

(2016) 01 MAD CK 0113

In the Madras High Court

Case No : W.P. (MD) No. 6216 of 2015 and M.P. (MD) No. 1 of 2015

Managing Trustee cum Chairman Ruben Educational and
Charitable Trust

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 2(4)(a), Section 3,
Section 4, Section 5, Section 5(1), Section 5(3), Section 8

Citation : (2016) 01 MAD CK 0113

Hon'ble Judges : D. Hari Paranthaman, J.

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant; Aayiram K. Selvakumar,
Government Advocate, for the Respondent

Final Decision : Disposed off

Judgement

D. Hari Paranthaman, J.—1. With the consent of both parties, the main writ petition itself is taken up for final disposal, as the matter is squarely covered by a decision of this Court in *The Secretary, Immaculate College for Women v. The State of Tamil Nadu*, reported in , 2015(1) CWC 557.

2. The petitioner made an application to the Government to grant them minority status for the purpose of establishing Arts and Science College. The said application was rejected by the Government in the impugned Letter No. 16031/E1/2014-2 dated 10.04.2015. The rejection is based on two grounds. The first ground is that the issue as to the grant of minority status would be considered only after the petitioner establishes a college and also after obtaining affiliation from the fourth respondent University. The second ground is that the petitioner has not submitted the Community Certificate of all the Trust members.

3. The petitioner has questioned the aforesaid letter refusing to grant minority status to the petitioner. On 22.04.2015, in M.P.(MD) No. 1 of 2015 in this writ

petition, passed an interim order and the said order reads as follows:

"There shall be an order of interim order as prayed for till 30.06.2015. List this miscellaneous petition for further hearing on 08.06.2015.

2. It is made clear that in the event of non payment of Batta within five working days from the date on which a copy of this interim order is made ready, the interim order granted shall stand automatically vacated and the stay petition shall also stand dismissed without any further reference to this Court."

4. Pursuant to the aforesaid order, the Government issued G.O.(D) No. 147, Higher Education (E1) Department, dated 17.06.2015, granting minority status. However, it is stated that the same is subject to the final outcome of this writ petition. Further, affiliation was also granted on 07.08.2015. The order of the Manonmaniam Sundaranar University granting affiliation also states that the same is also subject to the result of the writ petition.

5. As rightly contended by the learned counsel for the petitioner, the impugned order is liable to be quashed in view of the categorical pronouncement of the decision of this Court in *The Secretary, Immaculate College for Women v. The State of Tamil Nadu*, reported in , 2015(1) CWC 557. It is useful to extract paragraphs-10 to 21 of the aforesaid judgment, as under:

"10. The Deputy Secretary to Government, Higher Education Department has filed a counter affidavit. As per the counter affidavit, the Government had issued various guidelines for the grant of minority status, under G.O.Ms. No. 270, Higher Education Department, dated 17.06.1998, in tune with the decision of the Supreme Court in *T.M.A. Pai Foundation*. According to the Government, the applications of only those institutions which have already established colleges alone are taken up for consideration and that since the petitioner has not started a college, they are not entitled to conferment of minority status. Yet another reason stated by the respondents is that the petitioner has not submitted the Community Certificates of all the Trust Members and that there is no proof that the petitioner fulfils the twin objectives of Article 30(1) of the Constitution, as indicated by the Supreme Court in its decision in *P.A. Inamdar*.

11. I have carefully considered the objections of the respondents. I do not think that the rejection of the request of the petitioner by the Government, is for any bonafide reason.

12. In the order impugned in the writ petition, the Government stated two reasons namely: (a) that the petitioner is yet to start a college and (b) that the petitioner has not so far obtained affiliation. Both these reasons are highly untenable.

13. Section 5 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, prescribes the procedure for the grant of permission for starting a new private college. Sub-section (1) details the procedure to be followed by the Government on receipt of an application. Sub-section (2) declares that the decision of the

Government under Sub-section (1) shall be final. Sub-section (3) prohibits a University from granting affiliation to any private college unless permission has been granted under Sub-section (1).

14. Since the petitioner claims to be a minority educational institutions, some of the provisions of the 1976 Act do not apply. This is seen from Section 8 of the Act. Section 8 stipulates that any minority, whether based on religion or not, may establish and administer any private college without permission under Sub-section (1) of Section 5 read with Sections 3 and 4. The effect of Section 8 is that there is no need for a minority, to take permission for establishing and administering a private college under Section 5(1).

15. But, unfortunately, there is no reference to Sub-section (3) of Section 5, in Section 8. Therefore, the mandate in Sub-section (3) of Section 5, may stay. This is why the petitioner, despite being a minority, has applied for conferment of status.

16. More over, the question of conferment of minority status, is not dealt with by 1976 Act. Therefore, the field is now governed only by the Government Order issued following the decision of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* [, AIR 2003 SC 35].

17. As I have stated earlier, the respondents have given two reasons in the impugned order for rejecting the request. The first is that the petitioner has not started the College and the second is that the University has not yet granted affiliation. But, both these reasons tantamount to putting the cart before the horses. Before conferment of minority status, if the respondents want the petitioner to start a College, then, they will be obliged to obtain permission under Section 5(1), in which case, automatically Sub-section (3) of Section 5 will prohibit the University from granting affiliation. The respondents cannot put an institution in a vicious cycle, out of which they cannot escape at any point of time.

18. It is admitted that the Trust, which was established in 1992, had obtained minority status. The Trust is running about 312 institutions, some of which are colleges and some of which are schools. In other words, the educational agency of the petitioner College, will only be the Society which is known as Immaculate Heart of Mary's Society registered under the Tamil Nadu Societies Registration Act.

19. Section 2(4)(a) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 defines an educational agency in relation to any minority college to mean a body of persons established and administered or proposes to establish and administer such minority college. When the definition of the educational agency includes any person who proposes to establish and administer such minority college, the respondents cannot reject permission on the ground that the College is not yet been established. The first reason stated in the impugned order goes contrary to the very definition available in section 2(4)(a) of the Act. The second reason stated in the impugned order goes contrary to Section 5(3) of the Act.

20. On the reliance placed upon the decision in P.A. Inamdar v. State of Maharashtra [, (2005) 6 SCC 537], it is to be pointed out that today, without even processing the application of the petitioner, the respondents cannot come to a conclusion that the twin objects are not satisfied. The original Society, has already got it registered under the Tamil Nadu Societies Registration Act, 1976. Under the provisions of the act, the Society is obliged to file forms periodically, indicating the details of the office bearers on whom the management of the Society is vested. Therefore, the details about the persons who constitute the Managing Committee of the Society are always available with the Government, in a different department. So far, there is no allegation that any person belonging to a non minority, has been elected or at least has become a member of the Society in question. Therefore, the stand taken in the counter affidavit that community certificates have not been produced, cannot be accepted.

21. In K.M. Benedict Crizal v. Secretary to Government [decided on 11.7.2007, by K. Chandru, J, in W.P.(MD) No. 9424 of 2006], the learned Judge rejected a very identical contention raised by the respondents. Therefore, I am of the view that the stand taken by the respondents either in the impugned order or in the counter affidavit cannot be sustained. Hence, W.P. No. 22376 of 2014 is allowed, the impugned order is set aside and the respondents are directed to pass appropriate orders in accordance with law, within a period of eight weeks, taking into account the fact that the original educational agency, namely, the Society registered under the Tamil Nadu Societies Registration Act, has already been conferred with minority status and that they are also running several institutions. After the first respondent passes an order, the University shall take up the application and pass consequential orders. The other writ petitions are closed, in view of the fact that the last writ petition is for a larger relief and it has been disposed of as above. Consequently, connected M.Ps. are closed."

6. In view of the aforesaid judgment, the impugned order is liable to be quashed. Since already minority status is granted subject to the result of the writ petition, a direction is issued to the first respondent Government to continue the minority status that was granted in G.O.(D) No. 147, Higher Education (E1) Department, dated 17.06.2015. Of course, the Government is entitled to reconsider the minority status if there is any change in the composition of Educational Agency. In view of the aforesaid direction, the fourth respondent is also directed to continue the affiliation without any limit.

7. The writ petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.