



WEB COPY



W.P.(MD).No.5175 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.11.2022

ORDER PRONOUNCED ON : 08 .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.5175 of 2014
and MP(MD).No.1 of 2014**

The Secretary
Mar Chrysostom College of Education
Malankara Avenue, Kirathoor
Kanyakumari District 629 181

....Petitioner

Vs

1.The State of Tamil Nadu
Represented 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.Tamil Nadu Teachers Education University
Represented by its Registrar
Lady Willingdon College Campus
Kamarajar Salari, Chennai 600 005

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 1st respondent State Government in Letter No.2373/E1/2013-3 dated 25.11.2013, quash the same and further direct the State Government to recognise forthwith the status of the petitioner



W.P(MD).No.5175 of 2014

college as a Christian Religious Minority Educational Institution.

For Petitioner

: Mr.Isaac Mohanlal
Senior Counsel
For Ms/.Isaac Chamber

For R1 to R3

: Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.S.Kameswaran
Government Advocate

ORDER

The present writ petition has been filed by an unaided college of education challenging an order passed by the first respondent wherein the request of the petitioner for conferment of minority status has been rejected citing Clause 8(v) of G.O.Ms.No.270, Higher Education (J1) Department dated 17.06.1998.

2.According to the petitioner, they are owned and administered by a registered trust namely “ Diocese of Marthandam” vide Document No. 123(IV), dated 23.10.1997 in the office of the Sub Registrar, Marthandam, Kanyakumari District. According to them, the said Diocese is running 478 institutions. In order to provide professional education on teaching to the people belonging to the Christian Community, the petitioner college was started in the year 2006. The National Council for Teacher Education (NCTE)- Southern Regional Committee had granted recognition to the college with an annual intake of 100 students vide order dated 14.12.2006.



W.P.(MD).No.5175 of 2014

They have further contended that the college was initially affiliated to Manonmaniam Sundaranar University, Tirunelveli District. From the year 2008, it stands affiliated to Tamil Nadu Teacher Education University. According to the petitioner, it is fully self-financed college for which the educational agency is the Diocese. All the trustees and the governing body members of the Diocese belong to the Roman Catholic Order of Christianity. The said college is functioning as a full-fledged Christian Minority Educational Institution. Though it is a Christian Religious Minority Institution, admission is not denied to anyone on the ground of caste, creed or language.

3.The petitioner had further contended that for formal certification relating to their status as a minority, the college submitted a memorandum to the second respondent on 11.07.2007. The second respondent has forwarded the letter to the first respondent. Some clarification was sought by the second respondent thereafter. After details of the documents sought for were furnished, there was no response from the respondents 1 and 2. Thereafter, there were further communications between the authorities and the college management. The college had filed W.P.(MD).No.16853 of 2012 for a mandamus to direct the first respondent to consider and pass orders on the petitioner's memorandum dated 11.07.2007. The writ petition was allowed on 21.12.2012 directing the first respondent to consider and pass appropriate



W.P(MD).No.5175 of 2014

order in accordance with law within a period of 12 weeks from the date of receipt of a copy of the order. Since the order was not complied with, a Contempt Petition No.1208 of 2013 was filed. While the said contempt petition is pending, the present impugned order was passed on 25.11.2013 rejecting the said minority status stating that the college had admitted minority students exceeding 50% of the total sanctioned strength and therefore, the College has violated the guidelines framed by the Government of Tamil Nadu Under G.O.Ms.No.270, Higher Education (J1) Department dated 17.06.1998. This order is under challenge in the present writ petition.

4.The learned Senior Counsel appearing for the writ petitioner had contended that the reasons assigned by the first respondent for refusing minority status to the said institution is arbitrary and unconstitutional. He had further contended that the guidelines have been framed by the State Government in the year 1998 which are much prior to the judgment of the Hon'ble Supreme Court in T.M.A.Pai Foundation Case and P.A.Inamdar Case which were pronounced by the Hon'ble Supreme Court in the year 2002 and 2005 respectively. He had further contended that the institution being an unaided institution, the State Government cannot have any role whatsoever in relation to the number of admission of the students.

5.The learned Senior Counsel had further contended that the State Government cannot fix the maximum limit for admission of the students from



W.P(MD).No.5175 of 2014

the minority community, especially in an unaided minority institution. The purpose of conferring minority status is only for the welfare of the students belonging to the said community and therefore, the State Government should encourage admission of more students from the said minority community. He had further contended that the minority status of an institution only depends upon the constitution of the members of the trust/management and it can never be dependent on the religion of the students who are admitted to the said college. The religion of the students who are admitted to the said college may fluctuate from year to year and therefore, the said condition cannot be a criteria for conferring minority status upon the institution. Hence, he prayed for allowing the writ petition and to issue a positive direction for conferment of minority status upon the petitioner college.

6.The learned Additional Advocate General appearing for the respondents has strenuously contended that the fixation of a maximum limit for admission of students belonging to the minority community is only in order to preserve the minority status of the said institution. When it exceeds, it clearly violates G.O.Ms.No.270, Higher Education (J1) Department dated 17.06.1998. Without challenging the said Government Order, the present writ petition is not maintainable. That apart, the petitioner college has got an effective alternative remedy by way of filing an appeal. Without resorting to the appeal provision, the present writ petition is not maintainable.



W.P(MD).No.5175 of 2014

7.The learned Additional Advocate General had further contended that the State Government Order has been issued in consonance of the judgment of the Hon'ble Supreme Court in T.M.A.Pai Foundation and other cases. He had further pointed out that in T.M.A. Pai Foundation and other cases, the Hon'ble Supreme Court has held that the State Government is the competent authority to verify and determine the minority status of the institution for the purpose of Article 30(1) of the Constitution of India. He had further contended that the petitioner college cannot itself determine minority character and it is for the Government to declare that it is a minority institution. Hence, he contended that the State Government has got every power to decide about the minority status of the institution and to impose condition in order to preserve the minority status and quality of education of the students who are admitted to the said institution. Hence, he prayed for sustained the order impugned in the writ petition.

8.I have given anxious consideration to the submission made on either side.

9.The request of the petitioner college for conferment of minority status has been rejected by the State Government citing Clause 8(v) of G.O.Ms.No.270, Higher Education (J1) Department dated 17.06.1998 which is extracted as follows:

“8(v).In the case of self-financing educational institutions



W.P(MD).No.5175 of 2014

imparting professional courses of education established and administered by any minority they shall admit students of that minority alone, not exceeding 50% of the 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.”

10.A perusal of the impugned order indicates that this is only ground on which the request of the minority status has been rejected. Therefore, the issue that now arises for consideration is whether the State can impose limit upon the number of students from the minority community to be admitted to an unaided minority professional institution or not.

11.The Hon'ble Supreme Court in a judgment reported in (2005) 6 SCC 537 (P.A.Inamdar and others Vs. State of Maharashtra and others) in Paragraph Nos.124, 125, 127, 130, 132 and 133 has held as follows:

124.So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.



WEB COPY

125.As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of [Article 30\(1\)](#) or a reasonable restriction within the meaning of [Article 19\(6\)](#) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

127.Nowhere in Pai Foundation, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional



educational institutions and reservation policy of the State or State quota seats or management seats.

130.For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows States to fix quota for seat sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy, in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation.

132.Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of [Article 30\(1\)](#)

Q.2. Admission procedure of unaided educational institutions.

133.So far as the minority unaided institutions are concerned to admit students being one of the components of "right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom."



W.P(MD).No.5175 of 2014

12.The Hon'ble Supreme Court in a judgement reported in **AIR 2014**

SC 2114 (Pramati Educational and Cultural Trust and others Vs. Union of

India and others) in Paragraph No.26 has held as follows:

“26. Clause (5) of Article 15 of the Constitution enables the State to make a special provision, by law, for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Such admissions of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes who may belong to communities other than the minority community which has established the institution, may affect the right of the minority educational institutions referred to in clause (1) of Article 30 of the Constitution. In other words, the minority character of the minority educational institutions referred to in clause (1) of Article 30 of the Constitution, whether aided or unaided, may be affected by admissions of socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes and it is for this reason that minority institutions, aided or unaided, are kept outside the enabling power of the State under clause (5) of Article 15 with a view to protect the minority institutions from a law made by the majority. As has been held by the Constitution Bench of this Court in Ashoka Kumar Thakur v. Union of India (AIR 2008 SC (Supp)1) (supra), the minority educational institutions, by themselves, are a separate class and their rights are protected under Article 30 of the Constitution, and, therefore, the exclusion of minority educational institutions from Article 15(5) is not violative of Article 14 of the Constitution.”



W.P(MD).No.5175 of 2014

WEB COPY

13.A careful reading of the judgement of the Hon'ble Supreme Court cited supra will indicate that the State has no power whatsoever to impose any quota or percentage of admission in an unaided minority professional institution. The Hon'ble Supreme Court had further pointed out that the minority unaided institution enjoys total freedom with regard to admission of the students.

14.Article 15(5) was introduced by way of 93rd amendment of the Constitution of India with effect from 20.01.2006 empowering the State to provide reservation for socially and educationally background classes and for schedule castes and schedule tribes in relation to their admission to the educational institution including the aided and unaided private educational institutions. However, the Parliament in their wisdom had excluded the minority educational institutions from the purview of operation of Article 15(5) of the Constitution of India. Therefore, it is clear that the State Government has no power whatsoever to impose its reservation policy in a minority educational institution even after introduction of Article 15(5) of the Constitution of India. The State by insisting that the minority educational institutions should not admit more than 50% of the students from the minority community is nothing but an attempt to carve out 50% of the students from the said institution and trying to fill it up following the reservation policy.



W.P(MD).No.5175 of 2014

The petitioner educational institution being an unaided professional college, the State Government cannot have any right whatsoever to carve out certain seats under the Government quota by fixing the maximum number of students to be admitted from the said community.

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 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'be 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,



W.P(MD).No.5175 of 2014

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.

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.

19.A perusal of the impugned order indicates that the admission of minority students exceeding 50% in the preceding academic year is the sole



W.P(MD).No.5175 of 2014

ground on which the request of the conferment of minority status has been rejected by the petitioner college.

20.In view of the above said deliberations, the order impugned in the writ petition is set aside and the first respondent is directed to confer minority status upon the petitioner college as a Christian Minority Educational Institution. However, the authorities are at liberty to verify the present religious status of the trustees or the members of the governing board of the institution before passing orders.

21.With the above observation, this writ petition stands allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
mas



W.P(MD).No.5175 of 2014

To

WEB COPY

- 1.The Secretary
State of Tamil Nadu
Department of Higher Education
Fort.St.,George, Chennai 600 009
- 2.The Director of Collegiate Education
College Road, Chennai 600 006
- 3.The Registrar
Tamil Nadu Teachers Education University
Lady Willingdon College Campus
Kamarajar Salari, Chennai 600 005



WEB COPY



W.P(MD).No.5175 of 2014

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in
W.P.(MD).No.5175 of 2014
and MP(MD).No.1 of 2014

08 .06.2023