

**(1981) 10 AP CK 0001**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 4829 of 1980 and 1430 of 1981

Chikkala Samuel

APPELLANT

Vs

District Educational Officer, Hyderabad and Another

RESPONDENT

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**Date of Decision :** 01-10-1981

**Acts Referred:**

Constitution of India, 1950 — Article 30

**Citation :** AIR 1982 AP 64

**Hon'ble Judges :** Jeevan Reddy, J

**Bench :** Single Bench

**Advocate :** P. Babul Reddy and N. Baktavatsalam, for the Appellant; Govt. Pleader and B.V. Subbaiah, for the Respondent

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## **Judgement**

1. The first and important question that arises in these writ petitions is, whether the petitioner-institution is a "minority institution" within the meaning of Art. 30 of the constitution of India. While the petitioner asserts that it is a minority institution, the respondents deny the same and assert that in the petitioner-institution only secular education is imparted as per the syllabus prescribed by the Education Department and that the management is trying to hide its misdeeds, taking shelter under the plea that it is a minority institution. It is averred by the respondents that the petitioner-institution is in receipt of grant-in-aid and that, the correspondent of the institution has also given a declaration that the management will follow strictly the conditions of recognition laid down in the Andhra Pradesh Education Rules. It is further submitted that at no point of time earlier, did the correspondent or any other representative of the petitioner-institution ever assert that this was a minority institution.

2. The petitioner-school terminated the services of one of its teachers, Sri S. V. Subba Rao, against which order he filed an appeal before the f v. District Educational Officer. The D.E.O. found that the order of termination is bad and directed reinstatement. W. P. No. 4829/80 is preferred against this order. While refusing to implement the orders of the D.E.O. aforesaid, the petitioner-school

appointed one Smt. G. Satyavati Devi in place of Sri S. V. Subba Rao, and asked the department to release the grant. The respondents refused to do so on the ground that the appointment has been made contrary to the Rules and the directions issued by the competent authorities. W. P. No. 1430/1981 is preferred for issuance of a direction to the respondents to recognize the appointment of Smt. G. Satyavati Devi to the said post, and for release of the relevant grant. The petitioner's case is that "the main aim and purpose of organizing this educational institution is to give education to the local backward classes, particularly the Christians of the locality". It is stated, "with this purpose, a society is registered with No. 23/1957-58 under the name of S.N.P. Elementary School as per the provisions of Societies Registration (Act), Hyderabad Public Societies Registration Act No. 1 of 1950. All the Managing Committee members and President are Christians. The sole object is to maintain and protect the minority character of this institution. So this educational institution is started by Christians, to be managed and controlled by Christian community alone.....".

3. Article 30 of the constitution of India guarantees to all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. It declares further that 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. This is a right given to the minorities as such, and not to an individual member of the minority. The minorities have the right to establish an educational institution of their choice (see *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, and *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, They may choose to establish an educational institution, devoted mainly to teaching of religious tenets, or the language of the minority, as the case may be, or they may establish an educational institution for imparting general secular education as is imparted in Govt. schools and Colleges. The choice is theirs. These institutions need not be meant for, or confined to the students of that particular minority. They may freely admit students of all communities, with the possible result that the majority of students come to be drawn from other communities. The minority institutions are entitled to recognition and aid from the State, provided they satisfy the regulations imposed by the State for the purpose of ensuring educational standards and maintaining the excellence thereof. While this regulatory power includes the power to lay down the service conditions of teachers it is again clarified (see: *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, that under the guise of this regulatory power the State cannot virtually nullify the right to manage these institutions. (It is on this theory that sub-ss. (1) and (2) of S. 3 and Ss. 4 and 5 of the Andhra Pradesh Recognized Private Educational Institutions Control Act, 1975, were struck down by the Supreme Court). Indeed, in the words of Jaganmohan Reddy, J., in *The Ahmedabad St. Xavier's College Society and*

Another Vs. State of Gujarat and Another, (at p. 1407)

"such institutions have the right to seek recognition to their degrees and diplomas and ask for aid where aid is given to other educational institutions giving a like education on the basis of the excellence achieved by them. The State is bound to give recognition to their qualifications and to the institutions and they cannot be discriminated except on the ground of want of excellence in their educational standards so far as recognition of degrees or educational qualifications is concerned and want of efficient management so far as aid is concerned....."

The minority institutions thus enjoy certain special rights which are denied to the "majority institutions" - if such an expression can be used, in contradistinction to "minority institutions". While majority institutions are controlled and supervised in all respects by the State, the minority institutions are free to a large extent, from such control. This discrimination is justified in various ways. The history of our freedom struggle, our national character, and the need to assure the minorities are said to be some of the reasons. Be that as it may, let me note the principle behind and the *raison d'être* of Art. 30. According to the Supreme Court,

"the real reason embodied in Art. 30 (1) of the constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Art. 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education.....".

(See the opinion of Ray, C. J., in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at p. 1395). Similarly, it is stated:-

"As a matter of fact, according to several religious minorities, the State maintains a system of schools and colleges which is not completely satisfactory to them, inasmuch as no place is given to religion and morality. The sheer omission of religion from curriculum is itself a pressure against religions. Since they realise that the teaching of religion and instruction in the secular branches cannot rightfully or successfully be separated one from the other, they are compelled to maintain their own system of schools and colleges for general education as well as for religious instruction.

It is important to examine the *raison d'être* of educational institutions administered by religious groups. Clearly, their establishment does not come about because of a deep conviction what such institutions will be able to teach the facts of literature, geography or mathematics better than State schools. Rather, such schools are started with a primarily religious objective - to secure the opportunity for direct religious instruction and to develop a religious

atmosphere and view point even for the study of literature, geography and mathematics. In other words, a religious body establishes and maintains schools in order to create a total environment which will be favourable to the promotion of its particular religious values". See "India as a Secular State" by Donald Eugene Smith, p. 361.....".

".....The State cannot insist that the children belonging to the religious minority community should be educated in State-maintained educational institutions or in educational institutions conducted by the majority. The State's interest in education, so far as religious minorities are concerned, would be served sufficiently by reliance on secular education accompanied by optional religious training in minority schools and colleges, if the secular education is conducted there according to the prescribed curriculum and standard. Article 28(3) implies that a religious minority administering an educational institution imparting general secular education has the liberty to provide for religious education in the institution. The continued willingness to rely on colleges conducted by religious or linguistic minorities for imparting secular education strongly suggests that a wide segment of informed opinion has found that these colleges do an acceptable job of providing secular education. The State, concededly, has power to regulate and control the education of its children, but it cannot , by a general law compelling attendance at public school or college, preclude attendance at the school or college established by the religious minority when the parents seek to secure the benefit of religious instruction not provided in public schools. The parents have the right to determine to which school or college their children should be sent for education.....".

(See the opinion of Mathew, J., in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at p. 1434) but, in practice, we see that a majority of institutions which pass for "minority institutions" today, neither contain any religious instruction nor are they established primarily with a religious motive. Because of Art. 29(2) they cannot, and do not, restrict admission only to students of that minority. Since many of these institutions require aid to survive, they admit students on the basis of a uniform criteria with the inevitable result that majority of students come to be drawn from majority community or linguistic group, as the case may be. Indeed this difficulty was realised in the earliest of the cases on Art. 30, namely, in the reference relating to Kerala Education Bill. *Das, C. J.*, however, thought that even then a large majority of the students in these institutions would be from the relevant minority community or linguistic group, and hence such institution would continue to serve and promote the interests of the relevant minority. This is what the learned Chief Justice said:-

"Nor is it reasonable to assume that the purpose of Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other

community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed, the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Art. 30(1).....".

(See: In Re Kerala Education Bill, 1957, AIR 1958 SC 956 (at p. 978).) the learned Chief Justice, however, did not elaborate how it would be possible to restrict the "outsiders" to a "sprinkling while obeying Art. 29(2), particularly where the education imparted in the institution is general secular education.

4. The situation, as already pointed out, is that the education imparted in the "minority institution" is general secular education; the majority of students do not belong to that minority; no course of study relevant to that minority is taught therein, and yet it is contended that it is a minority institution. The questions, therefore, arise: What does one mean by "minority institution"? When does an educational institution become a "minority institution"? Whether a single member of a minority community is entitled to establish an educational institution and claim that it is a minority institution? Further, while running the educational institution as a business proposition, is he still entitled to claim that it is a minority institution entitled to all the special rights which go with it? Similarly, would it be permissible for the members of one or two families to form into a Committee and establish an educational institution, running it for their own benefit and still claim all the benefits which are available to a minority institution? Then again, would it be permissible for a few members of a minority community to come together, form a society, get it registered under the Societies Registration Act, and claim that it is a minority institution?

5. For answering these questions, it is necessary to reiterate that the right guaranteed by Art. 30 of the constitution is the right given to the minority as such, and not to an individual member, or individual members of the minority, and that the right is meant to benefit the minority by protecting and promoting its interests. Where an educational institution is established and maintained exclusively or predominantly for teaching or promoting the religious tenets of a given religious minority, or for promoting and developing the language and literature of a given linguistic minority, there can be little doubt that it is an educational institution serving and promoting the interests of such minority, and hence a "minority institution". But where an educational institution is established and maintained for imparting general secular education, where admission is not

restricted to the members of that minority alone, the question arises whether, merely because the person or persons who establish it belong to a minority community (whether or not they form into a Committee or a Society registered under the Societies registration Act), can the institution itself be treated as a "minority institution"? On this aspect, it should be remembered that it is not necessary that the minority community as such should establish the institution; it is open even to a single member of a minority community to establish and maintain an educational institution (see: *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, (at p. 2082)), but it should not be forgotten that such educational institution must, in some manner, serve or promote the interests of the minority. It should be shown that the minority concerned, or a considerable section thereof, is benefited by that institution. Otherwise, there would be no nexus between the institution and the minority as such. Take the case of an educational institution established by an individual "A" belonging to a minority community, in the State. The institution established by him imparts purely secular education as seems to be the position today generally. The institution is not meant to preserve and promote the religion or language of the minority. The person runs the institution for his own private benefit and promotion. The majority of the students do not belong to the minority community to which the person establishing it, belongs. What is the conceivable connection, in such a case, between the institution and the minority community; and what is the basis for calling it a "minority institution"? It is not a "minority institution", but an institution belonging to an individual who happens to belong to a minority community. In this connection, it is also necessary to keep in mind the guarantee of equality contained in Arts. 14 and 15 of the constitution of India. Art. 15 expressly states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. If a person belonging to the majority community, "B", establishes an identical institution as mentioned above, he cannot claim all the benefits which "A" can claim. Would it not be a case where "A" is being treated preferentially only because he happens to belong to a particular religion? It should also be remembered that a person residing in this State, whose mother-tongue is Tamil, belongs to a linguistic minority in this State, while he would be a member of the majority community in Tamil Nadu, and vice versa. If a Tamil speaking person starts an institution in this State, it would be a minority institution, while if he starts it in Tamil Nadu, it would not be. It is not necessary to multiply the instances. These are the several anomalies and abuses which are likely to result, if the law does not insist upon a nexus between the institution and the particular minority to which it claims to belong. From the above point of view, it would follow that, before an institution can claim to be a minority institution, it should be shown that it serves and/or promotes the interests of the minority community in some manner, whether by promoting the religious tenets, philosophy or culture of that community, or the language, culture, or literature of that community, as the case may be or otherwise. Now I will explain the words "or otherwise". The Constitution vests the choice in the minority itself to establish an

educational institution of its choosing. Therefore, the institution itself may not serve the religion or language; but it should, still, in some manner serve the interests of that minority, whether economically or socially. This, if an individual member or a few members of a minority establish an educational institution, which is not engaged in serving or promoting the religion or the language of that community, and which also does not serve or promote the economic or social interests of the minority community or a sizable section thereof, such institution cannot be called a minority institution. The next question is : whether a society registered under the Societies Registration Act, can claim such a benefit if all or most of the members, who form the society, belong to a minority community ? In my opinion, the test would be the same. If the institution established by a society is not engaged in furthering or promoting the religion or language of the particular minority, to which the members of the society belong, but is engaged in imparting general secular education like any other Government institution, there would be no nexus between the minority community as such, and the institution. So as to call it a minority institution, unless it is shown that the institution serves and/or promotes the interests of the minority in some manner, i.e., either economically or socially. Serving a public purpose generally is not the same thing as serving the interests of a particular minority, for, a "majority institution" too serves the general public interest. If an institution serves the public in general, without making any distinction between them, it would be a public institution, but not a minority institution. Therefore, it cannot be said that, merely because the members of a society which establishes an educational institution, belong to a particular minority community, the institution established by them automatically becomes a minority institution. In each case, the same test must be applied, viz., whether the institution does in any manner serve or promote the interests of the minority to which it claims to belong. If it is a religious minority, one must see whether the institution is established and maintained mainly or predominantly for promoting the religion, culture, or philosophy of that minority community; or, in the alternative, whether the institution serves the economic and social interests of that minority community in some manner. Similarly, if it is a linguistic minority, one must see whether the institution, in any manner, serves or promotes the language of that minority; or, in the alternative, whether the institution does in some manner serve or promote the socio-economic interest of that minority, or a sizable section thereof.

6. The only decision relevant on this question, is in *Rajeshi Memorial Basic Training School Vs. The State of Kerala and Another*, rendered by Balakrishna Eradi, J. The learned Judge observed (at p. 88):-

"In order that the petitioner should succeed in her claim based on Art. 30(1) of the Constitution she has to prove by production of satisfactory evidence that the school in question is one established and administered by a minority whether based on religion or language. The only material which she has produced before this court in this regard consists of the averments contained in the original petition and the supporting affidavit filed by the petitioner. The mere fact that the

school was founded by a person belonging to a particular religious persuasion is not at all conclusive on this matter. The institution must be shown to be one established and administered by or on behalf of the particular minority community.

In this case, the name given to the school is of some significance because the school has been named after a former Maharaja of Cochin and if at all any inference can possibly be drawn from the said circumstance it is only that the institution was one intended for the general benefit of all the citizens of the locality. There is no evidence placed before this Court to show that the local church or the parishioners attached to the church or the Christian community were in any manner associated with the founding of the school or its day-to-day subsequent administration; nor is it made out that any activity is carried on in the institution which is intended to promote the object of conserving the religion or culture of the particular minority. On the materials now available before this Court I do not find it possible to conclude that the petitioner's institutions a minority institution entitled to protection under Article 30(1) of the Constitution. The original petition is dismissed on this limited ground....."

These observations clearly support the view taken by me.

7. Now coming to the facts of the present case, it must be noticed that until now the petitioner never claimed that the institution in question is a minority institution. In the counter-affidavit it is stated that for the first time, such a contention is raised in this writ petition. Since the decision of the above question involves investigating into facts, it is not possible for this Court to determine the said question in this writ petition. The matter has to be decided, as and when the petitioner raises the same, by the educational authorities who are in charge of extending the recognition and aid, and who also exercise supervisory control over such institutions. Whenever such a question arises, the authorities shall examine the same, keeping in view the principles aforesaid, and determine whether the institution in question is a minority institution. As at present, I have to proceed on the footing that the petitioner herein is not a minority institution. If that is so, it is obvious that the very foundation of these writ petitions disappears, and there would be no ground for interfering with the impugned orders. It is for the institution either to obey those orders and obtain the grant-in-aid or to refuse to obey the orders and forego the grant-in-aid.

8. The writ petitions, accordingly, fail and are dismissed; but, in the circumstances without costs.

9. Petition dismissed.