(2011) 08 MAD CK 0065

In the Madras High Court

Case No : Writ Petition (MD) No. 551 of 2007

K.M. Benedict Crizal, Correspondent and Secretary, St. Joseph's College of Education, Appicode, Tholayavattam, Kanyakumari District — APPELLANT

Vs

The State of Tamil Nadu and Tamil Nadu Finance and Infrastructure Development Corporation Limited — RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:
Constitution of India, 1950 — Article 30(1)

Citation : (2011) 08 MAD CK 0065

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Issac Mohanlal, for the Appellant; S. Bharathi, Government Advocate for Respondents 1 and 2 R. Sivamanogaran for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

The Honourable Mr. Justice Vinod K. Sharma

1. The Petitioner prays for issuance of a Writ in the nature of Mandamus, directing the Respondents to release the Fixed Deposit of Rs. 10 lakhs

compulsorily obtained from the Petitioner and deposited with the third Respondent Corporation vide Deposit Receipt No. RAA 093612, dated

23.03.2005 at the time of giving ''No objection Certificate'' for establishing the Petitioner''s college of Education.

2. The Petitioner was directed to deposit a sum of Rs. 10 lakhs as a pre-condition to grant ''No Objection Certificate'' for setting up of Teachers

Education College. It is not in dispute that the Petitioner is a minority institution. The Honourable Division Bench of this Court in the case of

Madras English Baptist Church Vs. The State of Tamil Nadu and Others, was pleased to lay down that the minority institution cannot be directed

to create an endowment fund as envisaged under Government Orders. The operative portion of the judgment reads as under:

9. Therefore, what could not be justified as a statutory provision, cannot be got over by relying upon an executive order as found in G.O. Ms. No.

587, Education Department, dated 22.03.1978.

10.** * *

11. Yet another contention taken by learned Government Pleader is that, when a provision is made for creating an endowment by instalment, it

would not be an unreasonable restriction. Once it has been held that a precondition of this nature is violative of Article 30(1) of the Constitution of

India, to facilitate the Management to create an endowment by instalment is no justification for imposing that pre- conditions.

12. Therefore, the Writ Appeal is allowed. The endowment created during the pendency of the writ petition was without prejudice to the

contentions of the Appellant, and therefore, the Respondents are hereby directed to return the concerned documents regarding the creation of the

endowment to the Appellant within eight weeks of the receipt of the steno-copy of this judgment. As the Appellant has succeeded on both the

points, it is entitled to costs. Counsel fee Rs. 500/-

3. Again the Honourable Division Bench of this Court in the case of Lords and Angels Teacher Training Institute etc and Ors. v. The State of Tamil

Nadu and Ors. reported in 1997 I L.W 787 held that the Government order directing the creation of endowment fund was not applicable to

minority institutions. The operative portion of the judgment reads as under:

8. In W.P. No. 2165 to 2167 of 1996, the Petitioner not only challenges Regulations 5(e) and 5(f), but also challenges the norms and standards

for Teacher Education Institutions with reference to elementary schools under clause. Clause 2.2 says as follows:

In addition, institutions under private management should have an endowment fund of at least Rs. 5,00 lakhs and a reserve fund to cover three

months salary of all staff(1.5 lakhs)

In the above clause the challenge is made only to the endowment fund of Rs. 5 lakhs. Learned Counsel for the Petitioners says that he is not attacking the requirement for are serve fund to cover three months salary of the staff to the extent of Rs. 1.5 lakhs. In support of his contentions,

Learned Counsel relies on the decision reported in Madras English Baptist Church Madras v. The State of Tamil Nadu 1991 W.L.R 419. A

Division bench of this Court dealing with G.O. Ms. No. 587(Education) dated 23.3.1978, requiring such institutions to create a cash endowment

of Rs. 25,000/- as a pre-condition for a minority institution t seek recognition, held that the requirement was violative of Article 30(1) of the

constitution of India. I doing so, the Division Bench relied on an earlier judgment in W.P. No. 4478 of 1974, dated 17.12.1975,which judgement

is pending consideration in the Supreme Court of India. As on date, the above decisions hold the field Mr. Joseph Thatheus Jerome, Learned

Counsel appearing for the petitioner in W.P. No. 3987 of 1996 argued that the Act in question being a central Act, the consideration for

recognition should originate from ""The Central Policy"". The State Government is developing a State policy for rejecting applications for no

objection certificate, whenever, an institution applies for the same under Regulation 5 (e) of the Regulations. Therefore, he argues that in essence

the question of recognition is regulated to the State Authority, which is improper. We are of the opinion that he validity of an order by the State

Government, while considering an application under Regulation 5 (e) of the Regulations is totally a different mater and as and when such a question

arises, it will be time enough to consider the validity of the order of the State Government. We have already indicated that if the orders of the State

Government are found to be illegal or in violation of the rights guaranteed under the Constitution of India, it could always be challenged by the

parties aggrieved. That stage has not yet arisen.

12. We therefore do not find any substance in any of the points raised by the Petitioners to invalidate Regulations 5(e) and 5(f) of the Regulations.

We therefore uphold the validity of Regulations 5(e) and 5 (f). So far as the requirements to make a cash endowment of at least Rs. 5 lakhs, we

hold that the same cannot be enforced, in view of the Division Bench judgement of this Court in Madras English Baptist Church Madras v. The

State of Tamil Nadu (1991 WLR 419). In this view of the matter only the said requirement is held to be illegal and ultra vires the rights of the minority institution. Relief is therefore granted only to this extent in Writ Petition No. 2165 to 2167 of 1996. In all other respects, all the above writ

Petitions are dismissed reserving liberty to the Petitioners to challenge individual orders of the State Government, granting or refusing the No

Objection Certificate. However, there will be no order as to costs.

4. this Court in the case of Good Shephered Out Reach Mission Evangelical and Educational Trust (Go Meet India Trust) represented by its

President, Erode. v. The Government of Tamil nadu and Anr. reported in (2000) 3 MLJ 244 reiterated the same view holding that the Government

order directing the creating of endowment fund as precondition to grant of No Objection Certificate for establishment of institution was not

applicable to the minority institutions. The operative portion of the judgement reads as under:

15. In the light of what is stated above, I am in agreement with the contentions raised by the Learned Counsel for the Petitioner and I hold that the

direction to create an endowment for Rs. 10 lakhs as pre condition for considering the applicable of the Petitioner society for the establishment of

religious minority college in the name of Good Shephered Out Reach Mission Evangelical and Educational Trust, Erode is illegal and I further hold

that the Respondents are not entitled to make such a demand as a pre condition for considering the application of the petitioner society.

Accordingly, the impugned order is quashed and the writ petition is allowed. No costs. In the light of quashing the impugned order, the

Respondents are directed to consider the claim of the Petitioner and pass appropriate orders within a period of eight weeks from the date of

receipt of a copy of this order. Consequently, W.M.P. No. 29638 of 1997 is closed.

5. There is thus no justification with the Government to have directed the Petitioner to create endowment fund of Rs. 10 lakhs.

6. However, this Writ Petition suffers from legal lacunae as before approaching this Court for issuance of a Writ in the nature of Mandamus, the

Petitioner has not chosen to file any writ of demand, to enable the Respondent to consider the claim, and pass appropriate orders. It is now settled

that the Writ of Mandamus can be issued on satisfaction of these conditions i.e., the legal right of the Petitioner and corresponding legal obligation

of Respondent to address the grievance, and showing that a Writ of demand was filed, which is not answered.

7. Consequently, while dismissing the Writ Petition,the Petitioner is given liberty to file a demand notice with the Respondent. It is hoped, that in

view of settled law, the demand of Petitioner would be met, to avoid unnecessary litigation, in future.

8. No costs.

