

***HON'BLE SRI JUSTICE R.KANTHA RAO**

W.P.No.12094 of 20003

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% Date:04.03.2015

Between:

Bethal Grace Residential High School rep. by its Correspondent,
Sri D.MoodyBhobjones and three others

...Petitioners

And

\$ The Regional Joint Director of School Education, Kakinada and two others

...Respondents

! Counsel for petitioners: Sri D.Linga Rao

^ Counsel for respondents: Government Pleader for School
Education

< **GIST:**

>HEAD NOTE:

? **Cases referred:**

1. AIR 2005 SC 3226(1)

2. AIR 2002 SC 463

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THIS THE 4TH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.12094 of 2003

Between:

Bethal Grace Residential High School rep. by its Correspondent,
Sri D.MoodyBhobjones and three others

..... PETITIONERS

And

The Regional Joint Director of School Education, Kakinada and two others

.....RESPONDENTS

The Court made the following:

HON'BLE SRI JUSTICE R. KANTHA RAO

WRIT PETITION NO.12094 OF 2003

ORDER:

This writ petition is filed by the petitioners under Article 226 of the Constitution of India seeking to issue a writ of mandamus declaring the order of first respondent in Rc.No.24/A2/94, dated 22.04.2003 appointing Sri A.Benhur as Head Master of School as illegal, arbitrary and without jurisdiction violating Article 30(1) of the Constitution of India, to set aside the same and

consequently to direct the respondents not to interfere with the selection of Head Master made by the management.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

3. The petitioners' High School is a Minority Educational Institution and it acquired the minority status vide Certificate No.205/6256/M&R/A2/99-C, dated 29.07.1999. The school was also admitted to grant-in-aid in the year 1991 and several teachers have been were working in aided and unaided posts. A dispute arose between one Smt. T.Nalini Ratna Kumari and Sri A.Benhur, the 4th respondent herein who claimed the post of Head Master in the petitioners' school. Smt. T.Nalini Ratna Kumari filed W.P.No.2842 of 2000 against the deceased 1st petitioner and respondents 1 to 4 herein to declare her as a senior to the 4th respondent herein.

The said writ petition was dismissed through order dated 21-02-2003.

4. According to the petitioners, the management of the petitioners' school is at liberty to select suitable persons to the posts of Head Master for the purpose of running the administration of the school smoothly and effectively and there shall not be any interference by the authorities or the government in the internal administration or management of the minority institution as it offends the rights of the minority institution guaranteed under Article 30 (1) of the Constitution of India. It is submitted that the petitioners' management appointed Smt. T.Nalini Ratna Kumari as Principal in the interest of the institution on 20.05.2003 and she took charge from the in charge Head Master on 20.05.2003. It is further submitted that the management has neither appointed Sri Benhur, 4th respondent as Head Master nor recommended to the higher authorities for approval as Head Master of the High School. It is said that the Regional Joint Director of the School Education, 1st respondent herein took a unilateral decision to appoint the 4th respondent as Head Master of the petitioners' High School on 22.04.2003.

The version of the petitioners is that the school management was dissatisfied with the conduct and performance of the 4th respondent as B.Ed. Assistant who committed several irregularities and also forged the signatures of the

correspondent on the letter heads stolen by him. On the ground that he created some false documents and adopted unfair means for promotion as Head Master, disciplinary action was proposed against him.

It is contended by the petitioners in the writ petition that the management of the school is competent authority to take

a decision regarding the selection and appointment of Head Master in the interest of the school administration and the first respondent has no authority to appoint the 4th respondent as Head Master of the school. The said action is questioned in the writ petition as without jurisdiction and violative of Article 30(1) of the Constitution of India and the said order is sought to set aside and to direct the respondents not to interfere with the selection of the Head Master made by the management.

5 The first respondent filed a counter-affidavit on behalf of the respondents. It is contended in the counter-affidavit as follows:

The post of the Head Master is a promotional post as per G.O.Ms.No.167 Education (B) Department, dated 09.03.1984.

As per the terms of the said G.O., senior most B.Ed. Assistant working in the school is entitled to be promoted as Head Master. According to the respondents, the correspondent of the petitioners' school issued proceedings promoting the 4th respondent as Head Master by proceedings dated 08.01.2000. The proposals for approval of promotion were submitted by the District Educational Officer,

East Godavari to the first respondent. As the writ petition filed by Smt. T.Nalini Ratnakumari i.e. W.P.No.2842 of 2000 claiming seniority over the 4th respondent was dismissed, the 4th respondent being the senior most School Assistant working in the institution was appointed as Head Master and the same shall not be questioned in the writ petition. The main contention of the respondents seems to be that the institution is an aided institution, it is bound to follow the rules under the Education Act and the instructions were issued by the competent authorities regarding the appointment of regular Head Master and therefore, the petitioners cannot question the appointment of the 4th respondent. The respondents asserted that the minority institutions which are not seeking any aid from the government can make their appointment. But, the

petitioners' institution which is getting aid from the government is governed by Rule 12(8) of G.O.Ms.No.1 and as such approval is required with regard to the minority institutions. It is also contended that as the correspondent of the institution failed to implement the orders issued by the department, the government is entitled to initiate appropriate action as per Rule 10(32) of the Education Rules. Contending as above, the respondents sought to dismiss the writ petition.

6. The question which requires to be determined in the writ petition is whether the petitioners' school which is a minority educational institution can appoint the Head Master of its own choice as per the rights conferred to it under Article 30 of the Constitution of India.

7. Sri D.Linga Rao, learned counsel appearing for the petitioners submits that since the petitioners' institution is a minority institution, it has every right to appoint the Head Master of the school of its choice and the first respondent or any educational authority can not interfere with such right.

8. On the other hand, the learned counsel appearing for the respondents contends that since the petitioners' institution is receiving aid from the government, it can be subjected to certain restrictions and such restrictions include the selection of the Head Master by the first respondent and therefore, the order passed by the first respondent cannot be challenged in the present writ petition.

9. To address the issue involved in the present case, the rights of the minority institution under Article 30(1) of the Constitution of India and the power of the State making regulatory legislation in the form of certain restrictions have to be properly understood. The issue has been discussed in greater detail in

P.A. INAMDAR AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS.

Reliance has been placed on the above decision by the learned counsel appearing for the respondents wherein it is held that "*merely because Article 30(1) of the Constitution of India has been enacted, minority educational institutions do not become immune from the operation of regulatory measure because the right to administer does not include the right to mal-administer. The real purpose sought to be achieved by Article 30 of the Constitution of India is to give minorities some additional protection. On receiving aid, the autonomy*

conferred by Article 30 of the Constitution of India gets diluted and certain conditions in the nature of regulations can legitimately accompany State aid or affiliation and regulation framed in national interest would equally apply to minority institution. It is further held that the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized. But in the name of laying down conditions for aid or recognition, the State cannot directly or indirectly defeat the very protection conferred by Article 30 of the Constitution of India.”

10. Similarly in **FATHER THOMAS SHIGARE AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS**, the Apex Court took the view that the State cannot impose any restriction on the rights of the minorities to administer educational institutions so long as such institutions are unaided by the State, except to the limited extent that regulations can be made for ensuring excellence in education.

11. The question therefore, would be as to whether the first respondent can exercise the authority to appoint the Head Master of the petitioners' school which is a minority aided institution.

12. Article 30(1) of the Constitution of India reads as follows: Article 30(1) accords protection from the executive or legislative encroachment on their right to establish and administer educational institution of their choice. Under this Article, the minority educational institution whether aided or unaided, has a right to admit the students of its choice and also to appoint the teachers of its choice. The right however is not absolute but it is subject to reasonable regulations for the benefit of the institution. The freedom of the institution to appoint the Head Master of its choice is very crucial and vital factor in the matter of running the educational institution. If such right is interfered by the executive, it certainly offends the protection afforded to the minority institutions under Article 30(1) of the Constitution of India. The suitability of the person to be appointed as Head Master is to be decided by the institution itself provided such person possesses the requisite qualifications prescribed for the post. Article 30(1) of the Constitution of India does not confer right on the minority institution to obtain aid from the State. However, if the State grants aid to the institution on that ground it cannot impose restrictions which would virtually

deprive the institution of its right under Article 30(1) of the Constitution of India. Guidelines can be prescribed indicating the eligibility and quality of the teachers or Head Master but there cannot be interference with the day-to-day administration of the minority institution. Such guidelines can only relate to minimum qualifications and experience. But the right to appoint the Head Master of its choice belongs to minority institution and it cannot be directly encroached upon by the executive.

13. In the instant case, though the writ petition filed by Smt. T.Nalini Ratnakumari against 4th respondent claiming seniority over him was dismissed, that cannot be a ground for the first respondent to take up the task of appointing the Head Master of the petitioners' school which is a minority institution. It is not necessary that the senior most teacher can only be appointed as Head Master. Among the eligible teachers, the school management can appoint anybody as Head Master for smooth and effective administration of the school.

Such a right is vested with the minority institution and any interference with such right would be offending Article 30(1) of the Constitution of India. Depriving the minority educational institution of its right to appoint the Head Master of its choice cannot be interfered with so long as the person appointed by the institution possesses the minimum eligibility criteria fixed by the State.

14. For all the reasons stated herein before, the proceedings of the first respondent dated 22.04.2003 appointing Sri A.Benhur as Head Master are declared as illegal and violative of Article 30(1) of the Constitution of India and accordingly they are set aside.

The respondents are directed not to interfere with the selection of the Head Master by the management of the petitioners' school. The writ petition succeeds and the same is accordingly allowed. There shall be no order as to costs.

15. Miscellaneous petitions if any filed in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:04.03.2015

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Note:

L.R.copy to be marked.

B/O

ccm

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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WRIT PETITION NO.12094 OF 2003

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Date:04.03.2015

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