

(2014) 09 MAD CK 0276

In the Madras High Court

Case No : Writ Petition Nos. 12418, 16397 and 22376 of 2014 and M.P. Nos. 1 and 2 of 2014

The Secretary

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 2(4)(a), 3, 4, 5, 5(1)

Citation : (2014) 09 MAD CK 0276

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—A society by name "Immaculate Heart of Mary's Society, Cuddalore" was registered under the Tamil Nadu Societies Registration Act, 1975, way back in the year 1992. The Society was founded by a Roman Catholic Congregation of the order of "Immaculate Heart of Mary, Pondicherry". This Congregation was already recognized as a religious minority by a decision of this Court in W.P. No. 652 of 1975 dated 24.09.1976 and the proceedings of the Director of School Education dated 20.11.1976.

2. The said Congregation is running about 312 institutions including 8 colleges, 125 schools and Training Institutes, 51 Hospitals and Dispensaries, 128 Homes and Boarding etc. The Congregation is actually run by Nuns, numbering about 1170, with the Superior General as its President and the Provincials as Vice-Presidents.

3. With the intention of starting an Arts and Science College for women at Pudupalayam in Cuddalore, during the Academic year 2014-15, the petitioner submitted statements to the Director of Collegiate Education, on 21.10.2013. The petitioner also made an application to the Thiruvalluvar University on 26.10.2013 for the grant of affiliation.

4. Thereafter, the petitioner also submitted an application on 30.10.2013 and

remainder on 27.01.2014, seeking an order from the Government, recognizing the petitioner as a religious minority institution. Simultaneously, the petitioner also filed an application on 26.01.2014 with the University, seeking affiliation. But no orders were passed on the representations.

5. Therefore, the petitioner came up with 2 writ petitions in W.P. Nos. 12417 and 12418 of 2014, seeking the issue of a writ of mandamus in the first writ petition to direct the Government to pass orders on their representations for conferment of minority status and seeking a mandamus in the second writ petition to direct the University to consider their application dated 26.01.2014 for the grant of affiliation.

6. On 29.04.2014 this Court admitted W.P. No. 12418 of 2014. In W.P. No. 12417 of 2014, this Court passed an order directing the Government to consider the representation of the petitioner for conferment of minority status and to pass orders within a period of six weeks.

7. However, the Director of Collegiate Education, sent a communication dated 27.05.2014 informing the petitioner that his office was processing the applications for conferment of minority status of existing institutions alone and that as and when the petitioner started a college, his application will be considered. Aggrieved by the said order, the petitioner came up with a writ petition in W.P. No. 16397 of 2014. The said writ petition was admitted on 25.06.2014.

8. In the meantime, the University sent a communication dated 10.06.2014 directing the petitioner to obtain either a No Objection Certificate from the State Government to start a new Arts and Science College or a declaration that the petitioner is a minority institution, to enable the University to consider the question of affiliation.

9. Eventually, the Government sent a letter dated 24.06.2014, calling upon the petitioner to show cause why their request for conferment for minority status should not be rejected. The petitioner sent a reply. Thereafter, the Government issued an order dated 28.07.2014, rejecting the request of the petitioner. Therefore, challenging the said order, the petitioner has come up with W.P. No. 22376 of 2014.

10. Since the first writ petition is against the University for the grant of affiliation, the second writ petition is against the order of the Director of Collegiate Education and the third writ petition is against the order of the Government refusing to confer minority status, all the three writ petitions were taken up together and I have heard Mr. P. Godson Swaminathan, learned counsel for the petitioner, Mr. P. Sanjay Gandhi, learned Additional Government Pleader for the Government and Mr. V. Gangadharan, learned counsel for the University.

11. 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.

12. 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.

13. 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.

14. 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).

15. 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).

16. 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.

17. 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, .

18. 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.

19. 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.

20. 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.

21. On the reliance placed upon the decision in P.A. Inamdar and Others Vs. State of Maharashtra and Others, , 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.

22. 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.