
(1996) 08 MAD CK 0078
In the Madras High Court

Elkay Higher Secondary School and Elkay Primary School and Others APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (1997) 2 LW 213 : (1997) 1 MLJ 604

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The above appeals, though arising from out of different suits filed by different plaintiffs, the relief claimed as also the questions of law involved for consideration are similar and identical though under different sets of facts pertaining to each of the plaintiff. As a matter of fact, legal submissions have been made in common by all the counsel appearing, of course, highlighting the individual and distinguishing facts pertaining to them. Hence, they are dealt with together.

2. S.A. No. 900 of 1983 : (a) The plaintiff in O.S. No. 598 of 1979 on the file of the Court of District Munsif, Srivaikundam, is the appellant in the above appeal. The suit came to be filed for a declaration that the plaintiff schools are minority institutions and for a consequential direction. The case of the plaintiff before the trial court was that the schools in question were originally established five decades ago by one Abdul Hye Alim as "Kahira Aramba Padasalai" who was a Muslim and thereafter, it is claimed that the management was handed over to one L.K. Lebbai Thambi, who was said to have changed the name of the School as "L.K. Padasalai". The said S.K. Labbai Thambi is also said to be a Muslim. In 1962, L.K.S. Jewellers Educational Trust, Kayalpattinam was established and the management of the School was upgraded as High School and converted into two separate institutions, namely, (1) Elkay High School; and (2) L.K. Primary School. The further claim of the plaintiff was from 1962 onwards, the plaintiff-

schools were under the administration of the said L.K.S. Jewellers Educational Trust, which consisted of only Muslims and the Schools were in effect, in fact and in law administered only by persons belonging to Muslim Community with the object of imparting education to the Muslim Students of the locality. It was claimed that the persons who established the schools and now conduct them are Muslims and it is in law a religious minority. The trust in question being one consisting of only Muslims, the constitutional protection on the ground of religious minority is claimed and it is also contended that the authorities of the State Government are taking steps to enforce all the provisions of the Tamil Nadu Private Schools (Regulation) Act 29 of 1974 which actually exempts minority educational institutions in many respects and the plaintiff is driven to the necessity of filing the suit for declaration as noticed supra in view of the action of the departmental authorities to implement all the provisions of the said Act to the plaintiff school which according to the plaintiff, constitutes violation of the fundamental rights guaranteed to the minority institutions.

(b) The defendant State filed a written statement contending that the claim of the plaintiff schools is neither maintainable in law nor on facts, that the plaintiff schools are known by the public in the locality as belonging to L.K. Lebbai Thambi family at Kayalpattinam, that the school management appears to have been transferred to a private trust created by L.K. Lebbai Thambi himself for the benefit of his family trust and the claim that the object of the school was to impart education to Muslim of the locality was also not correct. The further case of the defendant was that the school was not established administered as minority as contemplated under Article 30 of the Constitution of India, that the plaintiff schools are not run by any association and the children of all communities are admitted to the schools and that most of the teachers are non-muslims and the plaintiff schools cannot be declared as minority schools so as to exclude them from the several important provisions of the Act 29 of 1974 and the Rules made thereunder which apply otherwise to all recognised private schools. The case of the defendant State was that the allegations of the nature by the plaintiff are made for the first time after coming into force of the Tamil Nadu Recognised Private Schools (Regulation) Act, 29 of 1974 for escaping from complying with the regulatory and welfare measures contained therein and, that therefore, the plaintiff is not entitled to any relief as prayed for.

(c) The learned trial Judge, by his judgment and decree dated 27.2.1981 decreed the suit as prayed for on the basis of the entries made by the Inspecting and Visiting Authorities as also the Photostat copy of the resolution incorporating the By-laws of the L.K.S. Jeweller's Educational Trust which indisputably was brought into existence after the filing of the suit. Aggrieved, the defendant-State filed an appeal in A.S. No. 121 of 1986 before the Sub Court, Tuticorin and the learned Additional Subordinate Judge, Tuticorin, by his judgment and decree dated 20.10.1982, while reappreciating the materials on record and considering the claim of the plaintiff in the light of the relevant principles chose to differ from the conclusions arrived at by the learned trial Judge and while reversing the

judgment and decree of the trial court, allowed the appeal and dismissed the suit. Hence, the above second appeal.

3. S.A. No. 1070 of 1983: (a) The plaintiff in O.S. No. 423 of 1979 on the file of the District Munsif, Srivaikundam is the plaintiff in the above second appeal. The suit came to be filed by the plaintiff school for a declaration that it is a minority institution and for an injunction restraining the defendants from enforcing the provisions and insisting upon compliance with the Tamil Nadu Recognised Private Schools (Regulations) Act, 1974 and the rules made thereunder. The case of the plaintiff before the trial court was that the plaintiff middle school at Sathankulam represented by its Manager and Correspondent for the time being A.E.M. Usoof was established in 1929 by his pious family and run by a religious minority community, he being a muslim by caste, that the school was established for affording facilities of the members of the Muslim community and for attaining higher educational standards, and that the students are taught Arabic language and the Holy Quran and the school was included in the muslim range in the year 1943 and subsequently in or about 1948, the ranges were merged by departmental orders and on that basis, the plaintiff-school claims that it is a minority institution established and administered by muslim minority, claiming therefore, protection under Article 30 of the Constitution of India. On that basis exemption from the relevant provisions of the Act is also claimed. The further case of the plaintiff was that on an earlier occasion when the constitutional validity of the Act 29 of 1974 was challenged by minority institutions, many of the provisions of the Act were struck down, that however the individual schools were directed to file suits in civil courts to have a declaration of the minority character of the institutions to get protection and that the plaintiff is also a member of the organisation of the muslim educational institutions and associations of Tamil Nadu and after the judgment of this Court, they have been making representations to recognise them as minority institution to the Government seeking the relief not to enforce the provisions of the Act to their institutions. Since the authorities were said to be addressing communications to the plaintiff-school calling upon them to comply with the requirements of the Tamil Nadu Act 29 of 1974, the plaintiff was constrained to file the suit for the relief as noticed supra.

(b) A written statement was filed by the defendants contending that the suit claim was not maintainable in law as also on facts, that the plaintiff-school does not satisfy the requirements of law to get a declaration that it is a minority school, that the plaintiff-school does not belong to the muslim community and it belongs to one M.S. Sahrfudeen who happens to be a muslim and that the plaintiff school is not run by any muslim organisation or association. It is the further case of the defendants that it is not primarily or generally intended for muslim children or for imparting muslim religious instructions and children of all communities are admitted to the school that there are also non-muslim teaches in the school and that the plaintiff-school does not deserve to be declared as a minority school to get excluded from the application of several provisions of the

Act 29 of 1974. The allegations and claims made in the plaint, according to the defendants, would at best show that it is the private school and it is not a minority school.

(c) The plaintiff filed a reply statement reiterating the claim made in the plaint and also contending that the plaintiff-school does not belong to a single individual as claimed by the defendants, but that the school was established by the three sons of A.E. Ibrahim namely A.E.M. Sulaiman, A.E.M. Usoof (the manager at the time of filing the suit) and A.E.M. Mathar Sahib and after the death of the two brothers A.E.M. Usoof is now the absolute owner of the school and manager from the year 1965.

4. S.A. No. 1071 of 1983 : (a) This appeal arises out of a suit, O.S. No. 424 of 1979 filed by the plaintiff-school of which also the manager and correspondent is one and the same as the school which is the subject-matter of issue in O.S. No. 423 of 1979. The plaintiff-school is one Kamaliya Middle School, Sathankulam and the said school also claims for similar declaration as in the other case on the plea that the school in question came to be established on 10.5.1916 by his pious family and run all along by a religious minority being a member of the muslim minority community. As in the other case, the plaintiff also claims relief on the identical fact situation and made similar averments in support of his claim for declaration of the plaintiff institution as the minority institution.

(b) The defendant also filed a written statement, contending at the same line of defence as in the other case and the plaintiff has filed in this case also a reply statement taking a similar and identical stand as in the other case.

5. Since the parties and witnesses in both the cases are one and the same though in respect of two different schools, they were tried together by recording common evidence in O.S. No. 423 of 1979, and considering the materials on record, the learned trial judge, by his judgment and decree dated 31.1.1981, decreed the suits as prayed for. The learned trial Judge in coming to such a conclusion was mainly carried away by the fact that the person who established the institution happened to be a muslim and the person who managed it at present is also belonging to a minority community and that though students belonging to other communities are admitted and teaching staff containing non-muslims are there having regard to the fact that the Holy Quran is taught and Arabic language also is being taught to the muslim students of the area, the institution deserves to be declared as a minority institution. Aggrieved, the defendants filed A.S. Nos.83 and 87 of 1981 respectively before the Sub Court, Tuticorin. The learned Subordinate Judge, Tuticorin, before whom the appeals came up for disposal, by his judgment and decree dated 24.7.1982 chose to differ from the judgment and decree of the learned trial Judge and held that the schools in question are private schools belonging to an individual and that the materials adduced to support their claim about the teaching of Quran and Arabic Language have been manipulated subsequently and, therefore, the plaintiff in each of the suit was not entitled to a declaration that they are minority

institutions as prayed for. Consequently, while allowing the appeals filed by the defendants and setting aside the judgments and decrees of the learned trial Judge, the suits filed by the plaintiffs came to be dismissed. Hence, the above second appeals.

6. Mr. R. Muthukumaraswamy, learned Counsel, appeared for the appellant in S.A. No. 900 of 1983 and Mr. K. Ilias Ali, learned Counsel, appeared for the appellants in S.A. Nos. 1070 and 1071 of 1983. Unlike the case of the plaintiff in S.A. No. 900 of 1983 wherein a mere declaration has been sought for, in the other two appeals the plaintiffs have sought for consequential injunction also in a blanket manner for restraining the defendants and authorities of the State from enforcing any provisions of the Tamil Nadu Act 29 of 1974 to their respective school. During the course of arguments, when this aspect was pointed out by the learned Advocate appearing for the respondents in the appeals, the counsel for the appellants in S.A. Nos. 1070 and 1071 of 1983 has filed a memo dated 12.8.1996 the relevant portion of which restricting the scope of the relief of injunction in the following terms:

The appellant in the second appeal restricts the prayer for injunction only to those provisions that have been declared unconstitutional by an order of the Division Bench of this Hon"ble Court dated 17.12.1975 in W.P. Nos.4478 of 1974 and 294 of 1975 etc., and also by an order dated 7.9.1990 of the Division Bench in W.A. No. 1285 of 1986 etc." as reported in (1991) II L.L.J. 21.

The provisions which are declared not applicable to minority Institutions are Sections 8(1)(a), 11(1)(b), 12(1), 14 to 18, 21(2), 22(1) and 22(2), 23 to 26, 31 to 33, 39(4), 41 to 45 and Rules 7, 9 except Clauses (e) to (k) of Sub-clause (2), Rules 10 to 14, 16 to 18 and 22 to 24.

The learned Counsel appearing on either side invited my attention to the decisions reported in In re. Kerala Education Bill AIR 1958 S.C. 956, State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , D.A.V. College, Vs. State of Punjab and Others, , The Ahmedabad St. Xavier"s College Society and Another Vs. State of Gujarat and Another, , A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , St. Stephens College v. University of Delhi, A.I.R. 1992 S.C. 1630, St. John"s Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., , Chikkala Samuel Vs. District Educational Officer, Hyderabad and Another, , N.P. Unnimoyin Kutty Vs. The Asstt. Educational Officer, Kondotty and Others, , in support of their respective contentions on the principles or guidelines to be applied in deciding character of the institutions and the claim of minority status made by an educational institution. My attention was also drawn to some of the Government Orders issued after the decision of the Apex Court in a group of cases which need no reference except for the sake of completeness and as being of only general relevance, but have no direct application as such to the cases on hand. In substance, the learned Counsel for the appellants have contended that the plaintiff-Institutions which are the appellants in the above three appeals squarely

satisfy the norms and guidelines laid down by the Apex Court and the learned trial Judges was right in according declaration as prayed for and that the learned first Appellate Judge committed an error in reversing the same on several assumptions which are not warranted in law, in that the learned Counsel for the appellants vehemently contended that the learned first Appellate Judge proceeded on an erroneous understanding that the founder or Managing being a muslim is not sufficient since in view of the part that of such muslims the majority speak only a common language, namely, Tamil and therefore muslims cannot be called to be a minority community and that the factual admission of students belonging to other communities are factors which will militate against the school from getting a declaration that it is a minority institution. Argued the learned Counsel for the appellants further that the materials produced in their respective case on hand are more than sufficient to substantiate their minority status and character and they therefore entitled to have the judgment of the learned first Appellate Judge set aside by restoring to them the declaration granted by the trial court.

7. Per contra, the learned Government Advocate tried to support the Judgment of the first Appellate Judge through not on all the reasons assigned by the court below but also contending with reference to the very guidelines and criteria laid down in the several cases referred to supra that the materials on record do not sufficiently substantiate their minority status or character of the plaintiff institutions so as to entitle them for any declaration that the plaintiff schools are minority schools and, therefore, no interference is called for in the above appeals.

8. I have carefully considered the submissions of the learned Counsel appearing on either side. The various decisions relied upon by the learned Counsel appearing on either side, as noticed earlier, have been considered by me in an unreported decision of this Court in S.A. No. 1375 of 1990 dated 9.8.1995 and Nirmal High School, Ayanavararn, represented by its Manager and Correspondent v. Devapiriam Henry Memorail Middle School, Madras-23 represented by its Manager and Correspondent, W.P. No. 10849 of 1989 and in my view it is really unnecessary to quote extensively the various passages from the several judgments except a few which are really relevant and touching the issue directly on the points raised in these appeals.

9. In In re. Kerala Education Bill 1957 AIR 1958 S.C. 956, a decision was rendered on a special reference for the opinion of the Apex Court in connection with the Kerala Education Bill, 1957 and the Apex Court observed that the real import of Articles 29(2) and 30(1) of the Constitution of India seems to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it and by admitting a non-member into it, the minority institution does not shed its character and ceased to be a minority institution. Their Lordships also observed.

Today 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.

10. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, it was held by a Constitution Bench of the Apex Court that it will be wrong to read Article 30(1) as restricting the rights of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of minorities and on the other hand, the said Article confers rights on all minorities since a minority may administer an institution for religious education which is wholly unconnected with the question of conserving any script or culture.

11. In *Chikkala Samuel Vs. District Educational Officer, Hyderabad and Another*, , Jeevan Reddy, J., as the learned Judge then was, held that it was open to even a single member of a minority community to establish and maintain an educational institution, but before it could claim minority status, it should be shown that it serves and/or promotes the interests of the minority community in same manner, whether by promoting the religious tenets, philosophy of culture of that community, or the language, culture or literature of that community, as the case may, or otherwise. It was also observed therein that unless the nexus between the institution and the minority community it serves, is shown an institution established by a member of the minority community or members thereof will not by the mere fact of its establishment become a "minority institution". It was further pointed out that it cannot be said that, merely because the members of the registered society which establishes an educational institution, belong to a particular minority community, the institution established by them automatically becomes a minority institution.

12. In *N.P. Unnimoyin Kutty Vs. The Asstt. Educational Officer, Kondotty and Others*, , the Kerala High Court was concerned with a case of a minority institution founded by a Muslim having majority of Muslim students. The court held that merely for the reason that the institution was established by an individual of the community and not by a community as a whole as a representative body, it would not necessarily mean that it is not a minority institution and that the real test is, whether the institution was established and administered for the benefit of the minority irrespective of the fact that it was started by an individual of the community or by an organisation representing the community or the school comes under a corporate management or individual management. Reliance was placed by the learned single Judge in that case to come to such a view on the decision of the Supreme Court in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, .

13. In *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, , a Division Bench of three learned Judges of the Supreme Court held that the object of Article 30(1) is not to a low bogies to be raised by

pretenders but to give the minorities" a sense of security and a feeling of confidence" not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. It is also held that the Government, the University and ultimately the Court have the undoubted right to pierce the "minority veil" and to go behind the claims that the institution is a minority institution and to investigate and satisfy itself whether the claim is well founded or not.

14. In *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* , a Constitution Bench of the Apex Court held as hereunder:

Equally, it would be difficult to accept the second submission that the minorities are entitled to establish and administer educational-institutions for their exclusive benefit. The choice of institution provided in Article 30(1) does not mean that the Minorities could establish educational institution for the benefit of their own community people. Indeed, they cannot. It was pointed out in *Re. Kerala Education Bill*, AIR 1958 S.C. 956, that the minorities cannot establish educational institution only for the benefit of their community. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community." In the absence of such words it is legally impermissible to construe the Article as conferring the right on minorities to establish educational institution for their own, benefit.

Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have relatively a homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges. Segregated faculties or Universities, for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational Institution irrespective of community to which it belongs is a "melting-pot" in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of the culture and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.

The core of the argument of counsel for the University and Students Union is that the minority institutions getting Government aid are bound by the mandate of Article 29(2) and they cannot prefer their own candidates. We may start with Article 29(2).

Article 29(2) provides:

29(2): No citizen shall be denied admission into any educational institution

maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

The Apex Court further held, as hereunder:

Laws carving out the rights of minorities to Article 30(1), however, must not be arbitrary, invidious or unjustified, they must have a reasonable relation between the aim and the means employed. The individual rights will necessarily have to be balanced with competing minority interest. In *Sidhajibhai* case, the Government order directing the minority run college to reserve 80 per cent of seats for Government nominees and permitting only 20 per cent of seats for the management with a threat to withhold the grant-in-aid and recognition was struck down by the court as infringing the fundamental freedom guaranteed by Article 30(1). Attention may also be drawn to Articles 337 of the Constitution which provided a special concession to Anglo Indian Community for ten years from the commencement of the Constitution. Unlike Article 30(2) it conferred a positive right on the Anglo-Indian community to get grants from the Government for their educational institutions, but subject to the condition that at least forty per cent of annual admission were made available to members of other communities.

In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent of the annual admission. The minority institutions shall make available at least fifty per cent, of the annual admission to members of communities other than the minority of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

15. In the latest decision of the Supreme Court in *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.*, , which was a decision rendered by the Apex Court in a batch of appeals from this Court, the Apex Court after adverting to the entire case law on the subject and on an analysis of the ratio laid down therein culled out the following principles as emanating from those decisions and relevant in adjudicating upon the claims of a minority institution in respect of the minority status as such of the institution. The principles laid down therein are as hereunder:

(1) The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures.

(2) There is no fundamental right under Article 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought

therefore.

(3) The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms.

(4) There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefor.

(5) The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State.

(6) The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves and not based on State necessity or general social necessities.

(7) The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like.

(8) Even unaided institutions are not immune from the operations of general law of the land such as Contract Law, Tax measures, Economic Laws, Social Welfare Legislations, Labour and Industrial Laws and similar other laws which are intended to meet the need of the society.

Among other things, it could be seen that the Apex Court was more concerned about the masked Phantoms abusing the Constitutional protection when it states that the institutions must be educational institutions of the minorities, in truth and reality.

16. While analysing the above principles referred to supra I have held in the unreported decision in S.A. No. 1375 of 1990 and W.P. No. 10848 of 1989, as hereunder:

The above decisions and the ratio laid down therein, in my view, extensively and to some extent exhaustively deal with the criteria and the core of the ratio of the decisions appears to be that it should be in truth and in reality a minority institution and that it should not be a mere pretender in order to get or usurp the constitutional right and protection. Yet another principle emanating from the above decisions is that the minority educational institutions are entitled to prefer their community candidates to maintain the minority character of the institution, subject of course in conformity with the university standards. The State may also regulate the intake in this category with due regard to the need of the community in the area in which the institution is intended to serve, but in no case such intake shall exceed 50% of the annual admissions and that the minority institution shall also make available at least 50% of the annual admissions to the members of the community other than the minority community.

17. The claim of the plaintiffs/appellants in the above appeals may now be

considered in the context of the various principles repeatedly laid down in the decisions referred to supra. In my view, the factual materials produced by the plaintiffs in these cases do not go to show that the respective institutions have been established and are administered by a minority community or any member of such minority community for the benefit of and for promoting the interest of the particular minority community. On the other hand, the materials on record would go to show that it is administered and run like any other private educational institution established and run or administered by a person or group of persons or an Association belonging to a non-minority community. The mere fact that the, founder of the school happens to be a muslim, by itself is not sufficient or conclusive proof of the fact that the educational institution can claim to be one established and administered by a minority community or as a minority institution. If such a generalized view is to be taken and every institution so established and run by any individual person belonging to a community, which community may indisputably be a minority has to be impressed with the character of a minority institution, it will only amount to allowing an abuse of the constitutional safeguards and extending undeservedly protection to what the Apex Court was pleased to identify as "marked phantoms" who are in truth and reality not minority institutions.

18. The learned Appellate Judge has chosen to analyse the evidence and record factual findings on the manner in which institutions in question came to be established and are run, though while applying the relevant principles of law, in adjudicating upon the nature and character of the institutions he has chosen to assume certain wrong principles to be the relevant and governing principles to be relevant for adjudicating the claim of minority status of an institution. The findings recorded by both the learned trial Judge and the first Appellate Judge in my view, would to show that the institutions in question have not substantiated their claim of possessing the vital and essential attributes or indicia to render them eligible to claim the minority status and to be granted with a consequential declaration. The institution which is the subject matter of S.A. No. 900 of 1983 apart from other infirmities pointed out by the learned first Appellate Judge appears to have created material export facto to give the institution a colour of status of a community institution during the pendency of the suit but that in my view cannot enure for the benefit of the school concerned in the said appeal inasmuch as a move made or action taken during the pendency of the suit cannot have the effect or projecting the state of affairs so brought into existence later as the one prevailing at the time of establishment of the school so as to give to it the character of a school established by the community. Similarly, the learned first Appellate Judge, apart from several other infirmities pointed out in the claim, has brought out the institutions involved in S.A. Nos.1070 and 1071 of 1983 were teaching Quran and Arabic language. Though the definition of a minority institution envisages within its fold even an institution established by an individual so long as it is not established to have been with the object of furthering primarily and mainly, the interest and welfare of the community as

such, there is no scope for claiming the minority status merely on the definition contained in Section 2(6) of the Tamil Nadu Act 26 of 1974. Such a claim, in my view, proceeds upon an erroneous appreciation and construction of Section 2(6) of the Act itself and countenancing such a plea would amount to a travesty of the very constitutional safeguards and mandate.

19. For all the reasons stated above, I am of the view that though some of the reasons assigned by the learned first appellate Judge do not accord well with the correct position of law, the decision rendered by the first appellate court, denying the claim of minority status to the plaintiff institutions and non-suiting the plaintiffs by ordering dismissal of the suits cannot in any manner said to be contrary to law or vitiated by perversity of approach and consequently these appeals fail and shall stand dismissed. No costs.