

W.P.(MD)No.19608 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.02.2025

Delivered On : 28.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.19608 of 2018

and

W.M.P.(MD)Nos.17393, 17394 and 21879 of 2018

Esther Santham Higher Secondary School,
Rep. By its Manager &
Correspondent Pastor G.Nellaikumar,
(Founder and Managing Trustee-
International Youth Fellowship in Christ)
Old No.1/113-A, New No.1/197,
Kalvilai Road, Meignanapuram,
Tuticorin District.

... Petitioner

Vs.

- 1.The Director of School Education,
(Higher Secondary School Education),
College Road, Chennai – 600 006.
- 2.The Chief Educational Officer,
C.V.Government Higher Secondary School Campus,
Tuticorin, Tuticorin District.
- 3.The District Educational Officer,
Government Boys Higher Secondary School Campus,
Tiruchendur, Tuticorin District.
- 4.The Government of Tamil Nadu,
(Education Department),
Rep. By its Secretary,
Fort St. George,
Chennai – 600 009.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for all the records relating to the order of the 4th respondent Government made in G.O.(Ms)No.65, School Education (MS) Department, dated 05.04.2018 and quash the same insofar as the petitioner Esther Santham Higher Secondary School, International Youth fellowship in Christ Old No.1/113-A, New No.1/197, Kalvilai Road, Meignanapuram, Tuticorin District, is concerned.

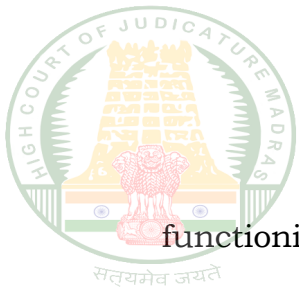
For Petitioner	: Mr.M.Joseph Thatheus Jerome
For Respondents	: Mr.M.Gangadharan Government Advocate

ORDER

This Writ Petition is filed, seeking to quash the order of the 4th respondent Government made in G.O.(Ms)No.65, School Education (MS) Department, dated 05.04.2018, insofar as the petitioner Esther Santham Higher Secondary School, International Youth fellowship in Christ Old No. 1/113-A, New No.1/197, Kalvilai Road, Meignanapuram, Tuticorin District, is concerned.

Gist of the case:-

2.The petitioner trust established the Esther Sandanam High School by obtaining all necessary certificates from the statutory authority. However, another minority institution in the same area objected to the founding of the school. Taking note of the objection, the third respondent passed an order in Na.Ka.No.3785/82 dated 30.08.2012, directing that the petitioner school is



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functioning without prior permission and therefore, has to be closed down and the students be admitted in the nearby school. The petitioner having applied for declaration of minority status to the educational agency and its institution challenged the aforesaid order by filing Writ Petition in W.P. (MD)No.12577 of 2012. This Court by order dated 07.01.2013, allowed the said Writ Petition as follows:-

“10. Therefore, the writ Petition to dispose of on the following terms:-

(i) The impugned order for the closure of the School is set aside.

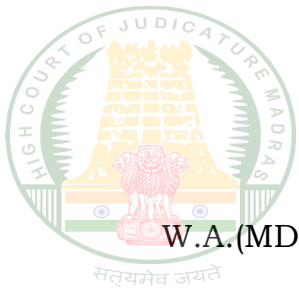
(ii) The respondents 2 and 3 are directed to forward the application of the petitioner for recognition and grant of minority status to the first respondent viz., the Director of School Education, within a week of receipt of copy of this order with necessary enclosures.

(iii) Within 4 weeks of receipt of the application from the respondents 2 and 3, the first respondent shall conduct an enquiry and give an opportunity of hearing to the petitioner and pass appropriate orders in accordance with law.

(iv) In the meantime, the proposal application of the School for permitting the students to write the examinations shall be processed. If recognition is granted before the end of February 2013, the children shall be permitted to write the examinations in the same school itself. If recognition could not be granted before the end of February 2013, the children shall be permitted to write the examination in another nearby Higher Secondary School other than the fourth respondent School.

11. The Writ Petition is disposed of on the above terms.”

3. Aggrieved by the said order, the Government filed a Writ Appeal in



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W.A.(MD)No.306 of 2013, and in the meanwhile, rejected the petitioner's request for recognition for the school, treating it as a non-minority school, since it had not obtained the status of the trust as one of the minority character. The petitioner therefore, challenged the same by filing W.P. (MD)No.9260 of 2013.

4.In the interregnum, the Hon'ble Division Bench of this Court disposed of the Writ Appeal in W.A.(MD)No.306 of 2013, directing the petitioner herein to apply for minority status separately to the respondents. Therefore, the petitioner preferred an application independently, for declaring it as a minority educational agency and since no orders were passed, the petitioner filed another Writ Petition in W.P.(MD)No.36010 of 2013 and this Court by order dated 26.11.2013, directed the respondent therein to pass order within two months from the date of receipt of the order.

5.The petitioner in the meanwhile, had approached the State Minority Commission and the authorities were pleased to verify the records and recommended the case of the petitioner herein for grant of minority declaration status through its no objection letter dated 19.12.2013. The said no objection letter granted by the State Minority Commission dated was sent to the respondent on 03.01.2014 and to the fourth respondent on 04.01.2013, which was received by him on 06.11.2014. However, in utter



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disregard to the same and also to the order passed by this Court on 26.11.2013 in W.P.No.36010 of 2013, failed to pass an order on the minority status application made by the petitioner herein. Hence, the petitioner was constrained to file a Contempt Petition in Cont.P.No.951 of 2014, which prompted the respondents 1 and 2 to deny minority status to the institution on the ground that the institution was not a recognized institution. As against the said order of the fourth respondent in letter No.36031/CC/1/(3) dated 11.04.2014, the petitioner herein filed a Writ Petition in W.P.(MD)No. 7392 of 2014. This Court was pleased to take up the Writ Petitions in W.P. (MD)No.9260 of 2013 relating to grant of recognition to the school and W.P. (MD)No.7392 of 2014 for grant of declaration of minority status together and allowed those Writ Petitions, by order dated 10.04.2017 and the operative portion of the same is as follows:-

“11.In the instant case, the basic notion upon which the impugned order is founded is that the petitioner has not obtained permission for starting their school. Before adverting to the various grounds raised by the petitioner as well as the learned Special Government Pleader, it would be appropriate at the outset to mention that the issue with regard to the requirement of prior permission for a minority institution has come up time and again before this Court and the Hon'ble Supreme Court of India and the issue has been answered in the negative. In all cases arising from the State of Tamil Nadu, the various authorities under the Department of School Education have always been arrayed as respondents therein. While that being so, the Education Department cannot be insensible to these well laid down law and be oblivious to the proposition. The law



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has been settled that when an Educational institution is established by a Trust, which is a minority trust, such a minority institution can be started without prior permission.

12.It is rather unfortunate that the respondents 1 to 3 herein were also the respondents in W.P.No.12577 of 2012 dated 07.01.2013, wherein the learned Single Judge has held as follows:-

'6.The fact that the petitioner is the Christian, cannot be in doubt. He has started a Trust by name International Youth Fellowship in Christ. The objects of the Trust also indicated in the affidavit in support of the Writ Petition.

7.The law is well settled that if an educational institution is established by an Institution/Trust/Society, which is a religious minority institution, the said institution can be started without prior permission. Nevertheless, such an institution should also obtain recognition.

8.The academic year 2012-2013 commenced on 01.06.2012. Therefore, the petitioner had time up to 31.08.2012 to present an application for recognitions as well as a declaration of minority status. However, on an objection lodged by the fourth respondent an order for closure came to be passed even before the expiry of the period of 3 months statutorily prescribed. Therefore, the impugned order is liable to be set aside.

9.According to the petitioner, the petitioner has put in the necessary infrastructure for the grant of recognition. The petitioner has also submitted an application to the respondents 2 and 3, both for recognition and for declaration of minority status. It is needless to point out that though the petitioner is obliged to obtain a recognition and a declaration of minority status, the starting of the School by a religious minority group, is not prohibited, nor is declaration of status made a pre-condition for starting a School.'



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13.Inspite of the aforesaid categorical finding that, the petitioner's school, which is run by a Religious Minority Trust is neither prohibited, nor is declaration of status made a precondition for starting a school, the respondent has chosen to issue the present impugned orders.”

6.Despite the categorical finding of this Court in the order passed by the aforesaid Writ Petitions that, though the petitioner is obliged to obtain a recognition and a declaration of minority status, to start a school by a religious minority group, neither declaration of minority status is a pre-condition nor the minority religious group is prohibited from starting a school without permission. In spite of the aforesaid categorical finding that the petitioner school, which is run by a religious minority trust is neither prohibited from commencing a school or declaration of minority status is made a pre-condition for starting a school, the respondents have chosen to issue the impugned Government Order in G.O.Ms.No.65, School Education Department dated 05.04.2018. Challenging the same, this Writ Petition came to be filed.

7.The learned Senior Counsel, Mr.Isaac Mohanlal, who argued on behalf of the learned counsel for the petitioner, Mr.Jerome, categorically submitted that, whether for the purpose of obtaining the status of minority institution, a compulsory requirement is mandated under the Constitution



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as to the minimum or maximum cap of students belonging to the minority community to be admitted in an educational institution concerned.

Submitting that the right from 1957, the famous **Kerala Education Bill** case, a sprinkling of outsiders would be enough because one cannot have a balkanized campus, therefore as far as sprinkling of outsiders, there cannot be a rigid percentage.

8.In fact, the whole problem arose in 1992, in **St.Stephen's college v. University of Delhi**¹ where the Hon'ble Supreme Court said because the college is 100% aided even for maintaining the college must ensure that at least 50% of students hailed from non-minority and 50% from the minority community concerned. For 10 long years, the said judgment was in the field till 2002, but later by a Hon'ble Bench of 11 Judges in **T.M.A.Pai Foundation and Others v. State of Karnataka**² case, the Hon'ble Supreme Court held that, the said rigid percentage is wrong and unconstitutional. Therefore, on the basis of the said judgment, the learned Senior Counsel categorically contended that, it all depends upon the local needs.

9.Suppose in a particular district or area where the college is located, the Christian population or the Muslim population or linguistic minority is

11992 (1) SCC 558

22002 (8) SCC 481

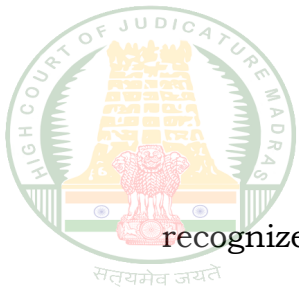


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very less, then they can admit more number of non-minority. So, also the other way round, therefore, there cannot be a rigid percentage like that and it is left to the institution. But at the end of the day, they must ensure that at least there is a sprinkling of outsiders who have been admitted in the college. It is followed in a recent judgment and this Court in the case of the **Secretary, Mar Chrysostom College of Education versus the State of Tamil Nadu and others**³, has dealt with a similar case and has held that, 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 the management of the said institution, and the same cannot depend upon the religion of the students who are admitted in the said institution, and on that basis, the learned Senior Counsel categorically contended that, fixing a minimum cap or maximum cap for admission of students in an educational institution run by a minority group is unconstitutional and pressed for allowing the Writ Petition by quashing the impugned G.O.

10.The learned Government Advocate, Mr.M.Gangadharan, on the basis of the counter affidavit filed by the third respondent submitted that, the institution, namely, S.S.Santhome High School at Meignanapuram, which is run by the petitioner Trust is a self-styled minority institution, which is one without the recognition of the school education department. The State Government shall examine only the applications received from the

³ 2023 (3) L.W. 251



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recognized school seeking minority status and only after the satisfaction of all the conditions stipulated for declaring minority status, the Government shall confer minority status to such schools and as such, the petitioner's claim to confer minority status to his unrecognized school could not be entertained. The State Government could examine only those applications received from recognized schools seeking minority status after satisfaction of all conditions stipulated for declaring minority status.

11.The Government shall confer minority status only to such schools and as such, the petitioner's claim to confer minority status to his unrecognized school could not be entertained. That apart, the petitioner could not question or challenge the guidelines issued in G.O.Ms.No.65 dated 05.04.2018, to protect the interests of minority students by keeping in view the observation of the Hon'ble Apex Court in ***T.M.A.Pai Foundation and others v. State of Karnataka***⁴, wherein it was directed that the institutions claiming minority status to the institutions concerned shall approach the State Government for a declaration that they are minority institutions.

12.Therefore, the State Government only considering the responsibility to protect the interests of the minority students and the minority community, formulated several Government orders including

⁴ Supra 2



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G.O.Ms.No.375, School Education Department, dated 12.10.1998,
G.O.Ms.No.214, School Education Department, dated 03.11.2008,
impugned G.O.Ms.No.65, School Education Department, dated 05.04.2008,
in modification of G.O.Ms.No.214 School Education Department.

13.The learned Government Advocate further pointed out that, only considering the observations of the Hon'ble Supreme Court in letter and spirit, more particularly, in the cases of ***C.Stephenson Roobasingh v. State of Tamil Nadu and Others***⁵, ***Chikkala Samuel v. District Educational Officer***⁶, ***T.M.A.PAI Foundation and others versus State of Karnataka***⁷, the Government has formulated and implemented G.O.Ms.No. 65 dated 05.04.2018, and the same is fully in synchronization with the mandates of the Constitution of India, more particularly, Article 30 of the Constitution, as well. Pointing out that, the Hon'ble Supreme Court has held that, the Government is competent to pass order on the plea to confirm minority status. The learned Government Advocate further submitted that, the petitioner has failed to plead that he could not enroll 50 percent of students from minority communities and as to how enrollment of students from minority communities of at least 50 percent would be against conferment of minority status. Accordingly, there is no substance in the Writ Petition filed by the petitioner and pressed for dismissal of the same.

⁵1993 WLR 544

⁶ AIR 1982 Andhra Pradesh 64

⁷ Supra 2



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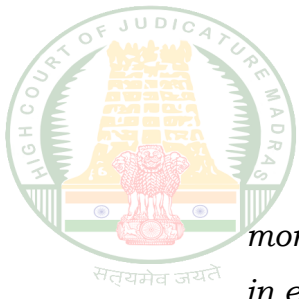
14. Heard the learned counsels on either side and carefully perused the materials available on record.

15. For the purpose of better clarity the operative portion of impugned G.O.Ms.No.65 dated 05.04.2018, is extracted as follows:-

“10. Keeping in view the observation of the Hon'ble Supreme Court and considering the proposal of the Director of Matriculation Schools, the Government have decided to issue the following additional guidelines in partial modification of the guidelines already issued in the Government Order second read above so as to protect the interest of the minority students:-

(i) The educational agency of all educational institutions, coming under the purview of the School Education Department including Teacher Training Institute, claiming minority status shall admit not less than 50% of the students belonging to the minority community in every academic year subject to the condition that in respect of the minority educational institutions, wherein the number of eligible applications received from the minority community are less than 50%, it would suffice for such institutions to admit all such minority students without any screening or imposing condition of whatsoever in nature including economic condition of the family, distance from the institution, academic performance of the students/parents.

(ii) In case of aided institutions, the educational institutions coming under the purview of the School Education including the Teacher Training Institute claiming minority status shall admit not



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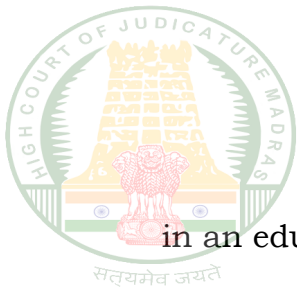
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more than 75% of the students belonging to the minority community in every academic year.

(iii)The educational agency of such minority educational institutions shall give wide publicity to reach out to the respective minority community to achieve at least 50% of admissions from that particular community in any given academic year in future and shall take all measures to ensure easy and transparent access to minority students. They shall also submit their returns with regard to the percentage of minority students admitted in their institutions to the authorities concerned by the end of September every year without fail in order to retain their minority status.

(iv)It is also clarified that the concept of minority is State specific and is with reference to proportion of population in that State. Therefore, the students, belonging to any minority group, residing only in the State of Tamil Nadu, can claim right for admission in such minority educational institutions.”

16.A careful reading of the guidelines crystallized in the aforesaid G.O., the point to be considered in the instant case is as to: whether the State Government for the purpose of conferring minority status to the educational institutions, facilitating the said institution to avail all the privileges and special rights envisaged under Article 31 of the Constitution of India, should admit a minimum percentage of students belonging to the minority community in every year – precisely, whether the State Government has the right to prescribe a minimum cap for admission of minority students



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in an educational institution for conferment of minority status ?

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17.Article 29(2) of the Constitution of India deals with the cultural and educational rights of the linguistic and religious minorities and the same is extracted as follows:-

“29.Protection of interests of minorities – (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2)No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

18.Article 30 of the Constitution provides for the right of minorities to establish and administer educational institutions and the same is extracted as follows:-

“30.Right of minorities to establish and administer educational institutions.-(1)All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

.....

(2)The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.”



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19. Significantly, the Constitution (93rd Amendment) Act, 2005, in Section 2 with effect from 20.01.2006, had effected an amendment to Article 15 of the Constitution of India, permitting the State from making special provisions by law for the advancement of any socially and educationally backward classes of citizens or for the scheduled caste or for the scheduled tribes, insofar as such special provisions relate to their admission to educational institutions including the private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause 1 of Article 30 of the Constitution.

20. By the exclusion of minority educational institutions referred to in Clause 1 of Article 30 of the Constitution from the mandates of Article 15(5) of the Constitution, which was brought into force with effect from 20.01.2006, it has become palpable that the minority educational institutions enjoy unfettered rights in establishing and administering educational institutions. The Hon'ble Supreme Court in the case of ***P.A.Inamdar and others versus State of Maharashtra and others***⁸, in its seven Judge Bench judgment rendered on 12.08.2005, has classified the minority educational institutions into three categories and the relevant portion of the same is extracted as follows:-

“107.It necessarily follows from the law laid down in Pai

⁸ MANU/SC/2621/2005



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Foundation that to establish a minority institution the institution must primarily cater to the requirements of that minority of that State else its character of minority institution is lost. However, to borrow the words of Chief Justice S.R. Das (in Kerala Education Bill) a 'sprinkling' of that minority from other State on the same footing as a sprinkling of non-minority students, would be permissible and would not deprive the institution of its essential character of being a minority institution determined by reference to that State as a unit.

Minority educational institutions: classifiable in three :

To establish an educational institution is a Fundamental Right. Several educational institutions have come up. In Kerala Education Bill, 'minority educational institutions' came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30(1) can "exercise that right to their hearts' content" unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist and efficiently function without some State aid. So is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition, education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be



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followed as essential to the grant of such aid or recognition. This Court clarified in Kerala Educational Bill that 'the right to establish and administer educational institutions' conferred by Article 30(1) does not include the right to mal-administer, and that is very obvious. Merely because an educational institution belongs to minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30(1) on the minority to establish and administer educational institutions. Dealing with the third category of institutions, which seek only recognition but not aid, their Lordships held that 'the right to establish and administer educational institutions of their choice' must mean the right to establish real institutions which will effectively serve the needs of the community and scholars who resort to these educational institutions. The dividing line between how far the regulation would remain within the constitutional limits and when the regulations would cross the limits and be vulnerable is fine yet perceptible and has been demonstrated in several judicial pronouncements which can be cited as illustrations. They have been dealt with meticulous precision coupled with brevity by S.B. Sinha, J. in his opinion in Islamic Academy. The considerations for granting recognition to a



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minority educational institution and casting accompanying regulation would be similar as applicable to a non-minority institution subject to two overriding considerations: (i) the recognition is not denied solely on the ground of the educational institution being one belonging to minority, and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.”

21.Three categories enumerated by the Hon'ble Apex Court as extracted supra, the petitioner institution falls under the third category, that is, those which want only recognition but not aid. As far as the petitioner institution is concerned, this Court has already categorically held in W.P. (MD)No.9260 of 2003, by order dated 10.04.2017, that the petitioner school, which is run by a religious minority trust is neither prohibited nor its declaration of status made a pre-condition for starting a school. The respondents authorities therein have chosen not to grant a declaration of religious minority status, recognition, attendant benefits to the petitioner institution from Standard 6 to 11, finally directed the respondents therein to declare the religious minority status as well as grant recognition to the petitioner institution along with other attendant benefits.

22.The plight of the petitioner is itself, despite the order passed by this Court in the aforesaid case, the respondent authorities have preferred to issue the impugned G.O.Ms.No.65 dated 05.04.2018. However, G.O.Ms.No.

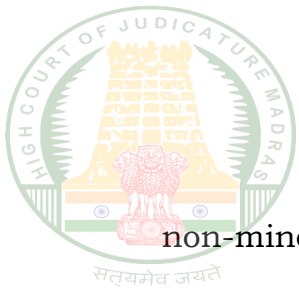


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65 dated 05.04.2018, is not particularly pertaining to the petitioner's institution but the same has been issued by the School Education Department framing certain additional guidelines for grant of minority status to the educational institutions. The petitioner institution being an institution which seeks for recognition and grant of minority status but not aid from the State, Sub para (i) and (iii) of paragraph 10 of the aforesaid G.O., would cover the case of the petitioner institution. Sub para (ii) of paragraph 10 of the said G.O., is with respect to teacher training institute, which is not relevant to this case.

23.A holistic and careful consideration of the language of the guidelines set forth in paragraph no.10 would make it clear that, by the mandates of sub para Nos.(i) and (iii) in paragraph no.10, the State Government has set forth the minimum cap for the admission of students from minority community in every academic year to be made. No doubt, the concept of “minority” is a State specific subject and is with reference to the proportion of the population in that particular state, and in this case, the concerned State is the State of Tamil Nadu.

24.It is needless to state that, time and again the various Courts of this land including the Hon'ble Apex Court had made it clear that, the fixation of a percentage governing admissions in minority educational institutions is inevitable and sprinkling of outsiders, more particularly, the



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non-minority students and minority students from other States to a reasonable extent should always be permitted, whereby the character of the institution is not annihilated and at the same time, the rights of the institution is protected as engrafted under Article 29(2) and Article 30(1) of the Constitution of India.

25.In this case, the State while dealing with the educational institutions coming under the purview of School Educational Department, claiming minority status fixes a minimum cap that the minority educational institutions concerned shall admit not less than 50 percent of students belonging to the minority community in every academic year, with the protecting rider which intends to protect the institution that wherein the number of eligible applications received from the minority community are less than 50 percent, even in that case, it would suffice for such institutions to admit all such minority students without any screening.

26.The categorical contention of the learned Senior Counsel appearing for the petitioner institution is that, the state has no right to fix a minimum cap or a maximum cap as far as admission of students from the minority community concerned in a minority educational institution. The same has been already settled by the Hon'ble Apex Court in its seven judges Bench verdict in ***P.A.Inamdar***⁹ case and the relevant portion of the same is

⁹ Supra 8



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extracted as follows:-

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“Q.1.Unaided educational institutions; appropriation of quota by State and enforcement of reservation policy.

First, we shall deal with minority unaided institutions.

120.We have in the earlier part of this judgment referred to Kerala Education Bill and stated the three categories of minority educational institutions as classified and dealt with therein. The 7-Judge Bench decision in Kerala Education Bill still holds the field and has met the approval of 11-Judge Bench in Pai Foundation. We cull out and state what Pai Foundation has to say about such category of institutions:-

(i) Minority educational institution, unaided and unrecognized Pai Foundation is unanimous on the view that the right to establish and administer an institution, the phrase as employed in Article 30(1) of the Constitution, comprises of the following rights: (a) to admit students; (b) to set up a reasonable fee structure; (c) to constitute a governing body; (d) to appoint staff (teaching and non-teaching); and (e) to take action if there is dereliction of duty on the part of any of the employees. (para 50)

121.A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. It may be imparting such instructions and may have students learning such knowledge that do not stand in need of any recognition. Such institutions would be those where instructions are imparted for the sake of instructions and learning is only for the sake of learning and acquiring knowledge. Obviously, such institutions would fall in the category of those who would exercise their right under the protection and privilege conferred by Article 30(1) "to their hearts content" unhampered by any restrictions



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excepting those which are in national interest based on considerations such as public safety, national security and national integrity or are aimed at preventing exploitation of students or teaching community. Such institutions cannot indulge in any activity which is violative of any law of the land.

They are free to admit all students of their own minority community if they so choose to do. (para 145, Pai Foundation)

(ii) Minority unaided educational institutions asking for affiliation or recognition.

122.Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing mal-administration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated. (para 55, Pai Foundation).

123.Apart from the generalized position of law that right to administer does not include right to mal-administer, an additional source of power to regulate by enacting condition accompanying



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affiliation or recognition exists. Balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. Subject to reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no in-road on the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away. (para 122, Pai Foundation).”

133. 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).

27.The answer to the issue in hand lies in para no.133 of the Hon'ble Supreme Court judgment extracted supra. Perhaps it is the categorical finding of the Hon'ble Apex Court that, neither the policy of reservation nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or a non-minority unaided educational institution,



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and that the minority institutions are free to admit students of their own choice including sprinkling of students from non-minority community and also members of their own community from other states, but the said exercise could be done only to a limited extent, not in a manner or to such an extent that, the minority educational institution status is lost.

28.If the percentage of admission made by the minority institutions of their own choice admitting students of non-minority community as also the members of their own community from other states has been done to an extent that their minority educational institution status is lost, would mean that the percentage of students of non-minority community as also the members of their own community from other States should not supersede the percentage of students from the minority communities. This has been duly acknowledged by this Court in the case of **Secretary Mar Chrysostom College of Education versus State of Tamil Nadu and others**¹⁰ decided on 08.06.2023, in the aforesaid case, an application made by a similarly placed minority educational institution, seeking minority status came to be rejected, for the reasons that the college had admitted minority students exceeding 50 percent of the total sanctioned strength and when the aforesaid order was challenged before this Court, this Court held that the said order is bad on the part of the State for having decided that the institution should not admit more than 50 percentage of students from the

¹⁰ Supra 3



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minority community. The relevant portion of the same is extracted as

follows:-

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“13.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. 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.

14.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.

.....

17. 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



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conferment of minority status upon an educational institution is not legally sustainable.”

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29.Observation made by this Court in Para no.15 extracted supra would make it clear that though the State cannot insist a minority educational institution not to admit more than 50 percent of students from the minority community, there is no bar for the State fixing a minimum percentage of students to be admitted from the religious minority community so as to preserve the minority status.

30.Fully fortified by the same, I have no hesitation to hold that the attempt of the Government of Tamil Nadu by issuing the impugned G.O.Ms.No.65 dated 05.04.2018, to ensure whether the educational institutions in Tamil Nadu to whom minority status has been confirmed actually subserve the interest of the minority students admitted in those institutions and to ascertain whether the institution seeking for conferment of minority status do contribute with dedication to subserve the interest of the minority students/community in line with the minimum admission cap as mandated by the State of Maharashtra and State of Andhra Pradesh has come out with a minimum cap of not less than 50 percent of students belonging to the minority community to be admitted in every academic year, that too, with a safeguarding rider, even in case of inability to do, all the



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applications received from the minority community should be accommodated and in future, should take effort to achieve at least 50 percent admissions from that particular community in any given academic year.

31.Keeping in mind, the concept of Minority is State specific and not district specific, I do not find any necessity in interfering with the impugned G.O.(Ms)No.65 dated 05.04.2018 and accordingly, the same is in order and hence, the Writ Petition fails and the same is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

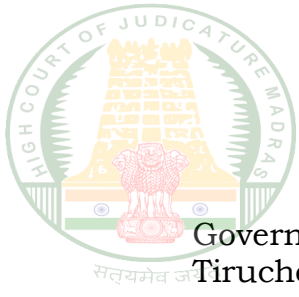
28.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Director of School Education,
(Higher Secondary School Education),
College Road, Chennai – 600 006.
- 2.The Chief Educational Officer,
C.V.Government Higher Secondary School Campus,
Tuticorin, Tuticorin District.
- 3.The District Educational Officer,

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Government Boys Higher Secondary School Campus,
Tiruchendur, Tuticorin District.

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4.The Government of Tamil Nadu,
(Education Department),
Rep. By its Secretary,
Fort St. George,
Chennai – 600 009.



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L.VICTORIA GOWRI, J.

MRN

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28.04.2025