



W.P.(MD)No.19289 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.19289 of 2021

and

W,M.P.(MD).Nos.16033 & 16034 of 2021

The Secretary,
St.Ignatius College of Educational (Autonomous),
Palayamkottai,
Tirunelveli District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St.George,
Chennai- 600 006.
- 2.The Director of Collegiate Education,
College Road,
Chennai- 600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli,
Tirunelveli District - 627 007.



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4.Manonmaniam Sundaranar University,
Represented by its Registrar, Abishekapatti,
Tirunelveli, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O(MS) No.154, Higher Education (E1) Department, dated 06.08.2021 issued by the 1st respondent State Government quash the same and further direct the 1st respondent State Government to issue orders forthwith recognizing the status of the petitioners college as a Christian Religious Minority Educational Institution.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel
for K.Ragatheesh Kumar

For R-1 to R-3 : Mr.P.Thambidurai,
Government Advocate

For R-4 : Mr.M.Mohamed Rafi
for M/s.Ajmal Associates

ORDER

This Writ Petition has been filed challenging the impugned Government Order in G.O(Ms).No.154, Higher Education (E1) Department, dated 06.08.2021, issued by the first respondent and for a consequential direction to the first respondent to issue orders recognizing the status of the petitioner's College as a Christian Religious Minority Educational Institution.



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2. Heard the learned counsel on either side.

3. The case of the petitioner is that the petitioner College is one among several recognized educational institutions founded and administered by the Congregation of the Missionary Sisters of the Immaculate Heart of Mary (ICM), Tiruchirappalli.

4. According to the petitioner, the College was established in the year 1957 and it is a recognized aided institution which was initially affiliated to the University of Madras and thereafter, re-affiliated to the Madurai Kamaraj University. Thereafter, it came to be affiliated with Tamil Nadu Teachers Education University. In the year 2009, UGC has also granted fresh autonomous status and it is being extended from time to time. The Educational Agency of the College has been declared as a Christian Religious Minority and hence, all the institutions established will automatically become a Minority Institution in terms of Article 30 (1) of the Constitution of India.

5. It is stated that even though the petitioner College must be considered to be the Minority Institution, the Government Authorities were



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insisting for minority status individually in the name of the College. In view of the same, the petitioner made an application on 18.07.2018 to the first respondent for a formal declaration of its minority status. According to the petitioner, the College had satisfied all the conditions enumerated by the State Government under G.O.(Ms).No.270, Higher Education (JI) Department, dated 17.06.1988.

6. The grievance of the petitioner is that the first respondent through the impugned Government Order in G.O(Ms).No.154, Higher Education (E1) Department, dated 06.08.2021, rejected the claim made by the petitioner for conferment of minority status. Aggrieved by the same, the present Writ Petition has been filed before this Court.

7. The only reason that has been stated in the impugned Government Order for rejecting the claim made by the petitioner for minority status is as follows:

“5 .It is observed from the report of the Director of Collegiate Education that the said College had admitted concerned minority students in their College exceeding 50% in its



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B.Ed. courses during the years 2009-10 and 2012-13, in M.Ed Courses during the years 2009-10, 2010-11, and in M.Phil Courses during the years 2009-10, 2011-12 and 2015-16 as detailed below:-

S.No	Year	Course	Sanctioned Strength	Students Admitted	Christian Minority	Percentage %
1	2009-10	B.Ed	150	147	78	52
		M.Ed	40	40	23	57.5
		M.Phil	15	15	9	60
2	2010-11	M.Ed	50	50	36	72
3	2011-12	M.Phil	15	15	11	73.33
4	2012-13	B.Ed	185	185	100	54.06
5	2015-16	M.Phil	15	11	8	53.33

8. The learned Senior Counsel appearing on behalf of the petitioner submitted that the impugned Government Order, on the face of it, is illegal, since the first respondent has not taken into consideration the fact that the students, who were admitted on merits and who also belong to the Minority Community, forms part of the percentage of students, who fall under the Non Minority Category. The learned counsel also brought to the notice of this Court the recent Judgment of the Division Bench of this Court in the case of *The Justice Basheer Ahmed Sayeed College for Women (Autonomous), Represented by its Correspondent Vs. The State*



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of Tamil Nadu, Represented by its Principal Secretary to the Government, Department of Higher Educational, Fort St.George, Chennai-600 009 and others reported in 2023 (5) CTC 529 and specific reliance was placed on the following findings:

“13.1. This leads us to the more contentious issue as to whether the State Government can impose threshold cap of not admitting students of the concerned Minority Community beyond 50%. In the case of St.Stephen's College vs. University of Delhi, the Apex Court held that the State may regulate the intake of admission of students in respect of the Minority Community, but in no case, such intake shall exceed 50% of the annual admission. The balance admission shall be made available to the members of the Communities other than the Minority.

13.2. In the case of T.M.Pai Foundation (supra), the Apex Court observed that the Right to admit students is not to be considered as an abstract and unqualified Right and it also held that the rigid percentage of 50%, with respect to intake of Minority students stipulated in St.Stephen's College case (supra), is not correct.



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It has to be left to the authorities to prescribe a reasonable percentage, having regard to the type of Institution and the educational needs of the Minorities.

13.3. In the case of P.A.Inamdar & Others vs. State of Maharashtra, the Apex Court observed that in Professional Educational Institution or those imparting Higher Education, merit based selection has been taken to be in the interest of the Nation and sub-serving and strengthening National welfare. Selection of meritorious students have been accepted to be of National Interest. A Minority Educational Institution cannot, in the name of Right under Article 30(1) of the Constitution of India, degrade merit or merit based selection of students with regard to Professional and Higher Education.

13.4. In the case of SK.Mohd. Rafique (supra) the Apex Court held that excellence and merit must be the governing criteria both in relation to the intake of students and the appointment of teachers. It is further held that the regulatory measures for ensuring educational standards and maintaining excellence thereof are



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no anathema to the protection conferred by Article 30(1) of the Constitution of India.

13.5. Under the G.O.(MS) No.270 dated 17.06.1998, the threshold cap of 50% was imposed. The State Government Order provided that in the case of self-financing Institutions, imparting Professional courses of Education, established and administered by the Minority, they shall admit students of that Minority alone, not exceeding 50% of the sanctioned strength. The said Government Order is issued exercising its power under Article 162 of the Constitution of India. The policy does not appear to be arbitrary or unreasonable or against the provisions of any Statute, Rules or Regulations in force.

13.6. In view of that, the petitioner, running a Minority Educational Institution has to abide by the said Government Order and admit students from the Minority Community, not exceeding 50%. However, while calculating the 50% of the Minority students, those students who are admitted on merit in the remaining 50%, belonging to the Minority Community, has to be excluded, because they have been admitted on



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their own merit competing with the others and not as students of Minority Community.

13.7. While issuing the impugned Government Order dated 20.11.2021, the Government rejected the extension of Religious (Muslim) Minority status to the petitioner Institution on the sole ground that the petitioner Institution admitted more than 50% of the Muslim Minority students during the Academic Years 2016-17, 2018-19 & 2019-20. The percentage of the Minority students admitted is charted out in the said Government Order. The said chart reads thus:

S.No.	Year	Sanctioned Strength	Total No. of concerned Minority students admitted against the sanctioned strength	Percentage of Minority students admitted against the sanctioned strength
1.	2012-13	2575	1146	45%
2.	2013-14	2577	1216	47%
3.	2014-15	2585	1241	48%
4.	2015-16	2672	1277	48%
5.	2016-17	2672	1468	55%
6.	2017-18	2733	1371	50%
7.	2018-19	2712	1402	52%
8.	2019-20	2756	1424	52%
9.	2020-21	2795	1381	49%



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13.8. *Under the G.O.(MS).No.232 dated 20.11.2021, it has been observed that the Members of the Governing Body of the petitioner College belong to the Muslim Minority, which has been established and continuously administered by the Religious (Muslim) Minority concerned. The Memorandum bylaws of the petitioner's Association stipulates that the Society has to serve the interest of the Muslim Minority Community. However, only on the ground that the 50% of the maximum sanctioned strength has been violated, the State has rejected the request for extension of Religious (Muslim) Minority status to the petitioner Institution.*

13.9. *As discussed above, the Right to cancel the recognition as a Minority Educational Institution vests only with the Commission, established under the Act of 2004. Admitting more students than the sanctioned 50% threshold would not ipso facto permit the cancellation of Minority status of the Educational Institution. More over, it is not clear from the impugned Order as to whether some of the students belonging to the Minorities are admitted on the basis of their own merit, while competing with the 50% students of*



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non-Minorities. The same also has to be taken into consideration.”

9. The learned Senior Counsel also placed reliance upon the Judgment of the learned Single Judge in W.P.(MD).No.5175 of 2014, dated 08.06.2023, wherein, the learned Single Judge has held as follows:

“15. As rightly pointed out by the learned Senior Counsel appearing for the petitioner college, it is understandable that the State fixes minimum percentage of students to be admitted from the religious minority community so as to preserve the minority status. On the other hand, the State Government has fixed the maximum cap on the admission of the minority students which would have an impact upon the minority status of the institution.

16. A perusal of G.O.Ms.No.270 Higher Education (J1) Department dated 17.06.1998 reveals that the State Government Order dated 17.06.1998 is clearly in violation of the judgements of the Hon'ble Supreme Court rendered by the Larger Bench. Therefore, the Government Order cannot be enforced as against



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the minority, unaided professional institutions. The question of challenging the said Government Order will not arise in view of the fact that they are in violation of the judgements of the Hon'ble Supreme Court.

17. The second respondent herein had called for a clarification from the petitioner college on 21.08.2013 relating to the percentage of the minority students admitted in the college during the academic year 2010-11, 2011-12, 2012-13 and 2013-14 and has also called for an explanation for exceeding the limit of 50% for admission of students. The college has addressed a reply to the second respondent on 20.09.2013 pointing out that the catchment area of the eligible candidates is predominantly Christian and naturally, they are compelled to give admission to Christian Minority Students in every year due to public pressure as a reason for exceeding the limit of 50%. Not being satisfied with the said reason, the first respondent had arrived at a finding that the admission of students from the minority community beyond 50% is in violation of the Government Order dated 17.06.1998.



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18. The conferment of minority status upon an educational institution is solely dependent upon the religion of the persons who are the founders and who are in management of the said institution. It cannot depend upon the religion of the students who are admitted in the said institution. If that is permitted, then, every year, there will be fluctuation in the number of students admitted from the minority community which will have an impact upon the minority status of the said institution. Therefore, viewed from any angle, the fixation of the maximum number of students to be admitted from the said minority community as a criteria for conferment of minority status upon an educational institution is not legally sustainable.”

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. It is clear from the Judgment of the Division Bench that a Minority Educational Institution has to abide by the Government Order in G.O.(Ms).No.270, dated 17.06.1988 and admit students from the Minority



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Community, not exceeding 50%. However, it was made clear that while calculating 50% of the minority students, those students who are admitted on merit in the remaining 50% belonging to the Minority Community, have to be excluded, because they have been admitted on their own merit while competing with others and not as students of Minority Community.

12. In the instant case, the first respondent has merely gone by the strength of the students, who were admitted for certain courses during the particular years without accounting for the students, who were admitted on merit and who belonged to the Minority Community and who should have been excluded while calculating the percentage. The first respondent cannot merely go by the numbers and percentage without properly undertaking this exercise. On this ground alone, the impugned Government Order in G.O(Ms).No.154, Higher Education (E1) Department, dated 06.08.2021 is liable to be interfered with.

13. The learned Senior Counsel submitted that by virtue of the Judgment passed by the learned Single Judge in W.P.(MD).No.5175 of 2014 mentioned supra, the very Government Order has now become



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questionable pursuant to the Judgment of the Hon'ble Apex Court in the case of ***T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors*** reported in (2002) 8 SCC 481. The learned Senior Counsel submitted that the State has not undertaken the process of prescribing the reasonable percentage having regard to the type of institution and educational needs of the Minorities. That apart, by virtue of the subsequent Judgments rendered by the Larger Bench of the Hon'ble Apex Court, the Government Order itself becomes unsustainable at this length of time.

14. The issue that has been dealt with by the learned Single Judge by taking into consideration the Judgments of the Hon'ble Apex Court rendered by the Larger Bench, was not placed before the Division Bench and the Division Bench did not have an opportunity to consider the Judgment of the learned Single Judge in W.P.(MD).No.5175 of 2014 dated 08.06.2023. In any case, I am bound by the Judgment of the Division Bench and it is not necessary to go into this issue in this case, since the impugned Government Order is unsustainable even as per the clarity given by the Division Bench in the case of ***The Justice Basheer Ahmed Sayeed College for Women (Autonomous), Represented by its Correspondent***



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15. In the light of the above discussion, the impugned Government Order in G.O(MS) No.154, Higher Education (E1) Department, dated 06.08.2021, is hereby quashed. There shall be a direction to the first respondent to deal with the application submitted by the petitioner seeking for conferment of religious minority status and if the petitioner satisfies the requirements otherwise, shall grant the status within a period of three (3) months from the date of receipt of a copy of this order. The interim protection given by this Court during the pendency of this Writ Petition, shall continue till the fresh Government Order is passed.

16. In the result, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

27.11.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg



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To

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the State of Tamil Nadu,
Department of Higher Education,
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Chennai- 600 006.
2. The Director of Collegiate Education,
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3. The Joint Director of Collegiate Education,
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N.ANAND VENKATESH, J

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