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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.06.2025

PRONOUNCED ON: 02.09.2025

CORAM

THE HON'BLE DR. JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR. JUSTICE C. KUMARAPPAN

W.A. No. 3769 of 2019

&C.M.P. No. 23848 of 2019

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.

..Appellants

Vs.

The Secretary,
Muthiayar Higher Secondary School,
Panruti – 607 106.
Cuddalore District.

..Respondent

Prayer:Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 27.09.2018 made in W.P. No. 8326 of 2012 on the file of this Court.

For Appellants :: Mr.P.S. Raman,
Advocate General
assisted by



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For Respondent ::

Mr.U.M. Ravichandran,
Special Government Pleader

Mr. Isaac Mohanlal,
Senior Counsel
for Mr. Godson Swaminathan for
M/s. Isaac Chambers

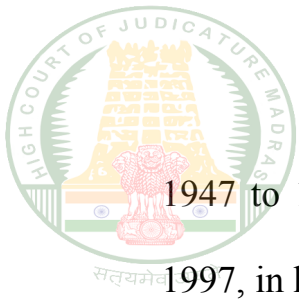
J U D G M E N T
(Delivered by Dr.ANITA SUMANTH,J.)

Background

The State is in appeal as against the order of the Writ Court dated 27.09.2018 made in W.P. No. 8326 of 2012 allowing the Writ Petition filed by The Secretary, Muthiayar Higher Secondary School, (in short 'R1') seeking a certiorarified mandamus challenging proceedings dated 03.10.2012 and seeking a direction to the authorities to accord minority status to the Muthiayar High Secondary School (in short 'school').

2. Muthiayar Higher Secondary School had been established as a primary school in 1901, upgraded as a Higher Elementary School in 1950, expanding to standards VI to VIII and upgraded further as a High School in academic year 1998-99, and as a Higher Secondary School in academic year 2003-04. The Government extends Grant-in-Aid towards staff salary upto class 8 (standards 1 to 8) only.

3. The School was founded by one Mr.P.Muthaiyar and had come to be known as A.V. School. After the demise of the founder in 1942, the school was being managed by his wife till 1947, by his nephew, one Mr.V.Natesan from



1947 to 1983 and thereafter by his son-in-law, Mr.S.R.Selvaraj from 1983 to 1997, in his name as Sri.P.Muthaiyar School.

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4. The individuals managing the school functioned as recognized Educational Agencies and Secretaries of the School after coming into force of the Tamil Nadu Recognised Private Schools (Regulation) Act, (in short 'Act') in 1973.

5. By sale deed dated 23.05.1997 the then Educational Agency Mr.S.R.Selvaraj, transferred all school properties to Sister Edvij, Trichy. The change in management was approved by the District Elementary Educational Officer, Cuddalore in proceedings Pa.Mu.No.5451/A3/97 dated 17.10.1997, in line with the provisions of the Act and the Tamil Nadu Recognised Private Schools (Regulation) Rules 1974, (in short 'Rules').

6. The school is thereafter being run by the Sisters of St.Anne. Tiruchirappalli, a congregation, constituting an assemblage of Nuns of the Roman Catholic Order (in short 'Congregation'). The Congregation is a recognized religious minority enjoying protection under Article 30(1) of the Constitution of India (in short 'Constitution') and had been accorded such status vide order of this Court in W.P.No.656 of 1975 etc. batch (order dated 24.09.1976).

7. According to R1, after the takeover of the school by it with effect from 01.06.1997, the Muthaiyar Higher Secondary School is functioning as a



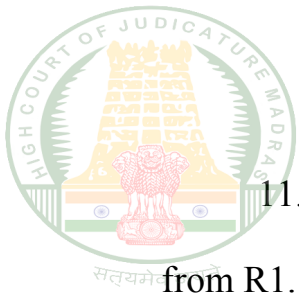
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Christian Minority Educational Institution. Since R1 desired that the school must be granted the benefits of minority institution as guaranteed under Article 30(1) of the Constitution, a memorandum was made to the State along with necessary enclosures, seeking such status.

8. According to R1, the School satisfied all the requisite parameters for grant of such recognition as adumbrated under G.O.Ms.No.375 (School Education) dated 12.10.1998. A report was called for from the Director of School Education who had also recommended that the school be so recognized vide his proceedings in Na.Ka.No.117/Aa2/98 dated 05.05.1998. Despite the same, the State issued G.O.Ms.No.125 (School Education) B2 dated 17.09.2004 rejecting the plea for minority status.

9. Reference was made to Clause (iii) of G.O.Ms.No.375 dated 12.10.1998 which stipulates that an Educational Institution which was originally not established by a minority community, cannot acquire such status or character subsequently under any circumstances.

10. A representation was made by the School to the State interpreting Clause (iii) as aforesaid, by stating that the concept of 'established' should not be interpreted as 'established originally' but that even a subsequent purchase/acquisition of the school management by a minority body would satisfy the term '*established*', vesting the school with the requisite character of a minority institution.



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11. The representation was processed and various details were sought from R1. Since no final orders had been passed, R1 filed W.P.No.24251 of 2009 seeking a mandamus directing the grant of recognition to the school as a Christian religious minority educational institution and the Writ Petition was closed on 25.02.2011 directing disposal of the representation.

12. Thereafter, some more details were sought, that were supplied by R1, who reiterated the stand that the school satisfied all requirements enumerated under G.O.Ms.No.375 dated 12.10.1998. Since there was still no response forthcoming, R1 was thus constrained to file W.P.No.8326 of 2012 challenging notices dated 21.04.2011 and 21.07.2011 seeking various particulars from it and seeking a consequential direction for grant of minority status to the school.

13. The sum and substance of the argument of R1 was that it had acquired the management of the school in a manner known to law, satisfying the requirement of '*establishment*' of the school. Moreover, it has been continuously managing the school thereafter. Hence, both requirements under Article 30(1) of the Constitution stood satisfied and there was no impediment to the grant of recognition as sought.

14. That apart, as far as the undertaking of R1 is concerned, such undertaking would have no sanctity in the eyes of law as protection under Article 30 of the Constitution is a fundamental right that cannot be denied to the school, if it were otherwise to be entitled to the same.



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15. The Writ Petition came to be allowed on 27.09.2018, the learned Judge accepting the argument that though the school had originally been established as a secular school, with the purchase and takeover of the school administration by the Sisters of St. Anne congregation, the latter having been recognized as an Educational Agency by the concerned State Department, the school is entitled to minority status.

16. Thus, he held that the Congregation should be considered as having established the school for the purpose of grant of minority status. In allowing the writ petition, the Writ Court has on a decision of the Kerala High Court in *Rt. Rev. Aldo Maria Patroni.S.J. And Another V. The Assistant Educational Officer and Others*¹. It is as against the aforesaid order that the State is in appeal.

Submissions of Mr.P.S.Raman for the State

17. Mr.P.S.Raman, learned Advocate General assisted by Mr.U.M.Ravichandran, learned Special Government Pleader assails the impugned order of the Writ Court pointing out that the Court has incorrectly appreciated the import of Article 30 of the Constitution. Article 30 reads as follows:

30. Right of minorities to establish and administer educational institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their

¹ 1973 CJ (Ker) 133



choice.

(1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

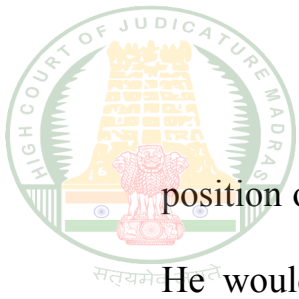
(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

18. It is thus a pre-condition for the school to have been both ‘established’ as well as been ‘administered’ by the Congregation. In the present case, while it is undisputed that the Congregation has been administering the school since 01.06.1997 when the management was taken over, it has not ‘established’ the school. The establishment was by Sri.P.Muthaiyar in 1901 as a secular school. The school would hence retain that character and it cannot be changed merely on the subsequent acquisition of the school properties by a Congregation holding minority status.

19. He places reliance on the judgment of seven Hon’ble Judges of the Supreme Court in *Aligarh Muslim University V. Naresh Agarwal and Ors.*². According to learned Advocate General, the Supreme Court has in the aforesaid case, unequivocally confirmed the position that mere takeover of an educational institution by the minority community cannot vest minority character upon the school.

20. There is thus no necessity to refer to any other judgment, as the

² 2024 SCC OnLine SC 3213



position of law espoused by the State is fully supported by the above judgment.

He would also point out that the Government Order in terms of which the Congregation had sought minority status, had itself made it very clear that under no circumstances could the nature of the school taken over, be changed at any later point in time.

21. The Congregation has established and manages over 200 schools in the State and cannot, but be aware of G.O.Ms.No.375 dated 12.10.1998, particularly clause (iii) of paragraph 4 thereof, on the basis of which the claim of R1 had been rejected.

22. That apart, the Congregation has executed an undertaking at the time of passing of the order relating to change of management, that the minority status would not be pursued and that no case will be filed in the Court of law seeking minority status. The aforesaid condition has been captured in proceedings of the District Elementary Education Officer dated 17.10.1997 and the Congregation cannot go back on that undertaking now.

23. Learned Advocate General would take us in detail through the judgment in the case of *Aligarh Muslim University*³, particularly to the conclusion therein and the decision of the Kerala High Court in *A. Raju and 2 others V. The Manager Nalloor Narayana L.P. Basic School and 4 others*⁴ as against which order, Special Leave Petition had been dismissed on 29.11.2019

³ Foot Note Supra (2)

⁴ 2019 SCC Online Ker 16483



(SLP(c) No.27527 of 2019).

24. He would thus assert that the school must be held to have been established only by the majority community, to cater equally to all sections of society, the founder nowhere contemplating at the time of establishment, that it would cater to the minority community in priority. The conclusions of the Writ Court were clearly contrary to law and the weight of precedent.

25. The State has cited the judgment of the Supreme Court in *R.Venugopala Naidu and others V. Venkatarayulu Naidu Charities and others*⁵ arguing that the immovable properties of the School ought not to have been sold without obtaining proper permission to do so, and that too by private negotiation. The Trust deed and all other relevant documents ought to have been looked into to ascertain the intentions of the original settlor and whether the claim of R1 would align with those intentions.

Submissions of Mr.Issac Mohanlal on behalf of R1

26. Mr.Issac Mohanlal, learned Senior Counsel appearing for Mr.Godson Swaminathan, learned counsel on record for R1 would, urge that there was no infirmity whatsoever in the order of the Writ Court. Undoubtedly, the school had been originally established/founded by a member of a majority community and was administered/managed by the founder and members of his family as a

⁵ AIR 1990 Supreme Court 444



secular institution for many years, till 31.05.1997.

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27. However, with the takeover on 01.06.1997 by the Congregation, which is nothing but a re-establishment of the school by a minority institution, the school now satisfies the requirement of having been '*established*' by a minority institution.

28. According to him, the term '*established*' does not mean established for the first time. It must take into account all subsequent changes in management/holding of the school. Thus, while the school had been a majority school till 31.05.1997, on and from 01.06.1997, it assumes the character of a minority school.

29. According to him, the judgment of the three Hon'ble Judges of the Supreme Court in *A.P.Christians Medical Educational Society V. Government of A.P. and another*⁶ as well as other judgments in *Union Territory of Ladakh V. Jammu and Kashmir National Conference*⁷, *Chanderwati Educational and Charitable Trust V. National Commission for Minority Education Institutions and Another*,⁸ *Chandana Das (Malakar) V. State of West Bengal and Others*⁹ and order of the Karnataka High Court in *T.M.A.Pai Foundation V. State of Karnataka*¹⁰ would fully support the position that an expansive view ought to be taken of the word '*established*'.

⁶ (1996) 2 SCC 667

⁷ 2023 SCC Online SC 1140

⁸ 2019 SCC Online Delhi 10130

⁹ 2019 SCC OnLine SC 1253

¹⁰ ILR 1985 Karnataka 1056



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30. Further, the school had had a complete makeover after the Congregation had taken it over. He produces photographs to show that prior to the takeover, the school was run on a very small scale in a tiled/thatched house with few students and practically no infrastructure or facilities. The photographs taken of the school post takeover, show the vast scale of improvements to the school. Several buildings have put up and the number of students admitted has increased manifold. All modern infrastructure and resources are available to the students, that were hitherto unavailable.

31. The reliance placed by the Writ Court on the decision of the Kerala High Court in *Rt. Rev. Aldo Maria Patroni.S.J.*¹¹ is perfectly in order, since it has taken into account the factual and legal position in proper perspective. The case of *Aligarh Muslim University*¹² has no bearing to the facts on hand.

32. In that case, the question that arose was whether AMU should be held to have been constituted by the Muslim community to cater to the interests of the Muslim community, or whether the Act of Parliament that regulated its functioning, would change the nature of its 'establishment'. That question does not arise in the present case. In all, the decision of the Writ Court must be affirmed.

33. We have heard the rival contentions and perused the material papers and cases cited by learned counsel.

¹¹ Foot Note Supra (1)

¹² Foot Note Supra (2)



Discussion and settling of the facts

34. We recapitulate the facts, to the extent relevant and necessary. The school was set up in 1901 by Mr.P.Muthaiyar and continued to be administered by the members of his family till 1997, as a secular institution. No documents such as the Trust Deed or any other documents relating to the establishment of the school by P.Muthaiyar have been produced though we are given to understand that the same were sought from the parties.

35. R1 had entered into a Sale Agreement dated 22.05.1997 with Mr.S.R.Selvaraj and Mrs.S.Bhuvaneshwari for purchase of the School, that reads as follows:

Sale Agreement

The sale agreement entered into between both of us together viz., 1.S.R.Selvaraj, 2.S.Bhuvaneshwari, wife of the aforesaid 1st party, residing in Kasthuribai street, Panruti Taluk, Panruti and Edwiji, the Chief Sisterhood, represented by the Congregation of the Sisters of Saint Anne of Tiruchirapalli Association registration No. 6/1956, registration office at Kirapatti, Trichy – 12, Trichy District, is as follows :

(1) We having agreed to sell the school in the name of “Muthaiyar Middle School”, belonging to the 1st party among us and the two plots in S.No.61-A at Panruti, belonging to the 2nd party among us, to you, had executed this agreement on this day, i.e., 22 nd day of May 1997.

(2) This agreement comprises of the buildings related to “Muthaiyar Middle School”, vacant land, school playground, logistics and the aforesaid two vacant plots.

(3) We having agreed to receive the sale consideration of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) in respect of all



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the above, had received Rs.18,00,000/- (Rupees Eighteen Lakhs only) as cash from you, in respect of the above sale amount, on this day. You have to settle the remaining amount of Rs.7,00,000/- (Rupees Seven Lakhs only) on 23.05.1997.

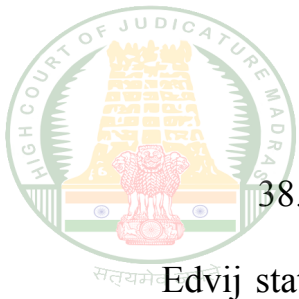
(4) We give our consent to subscribe signature in all the necessary documents for the change of school administration. We give our consent to execute the appropriate documents requested by you. We covenant that there is no encumbrance regarding this property.

This sale agreement has been signed with our full consent in the presence of the witnesses on this day, the 22nd day of May 1997.

Sd/-.....

36. The Agreement has been executed by two vendors, Mr.S.R.Selvaraj and his wife Mrs.Bhuvaneswari. The former has sold the Sri.P.Muthaiyar School with its immovable properties and the latter, two plots of land, to the Congregation, for a total consideration of Rs.25.00 lakhs. The 'school' is not saleable perse, and hence what has really been sold under that Agreement are the assets, being the buildings and land, and two other vacant plots. The Agreement also refers to 'logistics' but we are unaware as to what that means. This Agreement has not been produced before the Writ Court but was part of the records that had been sought for by us, and produced for our perusal.

37. R1 sought and was granted transfer of Management vide proceedings dated 17.10.1997, effective 01.10.1997, pursuant to which the management of the Sri.P.Muthaiyer Middle School was transferred from the then Correspondent S.R.Selvaraj to Sister Edvij, Trichy.



38. Prior to effecting transfer, an affidavit has been taken from Sister Edvij stating that (i) The school shall be maintained under the prevailing non-minority status (ii) No case will be filed claiming the grant of minority status before any court and (iii) A sworn affidavit be submitted with regard to acceptance of financial management with effect from 01.10.97.

39. Proceedings dated 17.10.1997 is extracted below:

*PROCEEDINGS OF DISTRICT ELEMENTARY
EDUCATIONAL OFFICER: CUDDALORE DISTRICT*

Pa .Mu.No.5451/A3/97,

Date 17.10.97

Sub: Elementary Education - Panruti Range, Sri. P.Muthaiyer Middle School. - granting approval to effect transfer of administration from 1.6.97 -reg.

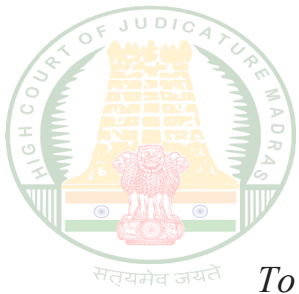
Ref: Letter by the Assistant Educational Officer, Panruti, in Na. Ka. No.887/Aa2/97, dated 10.6.97 and 6.8.97.

As per the recommendation of Assistant Elementary Educational Officer, Panruti, Sri.P.Muthaiyer Middle School, approval is granted to effect transfer of the Management from the Correspondent Tr. S.R.Selvaraj to Sister Edvij, Trichy. With effect from 1.6.97 under the Tamilnadu Educational Rules of 1973, 1974 and within the ambit of Educational Rules, the approval is granted.

Sister Edvij, Trichy taking up the administration from 1.6.97 shall swear the following terms and submit it to the District Elementary Educational officer and the finance management is granted to the new Manager from 1.10.97 onwards.

- 1. The school shall be maintained under the prevailing non-minority status.*
- 2. No case is to be filed claiming to grant minority status before any court.*
- 3. A sworn affidavit to be submitted with regard to the acceptance of the finance management with effect from 1.10.97.*

Sd / -



*District Elementary Educational Officer
Cuddalore 17/ 10/97*

To

*Correspondent, P. Muthaiyer Middle School, Panruti.
Tr. S.R.Selvaraj, B.A., M.Ed., Management
of P. Muthaiyer Middle School, Panruti.*

Copy to : Asst Elementary Educational officer, Panruti.

40. It was on the heels of the above proceedings, that R1 sought the grant of minority status for the School. The Director of School Education/R2 sought the recommendations of the District Elementary Educational Officer, who by proceedings dated 05.05.1998 gave a positive recommendation. In 1998, the School was upgraded as a High School and from 2003 as a Higher Secondary School.

41. A communication from the Chief Educational Officer/R3 to R2 dated 02.07.2006 reveals that R1 has, pursuant to the takeover been running the School along the lines of a Minority Institution, even prior to the grant of such status. R2 states that as on that date, 41% of the students belonged to the minority community and that R1 had made additions and renovations to the infrastructure.

42. R1 pursued the application for Minority status and received an adverse order on 03.10.2012 that was challenged in writ petition, and order dated 27.09.2018 was obtained in its favour.

43. Straightaway we would state that condition (ii) of order dated 17.10.1997 preventing the congregation from seeking minority status and



further preventing them from challenging a negative order passed in that regard, are contrary to law. The establishment of a school with minority status is a Fundamental Right guaranteed by Article 30(1) of the Constitution of India and there could be no stipulation preventing them from pursuing this benefit, should they otherwise be entitled to the same.

44. Likewise, reliance of the State on G.O.Ms.No.375 of 1988 would also not advance its case, or, for that matter, tip the balance one way or the other. Clause 4(iii) of the Government Order states that *the Educational institution that has not been established/constituted by the minority community will not obtain minority status at any point of time under any circumstances*. The issue to be decided is as to whether takeover/acquisition of a school would satisfy the requirement of ‘establishment’, and the aforesaid Government Order does not answer, or throw any light on that specific question.

Discussion and ratio of the Judgment of the Supreme Court in Aligarh Muslim University’s case

45. Both learned senior counsel have referred to the judgment in Aligarh Muslim University in extenso. The genesis of that judgment lies in the judgment of the Constitution Bench in *S. Azeez Basha and Another V. Union of India*¹³ wherein the vires of the Aligarh Muslim University (Amendment) Act, 1951 (in short ‘1951 AMU Act’) and the Aligarh Muslim (Amendment) Act, 1965 (in short ‘1965 Act’) were challenged.

¹³ (1968) 1 SCR 833 : AIR 1968 SC 662



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46. The challenge was on the basis of Article 30(1) and the petitioners contended that AMU had been established by the Muslim minority whose rights had been abrogated under the 1951 and 1965 Acts. The defence by the Union of India was that AMU had been established by the Aligarh Muslim University Act, 1920 (in short '1920 Act') and hence the establishment cannot be said to be by the Muslim minority but only by the Government of India, by legislative fiat.

47. The Bench considered the provisions of the 1920 Act noting that all properties endowed for the purpose of the Mohammedan Anglo Oriental Aligarh which was the original name of the College when it was started, had vested in the Aligarh University after it came into existence under the 1920 Act. With such vesting, the Mohammedan Anglo Oriental College, Aligarh came to an end and it was the AMU that was thereafter administered in terms of the provisions of the Act, which provides for all manner of administration including the power to hold examinations, to grant and confer degrees and academic distinctions.

48. On the question of 'administration' of the college, the Court went into the manner by which the college had been administered over the years, concluding that the establishment of AMU was by Act of Parliament only and hence it was not entitled to minority status. The challenge to the 1951 and 1965 Act was repelled.

49. This judgment is of the year 1968 and was referred to a Larger Bench.



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The reference ultimately came to be disposed of by seven Hon'ble Judges of the Supreme Court. There are four opinions in the case of *Aligarh Muslim University*¹⁴ that would touch on the interpretation of the term 'established', all opinions however converging on the position that the twin conditions in Article 30 relating to 'established' and 'managed' must be read conjunctively and must be satisfied concurrently. The majority opinion is by the Hon'ble the Chief Justice of India and three Hon'ble Judges and paragraph 110 reads as follows:

....

110. In Azeez Basha (supra), this Court observed that the term 'establish' means 'to bring into existence' and not any of the other dictionary meanings that is, to ratify, confirm, settle, found, or create. Adopting a formalistic interpretation, the Bench held that AMU was not established by the Muslim minority since it was brought 'into existence' by the Central Legislature. In Mother Provincial (supra), another Constitution Bench which was decided before Azeez Basha (supra) interpreted the word 'establish' to mean to found an institution, which offers a broader interpretation. In our view, it is inconsequential whether the word means 'to bring into existence' or 'to found'. We have held above that the enactment of a legislation to incorporate a university would not repudiate the minority character. The Court must pierce the veil of the statute to identify if the institution intended to retain its minority character even upon incorporation.

50. The Bench made a distinction between the 'establishment' of the University and 'incorporation' of the University. They say a formal approach must not be taken to state that a University was 'established' by Parliament merely because the long title and preamble of the Statute incorporating the

14 Foot Note Supra (2)



University states that it is an Act to ‘establish’ and ‘incorporate’ the University.

51. The Courts must, they say, identify the circumstances surrounding the incorporation of the University such as, who it was that actually established the University. In this respect, *‘formalism must give way to actuality and to what is real’*. The Bench laid down the indicia to determine ‘establishment’ of a minority educational institution and the burden and degree of proof required to prove that it was the minority that had established the institution.

52. Referring to the case of *Rev.Bishop SK Patro V. State of Bihar*¹⁵, the following evidence was relied upon:

- a. The correspondence and resolutions indicated that a permanent home for the Boys School was set up on property acquired by local Christians and in buildings erected from funds collected by them;*
- b. The institution and the land on which it was built and the balance in the local fund were handed over to the Church Missionary Society; and*
- c. Though substantial assistance was obtained from the Church Missionary Society London, it could not be said that the school was not established by local residents only because of that.*

53. The Bench, in *State of Kerala V. Very Rev.Mother Provincial*¹⁶, was quoted where the following material had been relied upon to decide the question of ‘establishment’:

- a. The purpose of establishing the educational institution emerged from the Report of 1878 to the Cambridge Brotherhood. The purpose of founding the college was to ensure that graduates from St. Stephen’s Mission School could be given the benefit of Christian teachings in college;*
- b. The buildings depicted the Christian orientation of the college*

¹⁵ (1969) 1 SCC 863

¹⁶ (1970) 2 SCC 417



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- c. *The motto of the college is “Ad Dei Gloriam”, that is the glory of god;*
- d. *There is a chapel in the college campus, where religious instruction is imparted;*
- e. *The Constitution of the college reflects its Christian character. It states that the object of the college is, inter alia, to offer instruction on doctrines of Christianity, the original members of the society were mostly Christians, and the composition of the society reflects its Christian character where a large number of Christian members of the Church of North India are a part of it; and*
- f. *The Governing Body has a distinct christian character. The Supreme Council comprises of members of the Church of North India. Their role is to look after the religious and moral instruction to students. The administration vests with the Governing Body which predominantly consists of Christians. Though three of the thirteen members of the Governing Body may be non-Christians, that does not dilute the Christian character of the institution.*

54. After discussing the march of the law on this aspect, the Bench states that the establishment or formation of an institution could be at any point in time and the enquiry in relation to the question of ‘establishment’ must relate back to the date when the institution was established or formed. Paragraph 135 is relevant and reads thus:

135. To determine who established the institution, the Courts must consider the genesis of the educational institution. For this analysis, the Courts must trace the origin of the idea for the establishment of the institution. The Court must identify who was the brain behind the establishment of the educational institution. Letters, correspondence with other members of the community or with government/State officials and resolutions issued could be valid proof for establishing ideation or the impetus to found and establish. The proof of ideation must point towards one member of the minority or a group from the community

55. The second indicia was the purpose for which the educational



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institution had been established *‘though it is not necessary that the educational institution must have been established only for the benefit of religious or linguistic minority community, it must predominantly be for its benefit’.*

56. The third test is to trace the steps taken towards the implementation of the idea of setting up an educational institution, as follows:

137. The third test is tracing the steps taken towards the implementation of the idea. Information on who contributed the funds for its creation, who was responsible for obtaining the land, and whether the land was donated by a member of the minority community or purchased from funds raised by the minority community for this purpose or donated by a person from some other community specifically for the establishment of a minority educational institution are elements that must be considered. Similar questions must be asked of its other assets. Other important questions are: who took the steps necessary for establishing the institution (such as obtaining the relevant permissions, constructing the buildings, and arranging other infrastructure)? It is also important to note that the state may grant some land or other monetary aid during or after the establishment of the educational institution. If the land or monies were granted after the establishment, the grant would not have the effect of changing the minority character of the institution. Minority institutions are not barred from receiving aid save at the cost of their minority status. If the land or monies are granted at the time of establishment, the circumstances surrounding the establishment must be considered as a whole to determine who established the institution. The presence of a grant must not be automatically interpreted as leading to the erasure of a claim to minority status.

57. The conclusion is that there is no straight jacket formula and the above indicia must be considered along with other relevant parameters which may commend themselves to the Court. While answering the question as to whether Article 30(1) envisages an institution which is established by minorities



alone, without participation from any other community, they state that while participation and involvement of persons from other communities are not precluded by Article 30, it is necessary that the minority community should have shouldered the initial and core responsibility for setting a school and must continue to shoulder the responsibility of managing the same. Other questions were also answered that do not have a bearing on this appeal.

58. In conclusion, the Bench holds as follows:

266. In light of the above, the following conclusions can be recorded:

.....

ii. The "establishment" of an institution by the minority is necessary for the said minority to claim right of administration under Article 30. The words "establish" and "administer" are used conjunctively in Article 30 of the Constitution.

iii. The term "establish" in Article 30 means "to bring into existence or to create" and cannot be conflated with generic phrases such as "genesis of the institution" or the "founding moment of the institution".

iv. The real positive indicia for determining the question of establishment of an institution would have to be developed on a case to case basis with the following broad parameters in mind:

i. Firstly, to claim "establishment", the minority community must actually and tangibly bring the entirety of the institution into existence. The role played by the minority community must be predominant, in fact almost complete to the point of exclusion of all other forces. The indicia which may be illustrative and exhaustive in this regard may be the nature of the institution, the legal/statutory basis required for establishing the institution, whether the establishment required any "negotiation" with outside forces, the role in acquiring lands, obtaining funds, constructing buildings, and other related matters must have been held completely by the minority community. Similarly, while teachers, curriculum, medium of instruction, etc. can be on secular lines, however, the decision-making authority regarding hiring teachers, curriculum decisions, medium of instruction, admission criteria,



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and similar matters must be the minority community. The choice of having secular education in the institution must be made expressly by the minority community, demonstrating the link between institution and the persons claiming to establish it.

ii. Secondly, the purpose of the institution must have been to the sole betterment of the minority community, irrespective of predominantly serve the interests of the minority community or the form of education provided and the mode of admission adopted. Therefore, as per the choice of the minority community, an institution may have secular education, but such secular education and the resultant institution, must be predominantly meant for the overall betterment of the minority community.

iii. Thirdly, the institution must be predominantly administered as a minority institution with the actual functional, executive and policy administration vested with the minority. The minority community should determine the selection, removal criteria, and procedures for hiring teaching, administrative staff, and other personnel. The authority to hire and fire staff must be from the minority community. Further, even if teaching or administrative staff may include non-minority persons, the final authority exercising functional, directional, and policy control over these authorities must be from the minority community. This ensures that the thoughts, beliefs, and ideas of the minority community regarding administration are implemented in reality. This represents the real decision-making authority of the institution being of the minority community.

In ascertaining the above, it would be open for the Court to look at the true purpose behind each of the above factors and to pierce the veil.

Discussion and ratio of other cases, and applicability to the present case

59. A Full Bench of the Kerala High Court in *Rt.Rev.Dr.Aldo Maria Patroni V. Kesavan and Others*¹⁷ considered a challenge posed by the Bishop of Calicut and the Provincial of the Jesuit Province of Kerala, to an Order passed by the Director of Public Instruction on the question of rival claim of seniority to

¹⁷AIR 1965 Ker 75



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the post of headmaster in St. Joseph's Boys' High School Calicut. The claims were by two teachers in the aforesaid school and the Director had preferred one over the other and had given some justification for the same. We are not, in this matter concerned with that justification.

60. The appeal filed by the petitioners was that they had an exclusive right to administer the school under Article 30(1) of the Constitution and that the order of the Director of Public Instruction violated that right. In deciding that question, the Full Bench traces the history of establishment of the St. Josephs Boys' High School Calicut. They commence by stating that the Christians amounted to 21.22% in the 1961 census and the Roman Catholics constituted a section of that community.

61. The St. Joseph's Boys' High School had been established as a Parish School around 1796, and was superceded in 1861 by a school run by the Christian Brothers. In 1883, the management passed into the hands of the Jesuit Fathers of the Calicut Mission who ran it on traditional lines with the Ordinary of the Diocese as its Official Manager.

62. In 1908, it was upgraded as a High School and recognised as an Institution under the Code of Regulations for European Schools. In June 1948, the new scheme of education in Indian Schools was introduced, and the school continued catering to both catholic and non-catholic boys, under the Roman Catholic Diocese of Calicut. The chief aim was to provide education to catholic



students though secular education was also provided.

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63. After so tracing the history of that School, the Full Bench traces the history of the Society of Jesus from the time of its founding by St. Ignatius Loyola in 1540 and its growth thereafter. It is in that context that they state, in the context of ‘establishment’ of the St. Joseph’s High School, the following:

36. it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be, by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

64. Referring then to the Opinion of the Supreme Court *In Re. Kerala Education Bill* and *Sidhrabhai V. State of Gujarat*¹⁸, and based on the unassailable position that the institution was a minority institution, the Petitioners’ claim under Article 30 was upheld. This is only to say that transfers of schools from one minority community to another, or by one sect of a minority community to another sect, would not be affected adversely by the transferee’s having to prove that they had ‘established’ the educational institution.

65. The above Judgment has been followed by the learned Single Judge in

¹⁸ AIR 1963 SC 540



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the judgment in *Rt. Rev. Aldo Maria Patroni.S.J.*¹⁹ In this matter too, the first Petitioner was the Bishop of Catholic Diocese, Calicut. The School in this case was the St.Peter's U.P. School Chalil, Tellicherry, and the question was whether the St. Peters Upper Primary School could have said to have been established and administered by the Roman Catholic Diocese of Calicut which claimed minority status for that school.

66. That petitioner had argued that the St. Peters Upper Primary School had been established in 1891 and was being administered by the Catholic Diocese of Calicut for giving catholic education to catholic students primarily, although other students were also admitted to the school. The Court noted that the Catholic Diocese of Calicut had taken over the management only in 1923 and hence between 1891 and 1923, the school could only had been established as part of the Catholic Diocese of Mangalore.

67. At paragraph 5, the Court states thus:

In order that the petitioners may claim protection under Article 30(1) of the Constitution they will have to show that the school is established and administered by a religious minority. It is not disputed that Roman Catholics of Kerala form a religious minority community. But that is not enough. It has to be shown that the school is established and administered by this religious minority. St. Peter's Church, Chalil, Tellicherry, is a Roman Catholic Church. The school is situated within the church compound and bears the name of the patron of the church. It is admitted that the school was established in 1891. In the original petition the petitioners stated that the school was established and is administered by the Catholic Diocese of Calicut of which the 1st petitioner is the Bishop. It is further stated that the school was established by the Bishop of Calicut for the purpose of giving Catholic education to Catholic students although students of other communities are also admitted to the school.

¹⁹ Foot Note Supra (1)



The Catholic Diocese of Calicut was formed in 1923 only. This is also not in dispute. From this the respondents took up the stand in their counter-affidavits that the claim of the petitioners that the school was established by the Catholic Diocese of Calicut is unsustainable. Until 1923 this area where the school is situate was part of the Catholic Diocese of Mangalore. The petitioners' answer in the reply affidavit is that the church and the school established by the Catholic Diocese of Mangalore were passed on to the Catholic Diocese of Calicut when the Mangalore Diocese was bifurcated in 1923 into the Catholic Diocese of Mangalore and Catholic Diocese of Calicut, and that their statements in the original affidavit that the school was established and is administered by the Catholic Diocese of Calicut was intended only to mean that the school belongs to the Roman Catholics now forming the Catholic Diocese of Calicut. In the reply affidavit full particulars of the original Catholic Diocese of Mangalore, its bifurcation in 1923 and the functioning of the Catholic Diocese of Calicut separately from that of Mangalore are all stated clearly. Though the respondents have filed supplementary counter-affidavits after this reply affidavit was filed, this fact is not disputed. So the petitioners' explanation in this regard can be accepted.

68. At paragraph 6, the Court states that in any event it remains to be seen as to whether that school had been established by the Roman Catholic Diocese or by any other organization or individual. The Education Department had argued that that school had been established by the Basel German Mission under the name of B.G Fisher Village School and recognition had also been given to it under the Madras Educational Rules after examining the documents produced. Evidently this was to discredit the stand of that School that it claimed a lineage from the Catholic Diocese that would support its claim for minority status.

69. The Court examined the documents, finding that the Upper Primary schools that had been established under the Malabar Gazette were different from St.Peter's U P School in Tellicherry. The Court thus found on facts and on the bases of documentation that the St.Peter's U P School had been established by



the Christians only.

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70. The Court held that there was no evidence in support of the argument that the school had originally been established by the Basel German Mission and that the takeover of the management by the Catholic church would suffice to satisfy the condition that the School has been '*established*' by them.

71. In the cases discussed supra, the original establishment of the schools has been by the Christian minority community only. The management of the schools had been transferred inter se the Roman Catholics and the Jesuit Fathers, both being sects of the minority Christian community. The subsequent takeover is also by a section of the same minority community and hence the minority nature of that school remains as a constant from the time of its original establishment to the takeover by another minority establishment and thereafter.

72. The indicia set out by the Supreme Court in the AMU case would stand fully satisfied in those cases, as the purport and object of the schools to cater to the minority community has been settled even from day one of its existence. It matters little if there is a takeover of the school by another section of the minority community as the primary purpose of Article 30(1) stood subserved, and seamlessly, without a break. It was hence that the condition regarding '*establishment*' by a minority, stood satisfied in those cases.

73. There is, in our view, a difference in the present case where the original establishment is not by a person from the minority community, and the



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school was set up as a secular institution. This very question was considered in the case of *A. Raju*²⁰, where the challenge was to an order declaring the Nalloor Narayana L.P Basic School as a minority educational education.

74. The aforesaid school had been established in 1936 by Nalloor Narayana Menon. After his demise, his son took over the school and in 2005 transferred the school properties to P.K.Mohammed Hajee who after several years claimed minority status for that school. The question that it was being administered by the minority community after the takeover was not in dispute. The claim was however rejected on the ground that it had not been established by a member of the minority community.

75. The learned single judge had held that the term ‘established’ meant infusing life and soul to an existing institution through dedication, relying on the decision of the learned single judges in *Rt. Rev. Dr. Aldo Patroni’s*²¹ case as well as *T.M.A.Pai’s*²² case.

76. However, the judgment in the case of *Rt. Rev. Aldo Maria Patroni.S.J.*²³ was distinguished and the Court arrived at the conclusion based on the judgments of the Supreme Court in *Sisters of St. Joseph of Cluny V. State of West Bengal and Others*²⁴, *Paramveer Albert Ekka Memorial College V.*

*State of Jharkhand*²⁵, *S. Azeez Basha*²⁶, *DAV College, Bhatinda V. State of*

20 Foot Note Supra (4)

21 Foot Note Supra (1)

22 Foot Note Supra (10)

23 Foot Note Supra (1)

24 (2018) 6 SCC 772

25 2018 6 SCC 788

26 Foot Note Supra (13)



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*Punjab*²⁷, and *Dr.T.M.A.Pai Foundation*²⁸, that a minority educational institution should be one established only by members of the minority community and in the interests of that community. The declaration that the Nalloor Narayana L.P.Basic School was a minority Educational Institution was thus quashed. The SLP filed as against this decision has been dismissed.

77. According to Mr.Mohanlal, this decision had not taken note of the earlier decision in *Rt. Rev. Aldo Maria Patroni.S.J.*²⁹ in proper perspective. Our attention is drawn to the findings at paragraph 14, reading thus:

14. The learned Single Judge relied on the decision rendered by this Court in Rt.Rev.Dr.Aldo Maria Patroni's case (supra) to hold that even an institution which is not established by a minority but subsequently taken over and administered by a minority would satisfy the requirement under Article 30(1). The facts in Rt.Rev.Dr. Aldo Maria Patroni shows that, though a contention was raised that the School therein was originally established by the Basel German Mission and not by the minority Roman Catholic community, that contention was repelled in the absence of evidence to support such contention. It was in that context the Court proceeded to hold that for establishment of a school it is not necessary that the school must have been constructed by the community and that even if a school previously run by some other organization 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. It was also held that the various exhibits produced in that case clearly justified the conclusion that the School was established and administered by the Roman Catholic community represented by the Bishop of Calicut. The Court went on to hold that the petitioners on whom the burden of proving that the School is established and administered by the minority community was

27 AIR 1971 SC 1737

28 Foot Note Supra (10)

29 Foot Note Supra (1)



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fastened, had satisfactorily proved that fact. Understood in the factual background in which the observations in *Rt.Rev.Dr.Aldo Maria Patroni* case (supra) were made, there is no difficulty to hold that the decision does not lay down a legal proposition that either 'establishment' or 'administration' of an educational institution by a minority would suffice for the purpose of declaring that institution to be a Minority Educational Institution. A conspectus of the decisions aforementioned and the provisions of the Act 2 of 2005 would lead to the irresistible conclusion that the declaration of an educational institution as a minority educational institution would depend upon on the satisfaction of the twin conditions of establishment and administration of such educational institution by a minority or minorities.

78. Mr.Mohanlal would compare the observations in paragraph 14 of the decision A.Raju's case³⁰ with the findings in *Rt. Rev. Aldo Maria Patroni.S.J.*³¹ to show that in *Rt. Rev. Aldo Maria Patroni.S.J.*'s case³² the Bench had stated that, '*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 organization is taken over or transferred to*'. According to him, the above observation supports his stand.

79. We cannot however agree. We have, in the paragraphs supra considered the factual matrices in the cases of *Rt. Rev. Dr.Aldo Patroni*³³ (Full Bench of Kerala High Court) and *Rt. Rev. Dr.Aldo Patroni SJ*³⁴ (Single Judge Kerala High Court) and noted that the takeover or transfer in those cases had

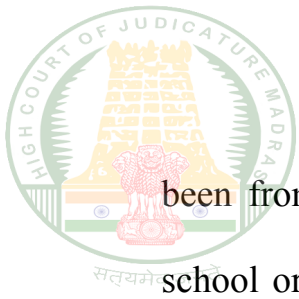
30 Foot Note Supra (4)

31 Foot Note Supra (1)

32 Foot Note Supra (1)

33 Foot Note Supra (17)

34 Foot Note Supra (1)



been from a minority institution. To put it differently, the conception of the school originally, the infusion of funds, the object, motive and constitution of the school even originally had been by, and for the minority community. The observation of the learned Single Judge in *Rt. Rev. Dr. Aldo Patroni SJ*³⁵ had been made in that context only.

80. In *Dr.T.M.A.Pai Foundation*³⁶, the constitutional validity of the Karnataka Educational Institution (Prohibition of Capitation Fee) Act, 1984 was challenged on the ground that it was violative of Article 30 of the Constitution. The facts were that the Academy of General Education was founded in 1942, registered as a Society under the Societies Registration Act. The Academy established a large number of Institutions including the Manipal Institute of Technology (in short 'MIT') on 30.05.1957.

81. The Manipal Engineering College Trust, Manipal, had thereafter been formed with the object of establishing an Engineering College, and had taken over the management of MIT. The Trust Deed stated that the object was to promote and develop the Konkani language and culture of Konkani speaking people and for educational advancement of students speaking Konkani in addition to other castes and communities. By way of a declaration, all assets were transferred to the Trust which owned and administered the MIT.

35 Foot Note Supra (1)

36 Foot Note Supra (10)



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82. The question that came up was whether the Trust could be said to have established the MIT. The learned Judge, after examining the objects of the Trust Deed and interpreting Article 30 of the Constitution discussed the case of *S.Azeez Basha*³⁷ stating that the expression 'established' in Article 30 included not only the foundation of an Institution but also securing of ownership of a party that had founded the Institution. Thus, re-establishment of the same Institution under a different management would also amount to 'establishment' for the purposes of Article 30 of the Constitution.

83. The relevant paragraph, being paragraph 11, reads as follows:

11. On a careful consideration of the rival submissions, I am unable to agree that the judgment of the Supreme Court in the case of Azeez Bhasha is an authority for the proposition, that even if a linguistic or religious minority takes over the ownership and right of administration of an institution already established by some-one else, it would not be entitled to the right guaranteed under Article 30(1) of the Constitution. I am of the opinion that the expression 'established' in Article 30 includes not only the founding of an institution, but also securing the ownership of an already founded institution, which means re-establishment of the institution under the new management and owner.

....

The interpretation of Article 30(1) by the Supreme Court to the effect that the expression 'establish' and administer should be read conjunctively means that both the ownership and right of administration must be in the hands of the minority, and that if one of them is absent, the right guaranteed under Article 30(1) cannot be invoked. In other words, a minority having only ownership or only right of administration without ownership, would not be entitled to the protection of Article 30. The Kerala High Court, after considering the relevant paragraph of the judgment of the Supreme Court in Azeez Basha's case held that the expression 'establishment' includes the taking over of ownership

³⁷ Foot Note Supra (13)



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and control of an institution already existing. I am in respectful agreement with the view taken by the Kerala High Court. Therefore, if a linguistic or religious minority, desirous of establishing an educational institution, instead of starting a new educational institution, if it were to secure both absolute ownership and management of an already existing institution, either by purchase or gift or by declaration of the property as a Trust for the benefit of the minority, it is entitled to the right guaranteed under Article 30 in respect of such institution. In all such cases, the test to be applied is, whether both the ownership and the right of administration of the institution concerned is really with the minority concerned? If the answer is yes, the right guaranteed under Article 30 extends.

84. The Bench goes on to say that the Petitioner in that case, that is, Dr.T.M.A.Pai Foundation was (i) Konkani in character, a linguistic minority (ii) the institution, the Manipal Institute of Technology, had been taken over by the T.M.A.Pai Foundation that was also administering it and most importantly, (iii) the institution had also been founded by Dr.T.M.A.Pai, a Konkani. The identity of the Institution and its character thus remained the same through the acquisition. This decision thus is of no assistance to R1 as both the original and subsequent entities, the transferor and transferee sub-served the interests of the linguistic Konkani minority community.

85. In *Manager, St. Thomas U.P. School, Kerala and Another V. Commissioner & Secretary to General Educational Department and Others* ³⁸, the Supreme Court considered whether the establishment test has been satisfied in the case of transfer of an institution funded by one P.J.Thomas, a Christian who had set up a school in 1964 which was taken over in 1980 by the

³⁸ (2002) 2 SCC 497



Archbishop of Thiruvananthapuram of the Malankara Syrian community.

86. The Court accepted that such a school would be entitled to minority status, on the basis that even the original commencement of the school had been by P.J.Thomas, who was a Christian and from the same Malankara Syrian community. Further, right from 1964 when it had been set up by the founder, the school had been administered for the benefit of the Christian community.

87. A Division Bench of this Court in *The Church of South India, Kanyakumari District, Nagercoil, represented by its Bishop Rt.Rev.G. Christudas V. The Director of School Education, Madras 6 and Others*³⁹ considered the question of whether the transfer of management of the V.V.High School for Girls and V.V.Higher Secondary School for Boys at Irenipuram Village that had been started by the landlords for the welfare of their tenants' children, to the Church of South India would satisfy the test of Article 30.

88. In understanding the term '*established*', the Court, relied on the decision in *Rt. Rev. Aldo Maria Patroni.S.J*⁴⁰, and accepted the claim for minority status. The operative portion of the decision is at paragraph 6 reading thus:

6. 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

³⁹ Writ Appeal NO. 1813 of 1987 Judgment dated 30.08.1989

⁴⁰ Foot Note Supra (1)



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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".

89. The Supreme Court, in the case of AMU has set out categoric indicia to test when an institution can be said to have been ‘established’ for the purposes of Article 30 of the Constitution. To sum up, the indicia are (i) what the character and nature of the institution was at the time of its genesis (ii) whether it had, predominantly, been set up for the benefit of the religious or linguistic minority community and (iii) tracing the steps for the setting up of the institution and efforts taken for such constitution.

90. While both the P.Muthaiyar school and the CSI Kanyakumari school might satisfy the second parameter in that, the schools, after transfer were being administered mainly for the benefit of the minority community, the first and third tests remain uncompiled. The first test relates to the nature of the schools at the time of their original setting up, which is secular.

91. The third test relates to the efforts taken for setting up the institution. In the case of the P.Muthaiyar school, the idea behind the setting up of that school was P.Muthaiyar’s and he had set it up as a secular school. The manner in which the school was created has not been gone into in detail, and the instrument of such creation is not available. The State has relied upon the



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judgement in the case of *P.Venugopala Naidu*⁴¹ to say that the properties of a Public Trust should be zealously guarded, and transfer of such properties by private negotiation should be monitored carefully by the Court, including on the aspect of the valuation of the properties.

92. This aspect of the matter has been raised only at the stage of the writ appeal before us, and has not been contemplated by the authorities at the initial stages. We are hence unaware as to the nature of holding of the school by Sri.P.Muthaiyar and whether at all there had been a Trust at the first instance. As a matter of practice, it is imperative that the State and the authorities concerned should look into this aspect, whether the transfer of the school properties was above board, for proper valuation, and in line with the objects of the Founder of the school concerned. This is as far as the transfer of the school properties are concerned.

93. As far as the school is itself, concerned, there is a procedure contemplated under the Act and Rules for setting up of a school. The entity/person would have to apply to the competent authority with an application under section 6 of the Act, and follow the procedure stipulated therein. Section 9 exempts any minority, based on either religion or language, from seeking permission under Section 6 of the Act, but requires, under Section 10 that every minority school should file a Statement with the requisite particulars within the prescribed time.

⁴¹ Foot Note Supra (5)



94. Once a school is established, an educational agency is to be set up.

Section 2(3)(a) of the Act, in the context of a 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. In this case, the educational agency has been named to be one Sister Edvij.

95. An application has been made for change of management from S.R.Selvaraj to R1, and that has been approved by the competent authority on 17.10.1997. In those proceedings, there is a specific stipulation that the school shall be '*maintained under the prevailing non-minority status.*' R1 had, at the time of grant of approval for change in management, acceded to maintaining and administering the school as a secular school, reversing that stand within days and seeking the grant of minority status. The communication of the CEO/R3 in 2003 states that the school was being administered with all trappings of a minority school at the time of the inspection even when it had not obtained such approval.

96. R1 has thus stepped into the picture only by purchase of the school assets, the land and building, and transfer of management to itself, the Congregation of the Sisters of St.Anne, Tiruchirappalli belonging to the Roman Catholic sect. Article 30 of the Constitution requires concurrent satisfaction of both 'establishment' and 'management' of the school by an entity. While the management of the school after the acquisition is admittedly by R1, we are of



the view that the school does not satisfy the tests for 'establishment' laid down by the Supreme Court in AMU's case and Kerala High Court in A.V.Raju's case.

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97. In light of the discussion as above, this Writ Appeal is allowed.

Connected Miscellaneous Petitions are closed with no order as to costs.

[A.S.M., J] [C.K., J]
02.09.2025

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Index: Yes/No

Speaking Order / Non-Speaking Order

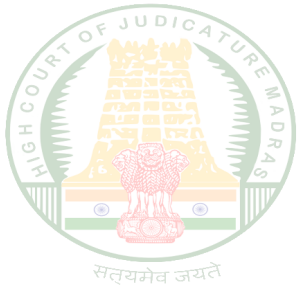
Neutral Citation: Yes/No

To

1. The Secretary,
Department of School Education,
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Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
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Cuddalore District.
4. The District Educational Officer,
Cuddalore – 607 101.
Cuddalore District.

DR. ANITA SUMANTH,J.
and
C. KUMARAPPAN,J.

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W.A. No. 3769 of 2



W.A. No. 3769 of 2019
&C.M.P. No. 23848 of 2019

Dated: 02.09.2025