

(2021) 01 KL CK 0421

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35018 Of 2019, 10058 Of 2020

Krishnadas And Ors

APPELLANT

Vs

Manager St Mary's U P School And Ors

RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

National Commission For Minority Educational Institutions Act, 2004 — Section 11(f)
Constitution Of India, 1950 — Article 30(1), 31

Citation : (2021) 01 KL CK 0421

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Vinod Kumar C, Jacob Sebastian, K.V.Winston, Anu Jacob, Sunil Nair Palakkat, K.N.Abhilash, Liju. M.P, P.Vijayakumar, T.G.Rajendran, T.R.Tarin, V.A.Vinod, Nikhil Berny

Final Decision : Dismissed

Judgement

1. The issue raised in these writ petitions is with regard to the award of minority status to the aided schools, which are the 1st respondent in both these cases.

2. In W.P.(C).No.35018/2019, the challenge is against Ext.P2 order dated 27.07.2009 of the 6th respondent National Commission for Minority

Educational Institutions. Further reliefs are sought for to direct respondents 1 and 2 to appoint the petitioner as Headmaster in the School in a vacancy

which arose on 01.06.2019. In W.P.(C).No.10058/2020, the challenge is against Ext.P1 order dated 05.12.2007 passed by the Commission. A further

prayer is sought for to direct the Assistant Educational Officer not to approve the appointment of the 2nd respondent as Headmaster. The petitioners

in these writ petitions are teachers working in the respective schools.

3. Heard the learned counsel for the petitioners in both these cases, the learned Government Pleader and the learned counsel appearing for the contesting respondents.

4. It is submitted by the learned counsel for the petitioner in W.P.(C) No.35018/2019 that the petitioner had been working as a teacher in the 1st respondent school from 01.06.1992 and is entitled and eligible for appointment to the post of Headmaster. It is stated that the school was established in the year 1953 by Late Kavungal Madhavan Nair as an LP School. It was upgraded as a UP School in 1960. After the death of Sri.Kottiyode

Balakrishna Panicker, who was the Manager, Dr.Radhakrishnan was appointed as the Manager of the school. It is stated that since the school is not

established by a minority, the action of the respondents in having conferred a minority status on the school by Ext.P2 was completely untenable. It is

submitted that the petitioner came to know of the minority status granted to the school only when his claim for appointment as HM was rejected by

the Manager. Relying on a decision of this Court in Raju A & others vs. The Manager, Nalloor Narayana L.P Basic School, Kozhikode and others

(2019 (5) KHC 1) it is contended that the minority status is liable to be granted to a school only if this school is established and administered by a

minority or minorities. It is, therefore, contended that the conferment of minority status on the school, which was not established by any minority

community was per se illegal and untenable.

5. Likewise, the petitioner in W.P.(C) No.10058/2020 challenges Ext.P1 order dated 05.12.2007. It is submitted that the school was established in the

year 1931 by Late Govindanunni Panicker as the Desabandhu Lower Primary School. After the death of the founder, the school was managed by his

children till 1985. In that year, the school was transferred to one Immanuel Jacob, who managed the school for 7 years. In the year 1992, Immanuel

Jacob transferred the management of the school along with its property to the Society of Dominican Sisters, Perimpadari, Mannarcad. It is stated that

the name of the school was changed in the year 1993 to St. Dominics Aided Lower Primary School. It is stated that a vacancy of Headmaster has

arisen in the school on 01.04.2020 and the petitioner, who was eligible and qualified, had sought appointment which was not considered by the

respondents on the ground that the school had minority status. It is contended

that it is only a school, which is established and administered by a minority that can claim for minority status under Article 31 of the Constitution of India and that the finding to the contrary in the order of the Commission is bad in law.

6. Detailed counter affidavits have been placed on record by the respective respondents. It is contended by the learned counsel appearing for the 1st respondent in W.P.(C) No.35018/2019 that the petitioner is not the senior most teacher in the school and he has no claim for appointment as HM on the basis of seniority or qualification. It is submitted that the petitioner was teaching in the school from 1992 onwards and was fully aware of the minority status awarded to the school as early as in 2009. It is stated that after enactment of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as 'the 2004 Act'), the Apex Court in the decision reported in *Sisters of St. Joseph of Cluny & another vs. State of West Bengal and others* (2018 (6) SCC 772) held that the power under Section 11(f) of the 2004 Act would clothe the Commission with the power to decide any question with regard to the right to establish or administer educational institutions by a minority. It is submitted that though the school was initially started and run by a non minority educational agency, the purchase of the school and the change effected in its name amounted to the establishment of a minority educational institution. It is submitted that all the factual aspects of the matter were brought before the Commission, which is empowered to consider the entire factual aspects. Thereafter, it was found that the institution answers the requirements of a minority educational institution and it was, thereafter, that the order has been rendered.

7. It is submitted that the very fact that the petitioner who was a teacher in the school never challenged the order of the Commission for 10 long years would show that there are no bonafidies in the challenges and that it is only made on an experimental basis. The decision of the Apex Court in *S. Azeez Basha and another vs. Union of India* (AIR 1968 SC 662) is relied on to contend that the purchase of the school by an admitted minority denomination and the renaming carried out by the said denomination would amount to an establishment of a minority educational institution. The judgment of the Apex Court in *Rt.Rev. Dr. Aldo Maria Patroni and another vs. The Assistant Educational Officer* (AIR 1974 Ker 197) is also relied

on. It is stated that it was held therein that even if an institution previously run by some other organization is subsequently taken over by a minority

community and run by it, it must be held to be established by that minority community. The decision in *State of Kerala, Etc vs Very Rev. Mother*

Provincial, Etc (AIR 1970 SC 2079) is also relied on.

8. The respondents in W.P.(C) No.10058/2020 has also placed a detailed counter affidavit on record. It is contended that the petitioner is not the

senior most qualified hand eligible for appointment as HM and that the petitioner has locus standi to challenge the decision of the minority commission.

9. Counter affidavits have been placed on record by the Government as well. The learned counsel for the 2nd respondent in W.P.(C) No.10058/2020

has also placed a counter affidavit on record. Apart from the factual aspects of the matter as are pleaded in the 1st respondent's counter affidavit, the

learned counsel would contend that the order of the National Commission, which is vested with the power under the 2004 Act to decide all questions

relating to minority status, are issued after considering the factual aspects of the matter and that no grounds of challenge have been raised against the

orders which are liable to be considered in exercise of judicial review. It is further contended that a Bench Decision of this Court has also specifically

entered a finding that the declaration of an educational institution as a minority educational institution would depend upon the satisfaction of the twin

conditions of establishment and administration of such educational institution by a minority or minorities. It is contended that in the instant case, such

satisfaction having been entered by the Commission on the basis of specific material placed before it, this court would not be justified in interfering on

facts. It is submitted that in the judgment relied on by the petitioners it was only on a finding that the National Commission had entered findings with

regard to minority status without any basis that the order of the Commission had been set aside. It is contended that since in the instant case no

challenge had been raised within any reasonable period of time and since no grounds sufficient to unsettle the order of the Commission in judicial

review have been made out in these writ petitions, the writ petitions are liable to be dismissed.

10. I have considered the contentions advanced on either side.

Article 30(1) of the Constitution of India reads as follows:-

30.Right to minorities to establish and administer educational institutions

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

The Apex Court in *S. Azeez Basha and another vs. Union of India* (supra) held that an educational institution which was established by an act of

Parliament could not claim minority status under Article 31 even if it was administered by a minority community. In *State of Kerala, Etc vs Very Rev.*

Mother Provincial (supra), the Apex Court held that the twin requirements of establishment and administration have to be met for an institution to

claim minority status. This Court in *Rt. Rev. Dr. Aldo Maria Patroni and another vs. The Assistant Educational Officer* (supra) held that a school

established by the Basel German mission which was taken over by the Roman Catholic community could not be denied minority status only on the

ground that it was not initially started by the said community. A Division Bench of this Court in *Raju A & others vs. The Manager, Nalloor Narayana*

L.P Basic School, Kozhikode and others (supra) held that the decision in *Rt. Rev. Dr. Aldo Maria Patroni* does not lay down a legal proposition that

either establishment or administration of an educational institution by a minority would suffice for the purpose of declaring the institution to be a

minority educational institution. It was further held that a conspectus of the decisions and the provisions of the Act 2 of 2005 would lead to the

irresistible conclusion that the declaration of an educational institution as a minority educational institution would depend upon the satisfaction of the

twin conditions of establishment and administration of such educational institution by a minority or minorities. Thereafter, on facts, it was found that the

order of the National Commission in that case showed that the Commission had come to the conclusion that the school is eligible for grant of minority

status on a finding that the school was being administered by an individual Muslim. It was held that there was no material to show that the school was

established with the main objective of subserving the interest of the Muslim community. It was in the above factual situation that the order of the

Commission was set aside by the Division Bench of this Court.

11.In the instant case, there is no dispute that the schools in question are being presently run by minorities. No such ground is raised in the writ

petition. Further, it is contended by the learned counsel appearing for the

respondents that all materials to show that the establishment and administration of the schools by the minorities had been produced and examined by the Commission. No grounds are raised with regard to the decision making process of the Commission or even as to the want of material before the Commission to reach its finding by it. Moreover, no reason whatsoever is stated by the petitioners, who are admittedly senior teachers in the schools, as to why no challenge was raised till now to the orders which are issued in the years 2007 and 2009 respectively. In the above factual situation, it is to be assumed that the decision of the Commission had been taken on the basis of facts available before it which were uncontroverted.

12. In the above view of the matter, I am of the opinion that no grounds have been made out by the petitioners herein to upset the orders issued by the Commission on the basis of applications made before it and the facts which were pleaded and proved before it. The challenge, therefore, fails and the writ petitions are accordingly dismissed.