
(1978) 08 KL CK 0015

In the High Court Of Kerala

Case No : O.P. No. 4001 of 1971

Fr. Mathew Munthiri Chinthiyil Vicar, St. Mary's Church
Anikkampoil and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-08-1978

Acts Referred:

Constitution of India, 1950 — Article 30
Kerala Education Rules, 1959 — Rule 11, 17, 2, 2A, 9

Citation : AIR 1978 Ker 227 : (1979) 2 ILR (Ker) 399

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; T. Chandrasekhara Menon, J; K. Bhaskaran, J

Bench : Full Bench

Advocate : K. George Varghese, Joseph Vithayathil and Varghese Kalliath, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—The petitioner is the Vicar of the St. Mary's Parish at Anikkampoil, Tiruvampadi, Kozhikode District, and has filed the writ petition in his capacity as the Vicar of the Church under the Ecclesiastical jurisdiction of the Bishop of Tellichery. He claims authority to represent the Parish, and the Catholic community. The Catholic community in Kerala is a religious minority entitled to the fundamental rights under Article 30(1) of the Constitution to establish and administer educational institutions of their choice. It is alleged that it is the primary religious duty of Catholics to give Catholic education to their children, and for that purpose to establish educational institutions, where Catholic students are taught their religion. Details have been given about the St. Mary's Parish Church, the Catholic families in Anikkampoil, the number of children of school-going age, the area covered by the Parish etc. The petitioner's grievance is that there was no Catholic school in the locality to cater to the needs of the Catholic community from 1963 onwards. The petitioner claims to have applied on behalf of the Parish for recognition and aid for the St. Mary's L. P. School,

Anikkampoil, started by the Catholics in the locality. The District Development Committee of Kozhikode at its meeting on 2-3-1968, it is said, had included the School in its priority list of Schools in the Kunnamangalam education sub-district. But still, no sanction was accorded to the School. Ext. P-1 is a copy of the reply given to the petitioner by the Collector informing him that no School had been opened at Anikkampoil with the permission of the Education Department, and that the question of granting recognition did not therefore arise. The petitioner was directed to apply to the authorities concerned as and when notification is published for opening new Schools. No notification was published in 1969, 1970 and 1971. But the petitioner claims that sanction was accorded for opening new Schools in those years. It is under these circumstances that the petitioner approached this Court for a writ of mandamus compelling the State Government to accord recognition to the St. Mary's L. P. School, Anikkampoil, and to give it aid given to similar aided Schools in the State, and for other consequential directions. A counter affidavit dated 15-6-1972 has been filed by the State. There has also been a supplemental counter affidavit. On 6-9-1974 there was a preliminary order passed on the writ petition by a Full Bench of this Court. The Bench there recorded the assurance given by the Advocate-General on behalf of the Government that if an application in form No. 1 is made forthwith, it will be considered expeditiously. The petitioner was directed to apply in Form No. 1 for permission to open the School, and if sanction is granted, to apply for recognition of the School in accordance with the Rules. Ext. P-5 dated 20-9-1974 is a copy of the application made by the petitioner. In the counter affidavit of the Government dated 4-10-1974, it has been stated that in so far as the educational needs of the locality had already been satisfied, the Government did not find the reason given by the petitioner sufficient for another School. The counter affidavit referred to the report of the As-sistent Educational Officer, Kunnamangalam, and the sanctioning of a Lower Primary School at Anikkampoil, by a notification published in the Gazette dated 21-8-1973 containing the list of places where Government Lower Primary Schools were to be opened for the year 1973-74. Ext. R-1 is a copy of the said notification. Anikkampoil was granted a Lower Primary School which started functioning in the academic year 1973-74, With that, the educational needs of the locality were satisfied; and according to the Government, there is no need for another School for the locality. The petitioner has filed a rejoinder affidavit dated 16-10-1974 repeating his prayer to direct the Government to Rive permission to open a School.

2. The petitioner has put his case plainly and directly. According to him, it is the absolute and unqualified right of the religious minority, namely, the Catholic community to establish and maintain educational institutions of their choice and the provisions of the Kerala Education Act and the Rules which in any manner fetter or restrict the exercise of the right must, for that reason, be unconstitutional. No fetters or restrictions can be placed on the right. The right can only be regulated in the interests of the minority community itself. The Rules impugned, it is said, go beyond the region of permissible regulations and amount

to restrictions on the recognised right of minorities in the matter of establishing religious institutions. Article 30 of the Constitution reads:

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

(2) 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."

We have been taken In detail through the pronouncements of the Supreme Court in the Kerala Education Act case AIR 1958 SC 956; Rev. Sidhrajibhai Sabhai v. State of Gujarat AIR 1963 SC 540 and the The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . Besides these. Counsel cited the pronouncements of the Supreme Court in the State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , and of a Full Bench of this Court in Benedict Mar Gregorios v. State of Kerala 1976 Ker LT 458. In the light of the pronouncements of the Supreme Court, the Full Bench of this Court, in Benedict Mar Gregorios's case 1976 Ker LT 458 summarised the law stating that although the Article was couched in terms absolute and unqualified, such was not its effect or purport, "and that regulations on the right in the interests of efficiency of instruction, discipline, health, sanitation, public order, morality, and the like, can certainly be imposed. It was stressed that what is permissible is only regulation of the right, and not any restriction thereon; and that the regulation can only be in the interests of the matters specified in the judicial decisions, and in the interests of the minorities themselves. The principles were emphasised with respect to the recent pronouncement of the Supreme Court in The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another, paras. 10, 11, 12, 13, 14 and 23.

3. The attack was on Rules 2, 2-A, 9, 11 and 17 of Chap. V of the Kerala Education Rules. Rule 2 of Chap. V which is the main Rule reads :

"2. Procedure for determining the areas where new schools are to be opened or existing schools upgraded :--

(1) The Director may once in two years prepare a report indicating the locality where new schools of any or all grades are to be opened and existing Lower Primary Schools or Upper Primary Schools or both are to be upgraded. In preparing such a report, he shall take into consideration the following :--

(a) the existing schools in and around the locality in which new schools are to be opened or existing schools are to be upgraded;

(b) the strength of the several standards and the accommodation available in each of the existing schools in that locality;

(c) the distance from each of the existing schools to the area where new schools are proposed to be opened or to the area where existing schools are to be

upgraded;

(d) the educational needs of the locality with reference to the habitation and backwardness of the area; and

(e) other matters which he considers relevant and necessary in this connection.

(2) The list prepared by the Director shall be published in the Gazette before the end of January of the year of publication, inviting objections or representations against such list. Objections if any, can be filed against the list published within one month from the date of publication of the list. Such objections shall be filed before the Asstt. Educational Officers or the District Educational Officers as the case may be. Every objection filed shall be accompanied by a chalan for Rs. 10/- remitted into the Treasury. Objections filed without the necessary chalan receipt shall be summarily rejected.

(3) The Assistant Education Officer and the District Educational Officer may thereafter conduct enquiries, hear the parties, visit the areas and send their reports, with their views on the objections raised to the Director within two months from the last date of receipt of the objections. The Director if found necessary, may also hear the parties and finalise the list and send his recommendations with the final list to Government within two months from the last date of the receipt of the report from the Educational Officer.

(4) Government after scrutinising all the records may approve the list, with or without modification and forward it to the Director within a month from the last date of the receipt of the recommendation of Director. The list shall be finalised before the end of July by the Government and shall be published by the Director.

(5) No appeal Or revision shall lie against the final list published by the Director,

(6) Government may revise the dates fixed, if found necessary, and shall duly publish the fact in the Gazette." Rule 2-A deals with applications for opening of new schools and upgrading of existing schools. Rule 9 deals with permission to open new Schools and under Clause (iv) of the said Rule, permission is not to be granted if the educational needs of the locality do not require the opening of a new school. Under Rule 17, Clause (v) again, in regard to granting of recognition, the school must be necessary to meet the educational needs of the locality. What has been stressed with respect to these Rules is that they placed unwarranted fetters and restrictions on the absolute right of the minority to establish educational institutions; that they do not take into account the needs of the minority community itself for an educational institution of its choice, but are really based on the needs of the locality which cover a far wider range. It was stressed that just as considerations of national interest and public interest cannot affect the content of the fundamental right of the minorities, the needs of the locality for a School should also be left out, and it should be assessed only on the interests of the minorities themselves. The argument is attractive; but we are afraid, should break down on an analysis. That the right is not absolute and

unqualified, but one capable of regulation in the matter and manner of its exercise, is now beyond dispute. In the course of the argument, we had asked the petitioner's counsel whether the minorities would claim a right to establish educational institutions whenever and wherever demanded. Although with hesitation, petitioner's counsel was obliged to admit that this extreme right cannot be maintained. We think too, that such an extreme position entitling the minority to ask, and to be given, the educational institutions, wherever it wants to establish, at any moment when the cry is raised, is not the scope and the content of Article 30. Regulation of the right in time as well as in space, must, it appears, be "permissible. Rule 2 seems to provide for nothing, more than such a regulation. It provides for the assessment of the educational needs of the locality by a competent authority after taking into account the relevant considerations. In weighing the educational needs of the locality, the authority, we have no doubt, is bound to consider, and will indeed consider, the requirements of the minority communities in establishing educational institutions of their choice. Before finalising the list of Schools to be opened in any locality, applications are to be invited, objections are to be received, and only after consideration of these, is the list to be finalised. The minority community therefore gets abundant opportunity of urging and putting forward its needs for serving the cause of education in a locality. Quite apart from the opportunity that it gets, the authorities are themselves bound to consider on their own the educational needs of the locality from the point of view of the interests of the minority community. We cannot, therefore, in the nature of things, regard Rule 2 as passing beyond the pale of permissible regulations and trenched on the offending sphere of restrictions on the fundamental right. We are of the opinion, that the Rule is well within the borderland of regulation of the right sanctioned by judicial decisions. Rules 2-A, 9, 11 and 17 are merely consequential on Rule 2, and further amplify the said rule. As realised by the petitioner's counsel, they stand or fall along with Rule 2. We see no reason to strike down any of these Rules.

4. In the result, we hold the impugned Rules to be constitutional, and dismiss this writ petition with no order as to costs. It will of course be open to the petitioner to apply for permission to open a School and to seek aid and recognition for the School. We have no doubt, his application will be considered and judged in the light of the rights conferred under Article 30(1) of the Constitution.