

(1998) 06 MAD CK 0032
In the Madras High Court

Bala Seva Educational and Charitable Trust	APPELLANT
Vs	
State of Tamil Nadu and Another	RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Constitution of India, 1950 — Article 29(1), 30(1)

Citation : (1998) 3 MLJ 449

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of writ of certiorarified mandamus calling for the records comprised in the records of the first

respondent in Lr.(MS) No. 153 Higher Education dated 7.4.1998 and quash the same and consequently direct the first respondent to accord

minority status to the petitioner on the basis of language and pass such further or other orders as this Court may deem fit and proper.

2. The affidavit is sworn to by the Chairman and the Managing Trustee of the petitioner Trust. It is stated therein that the petitioner has established

a College by name "Shanmuga College for Engineering" at Thirumalai Samudram in Thanjavur District.

3. The first Board was constituted with seven members and they all belong to Sanskrit speaking community which is a linguistic minority in the

State of Tamil Nadu. It is further stated that all the members who are named in the affidavit were well reversed with Sanskrit language and

committed for the propagation of the same. It is also stated that the college campus comprises of various block which bear Sanskrit names and the

foundation for all these buildings was laid by His Holiness Shri Jayendra Saraswathi Swamigal and His Holiness Shri Vijayendra Saraswathi

Swamigal of the Kanchi Kamakoti Peetam (Kanchi Mutt) and all the buildings were declared open by the above two seers of Kanchi Mutt.

Kanchi Mutt has instituted a gold medal named as "Kamakoti Medal" to be awarded to the students who excel in education, extra curricular activities and whose conduct is good.

4. It is further stated in the affidavit that the main goal of the petitioner-Institution is to bring about a balance and cohesion between the acquisition of technical knowledge and the appreciation of a language which is widely and uniformly recognised as being the only systematic and perfect in pronunciation, script and grammar. The petitioner-Trust encourages the students with the basic knowledge of Sanskrit to further equip themselves with the niceties of the said language from the renowned Sanskrit scholars engaged for this specific purpose.

5. In view of the great interest shown by the students of the petitioner-institution for the Sanskrit language, it thought of obtaining an autonomous status i.e., achieve twin goals, imparting technical education and preaching of Sanskrit language. On 25.6.1997 the petitioner applied to the first respondent seeking minority status, viz., a linguistic minority institution as all the trustees were well versed with Sanskrit and were committed to the cause of establishing Sanskrit as an important means of communication and in view of its intrinsic capability of being adopted to the modern technology.

6. As required the petitioner also attached a copy of the certificate issued by the Revenue Divisional Officer, Thanjavur District certifying that the petitioner-trust has established the college for the benefit and upliftment of Sanskrit speaking community in Tamil Nadu which constitutes a linguistic minority in Tamil Nadu. The said certificate was produced in complying with the requisition made in G.O.Ms.No. 589 EST Department dated 21.7.1995 of the first respondent:

7. It is also said that the petitioner-Trust satisfied all the other conditions laid down in G.O.Ms.No. 371 EST dated 10.5.1995. There is a long delay in disposing of the application and the petitioner after a long wait received a letter dated 13.8.1997 rejecting the application on the ground that the Sanskrit language has ceased to be used. It was stated therein that it was a dead language. The same was questioned before the Court in

W.P.No. 12672 of 1997, and the order of the first respondent was quashed and the first respondent was directed to reconsider the matter afresh.

A revised order was passed on 7.4.1998 again rejecting the application and the first respondent has justified its action on other grounds.

8. It is the case of the petitioner that none of the grounds mentioned in the order dated 7.4.1998 is legal, valid and therefore, the same could not be supported. It is stated in the affidavit that the impugned order is the result of mala fide action on the part of the respondents and the order is vitiated since it has taken into account the irrelevant factor and the order is also violative of the principles of natural justice.

9. In the various grounds taken in the writ petition, the grounds mentioned in the impugned order for rejecting the application of the petitioner, are attacked. It is stated that none of the documents produced along with the application was taken into consideration. Irrelevant facts are considered and the law declared by the Hon'ble Supreme Court is not taken into consideration. The guidelines issued by the Government is also not properly considered and the same is ignored for flimsy reasons. The petitioner, therefore, comes to the court to quash the impugned order and for issuance of writ of mandamus to declare it as a minority institution.

10. A detailed counter affidavit has been filed by the respondent wherein they support the impugned order. In para 10 of the counter, it is stated that the conduct and the intention of the petitioner in obtaining the minority status after 13 years of inception and immediately after the commencement of the selection process shows that the petition is filed without any good faith. The object is only self-serving and not in the interest of the language, as projected in the affidavit. It is also stated that they have considered the case of the petitioner on its own merit and there is no violation of principles of natural justice. It is further stated that the educational institution established by the petitioner is not promoting Sanskrit or Sanskrit speaking people and the college is also not a Sanskrit College. It is also stated that no material is placed before the Government that the Trust has dedicated themselves for the propagation of the Sanskrit language.

11. It is further stated that imparting Sanskrit education in professional course such as technical education is not permissible as per the norms and standards fixed for B.E. course. It was never the intention of the petitioner every

since inception and promotion of Sanskrit language in technical

education is also impermissible. It is further stated that the petitioner has not proved that the institution is established by a minority community within

the meaning of Article 29(1) of the Constitution of India. The members who claim themselves to be versed with the Sanskrit language cannot be

said to be belonging to that community as such. Therefore, they pray for dismissal of the writ petition.

12. I heard the learned Counsel on both sides in detail and the only question that require consideration is whether the impugned order is liable to be

quashed.

13. The various reasons for rejecting the application of the petitioner read thus:

(i) The main object of the petitioner is imparting technical education and the college is not established for promoting the Sanskrit language or

Sanskrit speaking people and the College is also not a Sanskrit College.

(ii) Imparting Sanskrit Language in professional course such as Technical Education is not permissible as per the norms and standards fixed for the

B.E. course.

(iii) In this case, it has not been clearly established that the Institution is being established by the minority community within the meaning of Article

29(1) of the Constitution.

(iv) The rights under Article 29(1) of the Constitution is conferred only to a section of citizen having distinct language, script of its own. As pointed

out by the Hon''ble High Court in its judgment, Sanskrit language is studied even by Muslims, Christians and non-Brahmins. Sanskrit is the mother

of all Indo-Aryan languages. It is an inheritance to all linguistic community in India, Sanskrit language does not belong to the applicants or to any

single community exclusively. Therefore, the applicants cannot be said to have Sanskrit language or script of its own.

(v) A person having knowledge in Sanskrit is one thing, and a person belonging to minority community whose mother tongue is Sanskrit is a

different thing, and only the latter will have protection under Article 30(1) of the Constitution.

(vi) The Revenue Divisional Officer's Certificate dated 31.5.1997 does not clearly state that, all the members of the Trust who established the

institution and are administering the same now, belong to minority community whose mother tongue is Sanskrit.

(vii) A person can speak any language. Just because the applicants speak Sanskrit language, it cannot be said that the language belongs to them exclusively.

14. In my view, none of the reasons mentioned in the order could be supported. The main reason for rejecting the application is that the petitioner

is imparting technical education and the college is not promoting Sanskrit or Sanskrit speaking people and the college is not Sanskrit college and

imparting Sanskrit language is not permissible in technical College, and Sanskrit is the mother of all languages and the same is studied by Muslims,

Christians and non-Brahmins and the language does not belong to any single community, etc.

15. Before going to the merits of these contentions, let us consider what are the guidelines issued by the Government for declaring minority status.

On 10.5.1995 the State Government issued G.O.Ms.No. 371 which was followed by another G.O.Ms.No. 589 dated 21.7.1995. The very

purpose of issuance of G.O.Ms.No. 371 is that the Government had permitted private managements to start Engineering College, Polytechnic and

other technical education including Management studies who have claimed minority status to the institution run by them. Some of the institutions

also filed litigations before the Civil court and obtained decrees that they are religious or linguistic minorities. When these matters went before the

Hon"ble Supreme Court it was directed that these institutions should approach the State Government for declaration of minority status. It is

pursuant to the said direction of the Hon"ble Supreme Court, a Committee was constituted by the Government and on their recommendation the

Government declared that the conditions stipulated in the said Government Order will have to be satisfied before it is being registered as a minority

institution. The Committee declared that the minority status will be granted only on two conditions viz., religious minority or a linguistic minority or a

combination of both. In regard to linguistic minority, clauses 2(5), (6) and (7) of the Government Order is relevant which read thus:

(5) In respect of language, the language spoken or written will be taken into consideration for the purpose of according minority status. For

example, people belonging to Sourashtra community, who speak a different language will be treated as minority on linguistic basis, although they belong to the Hindu Religion. Similarly, people speaking Telugu or Hindi in this State though they belong to the Hindu Religion, on the basis of language may be treated as minority.

(6) For the purpose of deciding whether the applicant is a minority or not, based on religion or language, the total population in the State will be taken into consideration and not the total population in any particular region in which the educational institution is situated or the population in the whole of the country. In other words, the State is a Unit and the number based on religion or language must be less than 50% of the total population in the State. The population on an All India basis cannot be the criterion so far as this State is concerned.

(7) The management of the educational agency must also comprise of a majority of persons belonging to the minority community.

16. Thereafter, G.O.Ms.No. 589, dated 21.7.1995 was issued. The Government said that the applicant will obtain a certificate from the office in Revenue Department, not below the rank of Revenue Divisional Officer to the effect that the languages spoken by majority of trustees is a language of minority for whose benefit the institution has been primarily established and produce the same to Government in addition to the other relevant records.

17. It is pursuant to this Government Order, the petitioner obtained a certificate from the Revenue Divisional Officer who declared that the seven trustees whose names are given in the certificate have established the Shanmuga College of Engineering at Thirumalaisamudram, Thanjavur Taluk and they all belong to Sanskrit speaking Brahmin community. Initially, the Government rejected the application on the ground that the Sanskrit is a dead language as per order dated 13.8.1997. The same was challenged before this Court and the order was set aside and this Court declared that the reasons mentioned in the order cannot stand for a moment and the order was issued only due to ignorance of the realities. The respondents were directed to reconsider the entire matter and pass final orders.

18. It is pursuant to the order of this Court, the impugned order was passed. Reasons 1, 2 and 4 of the impugned order go together. In my view,

these reasonings go against the decision of the Hon'ble Supreme Court In re: Kerala Education Bill, 1957 AIR 1958 S.C. 956 of the judgment

answers the questions which read thus:

Having disposed of the minor point referred to above, we now take up the main argument advanced before us as to the content of Article 30(1).

The first point to note is that the article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right

conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish

religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article

says and means is that the religions and the linguistic minorities should have the right to establish educational institutions of their choice. There is no

limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be

brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual

attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting

general secular education also. In other words, the article leaves it to their choice to establish such educational institutions as will serve both

purposes, namely the purpose of conserving their religion, language or culture and also the purpose of education to their children. The next thing to

note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to

administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the article under

consideration are the words "'of their own choice'". It is said that the dominant word is "choice" and the content of that Article is as wide as the

choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has, therefore to be determined on a

consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or

administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that Article may be classified

into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid.

As per the said decision, the right of the minority to establish an educational institution must mean the right to establish a real institution which will effectively serve the needs of the community and scholars who resort to educational institution.

19. In the affidavit in support of the writ petition it is stated that Sanskrit is being spoken by a community in day-to-day life, in normal routine works and religious duties. The Sanskrit language is inseparable from the day-to-day life of the community. This fact is not denied anywhere in the counter. There is no prohibition for promoting Sanskrit language by any educational institution.

20. It is also contended by the petitioner that the ground that the petitioner cannot impart Sanskrit language in a professional course has been taken only against petitioner-institution and the same standard is not applied for minority status in regard to other Dravidian languages.

21. On the basis of the certificate, it is clear that the institute is administered by the minority community and the same cannot be ignored by the

Government, under whose instance or under whose order, the certificate itself was issued. Not only the original Board of Trustees, but also the

present members also belong to Sanskrit Speaking minority community and this fact is not disputed in the counter though they say that the trustees

only have knowledge in Sanskrit. The statement that the Sanskrit language is studied by Muslims, Christians and other communities and the further

statement that the petitioner cannot claim Sanskrit as their own language are all not the grounds to reject the application.

22. In fact, it is rightly contended by the learned Counsel for the petitioner that the total number of people who speak the language also consist of

Muslims, Christians and other non-Brahmins who also constitute the minority in Tamil Nadu and this fact is not considered by the authorities. In

fact, the very same respondent while rejecting the earlier application has stated that Sanskrit is a dead language and now it is contended that that

language is spoken by Muslims, Christians and non-Brahmins.

23. It is rightly contended by the learned Counsel for the petitioner that the

Government has itself given certain norms and guidelines for considering the application and conferred minority status and the impugned order militates against the said direction. I have already extracted clauses 5, 6 and 7 of the Government Order No. 371 wherein the people belonging to Sourashtra community, though speak a different language, may be treated as a minority on language basis, though they belong to Hindu religion. Likewise, people speaking Hindi, Telugu, Malayalam, though they belong to Hindi religion, on the basis of the language, are treated as minorities. Therefore, it is clear that if a community speaks a different language, they are given a separate status though they belong to Hindu religion. A language is not confined to a particular religion or community.

24. The question to be considered is whether Clause 5 of the G.O.Ms.No. 371 is fulfilled. Regarding the same, the respondents have not given any answer while rejecting the application. Likewise, the rejection of the certificate by the respondent does not also seem to be correct. There is no vagueness seen in the Certificate. I find that the various reasonings mentioned in the impugned Order are not on the basis of application of mind, but to see that the application is rejected.

25. The respondent has also not considered the scope of Article 29(1) of the Constitution which reads thus:

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Durga Das Basu has commented that this provision is intended to preserve the language, script and culture of a section of citizens distinct in its culture of its own. The term "of its own" only means the language which they use regularly, and it does not mean that persons or citizens belonging to other religion or community should not use it.

26. If that is the scope of Article 29(1) of the Constitution, merely because other members learn and speak Sanskrit, it cannot be said that the petitioner is not entitled to the benefit of Article 29(1) of the Constitution. The fact that the Board of Trustees, the persons who established a college are well-versed in Sanskrit and they all belong to Sanskrit speaking community and the majority of the present Board of Members also belong to Sanskrit speaking community, is not denied. The only contention that

is raised is that knowledge of Sanskrit alone is not sufficient. But, that is not the case that is put forward by the petitioner.

27. The respondent seems to have confused themselves between religion and language, and have denied the petitioner the benefit of Article 29(1)

of the Constitution. I do not think that is the scope of the above said Article and the impugned order goes against the Government order, viz.,

G.O.Ms.No. 371, dated 10.5.1995. From the counter, it is seen that the understanding of the respondent is that Sanskrit can be learnt or spoken

only by Hindus and if knowledge in that language is obtained by a Muslim or Christian, it ceases to be a language of a minority. That understanding

is not correct.

28. When the matter came for arguments, learned Additional Government Pleader wanted the petitioner to produce certain documents. Notice of

the same was given to learned Counsel for petitioner. The purport of the said request was to prove that the mother-tongue of the petitioner-

Trustees is not Sanskrit.

29. I do not think that any purpose would be served by filing such an application. For the same, petitioner has filed an affidavit explaining how the

request is untenable and why at this stage it wanted to declare the Institution as a minority Institution. It is also brought to the notice of this Court

that in similar circumstances, the respondents have given minority status to various other institutions who also executed supplementary Trust Deed

in 1994-95. In fact, respondents have given minority status to Arunai Engineering College, S.R.M. Engineering College, etc. as per Order dated

25.5.1997 under similar circumstances and the petitioner alone was left out. The Trust Deeds executed in respect of those Institutions are also

among typed set of papers. Why should there be a different treatment for the petitioner alone?

30. I also feel that the request of the respondents is made only to improve the case of the respondents and for reasons which are not stated in the

impugned Order. They wanted to find out some more reasons also to reject the application. The same cannot be accepted by this Court.

31. Consequently, I quash the impugned order and I direct the respondents to pass fresh orders on the application of the petitioner dated

26.7.1997 seeking minority status, i.e., a linguistic minority, with in a period of

two weeks from the date of receipt of a copy of this Order. I make it clear that the respondents should not rake up other issues or other reasons while passing final orders. I find that the reasons mentioned in the impugned order cannot be accepted and the reasons are irrelevant for considering the request of the petitioner.

32. In the result, the writ petition is allowed. No costs. Consequently, the connected W.M.Ps. are closed.