

(2019) 09 DEL CK 0277

In the Delhi High Court

Case No : Civil Writ Petition No. 4311 Of 2019, Civil Miscellaneous No. 19169 Of 2019

Chanderwati Educational And Charitable Trust

APPELLANT

Vs

National Commission For Minority Education Institutions And
Anr

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 30, 30(1)

National Commission For Minority Educational Institutions Act, 2004 — Section 2(g)

Karnataka State Universities Act, 1976 — Section 3(1)

Citation : (2019) 09 DEL CK 0277

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Pallav Shisodia, Rishabh Sancheti, Padma Priya, Nishit Shah, Suyash Rawat, Ekta Sikri, Jasbir Bidhuri

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. Mr. Pallav Shisodia, learned senior counsel, who appears on behalf of the petitioner, says that he confines his relief to the grant of minority status. Learned senior counsel says that once the petitioner were to cross the impediment placed in its way by virtue of the impugned orders, only then, relief can be claimed against respondent no.2 university and that too for academic year 2020-2021.

2. Briefly, via the impugned order dated 30.07.2018, the National Commission for Minority Educational Institutions (in short "the Commission") has rejected the application preferred by the petitioner for grant of minority status. The reason, briefly, given in the order dated 30.07.2018 is that the petitioner was established in the first instance by the members of the non-minority community and it was only thereafter that it came to be administered by the members of the Jain minority community.

3. In support of the reasoning, which finds expression in the impugned order, recourse has been taken by the Commission to Section 2(g)1 of the National Commission for Minority Educational Institutions Act, 2004 (in short "2004 Act") and the judgment of the Supreme Court rendered in *S. Azeez Basha & Anr. v. Union of India*, AIR 1968 SC 662. The Commission appears to be of the view that for grant of minority status, not only is the applicant institution required to be administered by a minority community but it should also be established by a minority community.

4. It is in these circumstances the impugned order dated 30.07.2018 came to be passed, which was followed by an order dated 29.08.2018 rejecting the petitioner's application for review.

5. Mr. Shisodia, quite naturally, contends to the contrary. In support of his submissions, Mr. Shisodia has relied upon the judgment of the Supreme Court in matter of *Sisters of St. Joseph of Cluny v. State of West Bengal & Ors.*, (2018) 6 SCC 772 as also the judgment of the Karnataka High Court in *Dr. T.M.A. Pai Foundation v. State of Karnataka*, dated 10.09.1984, passed in W.P. (C)No.12597/1984. Besides the aforementioned judgements, he also relies upon the judgment of the Kerala High Court dated 20.11.1973, passed in OP No.1138/1973, in the matter of *Rt. Rev. Dr. Aldo Maria Patroni, SJ. and Anr. v. The Assistant Educational Officer and Ors.*

6. I have heard Mr. Shisodia as well as Ms. Ekta Sikri, Advocate, who appears on behalf of the respondent no.2 university.

7. The issue which arises for consideration in the present matter falls in 1 2. Definitions.- In this Act, unless the context otherwise requires,-

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(g) "Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities;

a narrow compass. What is required to be considered is whether for grant of minority status, it is necessary that the initial establishment and thereafter its administration should be by a minority community. In this case, what emerges from the record is that the petitioner was established by a non- minority community and thereafter taken over, admittedly, by the Jain minority community.

8. The judgment of the Karnataka High Court in *T.M.A. Pai Foundation* sheds some light on the poser framed hereinabove. The observations made by Hon'ble Mr. Justice M. Rama Jois, (as he then was), on this aspect being apposite are extracted hereafter:

"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* [AIR 1968 SC 662.] 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. In order to appreciate this point, the following illustration would be helpful: The Karnataka University was established under the Karnataka University Act, 1926, the Mysore University was established under the Mysore University Act, 1956 and the Bangalore University was established by the Bangalore University Act, 1964. When all these Universities were continuing to exist, the Karnataka State Universities Act, 1976 came into force. Section 3(1) of that Act reads-

"3. ESTABLISHMENT AND INCORPORATION OF UNIVERSITIES.

(1) There shall be established, with effect on and from appointed date, the following universities, namely;

(a) the Bangalore University with headquarters at Bangalore and territorial jurisdiction over the area comprising the districts of Bangalore, Kolar and Tumkur;

(b) the Karnatak University with headquarters at Dharwar and territorial jurisdiction over the area comprising the districts of Belgaum, Bellary, Bidar, Bijapur, Dharwar, Gulbarga, North Kanara and Raicur;

(c) the Mysore University with headquarters at Mysore and territorial jurisdiction over the area comprising the districts of Chickmagalore, Chitradurga, Coorg, Hassan, Mandya, Mysore, South Kanara and Shimoga."

It may be seen from the wording of the provision the Section speaks of establishment of the three Universities which had already been established. The fact that the three Universities had already been established is no basis to say that the three Universities are not established under the 1976 Act. Therefore, the expression 'establishment' means and includes re-establishment or taking over of both ownership and control of an institution. 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 [AIR 1968 SC 662.] , held that the expression 'establishment' includes the taking over of ownership 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."

(emphasis is mine)

8.1 Apart from the Azeez Basha case, in the T.M.A. Pai's case the judgement of the Kerala High Court in Rt. Rev. Dr. Aldo Maria Patroni, S.J. and Anr. vs. The Assistant Educational Officer and Ors., AIR 1974 Ker 197 has not only been considered but also affirmed. Crucially, in Rt. Rev. Dr. Aldo Maria Patroni's case as well the Kerala High Court extended the protection of Article 30 of the Constitution to petitioners even though the school qua which the right was invoked was not constructed by them. The observations made by the Court in this behalf are extracted hereafter:

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

(emphasis is mine)

9. As would be evident from a perusal of the aforesaid extracts from the judgements rendered in T.M.A. Pai Foundation and Rt. Rev. Dr. Aldo Maria Patroni that the learned judges considered the judgment of the Supreme Court in Azeez Basha case. I tend to agree with the view taken both by the Kerala High Court and Karnataka High Court that the expression 'established' used in Article 30 of the Constitution (and therefore by logical corollary in Section 2(g) of the 2004 Act) would take within its ambit the change, if any, in the ownership of an institution via takeover or other permissible means by the minority community from a non-minority community.

10. To my mind, if the change in ownership brings out a change in the status, that is, it gets converted from a non-minority institution to a minority institution, then, certainly the concerned institution should be considered by the Commission for issuance of such a declaration.

11. I find no impediment in the petitioner not being granted the minority status. The impugned order does not reveal any other rationale for rejecting the petitioners' application. Therefore, as prayed, the impugned orders are set aside. The matter is remanded to the Commission for deliberating on the grant of status of minority institution sans the aspect which is covered by the order passed today.

12. The Commission is requested to deliberate on the application for grant of minority status at the earliest though not later than four weeks from the date of the receipt of a copy of the order.

13. Insofar as the respondent no.2 university is concerned, if and when, the Commission accords minority status to the petitioner, it will deliberate on its application, in case, it is pending, for according affiliation in accordance with the extant rules and regulations.

14. The captioned petition and interim application is disposed of in the aforesaid terms.