
(1977) 12 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 4448 of 1975

Charles Robson

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 16-12-1977

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : AIR 1978 Mad 392 : (1978) 91 LW 260 : (1977) 90 LW 260

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : T. Martin, for the Appellant; N.R. Chandran, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, J.—This writ petition for certiorarified Mandamus arises under the following circumstances. The petitioner is the Manager and

Correspondent of Dr. Samuel High School, Santhapuram, Kanyakumari Dist. He belongs to C. S. I. Christian community and he is an Indian

Citizen. He is running a school which was established in 1935. It began with a preparatory class by the said Dr. Samuel, who is none other than the

father of the petitioner. The school became an English medium School during the year 1938-39, with preparatory class to form III. Both boys and

girls were admitted in the school and such school was recognised by the Travancore Government It was upgraded to a High School in the year

1961-62 with the Standard IX and it became a completed High School during 1963-64, and the temporary recognition has been granted to the

school under the Madras Education Rules. Both boys and girls have been admitted in the school.

2. The admission of students in the various schools in the State of Tamil Nadu was being regulated by the Madras Education Rules. The

Government of Tamil Nadu regulated the admission of girl students by issuing G. O. Ms. 1664 Education department dated 19-10-1972, which

runs as follows-

The Government direct that in areas where there are separate girls schools, girls should not under any circumstances be admitted in boys' schools

except with the specific and prior approval of the inspecting officials, and that too for valid reasons. The Government also agree with the views of

the Director of School Education that this condition may also be imposed for granting recognition to secondary schools. The Director is requested

to submit necessary draft amendments to the Tamil Nadu Educational Rules for the approval of the Government"":

3. There is a girls school by name L. M. S. Girls High School, Santhapuram which is situate within 400 yards from the petitioner's school, namely,

Dr. Samuel High School, Santhapuram, Kanyakumari Dist. The girls school was a Tamil Medium School from 1926. In 1963 the school was

upgraded into a girls High School. The school is being managed by the C. S. I. Corporate Body, under the Kanyakumari District C. S. I. diocese.

In the locality, therefore, there are two schools. Inasmuch as by reason of the girl students being admitted into a boys' school like that of the

petitioner, the petitioner was called upon to obey the terms of the G. O. Ms. 1664 Education department dated 19-10-1972, extracted above and

by proceedings dated 18-6-1975, the Director of School Education, Madras issued instructions to the District Educational Officer, Thuckalai, that

staff grant for Dr. Samuel High School, for the month of June 1973 need not be released, since the management has violated the rules regarding the

admission of girls in boys schools dining 1975-76 also. Therefore the petitioner has come up to this court seeking for certiorarified mandamus to

quash the G. O. extracted above, and direct the respondents to forbear from interfering with the right of the petitioner in admitting girls in its school.

4. Mr. T. Martin, learned counsel for the petitioner, submits first and foremost that it is a fundamental right of the petitioner school to admit girl

students in its school and any restriction on such a fundamental right which is guaranteed under Article 30 of the Constitution would be violative of

the said Article and that, therefore, the impugned G. O. has to struck down, in so far as it placed a restriction, as violative of the said Article and has to be set aside.

5. In support of this, reliance is placed on The Director of School Education Government of Tamil Nadu and Another Vs. Rev. Brother G.

Arogiasamy S.H.J., , Rev. Br. A. Thomas v. Dy. Inspector of Schools,(1) 1975 Mad LJ 353 ; AIR 1976 Mad 214 and The Ahmedabad St.

Xavier's College Society and Another Vs. State of Gujarat and Another, . Elaborating this point, the learned counsel for the petitioner contends

that it is not open to the Government, merely because they have the administrative control by means of a grant, to issue instructions to the schools as to whom they should admit.

6. The learned Government Pleader points out that it is a matter of policy in order that independent girls schools may come up. Therefore G. O.

1664 Education dated 19-10- 1972 is issued where, as in the instant case within 100 yards, another girls school is available which imparts

education solely to girls an impart of co-education may not be conducive and therefore the petitioner school was called upon not to admit girls.

Notwithstanding this, there was complete disobedience of the same and therefore the District Educational Officer was directed by the Director of

School Education not to release the staff grant for the academic year 1975-76.

7. There cannot be any fundamental right with regard to admission of girls into a coeducation institution. None of the rights of the petitioner is

infringed. The petitioner school can still impart education to boys in whatever manner it pleases.

8. Mr. M. Raghavan, learned counsel appearing for the girls High School, in supporting the submissions of the learned Government Pleader states

that no fundamental right of the petitioner is hereby affected, If as a matter of policy, it is laid down that proper permission of the concerned

educational authority should be obtained for admitting girls in a co-education institution, it wilt be purely regulatory in nature and such a regulation

does not violate Article 30 of the Constitution. In fact, an identical question arose before the Kerala High Court and the learned Judges of the

Kerala High Court have held that there is no fundamental right involved, since still it will be open to the petitioner to impart education to the boys as

is seen from Rt. Rev. MSGR. Mark Netto Vs. Government of Kerala and Others, .

8-A. Mr. Martin, learned counsel for the petitioner, in reply to this contention admits that the judgment of the Kerala High Court does not take

note of the Judgments of this court reported in The Director of School Education Government of Tamil Nadu and Another Vs. Rev. Brother G.

Arogiasamy S.H.J., and (1) 1975 MLJ 353 : AIR 1976 Mad 214 and therefore it cannot be held as laying down the correct law.

9. Unaided by any of the authorities, first of all let me consider whether the petitioner can contend that he has a fundamental right to admit the girls

in the school, merely because it happens to be a minority institution. Article 30(1) of the Constitution states.

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

In the instant case, the right to establish the educational institution is not in any way interfered with. Nor again in my view, the administration is not

interfered with because of the direction by the Government to the petitioner not to admit girls when an exclusive girls High School is available at a

distance of 400 yards from the petitioner's school. Still the petitioner's right to impart education to boys is not in any way interfered with.

Therefore it does not pertain to the realm of administration. Looked at from that point of view, no right of the petitioner has been violated.

10. A careful reading of G. O. 1664 Education, dated 19-10-1972, extracted above clearly shows that it is merely regulatory in character since it

says that in areas where there are separate girls schools, girls should, not, under any circumstances be admitted in boys schools except with the

specific and prior approval of the inspecting officers and that too for valid reasons. It does not deny him the right, but merely requires the schools

like petitioner to obtain prior approval. This may be a good policy from the view of the Government. This court cannot concern itself with the

wisdom of such policy and hold that some rights of the petitioner have been infringed. However, I have already stated that no right has been

infringed.

11. Now let me turn to the case law regarding the nature of the right conferred under Article 30 of the Constitution. In The Ahmedabad St.

Xavier's College Society and Another Vs. State of Gujarat and Another, , Mathew

J. stated the law as under (at p. 1441).

Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not

amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be

regulated or that every regulation of that right would be an abridgment of the rights,

Again in the *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, it has been held that Article

30(1) gives two rights to the minorities (1) to establish and (2) to administer educational institutions of their choice. The right to administer cannot

obviously include the right to mal-administer, The minority cannot surely ask for aid or recognition for an educational institution run by them to

unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair

standard of teaching or which teaches matters subversive to the welfare of the scholars. It stands to reason, then, that the Constitutional right to

administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid, the

State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.

12. *The Director of School Education Government of Tamil Nadu and Another Vs. Rev. Brother G. Arogiasamy S.H.J.*, , related to the admission

of students according to their choice. A Division Bench of this Court in dealing with the same held, (At p. 442 of AIR),

"In our opinion, it places serious restriction on the freedom of the minority institutions to make admissions of students according to their choice. It

throws the students of the minority community into a competition with the generality of students belonging to that and all other communities. The

applications for admission to any institution cannot be restricted to a particular community because of Articles 15(1) and 29(2). The result is the

students of the Roman Catholic community, which is said to represent less than 10 per cent of the total population when in competition with

students of the other communities who have all applied for admission, obviously will have but slender chances of admission, contrary to the

protection afforded by Article 30(1). It is true the impugned, order is conceived in public interest to ensure proper standards in the matter of

admission to basic and non-basic training schools. That is good by itself. But when applied to a minority institution, its effect is not to its benefit

from its own point of view. That is forbidden by Article 30(1).

13. Again in *Rev. Br. A. Thomas v. Dy. Inspector of Schools*, (1) 1975 MLJ 553 : AIR 1976 Mad 214 while dealing with the right of a minority

institution regarding the appointment of teachers it was held -- (At p. 215 of AIR).

It will be an unreasonable interference to tell the institution that it could not employ a more highly qualified teacher in the interests of better

standards of education in its schools because it would not assist the scheme of the Government to find employment for higher grade teachers.

.....The Government cannot insist that a protected institution cannot take a more highly qualified teacher in the interests of higher standards of

education in the institution. That will be an uncalled for, unreasonable and arbitrary interference with the management of the school. The aid given

by the Government does not clothe the Government with any right to interfere with the freedom of management of the institution to employ teachers

of their choice, who have a higher qualification than that prescribed by the Department.

14. Neither of these two decisions, in my view, affords any assistance to the petitioner since in those cases a right was held to have been

established. That is not the position here, as I have held above the more direct authority is what is found reported in *Rt. Rev. MSGR. Mark Netto*

Vs. Government of Kerala and Others, . In that case, the Regional Deputy Director of Public Instruction, Trivandrum, by his order dated 5-6-

1973, refused permission to the petitioner to admit girls in his school which was a boys school. In dealing with the validity of that order, which was

held under Rule 12 of the Kerala Education Rules, it was held --(At p. 62).

This only says that girls may be admitted in secondary schools for boys in areas where there are no girls' schools, it does not prohibit the minority

community from giving education to the girls. It does not prevent them from admitting girls in girls schools. It only prohibits admission of girls in

secondary schools for boys if there is a girls school in the same area, The basis

of the rule seems to be that it will be better for the girls to get instructions in girls schools as far as possible; and if there is a girls' school why the parents of the minority community should insist on admission of the girls in boys school is un-understandable. By the time the child reaches the secondary school stage it would have grown up a little. At that age to keep them under proper guidance and discipline the rule is made that they should as far as possible be given education in girls schools only. This is only in the nature of a regulation for discipline and morality. It does not interfere with the power of administration of an educational institution by a minority community, Therefore, we do not find any reason to hold that the rule in so far as it applies to religious minorities is invalid.

The reasoning of this decision squarely applies to the instant case. Consequently, I hold there are no merits in the writ petition. It will stand dismissed. No costs.

15. It is brought to my notice that during the pendency of the writ petition, students have been admitted and therefore at this stage if they are directed - to be sent out of the petitioner's institution, it will seriously interfere with their education and therefore it is appealed to me that my judgment may apply with regard to the future admission commencing from the next academic year. I see great justice in the appeal. Accordingly, my judgment will relate to admissions commencing from the academic year 1978-79.