
(2016) 08 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 42761 of 2016 (EDN-RES)

Indus Trust

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

National Commission for Minority Educational Institutions Act, 2004 — Section 11(f),
Section 2(f)

Citation : (2017) AIR(Karnataka) 8 : (2016) ILRKarnataka 4431 : (2016) 4
KCCR 3414

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Sri S. Basavaraju, Advocate, for the Petitioner; Smt. Pramodhini
Kishan, High Court Government Pleader, for the Respondents No. 3

Final Decision : Dismissed

Judgement

Raghvendra S. Chauhan, J. - The petitioner is aggrieved by the order dated 06.06.2016, passed by the National Commission for Minority Educational Institutions, whereby the learned Commission has rejected the petition filed by the petitioner for grant of Minority Status Certificate inter alia on the ground that the petitioner, which has sought Minority Status as linguistic minorities, is outside the purview of the National Commission for Minority Educational Institutions Act, 2004 (for short "the Act"). Therefore, the Commission does not have jurisdiction to entertain such a petition.

2. Briefly the facts of the case are that, the petitioner is a Trust under the name and style of "Indus Trust", which was initially registered on 13.06.2001, and subsequently by amended Trust Deed dated 25.08.2011. The petitioner Trust claims that the Trustees belong to various communities which include Marwaris, Marathas and Andhrites, who speak different languages, such as Hindi, Marathi and Telugu. Thus, the Trust represents linguistic minorities in the State of

Karnataka. In order to safeguard the interest of the linguistic minorities, the Trust had established and is running a school under the name of "Indus international School". The said school had acquired requisite permission from the Education Department of the State. On 24.01.2003, the State Government had also issued a "No Objection Certificate" to the petitioner's educational institution for its affiliation to the Council of Indian School Certificate Examination. Moreover, their school is also affiliated to the International Baccalaureate Organization, Geneva. Presently, there are 1284 students studying in the petitioner's educational institution.

3. In order to seek the status of a Minority Educational Institution, on 06.05.2016, the petitioner submitted an application before the National Commission for Minority Educational Institutions, respondent No.2. However, by order dated 06.06.2016, the said application has been dismissed by the learned Commission. Hence, this petition before this Court.

4. Mr. S. Basavaraju, the learned Counsel for petitioner, has vehemently contended that the learned Commission is unjustified in concluding that the linguistic minority is not covered by the Act. Secondly, relying on the case of T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481], the learned Counsel has pleaded that, any community which is less than 50% of the State population, whether the community is a religious community, or a linguistic one, would be deemed to be minority. Therefore, those who are speaking Hindi, Telugu and Marathi are linguistic minorities in the State of Karnataka. Hence, the institution run by the petitioner is entitled to be declared as Minority Education Institution under the Act. However, the learned Commission has lost sight of this fact, and has erred in concluding that linguistic minority is not covered under the Act.

5. Heard the learned Counsel and perused the impugned order.

6. Undoubtedly, the Act was enacted after the judgment of the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation and Others (supra). The Act was brought as minority communities wanted such a Commission to be established so that direct affiliation for the minority professional institution would be provided with the Central Universities. Moreover, recommendations had been made for establishing such a Commission. Considering the interest and the rights, and the views of the minority communities, the Parliament has enacted the said Act in 2004.

7. The salient features of the Act are not only that it shall establish National Commission for the Minority Educational Institutions, but it has also given a right to a Minority Educational Institution to seek recognition as affiliated college to a Scheduled University; it would allow a forum for dispute resolution in the form of a Statutory Commission regarding matter of affiliated minority educational institution, and scheduled University; its decision would be final and binding on the parties. The Act also empowers the Commission with the powers of a Civil

Court, for the purpose of discharging its functions. The Act would also empower the Central Government to amend the schedule, or omit from the schedule any University.

8. Section 2 of the Act contains a definition clause, where the words "minority", "educational rights of minorities" and "Minority Educational Institution" have been defined as under:

According to Section 2 (f) of the Act, the word "minority" has been defined as "for the purpose of this Act, means a community notified as such by the Central Government".

According to Section 2 (da) "educational rights of minorities" means "the rights of minorities to establish and administer educational institutions of their choice"

According to Section 2 (g) "Minority Educational Institution" means "a college or an educational institution established and administered by a minority or minorities".

9. Considering the definition of the word "minority" contained in Section 2 (f) of the Act, this Court has raised a pointed query to the learned Counsel for petitioner, whether linguistic communities under the Trust have been notified as minority by the Central Government ? To this question, the learned Counsel for petitioner has frankly conceded that the communities represented by the Trust have so far not been notified by the Central Government as being minority for the purpose of this Act.

10. Section 11(f) of the Act bestows a function on the Commission to decide all questions relating to the status of institution as a Minority Educational Institution and declare its status as such. However, before the Commission can be asked to deal with questions relating to the status of any institution, as a minority educational institution, and declare its status as such, the foremost requirement of the Act is that the minority community must have been notified as a minority community by the Central Government. For, the word "minority" in the words "Minority Educational Institution" would perforce bring in the definition of the word "Minority" as given in Section 2 (f) of the Act.

11. Since the Communities who are the members of the petitioner's Trust such as Marwaris, Marathas and Andhrites, have not been notified by the Central Government as a minority community, therefore, they cannot claim the status of being "a linguistic minority" for the purpose of this Act.

12. It is pertinent to note that the word "minority" as used in this Act stands in contradistinction to the word "Minorities" used in Article 30 of the Constitution of India. According to Article 30 of the Constitution of India, "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". Thus, according to Article 30 of the Constitution of India, the minorities can be divided into two categories, namely either "religious minority" or "linguistic minority". However, the Act defines the

word "minority" in a narrow compass, namely minority as notified by the Central Government. The restricted definition is only for the "purpose of the Act". Moreover, the Act requires and declares that only those communities which have been so notified by the Central Government, shall be treated as "minority community for the purpose of this Act". Therefore, the contention raised by the learned Counsel for petitioner that the linguistic minorities such as Marwaris, Marathas and Andhrites, who speak Hindi, Marathi and Telugu, respectively necessarily should be considered as linguistic minority for the purpose of this Act is a misplaced argument, until and unless these communities have been notified by the Central Government as minority communities. Even if they are linguistically a minority community, they cannot claim the status of "minority community", for the purpose of this Act. To acquire the said status, for the purpose of this Act, the community would have to be notified by the Central Government.

13. As mentioned above, the learned Counsel has frankly conceded that there is no notification issued by the Central Government declaring the Hindi, the Marathi and the Telugu speaking people in the State as minority community.

14. Since these communities have not been declared as minority communities by the Central Government, the learned Commissioner is certainly justified in concluding that they do not have jurisdiction under Section 11(f) to decide the questions relating to the status of an Institute run by the petitioner.

15. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order dated 06.06.2016, passed by the National Commission for Minority Educational Institutions. This petition, being devoid of merits, is hereby dismissed.