



W.P.(MD)No.16841 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.16841 of 2020

and

W.M.P.(MD)No.14067 of 2020

Servite College of Nursing,
Represented by its Secretary,
Manikandam Post,
Edamalaipatty Pudur Via,
Trichirappalli - 620 012.

... Petitioner

-VS-

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of Health and Family Welfare,
Fort. St. George, Chennai - 600 009.

2.The Director of Medical Education,
162, Periyar EVR High Road, Kilpauk,
Chennai - 600 010.

3.The Registrar,
The Tamil Nadu Dr.MGR Medical University,
69, Anna Salai, Guindy, Chennai - 600 032.

4.National Commission For Minority Educational Institutions,
Represented by its Secretary,
Gate No.4, First Floor, Jeevan Tara Building,
5, Sansad Marg, Patel Chowk, New Delhi – 110 001.

... Respondents



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PRAYER: Writ 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 communication, dated 31.10.2020, in R.C.No.Affln.VI (2)/62309/2016, on the file of the third respondent, insofar as directing the petitioner College to submit the status of minority issued by the Health and Family Welfare Department, Chennai - 600 009, quash the same, directing the respondents to accept the certificate of minority status of the petitioner College, dated 14.07.2017, in Case No.1009 of 2016, issued by the National Commission for Minority Educational Institutions.

For Petitioner	:	Fr.V.John Kennedy for M/s.Father Xavier Associates
For R1 and R2	:	Mr.P.Thambidurai Government Advocate
For R3	:	Mr.A.S.Vaigunth Standing Counsel
For R4	:	Mr.V.Malaiyendran Central Government Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned communication, dated 31.10.2020, issued by the third respondent, insofar as directing the petitioner College to submit the minority status issued by the Health and Family Welfare Department, Chennai, and to direct the



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respondents to accept the Certificate of Minority Status given to the petitioner College, dated 14.07.2017, by the National Commission for Minority Educational Institutions.

2. Heard the learned counsel appearing on behalf of the petitioner, the learned Government Advocate appearing on behalf of the respondents 1 and 2, the learned Standing Counsel appearing on behalf of the third respondent and the learned Central Government Standing Counsel appearing on behalf of the fourth respondent.

3. The learned Standing Counsel appearing on behalf of the third respondent submitted that the recognition has been renewed from time to time till date.

4. The issue that is involved in the present Writ Petition is squarely covered by the judgment of this Court in **W.P.No.1806 of 2013, dated 25.07.2017 [Nirmalamatha Convent Matric Hr. Secondary School vs. The Government of Tamil Nadu and others]**. The relevant portions in the



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judgment are extracted hereunder:-

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"5.The only issue to be decided in this writ petition is whether the State Government has got the power and authority to impose a condition on the petitioner school, which is a minority institution to abide by the provisions of the RTE Act. The Honourable Supreme Court in the judgment reported in 2014 6 SCC Pg.1 held that RTE Act is not applicable to minority institutions. When the Apex Court has already held that RTE Act is not applicable to minority institutions, under Article 141 of the Constitution of India, the said judgment is binding on the State Government. Therefore, the State Government has got no power to impose such a condition contrary to the judgment of the Honourable Apex Court.

6.With regard to the powers of the National Commission for Minority Educational Institutions to grant minority status to educational institutions is concerned, as rightly contended by the learned Assistant Solicitor General, there are two provisions, namely, Section 11(f) of The National Commission for Minority Educational Institutions Act, 2004 and Section 12B(1) of the Amended Act, which are extracted as follows:

"11. Functions of Commission:

...

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare



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its status as such;"

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"12B. Power of the Commission to decide on the minority status of an educational institution - (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission."

A perusal of the above provisions would, undoubtedly, make it clear that under Section 11(f) of the said Act, the Commission has to decide about the minority status of an educational institution as the Original Authority. The powers conferred under Section 12B(1) of the Amended Act is, as that of an Appellate Authority against the order passed by the Central Government or State Government. Therefore, the National Commission for Minority Educational Institutions is clothed with the powers as an Original Authority as well, as an Appellate Authority.

7.Though there are two contra judgments, one by the Division Bench of Allahabad High Court in Special Appeal. No. 552/2015



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dated 26.11.2015, wherein it was held that the Commission has got powers both as an Original Authority and as an Appellate Authority, and another by the Division Bench of Calcutta High Court in FMA No. 3579 of 2013 by order dated 13.07.2016, wherein it was held that Commission has got only Appellate Jurisdiction and not Original Jurisdiction, however, the issue was finally settled by the Honourable Supreme Court in Governing Body of P.A.E.M College and another V. State of Jharkhand and Others in Civil Appeal No. 3070 of 2004 dated 06.12.2012 wherein it was held that the Commission has got powers both as Original and Appellate Authority, namely, Sections 11(f) and 12B of the Act and concurred with the judgment of the Allahabad High Court. Paragraph 6 of the said judgment is extracted as follows:

"6.From the above provisions, it is clear that the Commission has the power to decide all questions relating to the status of any institution as minority educational institution and declare its status as such. Moreover under Section 12B, where an authority established by the Central Government or any State Government has rejected the application for grant of minority status to any educational institution, the aggrieved person may appeal against such order of the authority to the Commission. The provisions contained in Section 11(f) of 2004 Act and Section 12B of the Amendment Act are, thus, wholesome provisions for deciding all questions relating to the status of any institution as



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minority educational institution and for declaration of such status."

8. In view of the above settled position of law, the National Commission for Minority Educational Institutions has got jurisdiction and the petitioner's school having obtained minority status from the said Commission is entitled to recognition without being governed by the provisions of the RTE Act. Therefore, the conditions, which have been prescribed by the authority, while granting recognition/while extending recognition, that the petitioner's school has to abide by the RTE Act, has to be set aside and it is accordingly set aside. Accordingly, the writ petition is allowed. No costs. Connected M.Ps are closed."

5. It is clear from the above that it is only the National Commission for Minority Educational Institutions, which has got the jurisdiction to confer minority status and the petitioner has already obtained this status from the Commission. In view of the same, it is not necessary for the petitioner to obtain such a minority status every time from the State Government also. The same should not be insisted by the third respondent University while granting the renewal of recognition.



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6. This Writ Petition is accordingly allowed with the above directions.

No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No

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To

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Government of Tamil Nadu,
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N.ANAND VENKATESH, J.

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