

(2015) 06 MAD CK 0416

In the Madras High Court

Case No : Writ Petition (MD) No. 9124 of 2015

The Dalit Christians Educational and Development Trust

APPELLANT

Vs

The Secretary to Government, Department Higher Education
and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

National Commission for Minority Educational Institutions Act, 2004 — Section 10
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 3, 4, 5, 5(1), 8

Citation : (2015) 3 LW 793

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

**Advocate : P.M. Vishnuvarthanan, for the Appellant; R. Anandha Raj, Govt.
Advocate, Advocates for the Respondent**

Final Decision : Allowed

Judgement

S. Vaidyanathan, J—The petitioner has filed this writ petition, seeking to quash the order of 3rd Respondent in MSU/CD/Fresh Affil/2014 dated 04.08.2014, in and by which the petitioner was directed to get the Government order for establishment of new college. The petitioner also sought a direction to the 3rd respondent university to consider and pass orders forthwith on the petitioners application dated 30.10.2013 for the grant of affiliation to the petitioner Arts & Science College Viz. Dr. Noble Christian College of Arts & Science including the final reminder dated 23.05.2015. The contention of the petitioner is that there is no requirement for the petitioner Trust to obtain any prior permission for establishing a new college in terms of the Tamil Nadu Private Colleges (Regulations) Act, 1976 (in short "the Regulations, 1976"). For the sake of convenience, Sections 5 and 8 of the Regulations, 1976 and Section 10 of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as "the Act") are extracted below:

"5. Grant of permission - (1) On receipt of an application under sub-section (1)

of section 4, the Government -

(a) may, after considering the particulars contained in such application, grant or refuse to grant the permission; and

(b) shall communicate their decision to the applicant within such period as may be prescribed:

Provided that the permission shall not be refused under this section unless the applicant has been given an opportunity of making his representations:

Provided further that in case of refusal of the permission the applicant shall be entitled to the refund of one-half of the amount of the fee accompanying the application.

(2) The decision of the Government under clause (a) of sub-section (1) shall be final.

(3) No university shall grant affiliation to any private college unless permission has been granted by the Government under sub-section (1)."

8. Minority college to be established without permission - Any minority, whether based on religion or language, may establish and administer any private college without permission under sub-section (1) of section 5 read with sections 3 and 4."

Section 10 of the National Commission for Minority Educational Institutions Act, 2004:

"10. Right to establish a Minority Educational Institution.

(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose."

(2) The Competent authority shall,

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,--

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it

shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

10-A. Right of a Minority Educational Institution to seek affiliation.--

(1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University:

Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application."

2. As per Section 10 of the Act, which is extracted supra, minority institutions will have to apply to the competent authority for getting NOC for commencing the college. As per the said Section, NOC will have to be obtained from the competent authority, which, as per the definition is known as any University or authority empowered by the Government in the respective States. It is more relevant to extract the definition to Competent authority as per the Regulations, 1976 as under:

"(3) "competent authority", in relation to any provision of this Act means - (i) any university, (ii) authority, officer or person, empowered by the Government, by notification, to be the competent authority for the purposes of that provision and different competent authorities may be appointed for different provisions or for different areas or in relation to different classes of private colleges as may be specified in the notification."

The definition to "Appropriate Government" under the Act is as follows: "(2aa) "appropriate Government" means-

(i) in relation to an educational institution recognised for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational institution recognised for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established."

3. A reading of the definitions, referred to above, it is clear that educational institutions insofar the petitioner is concerned, it is the State Government, which is governed by the local laws. That being the case, the impugned order passed by the University stating that the petitioner College will have to get NOC from the appropriate Government, which is mandatory for establishing a new college, is not correct under the Law, coupled with the fact that Section 8 of the Regulations, 1976 also stipulates that minority institutions need not seek any prior permission for establishing and administering any private college.

4. By following the decision rendered by the Hon''ble Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 , this Court also in the case of Secretary, Immaculate College for Women Vs. State of Tamil Nadu, (2014) 8 MLJ 570 , has held as follows:

"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 and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 ."

In view of the above, I find much force in the contention raised by the learned counsel for the petitioner. Accordingly, the Writ Petition is allowed and the impugned order passed by the respondent University is set aside. The 3rd respondent University is directed to reconsider the issue, taking note of the decisions of the Hon''ble Supreme Court and this Court and also the provisions of the Tamil Nadu Private Colleges (Regulations) Act, 1976 and pass suitable orders within a period of two months from the date of receipt of a copy of this order. No costs.