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W.A.No.2353 of 2022 in
W.P.No.10973 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A.No.2353 of 2022 in W.P.No.10973 of 2022

The Justice Basheer Ahmed Sayeed College
for Women (Autonomous)
Rep. by its Correspondent
Mr.Faizur Rahman Sayeed
Old No.310, New No.56
K.B.Dasan Road
Teynampet
Chennai – 600 018.

Appellant / Petitioner
in both
W.A. & W.P.

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to the Government
Department of Higher Educational
Fort St.George, Chennai – 600 009.
2. The Directorate of Collegiate Education
College Road, Chennai – 600 006.
3. The Joint Director of Collegiate Education
Chennai Region, Saidapet
Chennai – 600 015.
4. The University of Madras
Rep. by its Registrar
University Centenary Building
Chepauk, Chennai – 600 005.

Respondents
in both
W.A. & W.P.



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Prayer in W.A.No.2353 of 2022: Appeal filed under Clause 15 of the Letters Patent against the order dated 27.04.2022 in W.M.P.No.10533 of 2022 in W.P.No.10973 of 2022;

Prayer in W.P.No.10973 of 2022: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned order passed by the first respondent Principal Secretary, Higher Education, Government of Tamil Nadu vide G.O.Ms.No.232, Higher Education (E1) Department dated 20.11.2021 rejecting extension of Religious Minority Status to the petitioner College and also consequently Clause 8(v) of G.O.Ms.No.270 Higher Education (J1) Department dated 17.06.1998, imposing the condition of restricting admission of minority students upto 50 percent to quash the same and further to direct the first respondent to issue the Permanent Religious Minority Status Certificate to the petitioner College.

[Prayer amended vide order dated 07.07.2023 in W.M.P.No.19308 of 2023 in W.P.No.10973 of 2022]

For the Appellant \ Petitioner : Mr.Vijay Narayan
in both W.A. & W.P. Senior Counsel
for Mr.B.Senthilnathan

For the Respondents : Mr.R.Shunmugasundaram
in both W.A. & W.P. Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader
for respondents 1 to 3

: Mr.A.S.Vijaya Raghavan
for respondent 4



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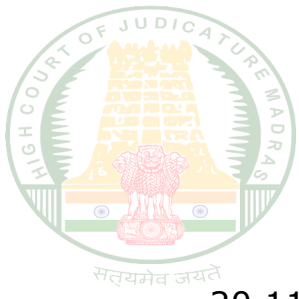
COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appellant/petitioner, claiming to be a Minority Institution, filed W.P.No.10973 of 2022 assailing the Government Order dated 20.11.2021, rejecting the extension of Religious Minority status to the appellant/petitioner College and further sought a direction to issue the Permanent Religious Minority status certificate to the appellant/petitioner College.

2. The learned Single Judge ordered *status quo* to be maintained till the next date of hearing upon a condition that the appellant/petitioner faithfully adheres to the maximum threshold. But, the appellant/petitioner breaches the condition of maximum threshold of 50 percent students to be admitted from the Minorities. The W.A.No.2353 of 2022 is filed by the appellant/petitioner against the said order.

3. W.P.No.10971 of 2022 was initially filed by the appellant/petitioner challenging the G.O.Ms.No.232 dated



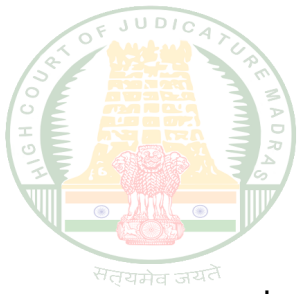
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20.11.2021, rejecting the extension of Religious Minority status to the appellant/petitioner College. However, during the pendency of the writ petition, on or about 07.07.2023, the appellant/petitioner amended the petition by raising additional grounds, so also the prayer. By amendment, the appellant/petitioner now challenges Clause 8(v) of G.O.Ms.No.270, issued by the Higher Education (J1) Department dated 17.06.1998, imposing the condition of restricting the admission of Minority students up to 50 percent and also seeks a direction against the respondents to issue Permanent Religious Minority status certificate to the appellant/petitioner College.

4. As both the writ appeal and the writ petition are based on the same set of facts and involves similar question of law, to avoid rigmarole, are decided together.

5.1. The appellant/petitioner claims to be a Religious Minority Institution and runs an Arts & Science College (Autonomous) for Women. The appellant/petitioner claims to be a Society established



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and administered by the members of the Muslim Minority Community and is registered under the provisions of the erstwhile Societies Registration Act, 1860 on 23.10.2021 and after the repeal of the Act of 1860, it is now governed by the Tamil Nadu Societies Registration Act, 1975.

5.2. The appellant/petitioner College is affiliated to the University of Madras. The College became fully autonomous in the year 2006. It functions in two sessions viz., forenoon session and afternoon session. According to the appellant/petitioner, the forenoon session of the College receives grant-in-aid from the Government. The G.O.Ms.No.270 dated 17.06.1998 provides that in case of self-financing Educational Institutions imparting Professional Courses of Education, established and administered by any Minority, shall admit students of that Minority alone in the existing 50% of the sanctioned strength.



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5.3. The appellant/petitioner was conferred with minority status for the Academic Year 2006-07, which was thereafter extended for a further period of five years from 2007-08 to 2011-12 vide Government Order dated 20.05.2009. The appellant/petitioner, under letter dated 03.03.2021, requested the first respondent for grant of Permanent Minority status to the College. The first respondent issued the impugned order dated 20.11.2021, rejecting the extension of Religious Minority status to the appellant/petitioner College on the ground that it has admitted more than 50% of the Muslim Minority students during the year 2016-17, 2018-19 and 2019-20 to the Courses run by it, ergo the writ petition.

6. Mr.Vijay Narayan, learned Senior Counsel appearing for the appellant/petitioner, in his usual erudite-self canvassed the following propositions:

- (i) The Government does not have the Right and authority to fix the cap for admission of students



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belonging to a Minority Community in a Minority Institution. It cannot direct a Minority Institution not to admit more than 50% of the sanctioned strength from the students belonging to the Minority Community;

(ii) By the 93rd Amendment to the Constitution of India, Article 15(5) of the Constitution of India was incorporated and based on that, subsequently, the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Private Educational Institutions) Act, 2006 (for brevity, hereinafter referred to as, "the Act of 2006") came to be passed. As per Section 2(d) of the Act of 2006, the Minority Educational Institutions, both Aided and Unaided by the State, are excluded from the definition of Private Educational Institutions. The maximum cap of not admitting students more than 50% from the Muslim Minority Community cannot be imposed;



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(iii) The State has no power to interfere with the administration of the Minority Educational Institutions, both aided and unaided, which affects the Minority character of such Institutions and is absolutely unlawful and unconstitutional;

(iv) The impugned G.O.Ms.No.270 dated 17.06.1998 was passed prior to the 93rd Amendment to the Constitution of India, by virtue of which, Article 15(5) was incorporated in the Constitution of India. Article 15(5) of the Constitution of India exempts Minority Educational Institutions from the ambit of Communal Reservation. The guidelines compelling the Minority Colleges to follow the conditions of reservation has become null and void and as it has been superseded by incorporation of Article 15(5) to the Constitution of India. Learned Senior Counsel buttressed his



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submissions by relying upon the cases of (a) *Pramati Educational and Cultural Trust vs. Union of India*¹; (b) *The Federation of Catholic Faithful, represented by its General Secretary vs. Government of Tamil Nadu and 4 others*²; (c) *The Institute of the Franciscan Missionaries of Mary, represented by its President St.Thomas Convent, Mylapore vs. Government of Tamil Nadu, Rep. by its Principal Secretary, Department of School Education and others*³;

(v) Reliance by the respondents in their affidavit on the Grant-in-Aid Code and Section 7 of the Tamil Nadu Private Colleges (Regulations) Act, 1976 are inapplicable, as Section 2(d) of the Act of 2006 nullifies the same;

1 2014 (4) MadLJ 486
2 2014 (3) LW 594
3 2019 SCC Online Mad 31519



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(vi) The contention of the respondents that Permanent Minority status has not been granted to any Educational Institutions as on date or cannot be granted is misconceived. A Division Bench of this Court in *W.A.No.113 of 2013* dated 11.09.2017 (*State of Tamil Nadu Vs. Secretary & Correspondent, Loyola College*) held that the Minority Status of an Educational Institution cannot be restricted for a limited period. This was affirmed in *Rev.Appl.No.236 of 2019* dated 21.02.2020. A Division Bench of this Court had followed the said judgment in the case of *State of Tamil Nadu vs. Syed Ammal Engineering College*⁴. Relying upon the judgment of the Division Bench, a Single Judge of this Court in the case of *Rabiammal Ahamed Maideen College for Women vs. Government of Tamil Nadu, Higher Education Department and Another*⁵ quashed the Government Order restricting the Minority status of the College for a limited period and directed the Government

⁴ 2020 6 MLJ 357

⁵ 2021 SCC Online Mad 12365



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to pass a fresh order granting permanent Minority status to the concerned College;

(vii) The reasons given by the first respondent for rejecting the extension of Religious Minority status to the appellant/petitioner College by referring to Clause 8(v) of G.O.Ms.No.270, Higher Education (J1) Department dated 17.06.1998 stating that the College has exceeded the maximum threshold of 50% in admission of the Muslim students to the Courses run by it during the three Academic Years, is illegal, as it compelled the Minority Educational Institutions to follow the Communal Reservation to admit Minority students to the Courses run by it. More over, G.O.Ms.No.270 dated 17.06.1998 would apply only to Professional Institutions;

(viii) In the guidelines provided under Clause 8(v) of G.O.Ms.No.270, the Government imposed the condition



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in admission of Minority students to only self-financing Educational Institutions imparting Professional Education, but the appellant/petitioner College is purely an Arts & Science College. The impugned Government Order and the impugned decision deserves to be quashed and set aside.

7. Mr.Shunmugasundaram, learned Advocate General appearing for the State of Tamil Nadu, in a lucid manner, countered the submissions of learned Senior Counsel appearing for the appellant/petitioner and canvassed the following submissions:

(i) The judgment of the learned Single Judge, relied on by the appellant/petitioner in W.P.No.8164 of 1998 with connected writ petitions dated 12.08.1998 would not apply to the present case. The challenge before the Court was to G.O.Ms.No.253, Higher Education (D2) Department dated 10.06.1998 and not the Government Order impugned in the present matter;



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(ii) The appellant/petitioner Institution is an Aided Minority Institution, receiving 100% aid from the State Government. The Right to admit students in Minority Institutions is not an absolute Right of a Minority Institution. The Admissions to the Aided Institutions, whether a Minority or a Non-Minority, cannot be at the sweet will and pleasure of the Management of the Minority Educational Institution;

(iii) Learned Advocate General relied upon on the judgment of the Apex Court in the case of *TMA Pai Foundation and Ors. vs. State of Karnataka and Ors.*⁶. It is submitted that the activities of Education being essentially charitable in nature, the Educational Institutions, both of a Non-Minority and Minority character, can be regulated and controlled.

6 2002 8 SCC 481



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(iv) Reliance is placed on the judgment of the Apex Court in *Sk. Mohd. Rafique vs. Contai Rahamania High Madrasah*⁷. It is submitted that the Apex Court, in the said case held that reverse discrimination was not the intention of Article 30;

(v) The Right to admission is not an absolute Right. There cannot be reverse discrimination against anyone and in order to regulate the same, the State has regulated all Minority Educational Institutions imparting Higher Education to reserve 50% of the seats for the Minority to safeguard their Minority character and earmarking of seats to a maximum threshold of 50% was adopted by the State Government to safeguard merit based admission;

(vi) In Professional Educational Institutions or those imparting Higher Education, merit-based selection has

⁷ (2020) 6 SCC 689



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been taken to be in the interest of the Nation. A Minority Institution cannot, in the name of Right under Article 30(1) of the Constitution, disregard merit or merit-based selection of students;

(vii) Further reliance is placed on the judgment of the Apex Court in the case of *Jaishri Laxmanrao Patil vs. State of Maharashtra*⁸ to state that the Apex Court held that fixation of the percentage of 50% cannot be said to be unreasonable and it is to attain the objective of equality. Article 15(4) of the Constitution of India speaks about the adequate representation and not proportionate representation;

(viii) It is further argued that an Educational Institution has the Right to apply for Minority Status under the National Commission for Minority Educational Institutions Act, 2004 (in short, hereinafter referred to

⁸ (2021) 8 SCC 1



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as "the Act of 2004") or approach the State Government as per the provisions of Section 2(aa) of the Act of 2004 and as the State Government has already taken a decision, the appellant/petitioner has a remedy of appeal and the appellant/petitioner ought to have preferred the remedy of appeal;

(ix) The Minority status can be granted for a limited period so as to review that whether the Minority status can be in vogue and that no violation occurs. The appellant/petitioner College has violated the maximum threshold of 50% for three Academic Years. In view of the gross violation, the Government decided not to extent the Minority Status to the appellant/petitioner College. The appellant/petitioner College ought to have approached the National Commission of Minority Educational Institutions by virtue of Section 12B of the Act of 2004.



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(x) Learned Advocate General relied on the judgment of the Apex Court in the case of *Christian Medical College Vellore Association vs. Union of India*⁹ and submitted that the choice of Institution does not mean that the Minorities could establish Educational Institution for the benefit of their own Community. It is further submitted that the intake for the Community cannot exceed 50% of the annual admission, which is to be provided to others than the Minority Community;

8. We have considered the submissions canvassed by learned Senior Counsel for the appellant/petitioner and learned Advocate General for the State of Tamil Nadu.

9. The spectrum and the canvass of the debate would revolve around the following issues:

9 (2020) 8 SCC 705



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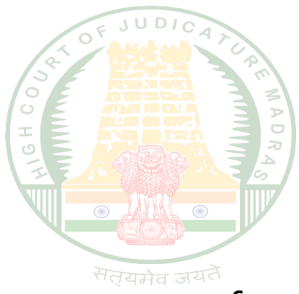


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- (i) whether the Minority Status can be granted only for a limited period;
- (ii) whether Social Reservation has to be maintained by the Institutions administered and managed by Linguistic Minorities;
- (iii) whether the State Government could impose threshold cap of not admitting students from the concerned Minority Community beyond 50 percent.

10. Article 30(1) of the Constitution of India bestows the Right on all Minorities, whether based on religion or language, to establish and administer Educational Institutions of their choice. The Right of the Minorities to establish and administer Educational Institutions flows from Article 30 of the Constitution of India.

11.1. The Act of 2004 is enacted so as to constitute a National Commission for Minority Educational Institutions and to provide for the matters connected therewith. The Act of 2004 creates the Right

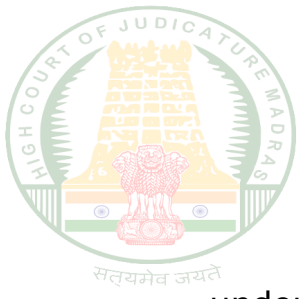


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of a Minority Educational Institution to seek recognition as an affiliated College to a Scheduled University. It also enables the Commission to decide on all questions relating to the status of any Institution as a Minority Educational Institution. The Commission is also empowered to cancel the recognition as a Minority Educational Institution, when it is found by the Commission that the purpose or character on which the Minority Educational Institution status was granted and also in admitting the students belonging to the Minority Community as per the Rules and the prescribed percentage is failed.

11.2. Under Section 10 of the Act of 2004, a person who desires to establish a Minority Educational Institution may apply to the Competent Authority for grant of No Objection Certificate for the said purpose. The Competent Authority is empowered to grant or reject such application. Upon grant of No Objection Certificate, the applicant shall 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



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under any Law for the time being in force.

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11.3. Under Section 11(f) of the Act of 2004, the Commission can decide all questions relating to the status of any Institution as a Minority Educational Institution.

11.4. Under Section 12-C of the Act of 2004, the Commission has powers to cancel the Minority status accorded to the Institution in the circumstances, (a) if the constitution, aims and objects of the Educational Institution, which has enabled it to obtain the Minority status has subsequently been amended in such a way that it no longer reflects the purpose and interest of the Minority Education and (b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the Minority Community in the Institution as per the Rules and the prescribed percentage governing the admissions during any Academic Year.

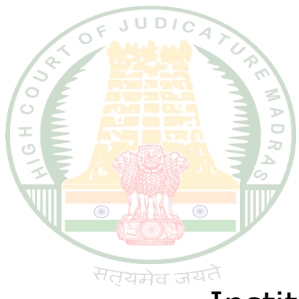


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11.5. The scheme of the Act of 2004 no way envisages grant of Minority status for a temporary period or for a restricted period. The grant of Minority status is not for a particular tenure. The Minority status of an Institution, accorded by the Competent Authority or the Commission, would subsist until the Commission cancels the same, as provided under Section 12-C of the Act of 2004.

11.6. In view of the aforesaid, it cannot be said that the State would have the Right to restrict the grant of Minority status for a limited period. Of course, in case, the constitution and/or the aim and objective of the Educational Institution, which has enabled it to obtain the Minority status, has subsequently been amended in a manner that it no longer reflects the purpose and character of the Minority Educational Institution, the Commission has the power to cancel the Minority status of that Institution. It does not empower the State to do so in that regard. In view thereof, it will have to be held that the Minority status, once granted to an Educational



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Institution, would continue until the same is cancelled.

11.7. This Court has also consistently held that the Minority status of an Educational Institution cannot be restricted for a limited period. For the said proposition, reliance is placed on the judgment of the Division Bench of this Court in W.A.No.113 of 2013 dated 11.09.2017 (*State of Tamil Nadu Vs. Secretary & Correspondent, Loyola College*) and another judgment of the Division Bench in the case of *State of Tamil Nadu vs. Syed Ammal Engineering College*⁴ (*supra*).

12.1. This takes us to the next question: whether social reservation has to be maintained by the Institution administered and managed by the Linguistic Minorities. The Constitution (93rd Amendment) Act, 2005 introduced Article 15(5) to the Constitution of India, thereby empowering the State to make special provision, by law, for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes or the

4 2020 6 MLJ 357



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Scheduled Tribes in so far as such special provisions relate to their admission to Educational Institutions including 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 of India. Though reservation is made applicable to the socially and educationally Backward Classes of citizens, the Scheduled Castes and the Scheduled Tribes for admission, from the Educational Institutions including Private Educational Institutions, the Minority Educational Institutions are consciously excluded from the operation of Article 15(5) of the Constitution of India. Article 15(5) of the Constitution of India does not empower the State to compel a Minority Educational Institution to admit students from the Scheduled Castes or Scheduled Tribes or Backward Classes of citizens.

12.2. Pursuant to Clause 5 of Article 15 of the Constitution of India, enabling the State Government to make special provisions by law for the advancement of any socially or educationally Backward



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Classes of citizens or for Scheduled Castes and Scheduled Tribes, relating to their admission to Educational Institutions, the State of Tamil Nadu enacted the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Private Educational Institutions) Act, 2006, (for brevity, hereinafter referred to as "the Act of 2006") so as to provide for reservation of seats. The Preamble of the Act of 2006 suggests that it is an Act to provide for reservation of seats in Private Educational Institutions in the State of Tamil Nadu for the Backward Classes of citizens and for the persons belonging to the Scheduled Castes and the Scheduled Tribes. Section 2(d) of the Act of 2006 reads thus:

"2(d) "private educational institution" means any deemed University or any private college or other private educational institution, including any institute or training center recognised or approved by the Government, whether aided or unaided by the State, other than the minority educational institution referred to in clause (1) of Article 30 of the Constitution established with the object of preparing,



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training or guiding its students for any certificate, degree or diploma or other academic distinctions granted or conferred by any University or authority established or approved in this behalf by the Government.”

12.3. The definition of Private Educational Institutions, as reproduced *supra*, would demonstrate that a Minority Educational Institution referred to in Clause (1) of Article 30 of the Constitution of India established with the object of preparing, training or guiding its students for any certificate, degree or diploma or other academic distinctions established is excluded. The Act of 2006 has excluded from its fold the Minority Educational Institution established.

12.4. Reading Article 15(5) of the Constitution of India and also Section 2(d) of the Act of 2006, it is manifest that the State would not have any authority to make any special provision, providing for the reservation to the Scheduled Castes, the Scheduled Tribes or the Backward Classes of citizens for admission in a Minority Educational Institution. More over, even as per the respondents, a Minority



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Institution is permitted to admit 50% of the students from a Minority Community and only the remaining 50% was permitted to the Minority Institution for admitting students other than the Minorities. In view of that also, the policy of Communal Reservation cannot be implemented i.e., reservation for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes.

12.5. In the case of *Pramati Educational and Cultural Trust (supra)* it was held that the Right to Education Act, 2009 does not apply to Minority Institutions, however, the Apex Court was dealing with primary education in the said case. In the case of *Ashok Kumar Thakur vs. Union of India*¹⁰, It is held by the Apex Court that exclusion of Minority Educational Institution from Article 15(5) of the Constitution of India is not violative of Article 14 of the Constitution of India, as the Minority Educational Institution, by themselves, are a separate class and the Rights are brought by other Constitutional provisions.

10 2008(3) MLJ 1105



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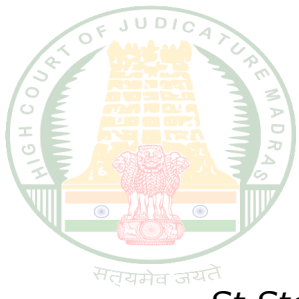
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12.6. In the light of the above, we have no hesitation to hold that the concept of Communal reservation or reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens would not apply to Minority Institutions.

13.1. This leads us to the more contentious issue as to whether the State Government can impose threshold cap of not admitting students of the concerned Minority Community beyond 50%. In the case of *St.Stephen's College vs. University of Delhi*¹¹, the Apex Court held that the State may regulate the intake of admission of students in respect of the Minority Community, but in no case, such intake shall exceed 50% of the annual admission. The balance admission shall be made available to the members of the Communities other than the Minority.

13.2. In the case of *T.M.Pai Foundation (supra)*, the Apex Court observed that the Right to admit students is not to be considered as an abstract and unqualified Right and it also held that the rigid percentage of 50%, with respect to intake of Minority students stipulated in

¹¹ 1992 (1) SCC 588



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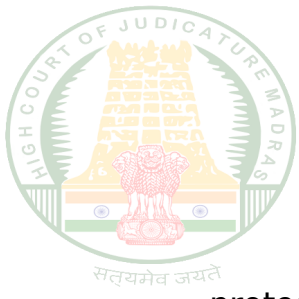
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St.Stephen's College case (*supra*), is not correct. It has to be left to the authorities to prescribe a reasonable percentage, having regard to the type of Institution and the educational needs of the Minorities.

13.3. In the case of *P.A.Inamdar & Others vs. State of Maharashtra*¹², the Apex Court observed that in Professional Educational Institution or those imparting Higher Education, merit based selection has been taken to be in the interest of the Nation and sub-serving and strengthening National welfare. Selection of meritorious students have been accepted to be of National Interest. A Minority Educational Institution cannot, in the name of Right under Article 30(1) of the Constitution of India, degrade merit or merit based selection of students with regard to Professional and Higher Education.

13.4. In the case of *SK.Mohd. Rafique (supra)* the Apex Court held that excellence and merit must be the governing criteria both in relation to the intake of students and the appointment of teachers. It is further held that the regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the

12 2005 (6) SCC 537



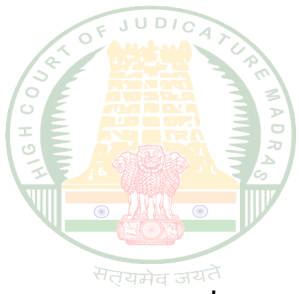
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protection conferred by Article 30(1) of the Constitution of India.

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13.5. Under the G.O.(MS) No.270 dated 17.06.1998, the threshold cap of 50% was imposed. The State Government Order provided that in the case of self-financing Institutions, imparting Professional courses of Education, established and administered by the Minority, they shall admit students of that Minority alone, not exceeding 50% of the sanctioned strength. The said Government Order is issued exercising its power under Article 162 of the Constitution of India. The policy does not appear to be arbitrary or unreasonable or against the provisions of any Statute, Rules or Regulations in force.

13.6. In view of that, the petitioner, running a Minority Educational Institution has to abide by the said Government Order and admit students from the Minority Community, not exceeding 50%. However, while calculating the 50% of the Minority students, those students who are admitted on merit in the remaining 50%, belonging to the Minority Community, has to be excluded, because they have



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been admitted on their own merit competing with the others and not as students of Minority Community.

13.7. While issuing the impugned Government Order dated 20.11.2021, the Government rejected the extension of Religious (Muslim) Minority status to the petitioner Institution on the sole ground that the petitioner Institution admitted more than 50% of the Muslim Minority students during the Academic Years 2016-17, 2018-19 & 2019-20. The percentage of the Minority students admitted is charted out in the said Government Order. The said chart reads thus:

| <i>S.No.</i> | <i>Year</i> | <i>Sanctioned Strength</i> | <i>Total No. of concerned Minority students admitted against the sanctioned strength</i> | <i>Percentage of Minority students admitted against the sanctioned strength</i> |
|--------------|-------------|----------------------------|--|---|
| 1. | 2012-13 | 2575 | 1146 | 45% |
| 2. | 2013-14 | 2577 | 1216 | 47% |
| 3. | 2014-15 | 2585 | 1241 | 48% |
| 4. | 2015-16 | 2672 | 1277 | 48% |
| 5. | 2016-17 | 2672 | 1468 | 55% |
| 6. | 2017-18 | 2733 | 1371 | 50% |
| 7. | 2018-19 | 2712 | 1402 | 52% |
| 8. | 2019-20 | 2756 | 1424 | 52% |
| 9. | 2020-21 | 2795 | 1381 | 49% |

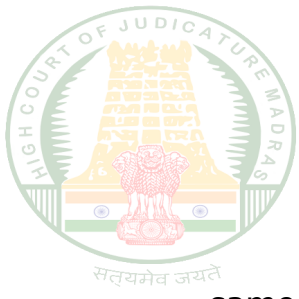


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13.8. Under the G.O.(MS).No.232 dated 20.11.2021, it has been observed that the Members of the Governing Body of the petitioner College belong to the Muslim Minority, which has been established and continuously administered by the Religious (Muslim) Minority concerned. The Memorandum bylaws of the petitioner's Association stipulates that the Society has to serve the interest of the Muslim Minority Community. However, only on the ground that the 50% of the maximum sanctioned strength has been violated, the State has rejected the request for extension of Religious (Muslim) Minority status to the petitioner Institution.

13.9. As discussed above, the Right to cancel the recognition as a Minority Educational Institution vests only with the Commission, established under the Act of 2004. Admitting more students than the sanctioned 50% threshold would not *ipso facto* permit the cancellation of Minority status of the Educational Institution. More over, it is not clear from the impugned Order as to whether some of the students belonging to the Minorities are admitted on the basis of their own merit, while competing with the 50% students of non-Minorities. The



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same also has to be taken into consideration.

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13.10. When the threshold cap of 50% is placed, that would mean that the 50% seats are exclusively meant for the Minority students and the remaining 50% admission would be open to all other non-Minorities, and in the same, even the students of the said Minority Community can compete. The impugned Order does not clarify the same.

14. In the light of that, the impugned G.O.(Ms).No.232 dated 20.11.2021, refusing the extension of Religious (Muslim) Minority status to the petitioner Institution is quashed and set aside. In case the petitioner complies with all other requirements, then the respondents shall permit the petitioner to function as a Minority Educational Institution, unless the Minority status is cancelled by the Commission under the Act of 2004.

15. Though we have held that Minority status accorded to the Educational Institution is not for a limited period, the regulatory



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measures may be adopted by the Commission or the Competent Authority, such as periodical calling for the list of Members of the Governing Board of the College, Memorandum and Bylaws, so as to monitor that the Institution is manned by the Members of the Muslim Minority.

16. In the result, we summarize our observation as under:

- i. The Minority status is not a tenure status, ergo is not for a limited period;
- ii. The Competent Authority may adopt regulatory measures and supervisory measures, such as periodical calling for the list of Members of the Governing Board of the College and the Memorandum and Bylaws, so as to monitor that the Institution is manned by the Members of the Minority;
- iii. The social reservation need not be maintained by the



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Educational Institution, administered and managed
by the Minorities; and

iv. The State Government would be within its Right to impose the threshold cap of admitting students from the Minority Community to 50%. However, in the remaining 50% seats, filled on merit from the General Category, the students of the Minority Community can also compete and be admitted on merit and the same would not be counted in the 50% threshold cap meant for the Minority students.

17. With these observations, the writ appeal and the writ petition stand partly allowed. There will be no order as to costs. Consequently, W.M.P.Nos.10553 & 14180 of 2022 and C.M.P.No.17870 of 2022 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

29.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

1. The Principal Secretary to the Government
The State of Tamil Nadu
Department of Higher Educational
Fort St.George, Chennai – 600 009.
2. The Directorate of Collegiate Education
College Road, Chennai – 600 006.
3. The Joint Director of Collegiate Education
Chennai Region, Saidapet
Chennai – 600 015.
4. The Registrar
The University of Madras
University Centenary Building
Chepauk, Chennai – 600 005.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU,J.

(drm)

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W.P.No.10973 of 2022

29.09.2023