

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

W.P.No.8326 of 2012
and
M.P.No.2 of 2012

The Secretary,
Muthaiyar Higher Secondary School,
Panruti - 607 106,
Cuddalore District. ... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Cuddalore - 607 101,
Cuddalore District.
4. The District Educational Officer,
Cuddalore - 607 101,
Cuddalore District. ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ order direction in the nature of Writ of Certiorarified Mandamus, to calling for the records relating to the impugned proceedings of the 1st respondent vide Letter(1D)No.353 dated 03.10.2012 quash the Same, and further Direct the Respondents herein to grant minority Status to the Petitioner School, and pass such further or other Suitanle order/orders".

PRAYER AMENDED AS PER ORDER DATED 23.04.2015 BY T.S.S.J IN MP.1/2015 IN WP.8326/2012.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel for
Mr.P.Godson Swaminath

For Respondents : Mrs.V.Annalakshmi,
Government Advocate.

O R D E R

The writ petition is filed for issuing a Writ of Certiorarified Mandamus to quash the proceedings of the 2nd respondent the Director of School Education, dated 21.04.2011 and the consequential proceedings, dated 21.07.2011 and further to direct the respondents 1 and 2 to grant minority status to the petitioner's School. The petitioner's School namely Muthaiyar Higher Secondary School is recognised private aided School. The petitioner's School as on date is one among the numerous educational institutions run by the Sisters of St. Anne, Trichirappalli a Congregation of the Roman Catholic Nuns.

2. It is stated that the School known as Muthaiyar Higher Secondary School was established as a Primary School in the year 1901 and it was upgraded as an Elementary School in the year 1950, with standards upto VII. Subsequently, the School was upgraded as High School from the academic year 1998 - 1999 and the School became a Higher Secondary School from the academic year 2003 - 2004. As on date the School is aided only upto VIII standard and there is no financial assistance from the Government for standards IX to XII.

3. It is admitted that the School was originally founded by one P.Muthaiyar. This School was then known as A.V.School. After the death of the said P.Muthaiyar in the year 1942, it is stated that his wife Tmt.Rajammal took over the administration and managed the school in the name 'Shri P.Muthaiyar School' later the School was administered by one V.Natesan who was the son of the said Muthaiyar's brother and thereafter another person by name S.R.Selvaraj, was the Secretary of the School. In the year 1997 the individual namely S.R.Selvaraj, who was then the educational agency, transferred the School along with all the properties attached therewith in favour of the petitioner, in this Writ Petition by a registered Sale Deed dated 23.05.1997.

4. It is not disputed that the Educational Department has approved the change of management vide proceedings dated 17.10.1997. It is relevant to point out that at the time of approving the transfer of management, the District Elementary School Officer has approved their transfer subject to certain undertakings to be given by the administrator of the School.

The following are the undertakings expected from the School Management:-

- (a) The School should be run as a non minority School.
- (b) The Management of the School shall not initiate any proceedings claiming minority status to the institution.
- (c) Educational Agency will give an undertaking as per the grant in
01.10.1997.

5. It is stated that the petitioner acquired the School with the main object of promoting the educational interest and social advancement of the Christian population in the District. The School was functioning in a thatched and tiled/roof sheds without side walls, at the time when the petitioner purchased the School. The petitioner invested substantial amount and provided all infrastructural and other facilities.

6. The petitioner states that the School is run by the congregation namely Sisters of St.Anne, Trichirappalli, which is recognised as a minority. It is stated that ever since the petitioner took over the Management of the School, the School became a Christian Minority Education Institution. Hence, the petitioner submitted a memorandum to the 1st respondent/State on 27.10.1997, requesting the Government to pass appropriate order recognising the status of School as a religious minority education institution.

7. Pursuant to the application the 2nd respondent directed the 4th respondent namely the Elementary Education Officer to inspect the School and to submit a report. The District Education Officer inspected the School and recommended for recognition of petitioner's minority status vide proceedings dated 05.05.1998. Thereafter, the 1st respondent rejected the petitioner's Memorandum and refused to give minority status to the petitioner's School, stating that the petitioner's School has not fulfilled the guidelines issued in G.O.M.S.No.375(School Education X-1 Department, dated 12.10.1998).

8. Thereafter, the petitioner submitted a representation dated 20.08.2005 to the respondents along with documents to show that the petitioner's School fulfils all the requirements as per the guidelines. Thereafter, the 2nd respondent sought for some clarification and details vide communication dated 20.09.2006, and the petitioner states that they submitted all the details required by the 2nd respondent. However the 2nd respondent namely the Director of School Education sought for further clarification vide communication dated 26.08.2008. The petitioner states that once again the particulars and details were submitted to the 3rd respondent, who forwarded the same to the 2nd respondent. Since, no further order was passed, it is stated that the petitioner earlier filed a writ petition in W.P.No.24251 of 2009 for issuing a writ of Mandamus, directing the 1st respondent to recognise the petitioner's School as a Christian Religious Minority Education Institution.

9. This Court issued direction in the writ petition, to the respondents to pass orders on the application of the petitioner. The petitioner further states that the petitioner has also communicated the order passed by this Court along with the necessary documents to the 2nd respondent. The 2nd respondent namely the Director of School Education, by an letter dated 21.04.2011, requesting the petitioner to furnish certificates from the Revenue Officials as to the residence and particulars of members of the School Committee.

10. Thereafter, by the impugned proceedings, the 2nd respondent rejected the petitioners application for grant of minority status for the reason that the petitioner has not submitted the residential details of residences of the members of the School Committee from the concerned Revenue Thasildar. The Director of School Education by communication dated 21.07.2011, informed the petitioner that unless the required details are furnished by the petitioner their petition for grant of minority status to the petitioner's School cannot be considered. Challenging the Impugned Order dated 21.04.2011 and the subsequent order dated 21.07.2011, the above writ petition is filed. It is not in dispute that Christians are minority in the State as well in the Country as whole. Hence the residential particulars of members of the School Committee is unwarranted.

11. A detailed counter has been filed by the 4th respondent. Surprisingly in the counter affidavit filed by the 4th respondent, he has given several reasons which are

not even stated in the impugned order passed by the 2nd respondent. It is stated in the counter affidavit that the District Elementary Educational Officer, Cuddalore inspected the School on 04.02.1998 as directed by the 2nd respondent and that the teachers gave evidence that no theological instruction was being imparted to the students and that it is not a Christian religious institution affecting the non minority status of the School. Again in the counter affidavit it is stated that the Director of Elementary Education in G.O.M.S.No.375, dated 12.10.1998 has given some guidelines and unless the educational institution has been established by the minority and continuously administered by the members of the minority, the minority status cannot be granted to the School.

12. Sum and substance, it has been repeatedly stated in the counter affidavit that unless the minority had established the School they cannot claim any right to administer under Article 30(1) of the Constitution of India. In other words it is stated in the counter affidavit that it is an essential requirement for the institution to claim minority status to have established the School at the initial stage, and to hold administration for claiming minority status.

13. In the case on hand it is not in dispute that the petitioner has purchased the School along with the properties. Therefore it is contended by the respondent that the School which was not established by the minority is not entitled to get a declaration as to the minority status.

14. The learned Counsel appearing for the respondents relied upon the proceedings dated 17.10.1997 by which the District Elementary Educational Officer has approved the transfer of educational agency upon the School being transferred to the present educational agency. Since the petitioner has specifically given an undertaking to the effect that the School will be run as a non minority School and that the petitioner will not claim minority status, it is stated that the application submitted by the petitioner to recognise the petitioner as a religious minority institution is unsustainable and contrary to the very undertaking given by the petitioner.

15. It is further stated that the reason stated in the Impugned Order that the petitioner has not satisfied with the requirements for granting the minority status to the petitioner's institution cannot be found fault with. Finally, it is submitted by the learned Counsel for the

respondents that there must be establishment and administration of the School and that is as much as the School was established by a non minority agency, by transfer the petitioner, who has not established the School, even if it is a minority institution, cannot get the status to confer the right envisaged under Article 30(1) of the Constitution of India.

16. The learned Senior Counsel appearing for the petitioner relied upon the Judgment of the Rt.Rev. Aldo Maria Patroni, S.J. And Another Vs. The Assistant Educational Officer and others reported in 1973 CJ(Ker) 133. Wherein, the learned single Judge of Kerala High Court following the previous Judgment of a Full Bench of Kerala High Court has held as follows:-

"6. A contention is taken on behalf of the respondents that the school was having successively a non-Christian as the Headmaster of the school which would show that this is not a school established and administered by the Christian community. This fact is relied on to show that the decision of this Court in Rt Rev. Aldo Maria Patroni v. E. C. Kesavan, (1964) Ker LT 791 = (AIR 1965 Ker 75 (FB) one of the circumstances relied on to show that the school is established and administered by the Christians is the continuous holding of the post of the Headmaster by Christians. May be that if that fact is there that may be an additional evidence to prove that the school is established and managed by the minority community. But the absence of it will not lead to the inference that the school is not established and administered by the Roman Catholic community. Certain decisions were relied on by the respondents in support of their contention that in order to claim protection under Article 30 what should be proved is that the school is established and administered by the minority community. The decisions of the Supreme Court in In re Kerala Education Bill. 1957 (AIR 1958 SC 956), Azeez Basha v. Union of India (AIR 1968 SC 662). State of Kerala v. Mother Provincial (AIR 1970 SC 2079), and finally D.A.V. College, Jullundur v. State of Punjab (AIR 1971 SC 1737) are cited in this connection. In all these cases it was held that in order to claim protection under Article 30 it should be proved that the school is established by the minority community. The fact that a college is founded by a minority

community was held to be not sufficient to claim protection under Article 30 in AIR 1968 SC 662. In the above Aligarh University case it was held that the words "established and administered" in Article 30 (1) must be read conjunctively and so read it clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them but not otherwise. Though some of the educational institutions now administered by Aligarh University were originally founded by Muslims or societies registered under the Societies Registration Act, as they were transferred to and vested in the University established by an Act of Parliament thereafter it was held to be a University not established by the minority but, established by the State under the Act of Parliament. The conversion of the nucleus college, namely the M. A. O. College into a University was however not by Muslim minority. It took place by virtue of an Act of Central Legislature. From that it was held that it is the Central Legislature that established the said University. This decision really supports the petitioners in countering the argument of the respondents that the school was originally established by the Basel German Mission. I have tried to show that there is no evidence in support of it. Even assuming that to be correct, what we have to see is whether the school is established by the Roman Catholics minority. For establishment it is not necessary that the school must be constructed by the community. Even if a school previously run by some other organisation is taken over or transferred to the Church and the Church reorganises and manages the school to cater to and in conformity with the ideals of the Roman Catholics it can be safely concluded that the school has been established by the Roman Catholics. As stated by me earlier, the various exhibits produced in this case clearly justify a conclusion that the school is established and administered by the Roman Catholic community represented by the Bishop of Calicut now. The other decisions of the Supreme Court relied on by the respondents are not in any way against the petitioners. The petitioner on whom the burden of proving that the school is established and administered by the minority community has,

according to me, satisfactorily proved that fact. Therefore, on the first point I come to the conclusion that the petitioners are entitled to protection under Article 30 (1) of the Constitution."

17. So the conclusion reached by the Hon'ble Kerala High Court was that for establishment it is not necessary that the School must be constructed by the community and that the School which was previously run by some other organization if taken over or transferred to minority agency and if the School is brought under the administration of such minority, it can still satisfy the term established. This view was followed by the Hon'ble Division Bench of this Court, latter in W.A.No.1813 of 1987, dated 30.08.1989 in the case of, the Church of South India, Kanyakumari District, Nagercoil, represented by its Bishop Rt. Rev. G.Christudas Vs. The Director of School Education, Madras-6, and others it has been held as follows:-

"5. As for the next reason that these two schools have not been established and administered by a minority Educational Agency, it has nowhere been held that unless buildings are put up by a minority Educational Agency, and a School is started by them; they cannot establish and administer a school by acquiring an existing school. There is no provision in the Act that a school could be run by an Educational Agency only in a building owned by it. It could take a building on lease or it could be licenced to run a school. As to what meaning could be given to the words "established and administered" as rightly pointed out in A.M.Patroni v. Asst Educational Officer MANU/KE/0041/1971 : A.I.R. 1971 Ker 197, even an existing institution could be taken over by a minority community and that would in law mean that it had been established and administered by it."

18. The Hon'ble High Court of Karnataka has also recognized this principle by the Judgment in the case of Dr.T.M.A.Pai Foundation Vs. State of Karnataka in W.P.No.12597 of 1984 dated 10.09.1984. Learned Senior Counsel, appearing for petitioner then relied upon the judgment of Hon'ble Supreme Court in the case of, Manager, St.Thomas U.P.School Kerala and another Vs. Commissioner and Secretary to General Education Department and others, reported in (2002) 2 SCC 497, the paragraph nos. 4, 5, 6, 7

& 8 are relevant and hence they are extracted herein under.

"4. The respondent Nos. 5 and 6 then challenged this decision under Article 226 before the Kerala High Court on the ground that the School was not a minority institution and could not act contrary to Rule 44 of Chapter XIV-A of the Kerala Education Rules. The learned Single Judge allowed the writ application and the appellate Court dismissed the appellants' appeal. Both the Courts held on the evidence that the appellants had been unable to substantiate that the School was a minority institution within the meaning of Article 30(1). Their reasoning was based primarily on the fact that the School had not been established by the minority community but by an individual and, therefore, it could not rely on Article 30 to avoid compliance with the statutory provisions generally applicable to all schools.

5. The question before us is whether the High Court was correct in taking the decision it did. Under Article 30(1), all minorities whether based on religion or language, have been guaranteed the right to establish and administer educational institutions of their choice. It is not in dispute that Christians form a minority in this country. The right of minorities under Article 30(1) to establish and administer educational institutions has been judicially construed as defining minority institutions. What is expressed in terms of a right under Article 30(1) in fact describes the institution in respect of which the protection of Article 30(1) can be claimed. It has, therefore, been held that unless the educational institution has been established by a minority, it cannot claim the right to administer it under Article 30(1). Thus the critical issue is was the School established by a minority. The issue has to an extent become academic as both the respondents 5 and 6 have since retired and we are given to understand that they have been paid the salary of a Headmaster for the period they would have served had the decision of the High Court been given effect to. However, the issue is still alive as far as the appellants are concerned. The second appellant is still in service and he has, because of the decision of the High Court, been asked by the School to refund the salary paid to him as

Headmaster. Also if the decision is allowed to stand, the status of the School would be finally determined without scrutiny entailing far reaching consequences in its day to day administration.

6. At the outset, we record our disapproval of the High Court's entertaining the writ application at all. Both the Single Judge and the Division Bench have determined what were clearly disputed questions of fact without the benefit of a full scale trial. The appellants have drawn our attention to evidence which, according to them, conclusively proves that the School was a minority institution and which was not considered by the High Court. We do not propose to commit the same mistake as the High Court. Given the nature of the dispute, the issue of the status of the School should have been left to the fact finding authorities whether executive or judicial for determination in jurisdictions equipped for the purpose. As far as the legal aspect is concerned, the High Court denied the School minority status under Article 30 of the Constitution because

"the School was established by an individual who is the buyer of the land in question under Ext. P5 document of sale making use of his own personal funds which negatives any intention on the part of the vendee to establish a minority institution"

and because "there is no contribution from any member of the minority community for the purchase of the property".

7. Assuming that the School was established for the purpose of Article 30(1) when P.J. Thomas started it, the reasoning is erroneous and contrary to the ratio of the decision of this Court in State of Kerala v. V.R.M. Provincial where construing Article 30(1), Hidayatullah, C.J. said that the right to establish an institution would include a case where "a single philanthropic individual with his own means, founds the institution".

8. Learned counsel for the appellants has submitted that with the purchase of the School in 1980, the School was in fact 'established' in its present form and that when the School was

purchased by the Archbishop of Thiruvananthapuram, he did so as the Corporate Manager of the Malankara Syrian Christian Schools so that the School was in fact established by the Malankara Syrian community represented by the Archbishop of Thiruvananthapuram. However, we express no view in the matter as this was not an argument made at any stage of the proceedings before the High Court by the appellants."

However, this judgment is not helpful to the petitioner as the issue considered by the Hon'ble Supreme Court is factually different. However, this Court is in agreement with the view expressed by the Hon'ble High Courts of Kerala and Karnataka.

19. In a case where the transfer of management in favour of a minority institution is questioned by staff members and the approval for transfer was rejected on the ground that the School has not been established and administered by the minority Educational Agency, a Division Bench of this Court followed the judgment of Kerala High Court in the case of, The Church of South India, Kanyakumari District, Nagercoil, represented by its Bishop Rt. Rev. G. Christudas Versus The Director of School Education, Madras & Others, in Writ Appeal No.1813 of 1987, dated 30.08.1989. The relevant portion is extracted below:

"5. Unless buildings are put up by a minority Educational Agency, and a School is started by them; they cannot establish and administer a school by acquiring an existing school. There is no provision in the Act that a school could be run by an Educational Agency only in a building owned by it. It could take a building on lease or it could be licenced to run a school. As to what meaning could be given to the words "established and administered" as rightly pointed out in A.M. Patroni v. Asst. Educational Officer, even an existing institution could be taken over by a minority community and that would in law mean that it had been established and administered by it."

20. Another Division Bench of this Court has considered this issue in W.A.No.120 of 2008, dated 18.02.2008 in the case of, The Secretary to Government and another Versus K.M.Benedict Crizal, it is held as follows:

"So far as the contention that population certificate was not obtained as to the population of a particular community is concerned, the same is not needed for, because it is well within the knowledge of the State that Christianity is a minority community. Further, in the instant case, the petitioner has produced a certificate from the Bishop that he is a Christian and thus, it would be indicative of the fact that he belonged to minority community."

21. The learned Counsel for the petitioner relied upon the Tamil Nadu Recognized College School Regulation Act 1973.

(i) Minority School has been defined under Section 2(6) is as follows:-

"minority school" means a private school of its choice established and administered, by any such minority whether based on religion or language as has the right to do so under clause (1) of Article 30 of the Constitution;"

(ii) Similarly, the education agency under Section 2(3) has been defined as follows:-

"educational agency" in relation to -

(a) any minority school, means any person who, or body of persons which, has established and is administering or proposes to establish and administer such minority school; and

(b) any other private school, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain such other private school;"

22. Therefore, it is the body of persons which has established and administering the School is the educational agency. Every School should have an educational agency. For the purpose of identifying educational agency the person who has established the School and administering the School would also mean a person who acquire the School and administer the same. Article 30(1) envisages a right to minority to establish and administer. From this it cannot be

deduced that only a person or body who founded the School should be considered as a person or body who established the School, as this would defeat the object for which the protection is given to minorities.

23. This Court is perfectly in agreement with the view taken by this Court and the Judgment of Kerala and Karnataka High Courts above referred to. Hence, this Court has no hesitation in this case to hold that the petitioner's School should be recognised as a religious minority institution for the purpose of Article 30(1) of the Constitution of India. Though Article 30(1) of the Constitution envisages only the right given for minorities to establish and administer educational institution, it has been held in several judgments that the right will follow only if the institution is established and administered by a minority community. To save the object of protection conferred on the minorities, the word established would also mean if the educational institution is established by transfer of Educational Agency to serve the needs of a minority community.

24. In this case as rightly pointed out by the learned Senior Counsel, the School though was originally established by a different body, after purchase and taking over the administration of the School the present educational agency which has now been recognized by the department should be considered as a person who established and administering the School for the purpose of Tamil Nadu Private School Regulation Act. That being so, the 1st and 2nd respondents cannot deny the petitioner the minority status for reasons which do not go well with the object for which the minorities are given protection under Article 30(1) of the Constitution.

25. For these reasons the writ petition is allowed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

msvm

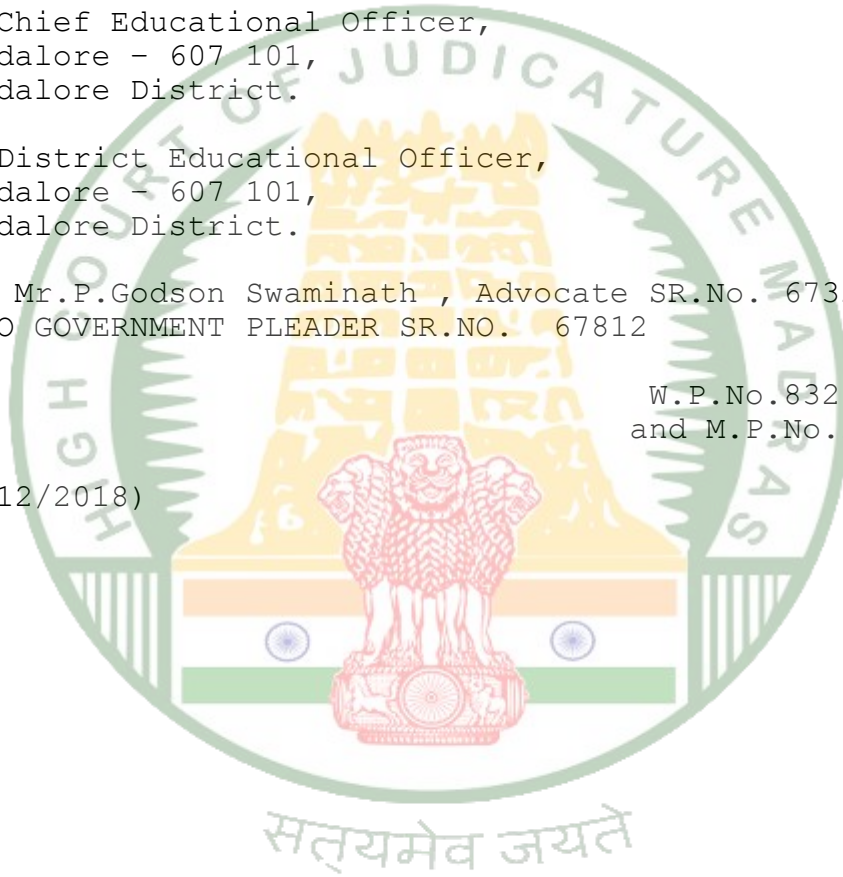
To

1. The Secretary,
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+1cc to Mr.P.Godson Swaminath , Advocate SR.No. 67328
+1 CC TO GOVERNMENT PLEADER SR.NO. 67812

W.P.No.8326 of 2012
and M.P.No.2 of 2012

ASK(17/12/2018)



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