
(2004) 11 KL CK 0054
In the High Court Of Kerala
Case No : W.A. No. 3485 of 2000

Haji Abdul Salam

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2004) 3 ILR (Ker) 508 : (2004) 3 KLT 826

Hon'ble Judges : K.S. Radhakrishnan, J;K. Thankappan, J

Bench : Division Bench

Advocate : P. Chandrasekhar, for the Appellant; P. Jayasankar, Government Pleader, R. Rajasekharan Pillai, P.J. Ibrahim, George T. Thachett and P.K. Ibrahim, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Will the benefit of Article 30(1) of the Constitution of India be available to a single philanthropic individual if he being a member of the minority community has established and maintained an Institution?

2. The Apex Court in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, , while considering the scope of Article 30(1) held that the right to establish an institution would include a case where "a single philanthropic individual with his own means, founds the institution". The said view was followed by the Apex Court in *St. Thomas U.P. School v. Commissioner and Secretary to Government* 2002 (1) KLT 655 (SC).

3. Learned Single Judge of this Court in *Unaided Recognised Schools Parents Association v. State of Kerala* 2000 (2) KLJ 54, held that only a corporate body can manage a minority institution and not an individual and the individual would not get the benefit of Article 30(1) of the Constitution is, in our view, not the correct enunciation of law. Learned Single Judge has reiterated the same view and held in the judgment under appeal as follows:

"It is now well settled position that to be entitled to the rights and privileges

under Article 30(1) of the Constitution of India, an educational institution shall be established and administered by a religious or linguistic minority group.....

Even if he was proved to be a philanthropist, establishment of a school by an individual cannot cloth the institution the character of one established by a community or a group of people of the community".

Going by the decision of the Apex Court in St. Thomas U.P. School's case, supra 2002 (1) KLT 655 (SC) the above is not the correct interpretation of Article 30(1) of the Constitution. In such circumstances, we are inclined to overrule the above reasoning of the learned Single Judge in Unaided Recognised Schools Parents Association's case, supra 2000 (2) KLJ 54, as well as in the judgment under appeal. We are of the view, on the question of law we are not in agreement with the learned Single Judge, but on facts we agree.

4. The dispute centres round the question of promotion to the post of headmaster of a school. Manager promoted one Abraham as headmaster and posted in a leave vacancy which arose from 6.1.1998 to 30.4.1998 and in the retirement vacancy from 1.6.1998. One Sudharma, fifth respondent in the Writ Petition, claimed the said post. Director of Public Instruction as well as the Assistant Educational Officer found that Sudharma has preferential claim as per Rule 45 of Chapter XIV A of the K.E.R. since she had degree with B.Ed. qualification and has passed Account Test and has the necessary service for promotion over the undergraduate teacher Abraham. Later Abraham retired on 31.3.1999 and the Manager without implementing the order of the Director of Public Instruction appointed another undergraduate teacher Arifa as headmistress. Sudharma again moved the Director of Public Instruction and Assistant Educational Officer to implement their earlier orders.

5. Areefa then approached this Court for a direction to the Government to consider her petition dated 15.3.2000. The learned Single Judge rejected the request, but in W.A.No. 1263 of 2000 the Division Bench of this Court directed the Government to consider the Revision Petition. Sudharma also filed O.P.No. 31196 of 1999 for promoting her to the post of Headmistress. This Court disposed of the Original Petition with a direction to consider her request also. Claims of both the parties were considered by the Government and the Government passed order dated 18.12.2000 upholding the claim of Sudharma. Claim raised by the Management under Article 30(1) of the Constitution was negatived against which Manager filed the present Writ Petition. Sudharma filed O.P.No. 6832 of 2001 to implement the Government Order dated 18.12.2000. Both the writ petitioners were heard together on 25.5.2001. The claim for promotion of Sudharma was upheld and direction was given to the Manager to appoint her as headmistress. O.P.No. 3430 of 2001 filed by the Manager was dismissed.

6. We have already held that the burden is entirely on the Manager to establish

that the School is a minority institution. For claiming the minority status to the school, the following points were urged before the Government.

1. On Friday mid-day interval is between 12.30 to 2.30 p.m.
2. Second Friday of every month declared as holiday instead of 2nd Saturday.
3. No open meal during Ramzan.
4. Managed by members of a Muslim family.

Government took the view that the above mentioned facts would show that the school is established and run by the minority community but by an individual. Copy of the Will dated 21.2.1983 executed by the father of the writ petitioner, bye-laws and other relevant documents were produced. We are of the view those documents, first of all, would not show that the school was established and maintained by a minority community. In the facts and circumstances of the case, we are of the view, Government is justified in rejecting the claim that the school is not entitled to the benefit of Article 30(1) of the Constitution. Consequently we reject the claim of Arifa for the post of headmistress for the period from 6.1.1998 to 30.4.1998 and on subsequent periods. It is pointed out that Abraham's appointment was also not approved and the salary was not given to him. If that be the case, we are of the view, Sudharma is also entitled to be appointed as headmistress and she is entitled to get salary for the period from 6.1.1998 onwards if it had not been paid to any other person. We, therefore, uphold Ext. P10 order passed by the Government. We are of the view the petitioner's school is not entitled to protection under Article 30(1) of the Constitution of India on the basis of the materials already on record. However, this will not prevent the petitioner to move the Government if they got sufficient materials to establish the claim with which we express no opinion. The Writ Appeal is disposed of as above.