

(2000) 11 GAU CK 0008
In the Gauhati High Court
Case No : WP (C) No. 72 (SH) of 1999

Araya Samaj and Another	Vs	APPELLANT
State of Meghalaya and Others		RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 29(1), 30, 30(1), 38
Meghalaya Aided Higher Secondary, Secondary, Upper Primary School Management Committee Rules, 1997 — Rule 38

Citation : AIR 2001 Guw 47 : (2000) 3 GLT 656

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. S.P. Roy, Mr. C. Barua, Mr. N. Alam and Mr. M.F. Qureshi, for the Appellant; Mr. B.P. Hangar and Mr. V.K. Singhal, for the Respondent

Final Decision : Allowed

Judgement

1. This petition under Article 226 of the Constitution has been preferred for two-fold directions, namely, (i) for declaration that the Meghalaya Aided Higher Secondary, Secondary, Upper Primary School Management Committee Rules, 1997, as unconstitutional and void and (ii) for a direction to the respondents to approve the Managing Committee of the Arya Kanya Vidhayala High School as proposed by the Arya Samaj vide Annexure-9.

2. I have heard the learned counsel for both the parties in details. For the purpose of resolving the dispute at hand, it would first be necessary to decide as to whether the Arya Kanya Vidyalaya High School is a religious minority institution within the meaning of Article 30(1) of the Constitution.

3. At the outset, it would be relevant to have a glimpse over the characteristics of the Arya Samaj as it would facilitate a decision as to whether this school established by them is a religious minority school within the meaning of Article 30(1) of the Constitution. The Arya Samaj is a registered Society established in the year 1935 by the Hindi speaking people of Shillong who have joined the

Samaj as members. The Memorandum of the Samaj (Annexure-1) spell out the objectives for which the Samaj has been established. The objectives incorporated in Article 3 of the Memorandum, inter alia, include establishment of schools and educational institutions. Only those persons who accept the ten principles and the constitution of the Arya Samaj are eligible for membership. The Samaj has established many schools within the State of Meghalaya and the school in question was established in the year 1942. Rule 38 of the Memorandum of Association provides that the President of Arya Samaj would be the President of the Managing Committees or ad-hoc committees, if constituted by the Government, of all the educational institutions established by the Samaj. The school in question was established to impart education upto class-X to the girl students who believe in the principles, thoughts and preaching of Arya Samaj floated by Swami Dayananda Saraswati. Most of the members of the Samaj as well as the Managing Committee of the school are Hindi speaking and "Hindu" by religion. The population of the Hindi speaking Hindus in the State of Meghalaya is less than 3 per cent and as such they are linguistic and religious minority. The Samaj has its branches spread throughout the country and abroad. The schools and colleges established by the Samaj are being run in strict compliance with the teachings and principles of the Arya Samaj based on Vedic culture, Devanagiri being the script of the members of the Samaj.

4. The characteristics as set out in the writ petition along with the provisions of the Memorandum of Association would be determinative of the status of the Samaj as well as the school in question. Mr. Jindal, learned counsel for the respondents, however, argued at length to dislodge the claim of the minority character of the Samaj. According to him, the Inspector of Schools have been constituting the Managing Committees of the schools since 1981 and therefore, the school cannot be said to be independent of any Government control. Mr. Jindal also argued that the school came into existence long before the Samaj was constituted and, as such, it cannot be accepted that the school was established by the Samaj. In addition, he also questioned the locus standi of the writ petitioners. The learned counsel also made a mention of the earlier Civil Rule No.69 (Sh.)/97 preferred by the writ petitioners.

5. At this stage, it would be pertinent to mention that in the aforesaid Civil Rule No.69 (Sh.)/97 an interim order of stay was passed on 23.5.1997 restraining the State authority from interfering with the affairs of the school. But, the said interim order was stayed by a Division Bench of this Court in Writ Appeal No.275/97. Consequent thereupon, the Civil Rule was withdrawn and the writ petition was dismissed. There is nothing on record to show that any decision on merit was pronounced in the aforesaid Civil Rule and the connected Writ Appeal. Therefore, the proceedings of those cases cannot be a ground for refusal of the instant writ petition.

6. The respective stand of the parties reproduced above necessarily call for recapitulation of the law as interpreted by the Apex Court and the High Courts in

this behalf. In *S.P. Mittal v. Union of India & others*, the Supreme Court held-

"...In order to claim the benefit of Article 30(1) the community must show: (a) that it is a religious or linguistic minority; (b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it...."

7. It would, therefore, appear that unless the above two tests are satisfied, the school in question cannot be given the guaranteed right to administer it. According to the writ petitioners, the majority of the members of the Samaj are Hindu who constitute less than 3 per cent in the State of Meghalaya having a Christian population exceeding 80 per cent. It is specifically pleaded that the language of the Samaj is Hindi and the school established by them imparts education in "Hindi" medium. Both on the counts of religion as well as language, it is claimed that the school established by them is a minority institution within the meaning of Article 30(1) of the Constitution. Obviously, this claim has been controverted by the respondents in their respective affidavits. According to the State respondent, the status of the Arya Samaj as "minority" cannot be determined without an investigation of the population/structure of the State, and this exercise is not permissible in a petition under Article 226.

8. In *Mechel Lyngdoh v. Managing Committee, Sacred Heart Boys' H.S. School, Shillong & others* 1999 (2) GLT 1, the learned Single Judge of this Court while determining the minority status of the Sacred Heart Boys' High School discussed in details the Census Report of 1991. The statement of the population structure as quoted below will certify the position:-

Sl.No. Major Religion Percentage

1981 1991

All religions 100.00 100.00

1. Christians 52.62 64.58

2. Hindus 18.03 14.67

3. Muslims 3.10 3.46

4. Buddhists 0.20 0.16

5. Sikhs 0.13 0.15

6. Jains 0.04 0.02

7. Other religions and persuasion 25.77 16.82

8. Religion not stated 0.11 0.14

It is clear from the aforesaid report that the Hindus constituted 14.67 per cent as against the Christian population which constitute 64.58 per cent. It is clear that the Hindus altogether is a minority community in the State of Meghalaya. The

members of the Arya Samaj which is a segment of the Hindu population, therefore, cannot but be a religious minority community. This conclusion gains support for a decision of the Court in *Jugalkishore Kedia and Others Vs. State of Assam and Others*, where the status of the Marwaris of Hojai in the State of Assam was under consideration. The Court after consideration that the Hindi speaking population in the State of Assam was 5.42 per cent at the relevant time held the Marwari community of Hojai along with other Hindi speaking community as "minority community" for the purpose of Article 30(1). Consequently, the Gandhi Vidyapith established for imparting general education in Hindi was adjudged to be a minority school. (This judgment was reversed by the Supreme Court in C.A. No. 1710 to 1721 / 1978 without disturbing this finding).

9. In *D.A.V. College etc. etc. v. State of Punjab and others* (1971) 2 SCO 269, while dealing with the status of the Arya Samaj in relation to Guru Nanak University, Amritsar Act, 1969, the Supreme Court held as follows:-

"12. For the purpose of the Article 29(1) even though it may not be necessary to enquire whether all the Hindus of Punjab as also the Arya Samajis speak Hindi as a spoken language, nonetheless there can be no doubt that the script of the Arya Samaj is distinct from that of the Sikhs who form the majority. It is claimed that while the Sikhs have Gurumukhi as their script the Arya Samajis have their own script which is the Devanagari script- Their claim to be a religious minority with distinct script of their own seems to us to be justified as would appear from the following.

13. The Arya Samaj is a reformist movement, believes in one God and in the Vedas as the books of true knowledge. It holds that it is the duty of every Arya Samaji to read the Vedas and have them read, to teach or preach them to others. It has a distinct organisation, the membership of which is open to all those who subscribe to its aims and objects. The Arya Samajis worship before the Vedic fire and it begins with the burning of incense (the homa "sacrifice") accompanied by the chanting of the Vedic verses.

* * * * *

16. The passages read above show beyond doubt that the Arya Samaj by "rejecting the manifold absurdities found in Smriti and tradition and in seeking a basis in the early literature for a purer and more rational faith can be reconsidered to be a religious minority, at any rate as part of the Hindu religious minority in the State of Punjab.

* * * * *

18. Now coming to the question whether the Arya Samajis have a distinct script of their own bye-law 32 of their constitution shows that the proceeding of all meetings and sub-committees will have to be written in Arya Bhasha- in Hindi language and Devnagari character. All Aryas and Arya Sabhasads should know Arya Bhasha, Hindi and Sanskrit. The belief is that the name of the script

Devnagari is derived from Deva and therefore has divine origin. From what has been stated it is clear that the Arya Samajis have a distinct script of their own, namely, Devnagari. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority."

10. The decision in the aforesaid judgment resolves the question at hand. The percentage of Hindu population in the State of Meghalaya available in paragraph 7 of the judgment in relation to the Meghalaya School Education Act, 1981 clearly establish that Arya Samaj is a religious as well as linguistic minority in the State of Meghalaya having a distinct entity of their own. I have, therefore, no hesitation in holding that the Arya Samaj in the State of Meghalaya is a religious minority. They are also a linguistic minority, since Hindi is the language of conversation of the members of the community with "Devnagari" as their script.

11. The next question that comes for consideration is whether the school was established by the Arya Samaj. Mr. Jindal, learned counsel for the respondents argued that the school was established in the year 1942 (paragraph 4 of the writ petition) while the Samaj was established and registered long thereafter, and hence, cannot be stated that the school was established by the members of the Arya Samaj as per objectives in the Memorandum of Association (Annexure-1). But the documents on record indicate that the school has already been under the Management of the Members of the Arya Samaj for all practical purposes having their buildings on a plot of land allotted by the Government of India. Ministry of Defence and it has been in receipt of donations in different forms from various institutions including aid from the State Government. This school is imparting general education and "Hindi" is the medium of instructions in the school along with the English. The instruction is being imparted in accordance with the Memorandum of Association of the Samaj. May be the school was established before the Samaj acquired a juristic character, but the fact that the school was established by the Samaj to advance the avowed principles of the Samaj is sufficient enough for a conclusion that it is a minority institution. Constitution of the Managing Committees by the State authority cannot take away the minority character of the school.

12. The petitioners have not challenged any provision of the Act of 1981. In fact, the Act of 1981 protects the rights of the minority institutions enshrined in Article 30. Section 21 clearly says that the Government is not eligible to take over the management of the minority schools. Section 31 provides for rule making powers of the State Government. Clause (xxvi) of Section 31 makes it clear that the State Government may make rules for the maintenance and administration of aided schools and the constitution and function of their Managing Committees other than those of minority schools. It is, therefore, clear that no provision of the Act of 1981 is in derogation of the rights of the petitioners guaranteed under Article 30.

13. Article 38 of the Memorandum of Association vests some restricted powers

with the State authorities. It reads as follows:-

"38. The President of Arya Samaj shall be the President of the Managing Committees or Ad-hoc Committees if constituted by the Government of all the educational institutions under the control supervision of the Arya Samaj Shillong and functioning under the Arya Samaj Shillong."

The provisions of Article 38 clearly show that if the Managing Committees or ad-hoc committees of the educational institutions of the Arya Samaj are constituted by the Government, the President of such committees shall have to be the President of Arya Samaj only. The impugned notification (Annexure-5) shows that it is the Inspector of Schools who has been named as the President of the Managing Committee of the concerned school. This constitution is obviously contrary to the provisions of Article 38 of the Memorandum of Association. Since the Act of 1981 does not contemplate taking over of the management of the minority institutions, or to exercise any control in the nature of constitution of the Managing Committees, the impugned notification (Annexure-5) has to be held as bad in law being beyond the powers of the State. The draft rules (Annexure-2) and the instructions communicated to the Inspector of Schools and Deputy Inspector of Schools vide letters dated 2nd August, 1997 and 8th August, 1997 (Annexure 3 and 4) directing that the rules would be operative with immediate effect and calling upon all the Inspector of Schools to strictly follow the provisions of the draft rules are obviously violative of the provisions of the Act of 1981. By these instructions contained in Annexure 3 and 4, the State authorities have definitely exceeded their powers in violation of the constitutional guarantee given to the minority community.

14. In Civil Appeal Nos. 1710 to 1721/1987 and 1074 of 1987 (Shri Ambika Prasad Kodia & others v. State of Assam & others), the Supreme Court observed as follows: -

"There is a catena of decisions of this Court that lay down the administration of minority educational institutions cannot be taken over and must remain with the minority concerned. These decisions have been adverted to in the judgment under appeal and it is unnecessary to repeat them. Having regard to those judgments, there is no doubt that the said Section 5 the said Rule 4 and the orders taking over management based thereon are ultra vires of Article 30(1). They cannot be saved by the method contemplated by the High Court, namely, that a Special Committee should be constituted in the case. So long as the power to appoint members of the Managing Committee and a Special Committee vests in the Government there is an usurpation of the light of the minority communities to administer their educational institutions.

.....

..... In any event, a constitutional guarantee such as that contained in Article 30 cannot be waived."

15. The argument that Managing" Committees have been constituted by the State authorities since beginning will obviously have no effect. In the opinion of the Supreme Court, the constitutional guarantee contained in Article 30 cannot be waived. Therefore, the constitution of the committee will have to be made only in terms of the Memorandum of Association and not otherwise.

16. The objection that the petitioners have no locus standi to prefer this petition does not appear to be of any significance. It is because the Arya Samaj is the petitioner here which is represented by Managing Committee. The Managing Committee was sought to be ousted by the impugned order dated 15-5-1997. But in view of the stay granted, the Committee is still functioning. It is not understood as to how they have no locus standi.

17. In the result, the writ petition is allowed and impugned letters dated 2-8-1997 and 8-8-1997 (Annexure 3 and 4) and the impugned order dated 15-5-1997 (Annexure-5) are hereby set aside. The respondents are directed not to give effect to the provisions of the Rules/draft Rules (Annexure-2) to the school in question. The petitioners are left to "constitute the Managing Committee of the school in accordance with the Memorandum of Association/bye-laws. No costs.