

(2009) 12 MAD CK 0130

Madras High Court

Case No: Writ Petition No. 12481 of 2001

Nellai Kattabomman SC/ST
Welfare Association

APPELLANT

Vs

State of Tamilnadu and Arulmigu
K.G.S. Arts College

RESPONDENT

Date of Decision: Dec. 2, 2009

Acts Referred:

- Tamil Nadu Private Colleges (Regulation) Act, 1976 - Section 2(8)
- Tamil Nadu Private Colleges (Regulation) Rules, 1976 - Rule 11(1A), 11(1B)

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Advocate: R. Subramanian, for the Appellant; A.C. Manibharathy, G.A. for RR1 and 2 and G.R. Swaminathan, for R3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Manikumar, J.

Nellai Kattabomman District SC/ST Welfare Association, Tirunelveli, represented by its Secretary has sought for a direction to the respondents 1 and 2 to direct Arulmigu K.G.S. Arts College, Padmanabha Mangalam, Tirunelveli, the third respondent to follow the rules of reservation while making appointments to its employees as per Tamilnadu Private Colleges (Regulation) Act 1976.

2. According to the petitioner, the association has been formed to promote the welfare of SC/ST persons in all walks of life. It is the grievance of the petitioner that the third respondent is not implementing the rules of reservation in the matter of appointment of teaching and non teaching staff except in the category of scavenger. It is the contention of the petitioner's association that the third respondent college is not a minority institution and therefore, the college is bound to follow the

provisions of Tamilnadu Private Colleges (Regulation) Act 1976, as well as the Government orders issued from time to time in the matter of reservation. It is also the contention of the petitioner's association that minority status has not been conferred on the third respondent and therefore, the college should follow the rules of reservation in the matter of appointment of teaching and non teaching staff.

3. Per contra, the Special Secretary to the Government, Higher Education Department, Chennai, in his counter affidavit has submitted that the third respondent college is a private college within the meaning of Section 2(8) of the Tamilnadu Private Colleges (Regulation) Act 1976 and it is governed by the provisions of the Act and the rules framed thereunder. The said college has obtained a decree declaring them as religious minority college in O.S. No. 18/85 on the file of the Sub Court, Kumbakonam, which has been confirmed in A.S. No. 62/86, on the file of the District Court, Thanjavur. Pursuant to the Government order (Ms) 270, Higher Education Department dated 17.06.1998, the private colleges which were hitherto treated as minority colleges including the third respondent college, were requested by letter dated 29.07.1998 of the Director of Collegiate Education, Chennai, the second respondent, to apply and obtain minority status from the Government, since, the Hon'ble Supreme Court of India in TMA Pai foundation and other's case in I.A. No. 20 in W.P.(Civil) 317/93 dated 17.10.1994 has stayed the operation of all decrees or orders given by the Civil Courts, in respect of minority status to the institutions. By the abovesaid G.O, it was further clarified that the institutions have to approach the State Government for a declaration that they are minority institutions and till the government issues such an order declaring them as minority institutions they cannot operate in that capacity. Pursuant to the abovesaid G.O., during 1998-1999, permission was given by the Director of Collegiate Education dated 19.01.1999, to the third respondent college to fill up certain teaching posts duly following the rules of reservation i.e., by obtaining a list of candidates from the employment exchange and following communal rotation in the matter of appointment, as the said college did not obtain any minority status from the Government as per G.O.Ms. No. 270, Higher Education Department dated 17.06.1998. Challenging the order dated 19.01.1999 of the Directorate of Collegiate Education, Chennai, the third respondent college filed W.P. No. 2021 of 1999 for a direction to the second respondent, to grant permission to fill up additional teaching posts claiming minority rights and that the third respondent also obtained interim stay of the orders passed by the second respondent. Based on that the said college has been acting as a minority institution reserving their exclusive rights in the matter of appointment. By order dated 19.09.2002, the above Writ petition was allowed holding that it is not open to the Government to ignore the decree and minority status of the institution and the direction given to follow the roster point was held as invalid. The respondents have further submitted that Rules 11(1-A) and (1-B) of the Tamilnadu Private Colleges (Regulation) Rules 1976 were not made applicable to minority colleges. For the abovesaid reasons, he prayed for dismissal

of the Writ petition.

4. Heard the learned Counsel for the parties and perused the materials available on record.

5. Though the petitioner has contented that the object of the association is to promote the welfare of the SC/ST persons and the rules of reservation and instructions issued from time to time, in the matter of appointment of teaching and non teaching staff were not followed by the third respondent under the guise of a minority institution, the petitioner's association has not spelt out the policy of the Government regarding, implementation of the rules of reservation in minority colleges in the matter of appointments/promotions. The only averments made in the supporting affidavit regarding non implementation of the rules of reservation in the third respondent college is that after 1985, no SC/ST teacher has been appointed in the non teaching side, except in the category of scavenger. The averments relating to non-implementation in other categories are not supported with any materials. The petitioner has not furnished the details of the cadre strength of teaching/non teaching staff in the college and established as to how there is an infringement of statutory right, enabling SC/ST candidates to get themselves inducted in the posts sanctioned by the Government. The averments made in the Writ petition are bereft of details. It is well known that Mandamus can be issued if there is a failure on the part of the authorities in exercising their statutory duties and before that the legal right of the petitioner should be established. In the case on hand, the petitioner has not established the requirements.

6. Pleadings disclose that the order of the Director of Collegiate Education dated 19.01.1999, Chennai, the second respondent, has been set aside by this Court in W.P. No. 2021 of 1999, giving directions to the respondents therein, not to ignore the decree or minority status obtained by the petitioner in O.S. No. 18/85, as confirmed in A.S. No. 62/86.

7. Rule 11(1-A) and (1-B) of the Tamilnadu Private Colleges Regulation Rules reads as follows:

11. Conditions of service, etc. of teachers and other persons in college.- (1) The number of teachers employed in a college shall not exceed the number of posts fixed by the Director, from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and overall financial considerations.

(1-A) Every private college, not being a minority college shall reserve 18 per cent of the vacancies for appointment as teacher or other employee, for candidates belonging to Scheduled Castes and Scheduled Tribes.

(1-B) Every private college, not being a minority college shall reserve 50 per cent of the vacancies for appointment as teacher or other employee, for the candidate

belonging to the Backward Classes.

8. As per the statutory provisions, the minority colleges are not under any statutory obligation to reserve 18% of the vacancies for appointment to the post of teaching and non teaching staff and that they are also not under obligation to reserve 50% of the vacancies for backward classes. As long as, the abovesaid provisions remain in the statute, no Mandamus can be issued against respondents 1 and 2 to act contrary to the statutory provisions. In such a view of the matter, the relief sought for cannot be granted.

9. Hence the Writ petition is dismissed. No costs.