

(2006) 12 OHC CK 0017

In the Orissa High Court

Managing Committee, Sayeed Seminary and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Constitution of India, 1950 — Article 26, 29, 30

Citation : (2007) 103 CLT 376 : (2007) 1 OLR 209

Hon'ble Judges : P.K. Mohanty, J;J.P. Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—The Managing Committee of Sayeed Seminary, Nimasahi in the city of Cuttack and its Headmaster are the Writ Petitioners seeking for the relief of declaration that the Sayeed Seminary, a High School recognized by the Government of Orissa and the Board of Secondary Education, Orissa, was established and administered by the Muslim Community of the State and that of Cuttack city and as such comes within the purview of Section 2 of Orissa Education Act, 1969 and for quashing the Government Order dated 29.3.1995 refusing to declare the said institution as a Minority Community managed educational institution.

2. Briefly stated Petitioners case is that, the Minority Community, the Muslims of Orissa and more particularly of Cuttack town being prevented by poverty and financial backwardness from continuing their education and/or academic career beyond primary classes felt the need for establishing a Minority Community institution for educational and social upliftment of the muslims. In the year 1913, an educational institution named "Moslem Seminary" was established in Cuttack town by Moulavi Mohammad Sayeed and the institution was administered and managed by the Muslim Community of Cuttack city. The school is situated over a plot of land comprising AC. 5.278 acres purchased by Mr. C. Abdul Hakim at a cost of Rs. 10,000/- in or about the year 1919. A double storeyed building was constructed with the donation raised from muslim residents of the locality and

other eminent muslim citizens of India. In all Government records, ROR, Patta and Survey Map, the area over which the school is situated has been recorded in the name of "Moslem Seminary". Moslem Seminary subsequently was renamed as "Sayeed Seminary" in memory of its founder Mohammad Sayeed Saha. The property and the institution is a wakf property and it has been so registered under the provisions of the Wakf Act, 1954. From the date of its inception, the institution established by the Minority Community is being run and administered by the said community. Public spirited persons of the Minority Community donated liberally for administration of the institution. The then Nizam of Hyderabad (Lt. Gen. Sir Mir Usman Ali Khan Bahadur) made quite a substantial contribution to the institution for its management and administration. The school thus was founded, established and administered by the Minority Community, the muslims. But the students of all communities are allowed to be admitted to the institution and are imparted education. But, however, the Minority-Community-students constituted the majority among the students. The Managing Committee elected from time to time by the Minority Community is constituted of mostly the members belonging to the muslim community and no students belonging to any other religion, race or language has ever been deprived by the management to be educated in this institution. It is further asserted that the institution has maintained a fair standard of teaching and Urdu has been accepted as the medium of education in the institution from Class-V to Class-IX besides the local language Oriya. It is further asserted that the correspondence of the Government Department and the management would indicate that the Government has throughout treated the school as a Minority Community educational institution. The State, for the last eight decades, has been assuring the Managing Committee that Sayeed Seminary is the singular institute belonging to the Minority Community and recognized and treated the same as Minority Community institute and as such the Petitioners had legitimate expectation that the demand, request and representation of the Managing Committee to declare the institution as such would be accepted. However, the Headmaster of the school on 10.6.93 while requesting the Inspector of Schools for a declaration that the Institution is a Minority Community institution submitted all relevant papers/ records for the purpose. The Inspector of Schools visited the schools in August, 1994 and conducted an enquiry for the purpose of declaration of Sayeed Seminary as a Minority Community institution. The management of the institution produced before him all relevant records relating to the institution. The Inspector of Schools, by his letter dated 29.11.94, recommended to the State Government, through the Director, Secondary Education to declare the said school as a Minority Community institution. The then Minister of Health, who belonged to the Minority Community, also recommended to the Minister of Mass Education to declare the institute as a minority institution by a letter dated 24.12.93. The Government, without applying its mind to the facts and circumstances and the report of the Inspector by a bald order refused to recognize and declare the institute as a Minority Community institute and conveyed the said decision by letter dated 24.5.95, copies of which are Annexure

3. The Opposite Party No. 1 has filed a counter affidavit denying the claim made by the Petitioners contending inter alia that the school in question is in the fold of direct payment and at no stage, the Managing Committee has raised any objection on payment of salary to the teachers of the school directly like all other aided High Schools. The Managing Committee of Sayeed Seminary was not originally a Minority Community school at the time of giving recognition. The school like any other school has been functioning smoothly till the new Orissa Education Rules, 1991 came in to force. It is stated that the old Managing Committee being apprehensive of the replacement has began to raise the question of status of the institution as a minority educational institution. It is stated that the Government has judiciously considered and rejected the claim of the Managing Committee as a minority educational institution. It is further asserted that the institution in question does not belong to the Minority Community and imparts education from Class-IV to Class-X in both Oriya and Urdu medium. It is an aided educational institution within the meaning of Orissa Education Act. According to the State, although the school has been functioning since long, donors from all religions have contributed to its upliftment. But, however, it is contended that donation from any person is not the criteria for determination of the status of the institution.

4. The Opposite Parties 3 and 4, who have been allowed to intervene in the matter by Order dated 23.9.1996, have also filed their separate counter affidavit denying and refuting the claim made by the Writ Petitioners. The establishment of the school in 1913 has been admitted. However, it has been stated that prior to 1913, in Victoria High School which is renamed as Bhakta Madhu Vidyapitha, there were reservation of seats for Muslim and Hindu students, as a result of which there was protest by two eminent teachers namely, Moulavi Md. Sayeed and one Mr. Patnaik, that there should not be any reservation for Muslim and Hindu students while taking admission. But the management did not yield or hear their protest, as a result of which, the aforesaid two teachers left the institution and started "Seminary, which was of a secular status. The assertion of the Writ Petitioners that the property of the institution has been recorded as wakf property has been disputed by these opposite parties on the ground that while recording the property as wakf property, the provision of the Wakf Act and the Rules framed thereunder have not been fulfilled. It is the claim of the Opposite Parties 3 and 4 that the institution is a public and secular institution and the management had no authority to get it registered as wakf property. These Opposite Parties have given instances to the effect that at different points of time, the Managing Committee was constituted of both Hindu and Muslims and reconstitution/constitution of Managing Committee was being approved by the Inspector of Schools in terms of the provisions of Orissa Education Act and Rules framed thereunder. The Writ Petitioners have filed their additional affidavits and documents in support of the claim made in the Writ Petition.

5. The Commissioner-cum-Secretary to Government, School and Mass Education Department, pursuant to the direction dated 20.7.2005, to cause production of the relevant documents, has filed an affidavit. The Inspector of Schools has filed an affidavit on 20.7.2005. In paragraph-4 thereof, the Inspector of Schools has stated that the present Sayeed Seminary, Cuttack formerly known as Moslem Seminary was established in the year 1913 by some philanthropists from the Minority Community of Cuttack city. The school building stands on its own land is a wakf property and it has been registered under Muslim Wakf Board under the Wakf Board Rules, 1954. It has further been stated that the name of Moslem Seminary was changed to Sayeed Seminary in the name of the founder Md. Sayeed. Since then the institution is continuing in the name of Sayeed Seminary and the Muslim and Hindu students have been reading in the school till date. It is further stated that the school in question is a recognized High School from 1.6.1945 as revealed from Orissa Gazette No.30 dated 3.8.1945 showing the name of the school as Moslim Seminary, a copy of which has been annexed as Annexure-A/3. The school came into the direct payment system from 1974 for teaching staff and from 1977 for non-teaching staff. The records of the first resolution and first grant-in-aid order in respect of the school are not available in the office of the Inspector of Schools. The Headmaster also expressed his inability to provide the records. It is further stated that most of the old records of the deponent's office pertaining to the said school and others have been destroyed due to collapse/replacement of the roof of the office building in the year 1980 and the records could not be traced out.

6. Mr. Bijan Ray, Learned Senior Advocate for the Writ submitted that the very name "Sayeed Seminary" leads to the only irresistible inference that it is a Minority Community institution like the All Saints High School. He further submitted that on a plain reading of Articles 26(a), 29(1) and 30(1) of the Constitution of India, the present institution having been established by the Minority Community which is a religious denomination is entitled to be declared as such. His further contention is that admittedly the Muslim community in the State of Orissa being minority and such Minority Community having established the institution, it is entitled to the constitutional protection. In the impugned order of rejection (Annexure-9), the State Government has not assigned any reason nor has relied on any document in support of its stand that the school in question is not an institution established and administered by a Minority Community, but from general public belonging to different communities.

7. In view of the pleadings of the parties and the submissions made at the bar, the moot questions that need consideration are as to:

A. Whether the institution "Sayeed Seminary" has been established, managed and administered by the muslim community, a minority community, from its inception and continuing as such?

B. Whether in view of the fact that the institution has received grant in-aid and direct payment for its teachers and staff, the school in question which is

established, managed and administered by the Minority Community can have the status of minority institution?

C. Whether the decision of the Government in Annexure-9 rejecting the plea of the Writ Petitioners that the institution in question is a minority institution which is established, managed and administered by the muslim community is sustainable in law?

8. It is not in dispute that "Moslem Seminary" renamed as "Sayeed Seminary School" was established in the year 1913. The proceedings of the first meeting of the Managing Committee of the Moslem Seminary (Annexure-1) indicate that Maulavies Golam Mohammad, Mohammad Kasim Ahmad Quazi, Kamiruddin Khan, Alla Bira, Mahammad Sayeed Abdus Sakur, Babus Akshay Chandra Ray, Satyabrata Patnaik and Devendranath Ray were appointed as members of the Managing Committee of which Moulavi Golam Mohammad and Babu Akshay Chandra Ray were appointed as President and Vice President and Moulavi Kamiruddin Khan and Babu Satyabrata Patnaik were appointed as Secretary and Assistant Secretary respectively. It was also resolved that the school be formally opened on Friday, the 8th August, 1913 and a suitable house be hired for the purpose. Mr. C. Abdul. Hakim of 5, Jafar Street, Madras donated Rs. 10,000/- to cover the cost of acquiring the land and building of Moslem Seminary at Cuttack which was acknowledged and appreciated by the Secretary to Government of Bihar and Orissa, Ministry of Education and such appreciation was notified in the Official Gazette dated 1st December, 1932 (Annexure-2). The records-of-rights (Annexures 3 and 3/1) indicate that the land over which the present school situates has been recorded in the name of Moslem Sayeed Seminary High School, c/o Managing Committee. By resolution dated 5th November, 1950 of the Managing Committee the name of the school (Moslem Seminary) was changed to Sayeed Seminary after the name of its founder late Mohammad Sayeed. The proceedings of the meeting of the Wakf Board held on 5th February, 1969 (Annexure 5) suggest that from inception the nature, character, improvement and development of Sayeed Seminary was brought into existence for the upliftment of the muslim boys and imparting them higher education and as such, it was declared that Sayeed Seminary situated at Cuttack is wakf property and is required to be registered according to the Wakf Act. The Petitioner has annexed a copy of the letter of the Deputy Secretary to Government in the Education and Youth Services Department dated 10.11.1986 (Annexures-7 and 7/1) to indicate that the Petitioner institution Sayeed Seminary, Cuttack, has been described as an aided minority institution. The Secretary of the Petitioner school in his letter dated 16.12.1992 (Annexure-8) requested the Inspector of Schools to declare Sayeed Seminary a Minority Community institution and allow the community to manage and administer the institution by them. In reply dated 18.1.1993 (Annexure 8/2) the Inspector of Schools, Cuttack, requested the Headmaster of the School to furnish copies of records/documents, if any, in support of the fact that the school in question is a Minority Community institution. The Inspector in his letter dated 29.11.1994 (Annexure 8/4) reported that at the initial stage the

school was established by the muslim community and in their first meeting on 23.3.1913 resolved to constitute a Managing Committee. The report further indicated that the records revealed that Sayeed Seminary was brought into existence for upliftment of the muslim boys and imparting them higher education and thus, the institution came directly under the Muslim Wakf Act, 1954 and has been declared as a wakf property. The Inspector thus recommended to move the State Government to take a decision at their level on the proposal of the Secretary to declare Sayeed Seminary as a Minority Community institution. However, the Government in its letter dated 24.5.1995 on consideration of the claim has declined to accept the proposal of the Petitioner institution to be declared as a minority institution since according to the State Government it has no basis. It is relevant to note that the Inspector of Schools, Cuttack Circle, in her affidavit dated 20.7.2005 has admitted that the school was established in the year 1913 by some philanthropists from the Minority Community of Cuttack City, it stands on its own land and is a wakf property. The school in question was recognized as a High School from 1st June, 1945 and came under the direct payment fold from the year 1974 for the teaching staff and from 1977 for the non-teaching staff. However, the records of first recognition and first grant-in-aid in respect of the school are not available in the office of the Inspector of Schools since according to her, they have been destroyed due to collapse/replacement of the roof of the Inspector's office in 1980. Admittedly, the records are not available and, as such, the matter is to be considered and decided on the undisputed records, as above.

In view of the materials hereinbefore discussed, it appears that the school in question was established and administered by the minority muslim community even though non-muslims were also taken as members of the, Managing Committee. There is no record so far produced to show as to whether any donation/aid/help was given by the members of any other community for the purpose of establishment, management or administration of the institute in question. The school was admittedly established in the year 1913 and in course of time it has grown in size and student strength. In such view of the matter, it seems that there was no record or materials before the State Government to reject the claim of the Petitioner that Sayeed Seminary was an institution established, maintained and administered by the muslim community, admittedly a Minority Community. The submission of the Learned State Counsel that the teaching and non-teaching staff of the school have been receiving direct payment of salaries since 1974 is of no consequence in view of the fact that in the year 1986, as evident from Annexure-7 dated 10.11.1986, the State Government had described the Petitioner school Sayeed Seminary, Cuttack as an aided minority educational institution.

9. In *St. Catherine Girls' High School Vs. State of Orissa and Others*, a Division Bench of this Court of which one of us (P.K. Mohanty, J.) was a member while considering a similar case has held that it is wholly irrelevant whether at the initial stages the management of the school was voluntarily complying with some

provisions of the rules framed by the State Government and sending constitution and reconstitution of the Managing Committee for approval of the appropriate authorities. Besides, a minority institution may on its own follow the principle or policy contained in any Statute, or Rules so long as the same does not clash with its right of freedom of management. Voluntary submission to certain general rules, regulations or restrictions is totally different from the State's insistence on compliance with the provisions of the Statute, Rules and Regulations interfering with the freedom of management guaranteed under Article 30 of the Constitution. So constitution or reconstitution of the Managing Committee on the pattern laid down in the Education Code or any rule and sending those for approval cannot affect the minority status of the school if it is otherwise found to be an institution established by the minorities within the meaning of Article 30 of the Constitution. Direct payment of salaries to the teachers, deduction of PF amount etc. are all unilateral acts of the State Government and those are not at all relevant for the purpose of determination of the real character of the school. The ratio of the said decision squarely applies to the facts of the present case and thus following the said decision and in view of the clinching materials placed in support of the contention of the Petitioner, we hold that the Petitioner institution is a minority institution established, managed and administered by the muslim minority and therefore, the decision of the State Government in Annexure-9 rejecting the claim of the Petitioner is quashed.

10. The Writ Petition is thus allowed.

J.P. Mishra, J.

11. I agree.