



W.P.(MD).No.5178 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.5178 of 2014
and MP(MD).No.1 of 2014**

The Secretary
St.John's College of Arts and Science
Thivandakottai Road
Ammandivilai
Kanyakumari District 629 204

....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 600 009

3.The Joint Director of Collegiate Education
Perumalpuram, Tirunelveli

4.The Manonmaniam Sundaranar University
Represented by its Registrar
Abishekapatti, Tirunelveli
Tirunelveli District 627 012

....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



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Letter No.9572/E1/2011-4 dated 13.01.2014, quash the same and further direct the State Government to recognise forthwith the status of the petitioner 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
For R4	: Mr.K.Sathya Singh

ORDER

Heard the learned Senior Counsel appearing on either side.

2.The present writ petition has been filed challenging an order passed by the first respondent wherein the request of the petitioner for conferment of religious minority status has been rejected on the ground that the institution has not fulfilled the guidelines as laid down in G.O.Ms.No.270 Higher Education (J1) Department, dated 17.06.1998.

3.According to the writ petitioner, they are running an Arts and Science College in Thivandakottai Road, Ammandivilai, Kanyakumari District. The said institution is funded and administered by a trust which is registered before the District Registrar, Nagercoil. According to the petitioner, it is an unaided minority educational institution.



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4.The petitioner had further contended that all the members of the trust belonging to the Roman Catholic Order of Christianity which is recognised as minority religion in the state of Tamil Nadu.

5.It is further contended that the institution had applied for conferment of minority status on 07.10.2009 and some details were called for by the Director of Collegiate Education on 16.02.2010 which were furnished by the College on 01.03.2010. According to the petitioner, the institution has satisfied all the guidelines issued by the State Government under G.O.Ms.No. 270. The petitioner institution was constrained to file various writ petitions to direct the authorities to consider the request and pass final orders. Ultimately, the order impugned in the writ petition was passed on 13.01.2014 rejecting the request of the petitioner college for conferment of minority status on the sole ground that the petitioner college has admitted minority students exceeding 50% during the academic year 2009-2010, 2011-2012 and 2012-2013. This order is under challenge in the present writ petition.

6.The learned Senior Counsel appearing for the writ petitioner institution had contended that admittedly the institution is an unaided minority institution which is running an Arts and Science College. There cannot be any dispute that the administration vest with the trustees who all belong to the Roman Catholic order of Christian religion. Being an unaided non-professional institution run by a religion minority, the Government



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cannot have any role whatsoever with regard to the admission process.

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7.The learned Senior Counsel had further contended that the educational institution was started in the said locality only to cater to the needs of the students of the minority community. Therefore, the admission of the students belonging to the said community is excess of 50% can never be considered to destroying or affecting the minority status of the institution. In fact, admitting more students from the said minority religion should only be beneficial to the students of the said community.

8.The learned Senior Counsel had further contended that G.O.Ms.No. 270 is dated 17.06.1998. This Government order is much prior to the pronouncement of the judgment of the Hon'ble Supreme Court in ***TMA Pai Foundation and others Vs. State of Karnataka and others*** reported in ***(2002) 8 SCC 481***. The said judgment was also clarified in ***P.A.Inamdar and others Vs. State of Maharashtra and others*** reported in ***(2005) 6 SCC 537***. In these two judgments, it has been categorically pointed out by the Hon'ble Supreme Court that an unaided minority undergraduate college enjoys more freedom in relation to admission of the students. Therefore, the said G.O. can no longer be pressed into the service after the authoritative pronouncement of the Hon'ble Supreme Court.

9.The learned Senior Counsel appearing for the petitioner had further contended that the conferment of minority status should only be based upon



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the religion of the founder of the institution on whom the administration and management of the said institution vests. It cannot depend upon the religion of the students who are admitted every year. The religion of the students are likely to fluctuate every year. The same may exceed 50% in one year and in the next year it may fall below 50%. Therefore, the criteria which is sought to be imposed for conferment of minority status cannot be so fluid, that the minority status of an institution gets changed from year to year. Hence, he prayed for allowing the writ petition with a positive direction to the authorities to confer minority status upon the petitioner institution.

10.Per contra, the learned Additional Advocate General appearing for the respondents had contended that G.O.Ms.No.270 (Higher Education (J1) Department dated 17.06.1998 specifically refers to the orders passed by the Hon'ble Supreme Court under which it was held that the State Government can verify and determine the minority status of the educational institution. He had further contended that only in order to preserve the minority status of the educational institution, it has been made clear that they have to compulsorily admit 50% of the students from the minority community and the rest of the students have to be admitted under the Government quota following the reservation policy. In case, if 50% cap is removed and full freedom is granted to the educational institutions to admit students, it will not serve the students belonging to the minority religion. Therefore, only in order to preserve the



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minority status of the institution it has been insisted that the students from the minority religion should not exceed 50% of the sanctioned strength. Without challenging the Government Order dated 17.06.1990, the present writ petition is not maintainable. He had further contended that an appeal provision is also available and in view of the said alternative remedy, the said writ petition is not maintainable. Hence, he had prayed for sustaining the order impugned in the writ petition.

11.I have considered the submissions made on either side and perused the records.

12.The issue that arises for consideration is whether the State can fix the maximum limit to the number of students to be admitted from the minority religion in relation to an unaided minority non professional college.

13.The 11 Judges Bench of the Hon'ble Supreme Court in a judgement reported in reported in ***(2002) 8 SCC 481 (TMA Pai Foundation and others Vs. State of Karnataka and others)*** in Paragraph No.450 while answering question No.4 has held as follows:

“Q.4.Whether the admission of students to minority educational institutions, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?”

Ans. Admission of students unaided minority educational institutions, viz.schools where scope for merit-based selection is



practically nil, cannot be regulated by the State or the university (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards)

Right to admit students being an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right in respect of unaided minority institutions provided, however, that the admission to the unaided educational institutions is on the transparent basis and merit is the criterion. The right to administer not being an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof and it is more so, in the matter of admissions to undergraduate colleges and professional institutions”.

14. The 7 Judges Bench of 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. 132 and 133 has held as follows:

“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 institution 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



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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 “ the 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 the total freedom”

15.A careful reading of the Judgment 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 a minority or non-minority unaided educational institution.

16.The Hon'ble Supreme Court had further pointed out that the minority institution are free to admit students of their own choice including the students of non-minority community. The only embargo is that the admission of non-minority students and admission of minority students from other State should be limited to an extent so that their minority educational institution status is not lost. The Hon'ble Supreme Court had further pointed that the minority unaided institutions enjoyed total freedom with regard to the admission of students.

17.It is an admitted fact that the petitioner institution which has sought for conferment of minority status is not a professional institution but an Arts and Science College. As pointed out by the Hon'ble Supreme Court *in*



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certain seats under the Government quota by fixing the maximum number of students to be admitted from the said community.

19.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.

20.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 has been passed and it remains in force without taking into consideration the subsequent judgements of the Hon'ble Supreme Court rendered by the Larger Bench. That apart, Clause-5 of the State Government order imposes the said condition of the 50% only on self-financing education institution imparting professional course. Admittedly, the petitioner institution is an non-professional college and therefore, even assuming that the State Government order is in force, the said clause can be invoked only for the institutions imparting professional course and not against the petitioner college.

21.The first respondent has called for a clarification from the petitioner college relating to the percentage of students admitted from the Christian



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community in the preceding 5 academic year and has arrived at a finding that in all these years, the admission of the minority students have exceeded 50%.

The conferment of the 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.

22.A perusal of the impugned order indicates that the admission of minority students exceeding 50% in the preceding academic year is the sole ground on which the request of the conferment of minority status has been rejected by the petitioner college.

23.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



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religious status of the trustees or the members of the governing board of the institution before passing orders.

24. 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
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To

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The State of Tamil Nadu
Department of Higher Education
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College Road, Chennai 600 009

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in
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