2019 INSC 1081

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 106 OF 2011

Andhra Kesari College of Education & Anr. … Appellants

versus

State of Andhra Pradesh & Ors.. … Respondents

WITH

CIVIL APPEAL NO. 110 of 2011

Holy Mary Institute of Technology & Science …Appellant

Versus

Govt. of A.P. & Ors. …Respondents

WITH

WRIT PETITION (CIVIL) NO. 244 OF 2007

Holy Mary Institute of Technology & Science …Petitioner

Versus

Union of India & Anr. …Respondents

J U D G M E N T

INDU MALHOTRA, J.

1. The present Civil Appeals and Writ Petition have been filed to challenge the *vires* of the Rules framed by the Government of Andhra Pradesh *vide* G.O.M. No. 57 dated 21.03.2005, G.O.M. No. 92 dated 16.11.2006, and G.O.M. No. 98 dated 06.12.2006 (hereinafter referred to as the "impugned G.O.Ms"), for admission to the B. Ed. Course in the State of Andhra Pradesh, and became applicable from the Academic Year 2006 – 2007. The said G.O.Ms continue to remain in force even as on date.

   At the time of final hearing, the Counsel appearing in Writ Petition (Civil) No. 244 of 2007 only pressed this matter for hearing. We are therefore, deciding the case in light of the facts in the Writ Petition.

2. The Petitioner – Institution is a minority institution which was granted the status of a "Christian Minority Educational Institution" by the Government of Andhra Pradesh.

As per G.O.M. No. 55 dated 20.03.2005, minority colleges were permitted to fill up 85% of their total seats, with students belonging to the minority community, as the Management Quota.

3. The Petitioner – Institution filed the present Writ Petition to challenge the impugned G.O.Ms on the following grounds :–

i) As per Clause 3(i) of the G.O.M. No. 57 dated 21.03.2005, the Government of Andhra Pradesh directed that the criteria for determining the minority status of candidates would be as follows :–

> *"As there were reports of students/candidates obtaining religious conversion certificates overnight by exploiting the provisions contained in G.O. 6th above, the following condition is prescribed. For the purpose of determining the minority status of candidates seeking admission into 85% management quota in the B.Ed., minority colleges, the Secondary School Certificates or Transfer Certificates (T.C.) from the school from which they have studied shall be the basis. In the absence of a T.C., the candidate should obtain a certificate from the Head of the Institution in which he/she studies in the proforma prescribed (Annexure-I) to this order. Further, the students submitting bogus minority community certificates shall be dealt with under the relevant sections of the I.P.C. apart from losing their seats following the due procedure."*
>
> (emphasis supplied)

ii) The second principal ground of challenge is that as per G.O.M. No. 92 dated 16.11.2006, Clause 4(viii) provided as follows :-

> *"(viii) The minority status of the students shall be decided as per the orders issued in G.O.M. No. 57 School Education (Trg-A1) Department dated 21.03.2006."*

Clause 5 set out the general guidelines for admission in the order of merit on the basis of the rank assigned in the Ed. CET to the extent of sanctioned seats.

Clause 6 prescribed centralized counselling as the only mode for admission even in respect of minority institutions.

iii) The third ground of challenge is the amendment made to G.O.M. No. 92 dated 16.11.2006 *vide* G.O.M. No. 98 dated 06.12.2006. The following clause was incorporated by the amendment :–

> *"(8). In clause (iii) (b), after sub-clause para (10), the following shall be inserted, namely :-*
> *(10 A). The Convenor, Ed. CET-AC Admissions shall conduct the counselling in phases if required till the last rank of Ed. CET. The Convenor, Ed. CET-AC Admissions shall fill the left over seats of the un-aided colleges in the presence of a Government nominee by following rule of reservation through counselling process, in case the seats in minority colleges are to be filled up with non-minority candidates."*
>
> (emphasis supplied)

iv) It was submitted on behalf of the Petitioner – Institution that the direction under G.O.M. No. 98 dated 06.12.2006 that unfilled seats in the 85% Management Quota, be allotted by the Convenor, Ed. CET to non-minority students on merit, is an intrusion on the right to administer the minority institutions conferred by Article 30(1) of the Constitution of India.

4. The Respondent – State contended that the impugned G.O.Ms do not in any manner violate the fundamental rights of the Petitioner – Institutions whatsoever.

4.1. The condition making the SSC Certificate as the basis for proving the minority status of the student, was imposed in light of the statistical data, which revealed that many students were converting over-night so as to obtain admission in the Management Quota of Minority Educational Institutions.

4.2. The Petitioner – Institution had an unhindered right to select minority students to fill up the 85% of the seats by the Management Quota, subject to merit in the Common Entrance Test.

If however, seats in the Management Quota of the Minority Education Institution, remained unfilled by students from the minority community, the unfilled seats would be allotted by the Convenor to candidates on the basis of merit in the Common Entrance Test.

5. We have heard the learned Counsel for the parties, and perused the material on record, as also the written submissions filed by the parties. We would observe :–

5.1. G.O.M. No. 57 dated 21.03.2005 had been issued for the purpose of determining the minority status of candidates seeking admission in the Management Quota. The G.O.M. provides that the SSC/Transfer Certificate should be the basis for making a valid claim by a candidate that he or she belongs to the minority religion, to be eligible for admission.

Statistical data was placed on record before the High Court, which is recorded in the impugned judgment, which highlights that Baptism Certificates were being obtained by students from other communities, so as to obtain admission in the Management Quota of Minority Educational Institutions.

In the additional counter affidavit filed by the Respondent – State before the High Court, it was

revealed that a large number of admissions were made on the basis of conversion certificates. The enquiry conducted revealed that 67 out of 200 students in New College of Education, Nizamabad; 90 out of 136 in Rayalseema College of Education, Kurnool; 82 out of 102 in Bhongir College of Education, Bhongir; 60 out of 85 in Jyoti College of Education, Siricilla; 91 out of 102 in Anebesent College of Education, Khammam; 85 out of 102 in Trinity College of Education, were admitted on the basis of Baptism Certificates. In most of these cases, the candidates declared themselves to be Christians subsequent to the date of submitting their applications for the Entrance Test.

Considering the extensive misuse of such certificates, the State Government deemed it appropriate to issue G.O.M. No. 57 dated 21.03.2005 making the SCC Certificate as the basis for determining the minority status of a student, in order to prevent misuse of Conversion Certificates by ineligible candidates, so as to ensure that only *bona fide* students were granted

admission in the Management Quota of Minority Institutions.

G.O.M. No. 57 prescribed a uniform criteria for determination of the status of all minority students. It safeguards the interest of genuine minority students, so that their seats are not taken away by those who resort to false conversions over-night, for the purpose of securing admission. This would preserve the minority character of the Institution, rather than act as an intrusion of the same.

5.2. The impugned G.O.Ms grant full autonomy to the Minority Educational Institutions to provide quality education for the minority community, by filling up 85% seats with meritorious minority students, and granting them priority for admission in such institutions.

5.3. With respect to G.O.M. No. 98, the requirement to fill up the vacant seats by non-minority candidates was based on statistical data which showed that the number of colleges, and the seats available for minorities, were highly disproportionate, and far in excess of the population as per the 2001 census. The

distinct possibility of seats remaining unfilled in the Minority Institutions every year, would not be in the interest of the Minority Educational Institutions.

With this object in mind, G.O.M. No. 98 was issued to ensure that the vacant seats in the 85% Management Quota did not remain unfilled during any academic year. The G.O.M. merely stipulated that if the said Quota remained unfilled by minority students, it would be filled from the merit list of successful candidates, as allotted by the Convenor, Ed. CET to promote excellence in education. By this process, an opportunity was granted to the CET qualified non-minority candidates to secure quality education, which would subserve the interest of the nation.

This G.O.M. does not, in any manner, interfere with the right of a Minority Educational Institution to manage its affairs for the benefit of the Minority Community. On the contrary, it ensures that vacant seats are not wasted, and are filled up by meritorious and deserving candidates.

5.4. Furthermore, the presence of a Government Nominee in the counselling process was to ensure that the

admission process is fair, transparent, and non-exploitative, and is based on merit. This would not interfere with the admission process of the minority institutions in any manner.

5.5. The impugned G.O.Ms are not violative of Article 30(1) of the Constitution of India. Article 30(1) states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The impugned G.O.Ms do not whittle down the right of the minority institutions in any manner.

The right of minority institutions is not absolute, and is amenable to regulation. The protection granted to Minority Educational Institutions to admit students of their choice is subject to reasonable restrictions.

In *T.M.A. Pai Foundation and Ors.* v. *State of Karnataka and Ors.*,[1] this Court held that :–

> *"The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining*

1 (2002) 8 SCC 481.

excellence thereof, and it is more so in the matter of admissions to professional institutions."

(emphasis supplied)

5.6. The impugned G.O.Ms do not impose any fetters on the freedom of the minority institutions to profess, propagate, and practice their religion, or the right to establish and administer their educational institutions. The criteria has been prescribed only for the purpose of determining the minority status of the candidates for admission to the B. Ed. Course. This would not amount to a restriction, or impose any fetters in the matter of an individual's choice of religion.

5.7. The contention of the Petitioner – Institution that the impugned G.O.Ms are unconstitutional, and violative of their fundamental rights, is liable to be rejected.

5.8. The impugned G.O.Ms were brought into force w.e.f. the academic year 2006-2007. These G.O.Ms have remained in force ever since. All Minority Educational Institutions in the State of Andhra Pradesh, including the Petitioner Institution, have been following these G.O.Ms since the past over 13 academic years without any complaint. There is no justifiable reason why the same should be discontinued at this stage.

In light of the aforesaid discussion, the Civil Appeals and the Writ Petition are dismissed as being devoid of any merit. All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

New Delhi;
September 25, 2019.