petitioners to provide the details, vide the impugned letter, couched in the manner of show cause notice, is beyond the jurisdiction of the 4th respondent and, therefore, the said impugned communication definitely warrants interference.



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14. For the reasons aforesaid, the impugned proceedings of the 4th respondent dated 16.10.2018 is set aside. Accordingly, these Writ petitions stand allowed with the above observations. 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

To

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Rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Joint Director of Collegiate Education,
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in

W.P.Nos.30255 & 31166 of 2018

M.DHANDAPANI., J.

Dispense with ordered.

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