
(1991) 01 MAD CK 0016
In the Madras High Court

L. Paulraj

APPELLANT

Vs

The District Educational Officer and Others

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 19

Citation : (1991) 2 LW 169 : (1991) 2 MLJ 140

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This writ appeal is directed against the order of the learned single Judge in W.P. No. 1628 of 1990. The petitioner in

the writ petition is the appellant herein. The respondents in the writ petition are the respondents herein. Convenience suggests to us the writ petition

while dealing with the controversy in the writ appeal. The petitioner is working as a B.T. Assistant, is the fourth respondent school. The post of the

headmaster at the fourth respondent-school fell vacant on 31.5.1988, on account of the retirement of the previous incumbent. So far as the

qualification of the petitioner to the post is concerned, the petitioner is qualified. The petitioner claims that the post of the headmaster should be

filled up as per G.O.Ms. No. 1297, Education Department, dated 21.7.1979. The foundation for this claim of the petitioner is referable to Clause

2(b)(i), which lays down that the vacancies in the posts of headmasters of middle schools due to death, retirement, resignation, etc. shall be filled

up by the senior-most among persons working as Secondary Grade Teachers or in other cadres of trained teachers, but qualified for B.Ed. Tamil

Pandit. According to the petitioner, he being the senior-most teacher should be

preferred. He came to this Court by way of the writ petition asking for a writ of mandamus to appoint the petitioner as headmaster of the fourth-respondent school pursuant to G.O.Ms. No. 1297. The move of the petitioner was counter-acted by respondents 3 and 4 and the main question that cropped up for consideration on the contentions raised by the parties, centered around the enforcibility of Clause 2(b)(i) of G.O.Ms. No. 1297, so far as the fourth-respondent school is concerned. That the fourth respondent school is a minority school is not in dispute. It was argued before the learned single Judge on behalf of the petitioner that Section 19 of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973, hereinafter referred to as the Act, enabling the Government to make rules regulating the number, qualifications and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters) of the teachers and other persons employed in any private school, should govern minority schools also and u/s 14 of the Act directions also could be given, and viewed from either of the angles, G.O.Ms. No. 1297, has to be implemented and the fourth respondent school cannot demur over the implementation of the same. On behalf of respondents 3 and 4, it was contended that G.O.Ms. No. 1297, would amount to infringement of the minority rights guaranteed under Article 30(1) of the Constitution of India, and hence has got to be ignored and the fourth-respondent school must have a free hand with reference to the choice of the headmasters. On behalf of respondents 3 and 4, the pronouncement of Srinivasan, J. in *Ethiraj v. State of Tamil Nadu* (1990) 1 M.L.J. 284, as well as the earlier pronouncement of Ramanujam, J. in *The Meston Training College Association, Madras v. Joint Director of School Education, Madras and others*, W.R. No. 5186 of 1981, Order dated 16.11.1982, were pressed into service. It must be noted that Srinivasan, J. in *Ethiraj v. State of Tamil Nadu* (1990) 1 M.L.J. 284, has followed the ratio of Ramanujam, J.) in *The Meston Training College Association Madras v. Joint Director of School Education Madras and Ors.* W.P. No. 5186 of 1981, Order dated 16.11.1982. The petitioner placed reliance on the pronouncement of a learned single Judge of the High Court of Kerala in *Fr. Francis Fernandez v. District Educational Officer Ernakulam and Ors.*

(1989) 3 S.L.J. 15, where there was a challenge of an order of the State Government directing the appointment of senior-most teacher as

headmaster as violative of the fundamental right under Article 30(1) of the Constitution of India. The learned single Judge of the High Court of

Kerala repelled the challenge and held that the right of minority managements in the choice of headmasters of their schools is not absolute and

could be regulated by statutory provisions relating to promotion of teaching staff.

2. The learned single Judge in the present case in substance opined that the right of management to appoint headmasters according to their own

rules and regulations would stand infringed if G.O.Ms. No. 1297, has got to be applied. The learned single Judge expressed the view that the

senior-most teacher may have an ideology which is totally contrary to the ideology of the minority institution and hence such choice will amount to

interference with the administration in their hands guaranteed under Article 30(1) of the Constitution of India. As a result, the learned single Judge

held that Clause 2(b)(i) of G.O.Ms. No. 1297 cannot be enforced against minority institutions; and the learned single judge ordered the writ

petition in the following terms:

As a necessary concomitant of the above reasoning, it follows that if the senior-most teacher like the petitioner in this case is entitled otherwise to

be appointed as a headmaster, there is no reason why he should not be appointed, unless the management has got adequate reasons to ignore his

claims as affecting their minority right. While, therefore, upholding the right of the respondents 3 and 4 to fill up the post of headmaster in the 4th

respondent school without reference to the offending portions of the G.O.Ms. No. 1297, Education, dated 21.7.1979, I direct the respondents 3

and 4 to consider the claims of the petitioner also. It is only if the respondents 3 and 4 come to the conclusion on valid reason that the petitioner is

ill-equipped to be appointed as headmaster or grounds affecting their rights guaranteed under Article 30 of the Constitution of India, that the

respondents 3 and 4 can appoint some other person of their choice as headmaster. Since the post of headmaster is kept vacant for a long time, I

direct the respondents 3 and 4 to fill up the post within 4 weeks from today in accordance with the directions given above. The writ petition is

ordered in the above terms. There will be no order as to costs.

As already noted, this writ appeal is directed against the order of the learned single Judge.

3. Mr. K. Chandru, learned Counsel for the petitioner, would submit that the two pronouncements of this Court, referred to before the learned

single Judge and preferred by him for being followed, do not tell anything on the subject in issue in the present case and he wants us to adopt the

reasoning of the learned single Judge of the High Court of Kerala in *Fr. Francis Fernandez v. District Educational Officer Ernakulam and Ors.*

(1989) 3 S.L.J. 15. We went through the pronouncements of the two learned single Judges of this court, which were referred to before and relied

on by the learned single Judge. We find that they are entirely on a different aspect, namely, with reference to availability of an appellate remedy.

But by eschewing those two pronouncements from application to the facts of the present case, we cannot straightway find a solution and give an

answer in favour of the petitioner.

4. The moot question that arises for consideration is as to whether Clause 2(b)(i) of G.O.Ms. No. 1297 in anyway infringes the fundamental right

guaranteed under Article 30(i) of the Constitution to minority institutions, like the fourth respondent school. Profuse is the case law even at the level

of the highest court in the land, which has spoken on the scope and ambit of Article 30(1) of the Constitution of India. But, apart from taking

guidance on general principles from the pronouncements, we must say that each case has got to be decided on its own facts taking note of the

implication of the act, rule, regulation, order or proceeding, which has come to be made and the impact, it may have on the right guaranteed to

minority institutions under Article 30(i) of the Constitution of India. Here we find a case where under Clause 2(b)(i) of G.O.Ms. No. 1297, there is

a prescription that in the choice of headmasters in the middle schools to fill up vacancies arising due to death, retirement, resignation, etc. the

Middle Schools are directed to fill up the posts by the senior most among persons working as Secondary Grade Teachers or in other cadres of

trained teachers, but qualified for B.Ed./Tamil Pandit.

5. With regard to the scope of and the sanctity to be annexed to the right guaranteed under Article 30(1) of the Constitution of India, we find an

elaborate discussion by a Bench of this Court in *The Madras Diocese of the*

Church of South India v. State of Tamil Nadu W.P. No. 295 of

1975, Order dated 24.9.1976, and it is worthwhile to make the following extracts from the said pronouncements:

Under Article 30(1) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of

their choice. The right guaranteed under this Article is a fundamental right available to religious or linguistic minorities. This right is among the group

of rights relating to freedom of religion, freedom to manage religious affairs, freedom as to attendance at religious institution or religious worship in

certain educational institutions, cultural and educational rights. Article 25(1) ensures that all persons are equally entitled to freedom of conscience

and the right freely to profess, practise and propagate religion; but this right is subject to public order, morality and health, and to the other

provisions of Part-III of the Constitution. Though the right under Article 25(1) is of a large amplitude, it is, however, not absolute. The right is

subject to public order, morality and health and the other provisions of the part. Clause (2) of the Article further abridges the scope of the right.

Again, the freedom to manage religious affairs given by Article 26 to religious denomination or any section thereof is not absolute either, because it

is subject to public order, morality and health again. But, the right under each of Articles 28 to 30 is not subjected to any limitation or restriction.

The right guaranteed in Article 30(1) is in absolute terms, and no abridgement of the substance of the rights is therefore, permissible. Unlike the

freedom under Article 19, the right under Article 30(1) cannot even be subjected to reasonable restriction in public interest. So, the right of a

religious or linguistic minority to make its own choice of educational institutions, establish and administer the same, is of the widest amplitude, and is

untrammelled. The test being what is good or is in the interest of the religious or linguistic minority, no other criterion like reasonableness or public

interest can avail to abridge its scope and effect, for otherwise the right will lose its purpose. The right is in two parts (1) the right to establish; and

(2) the right to administer. The right to establish an educational institution is secured to all religious or linguistic minorities, which include not merely

religious or linguistic minority communities, but also individuals belonging to either of them. A person belonging to a religious or linguistic minority

community, has unbridled and absolute right to establish any institution of his choice, which means that any restriction which will have the effect of abridging that right will be unconstitutional. Likewise the right to administer is free from any limitation, so that a religious or linguistic minority community or an individual belonging to either has the whole field of administration of the institution open, uninhibited by any interference. A religious or linguistic minority, including an individual belonging to it, has unfettered right to found any educational institution of its or his choice, and administer it according to its or his wish and discretion. But as administration does not mean maladministration, any regulation which will ensure proper administration will be permissible. So also will be permissible any regulation, procedural in character, which is designed to further the objects of the right and which does not in fact and substance, eat into the vitals of the right. While regulation of the right, therefore, is not open to objection, any restriction in the sense that it has the effect of abridging the right or making in road into its substance, call it regulation or restriction, is unconstitutional. That, in our opinion, is the ambit and effect of the right under Article 30(1) and as laid down in the Supreme Court cases from Kerala Education Bill Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , to The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . While there is this uniformity of opinion including in the recent decision of the Supreme Court in the Gandhi Faiszeam College, Saharanpur v. University of Agra Civil Appeal No. 1611 of 1969, as to the scope and effect of Article 30(1) as expounded in the different cases, the problem in each case has presented seemingly differing approaches, or points of view or yardstick in testing the validity of an allegedly offending statutory provision or rule, or regulation or administrative order vis-a-vis the impact on the fundamental right. But we should think that though the various decisions of the Supreme Court, as we see them, absolute character of the right has always been kept in view and any erosion on its substance has not been permitted. Most of the earlier decisions of the Supreme Court were reviewed by a large Bench of the same Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, .

6. In Sidharajbhai v. State of Gujarat AIR 1963 S.C. 540, this is what has been observed:

The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19

it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of

educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures

conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining

the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest,

though not in its interest as an educational institution the right guaranteed by Article 30(1) will be but a "teasing illusion" a promise of unreality.

Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be

directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must

satisfy a dual test the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making

the institution an effective vehicle of education for the minority community or other person who resort to it.

With regard to what type of regulations would not amount to restrictions, the observations run as follows:

Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be

imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the

institutions, in matters educational.

7. In *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*, , it has been countenanced that:

The post of the headmaster is of pivotal importance in the file of a school. Around him wheels the tone and temper of the institution; on him

depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is

perhaps the most important facet of the right to administer a school; and it has to be held that the imposition of any trammel thereon-except to the

extent of prescribing the requisite qualifications and experience-cannot but be considered as a violation of the right guaranteed by Article 30(1) of

the Constitution. To hold otherwise will be to make the right's teaching illusion, a promise of unreality.

8. In *V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, Kovilvattam Road, Ernakulam, Cochin and*

Others Vs. State of Kerala and Others, , the Full Bench of the High Court of Kerala set down the proposition in the following terms:

Article 30(1) is not a character for maladministration; regulation, so that the right to administer may be the better exercised for the benefit of the

institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but a restriction on the right to

administer, the article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying

interference can only be the interests of the institution concerned.

9. In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, , the proposition countenanced runs as follows:

Article 30(1) contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of minority's

choice. It is irrelevant that in addition to the minority community others from other minority communities or even from the majority community can

take advantage of these institutions. The next part of the right relates to the Administration of such institutions which means "management of the

affairs" of the institutions. This management must be free of control so that the founders or their nominees can mould the institutions as they think

fits, and in accordance with their ideas of how the interests of the community in general and the institutions in particular will be best served. There

is, however, an exception that the standards of education are not a part of management as such. The minority institutions cannot be allowed to fall

below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the

general pattern.

10. In *The Director of School Education Government of Tamil Nadu and Another Vs. Rev. Brother G. Arogiasamy S.H.J.*, , a Bench of this Court

summed up the proposition in the following terms.

Article 30(1) of the Constitution entitles a minority community, whether based on religion or language, not only to establish but also to administer educational institutions of their choice. These rights are absolute and unqualified. They are not subject to any restrictions unlike the fundamental rights under Article 19. The right to administer includes the right to admit students of their choice. But that is not to say that the State is not entitled to make reasonable regulations. But, at the same time, what is important to notice is that such a regulation should be conceived and made from the standpoint of and for the benefit of the minority institution in the matter of its establishment and its administration. General standards to be achieved by the regulations may be good from the public point of view, but enforcement of such general standards in a minority institution may destroy or defeat or severely curtail the protection given to it by Article 30(1). The regulations can only be made in the interests of the institution and they cannot be made in the interest of outsiders.

11. In *St. Xavier's College v. State of Gujarat* AIR 1974 S.C. 1398, the principle countenanced runs as follows:

Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teacher of its disciplinary control over teacher and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of these teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1).

12. In *Rev. Br. A. Thomas v. Deputy Inspector of Schools* AIR 1975 Mad. 214, it was argued on behalf of educational authorities that since the Government gives aid to minority educational institutions, it could insist on teaching staff of their choice being appointed. This argument was repelled in the following terms:

The learned Government Pleader strenuously contends that, though the

petitioner-institution is a protected institution, inasmuch as it received aid from the Government, and as all the teachers whether they are in protected or unprotected institutions are paid., by the Government through the aid the Government have a right, in order to do social justice inasmuch as it has to provide employment for the higher grade teachers, to tell the institution that it should not employ a secondary grade teacher in higher grade vacancies. We are unable to accept this contention as far as it relates to protected institutions. The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, , as well as earlier decisions go a long way to recognise the freedom of management on the part of denominational institutions and the management includes also appointment of teachers of their choice. It is not necessary to say more than this in this case. Here it happens to be a case of employment of more qualified teachers in the interests of higher standards of education and the Education Department cannot insist that that should not be done by the institution. This has nothing to do with the aid given. The aid given by the Government does not clothe the Government with any right of the type they have claimed to interfere with the freedom of management of the institution to employ teachers of their choice, who have a higher qualification than that prescribed by the Department.

13. As observed in *Sidharjbhai v. State of Gujarat* AIR 1963 S.C. 540, "regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed; such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution in matters educational. This passage, if we can say, so, with respect, succinctly provides the guidelines as to when a regulation need not be frowned upon as making an inroad into the fundamental right guaranteed under Article 30(1) of the Constitution of India Coming to paragraph 2(b)(i) of G.O.Ms. No. 1297, it has been stipulated that in the matter of filling up the vacancies in the posts of headmasters arising on account of the stated contingencies the choice could be only from senior-most of the staff mentioned therein. Practically this curtails the sphere of choice of headmasters for the minority institutions like the fourth respondent school. From the angle of the minority institutions especially with regard to the standard

and ideologies which they would like to keep up and adhere to in the matter of imparting educational courses, this imposition will curtail their freedom of choice regarding the head of the teaching staff. The minority institutions would like to go by certain norms and standards in the selection and appointment of headmasters, which as per their estimate and assessment may bring in and ensure excellent service in their field of activities, serving their community. Though seniority may be a salutary guiding factor in the matter of promotions or selections to higher posts, it is not always possible to commend it as the sole criterion with reference to the choice of personnel for higher posts. We have to view this matter not from the general angle, but only from the angle of the minority institutions, which stand as a class by themselves having been secured the fundamental right under Article 30(1) of the Constitution of India. What has been guaranteed under Article 30(1) is absolute, and no abridgement of the same could be brooked. The right is not only to establish, but also to administer educational institutions of their choice. That right is of the widest amplitude and must remain untrammelled. Any regulatory measure, though conceived in public interest, but not of the minority institution, may have to be frowned upon as infringing upon that right. By their choice of headmasters or principals, the minority institutions, will be in a position to adhere to their traditions and standards in the educational field. If any prescription other than qualifications and the like is to be imposed that would be trammelling their right guaranteed to them under the Constitution. Any regulatory measure cannot be justified by pleading the interests of the general public, when the interests of the minority institutions stand affected.

14. At this juncture, we may advert to the pronouncement of the learned single Judge of the High Court of Kerala in *Fr. Francis Fernandez v.*

District Educational Officer Ernakulam and Ors. (1989) 3 S.L.J. 15. The learned single Judge has viewed the direction by the State that only

senior-most teachers should be appointed as headmasters as a regulatory measure and as not infringing upon the right of the minority institutions

under Article 30(1) of the Constitution of India. In view of our preceding advertence to the discussion of the principles as done by the

pronouncements and our analysis of the implications of paragraph 2(b)(i) of

G.O.Ms. No. 1297, we are not able to persuade ourselves to appreciate and accept the line of thinking of the learned single Judge of the High Court of Kerala in the pronouncement, referred to above. We have no ambiguity in our mind that though paragraph 2(b)(i) of G.O.Ms. No. 1297, could be stated to have been conceived in public interests and may be in the interests of the teaching personnel; but when applied to a minority institution its effect may not be its benefit from its own point of view. It would amount to interference with their fundamental right, and such interference cannot be justified by projecting the interests of the general public. The justifying feature has got to be assessed only from the angle of the interests of the minority institution. This is the standard uniformly adopted by pronouncements. Accordingly, we do not find any warrant for interference with the ultimate decision of the learned single Judge. This obliges us to dismiss the writ appeal and accordingly we dismiss this writ appeal. No costs.