



W.A(MD)No.1345 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2024

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CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.1345 of 2024
and
C.M.P(MD)Nos.10493 and 10494 of 2024**

Rev.D.Soundarapandiyan

... Appellant/Writ petitioner

-VS-

- 1.The Correspondent,
Sarah Tucker College,
Palayamkottai,
Tirunelveli District.
- 2.The Director of College Education,
DPI Compound,
College Road, Chennai.
- 3.The Regional Director of College Education,
Tirunelveli District,
Tirunelveli.
- 4.Rev Dr.ARGST, Barnabas,
Bishopstowe,
No.15, North High Ground Road,
Palayamkottai - 627 002,
Tirunelveli District.
- 5.S.Gnanathiraviam,
Secretary,
Standing Committee on Higher Education,
St. Johns's College Boys Hostel Campus,
North High Ground Road,
Diocesan Office,
Palayamkottai - 627 002.

... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, against the order dated
<https://www.mhc.tn.gov.in/judis>



22.07.2024 made in W.P(MD)No.2211 of 2024.

For Appellant : Mr.N.L.Rajah, Senior Counsel for
Ms.M.Murugeswari

For R-1 : Mr.V.Prabhakar, Senior Counsel for
Mr.V.S.Kishok Kumar

For R-2 & R-3 : Mr.S.P.Maharajan,
Special Government Pleader

For R-4 : Mr.P.P.Alwin Balan

For R-5 : Mr.M.Mohaboob Athiff

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

Challenge in this writ appeal is to the order of the learned single Judge upholding the removal of the appellant as the Secretary-cum-Correspondent of Sarah Tucker College, Palayamkottai.

2. The writ Court had dismissed the writ petition mainly on the ground that the Diocese of Tirunelveli's Constitution stipulates that the tenure of the Correspondent shall not exceed one year.

3. Mr.N.L.Rajah, learned Senior Counsel appearing for the appellant would attempt to make a difference between the Secretary and the Correspondent.

4. We are of the considered opinion that the writ petition itself is not maintainable since the issue relates to appointment or nomination of a Secretary of a private minority institution. It will not be a question that could be answered



under Article 226 of the Constitution of India.

5. Reliance is placed by Mr.N.L.Rajah, learned Senior Counsel on the recent decision of a Full Bench of this Court where one of us (R.SUBRAMANIAN, J.) was a party in **D.Bright Joseph vs. Church of South Indian(CSI) Synod Secretariat, represented by its General Secretary and Others** reported in **2024 SCC OnLine Mad 286**, to sustain the writ petition.

6. Mr.N.L.Rajah, learned Senior Counsel draw our attention to the observations of the Hon'ble Supreme Court made in **St. Mary's Education Society v. Rajendra Prasad Bhargava** reported in **(2023) 4 SCC 498**, where at Paragraph Nos.75.2, the Hon'ble Supreme Court observed as follows:

“75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.”

7. After considering such observations, the Full Bench in **D.Bright Joseph's case**, has concluded on maintainability of writ petitions against the Church of South India under whom the Tirunelveli Diocese has functioned, in paragraph No.



32 which reads as follows:

“32.

i. the respondents 1 and 2 are running 2300 schools, 150 colleges and 104 hospitals in India. Therefore, the public duty that they discharge falls within the contours of Article 21 and 21A of the Constitution of India.

ii. The Courts have emphasized that educational institutions which nurture and develop young minds should ensure quality education and high standards of integrity to the persons passing through their institutes. Therefore, persons administering and managing these institutions should be above board.

iii. Since the educational institutions run by respondents 1 and 2, both aided as well as unaided, are bound by statutory regulations of varying degrees, they are amenable to the writ jurisdiction. Any act of the management who are in administration of these institutes / hospitals likely to bring down the standards of both education as well as medical services can be challenged by any person invoking the rights under Article 226 and in that sense, respondents 1 and 2 would fall within the category of any person or authority as described under Article 226 of the Constitution of India.

iv. The educational agency of the institutions run by the first respondent is the Synod and the Constitution of the Synod has a direct impact on the quality and standards of the educational institutions/hospitals. Therefore, any act impairing / impacting the process of electing the Synod would have a direct impact on the quality and standard of these institutions/hospitals



v. Apart from running educational institutions, respondents 1 and 2 are also maintaining churches and discharging functions of the clergy. These functions are outside the scope of judicial review under Article 226 of the Constitution of India.

vi. A person aggrieved by the acts of respondents 1 and 2 relating to the above can definitely move this Court under Article 226 of the Constitution of India to ensure the due compliance of this public duty.”

8. We find that the question that arises in the writ petition namely the removal of Secretary does not come out of any of the classes of writ petitions which could be entertained by this Court against a private minority management. However, Mr.N.L.Rajah, learned Senior Counsel would implore us to invoke Rule 9 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, which reads as follows:

“9. Secretary of the committee.

(1) The educational agency shall nominate one of its representatives as Secretary of the committee: Provided that it shall be open to the educational agency, to nominate the Principal as Secretary of the committee.

(2) The term of office of the Secretary shall ordinarily be three years. However, he/she shall be eligible for renomination for subsequent terms. If the educational agency intends to change the Secretary within the period of three years, it shall do so only with the prior approval of the Director. Application for approval of change in the Secretaryship shall be made to the Director in Form 6.

(3) The Secretary shall function for and on behalf of the committee and educational agency.



(4) *The Secretary shall act according to the resolutions passed at the meeting of the committee.*

(5) *The Secretary shall not interfere in the internal administration of the college such as admission, examination, promotion of student and other academic matters as also the administration of the special fee funds, which shall be made the exclusive responsibility of the Principal.*

(6) *The Secretary shall be responsible for the maintenance, of proper and accurate accounts and the administration of college funds except special fee funds.”*

9. His contention is that there is a violation of Sub-Rule 2 of Rule 9 of the Tamil Nadu Private Colleges (Regulation) Rules, which makes the prior approval of the Director as mandatory for removal of the Secretary.

10. Mr.V.Prabhakar, learned Senior Counsel appearing for the caveator would submit that these Rules will not apply to a private minority college or a college under the minority management. Reliance is placed upon the decision of the Hon'ble Supreme Court in **T.M.A. Pai Foundation vs. State of Karnataka** reported in **(2002) 8 SCC 481**, wherein the Hon'ble Supreme Court while answering question No.5(c) which reads as follows:

“Q.5.(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc., would interfere with the



right of administration of minorities?

had observed as follows:

“Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed.”

11. The above pronouncement is clear and categoric to the effect that the Rules relating to appointment of Secretary and Correspondent will not bind a minority institution and the same cannot be invoked by the Secretary of the minority institution to challenge his removal.

12. Mr.N.L.Rajah, learned Senior Counsel would however contend that the provisions of Rule 9(3)(4)(5)(6) are within the powers of the State Government recognized by the Hon'ble Supreme Court in **T.M.A. Pai Foundation case**. We are unable to agree for the simple reason that the above observations of the Hon'ble Supreme Court are clear and categoric to the effect that regulations can be framed if they come within the parameters suggested by the Hon'ble Supreme Court. The very post is being outside the purview of the power, we do not think that we can accept the arguments of Mr.N.L.Rajah.



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13. We are therefore, constrained to conclude that the very writ petition itself is not maintainable and the order of the learned single Judge is sustained, though for different reasons. The Writ appeal fails and the same is accordingly dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

08.08.2024

NCC :Yes/No
Index :Yes/No
Internet:Yes
PM

To:

- 1.The Director of College Education,
DPI Compound,
College Road, Chennai.
- 2.The Regional Director of College Education,
Tirunelveli District,
Tirunelveli.



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