

(2005) 02 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 2554 and 2938 of 2005

Mohammed Yeseen, P.P.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Kerala Education Rules, 1959 — Rule 45

Citation : (2005) 2 KLT 528

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : V.A. Muhammed and K.E. Hamsa, for the Appellant; M. Rajasree, Govt. Pleader for Respondents Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The Petitioner in W.P. (C) No. 2554/2005 was appointed as Headmaster of the Viswavidyalayam U.P. School, Chennara by the Petitioner in W.P. (C) No. 2938/2005, the Manager of the said school. In doing so, Sri George George, who is the 5th Respondent in W.P. (C) No. 2938/2005 (6th Respondent in W.P. (C) No. 2554/2005) was proposed, to be superseded.

2. The appointment of the Petitioner in W.P. (C) No. 2554/2005 in preference to Sri George George as Headmaster will admittedly be against Rule 45 in Chapter XTV A of the Kerala Education Rules (the "Rules" for short), since Sri George George, who is a graduate with B.Ed., is admittedly the candidate to be preferred in accordance with the Rules, over the Petitioner in W.P. (C) No. 2554/2005, whose qualification is S.S.L.C. with T.T.C. and, therefore, only a non-graduate teacher (see *Karunakaran v. D.E.O. Badagara* and Ors. 1976 K.L.N. 51, and *Akkarishetty v. Manager S.R.A.U.P. School* (2) ILR 1978, Ker 14.

3. The Manager of the school (Petitioner in W.P. (C) No. 2938/2005) attempted to justify the preference he made on the ground that the institution is one to which the protection under Article 30(1) of the Constitution of India applies and

therefore, it has a right to establish and administer educational institutions of its choice and that the right to appoint Headmaster of its choice is part of its such right to administer. In support thereof, the Manager appears to have pressed into service, the approved bye-laws of the management, as sanctioned by the competent statutory authority. After advertent to and considering the terms of the said bye-laws, the Government, by the impugned Order, G.O. (Rt.) No. 5110/2004/G.Edn., dated 29-11-2004, held that the claim as to minority status is not established.

4. As already noticed, the Manager and the teacher, whose appointment as the Headmaster is thus interfered with by the statutory authorities, including the Government, are challenging the said Government order in these writ petitions. They are represented by same counsel.

5. I have heard the learned Counsel for the Petitioners as also the learned Government Pleader on notice.

6. In the realm of procedure, the learned Counsel for the Petitioners pressed two grounds.

7. Firstly, it is urged that Sri Askar Ali (Petitioner in W.P. (C) No. 2554/2005), the teacher, whose appointment has been interfered with, was not heard by the Government and this amounts to infraction of the directions contained in Ext.P-6 Judgment dated 10-6-2004 issued by this Court in W.P. (C) No.17167/2004. In so far as this issue is concerned, it is to be noticed that the Government was deciding only the revision petition filed by the Manager challenging the decision of the A.E.O. and the D.E.O., refusing to approve the appointment of Sri. Askar Ali. Sri Askar AH had not carried any revision before the Government on the said issue. Ext. P-6, the Judgment in W.P. (C). No. 17167/2004 was rendered by this Court on a writ petition filed by Sri George George and the direction therein was that the revision shall be disposed of after hearing the affected parties. I am sure that the said direction, by itself is no sufficient ground for this Court to interfere in exercise of writ jurisdiction on the ground that the Petitioner in W.P (C) No. 2554/2005 was not heard by the Government. This is more so because, the Management was heard by the Government and the only question that was in issue before the Government was as to whether the Management had the protection of Article 30(1) of the Constitution of India. Having heard the Manager and the issue having been considered and decided by the Government with reference to the relevant materials, the mere non hearing of the teacher, in relation to whose appointment the matter was heard, would not matter much. At any rate, in the realm of discretion, I am not inclined to issue a writ interfering with the impugned decision on this ground.

8. Secondly, it is urged that though Ext. P-1 Deed of Trust was placed before the Government, it was not considered and adverted to. In my considered view, the said deed cannot be treated as an inexcusable material that ought to have been considered by the Government. This is so because that was not the deed which

was approved by the Government as per Rules. It is the admitted case of the Petitioners that Ext. P-2 approved bye-laws were considered by the Government and the Government have, in the impugned order, relied on the said approved bye-laws to hold that the institution is not one, which has a minority status. Hence, the impugned decision is not vitiated on account of non consideration of Ext. P-1.

9. Be that as it may, the learned Counsel for the Petitioner has argued before me as regards the effect of the contents of Ext. P-1 Trust Deed, the only further material placed. What is called for is the interpretation and construction of the said Ext. P-1 Deed and not a decision on disputed facts and evidence. I, therefore, proceed to consider the said document including the interpretation of the said deed to decide whether the impugned Government Order is sustainable.

10. Ext. P-1 is a deed by which the Petitioner in W.P. (C) No. 2938/2005 and his wife are the trustees of the trust. An amount of Rs. 10,000 contributed by the Petitioner in W.P. (C) 2938/2005 and an amount of Rs. 5,000 contributed by his wife form the corpus of the said trust. Going by the facts disclosed by the impugned Government Order, the said Trust acquired the Viswavidyalayam U.P. School, which is stated to be one established initially in the year 1918 and the first Manager was Chelattu Govinda Panicker. Later on, the management was transferred to Vallathol Saraswathi Amma and in 1992-93, it was transferred to the present Manager [Petitioner in W.P. (C) No. 2938/2005, who is the Chairman of the Maulana Educational Charity Trust.

11. The learned Counsel for the Petitioner canvassed that Ext. P-1 discloses a trust, which is one identifiable as an institution, entitled to the benefit and protection of Article 30(1) of the Constitution. He makes specific reference to Clauses 3(b), (e) and (g) of Ext. P-1. For the sake of convenience, I extract hereunder all objects of the trust as disclosed by Clause 3 of Ext. P-1.

3. The objects of the trust are as follows:

(a) to found, construct, take over, own, subsidise, help and make donations to educational institutions, students hostels and recreation centres for disabled, crippled, blind, deaf, dumb, mentally retarded or otherwise handicapped children and to develop their health, character and vocational pursuits;

(b) to found, establish, take over, maintain and administer educational institutions aided by the Government or any recognized agencies any where in the State of Kerala especially for the upkeep and benefit of the minority communities;

(c) to engage and appoint, managers, qualified teachers, instructors and other staff to run the institutions under the trust;

(d) to establish, take over, maintain, run, subsidise, hold and make donations to hostels, boarding and lodging houses for students and staff connected with such institutions;

(e) to establish, take over, maintain, run and make donations to orphanages for the poor and needy children of minority communities;

(f) to donate either in cash or in kind, support, help, aid, render assistance to all individual causes and institutions which have objects similar to the objects of the trust and which deserves support by reason of the locality of operation or otherwise;

(g) to institute and award scholarships and grant loans for study and research to poor and needy students of the minority communities;

(h) to promote civic consciousness and develop discipline and obedience to the rule of law in the public;

(i) to accept donations, maintenance, grants for Government aided educational institutions under the agency of the trust, presents and gifts either in cash or in kind for the purpose of the trust and to adopt all lawful courses, means, and measures for raising funds for the trust;

(j) and generally to do all such other acts, things, and conducive to the general objects of the trust.

12. I have no doubt in my mind that the objects of the trust disclose that it is secular in character and the objects sought to be achieved are purely secular. This is evident from a reading of the clauses, which have been emphasised on behalf of the Petitioners. Clause 3(b) quoted above is to found, establish, take over, maintain and administer educational institutions aided by the Government or any recognized agencies anywhere in the State of Kerala especially for the upkeep and benefit of the minority communities. Similarly, Clause (e) is the object of the trust to establish, take over, maintain, run and make donations to orphanages for the poor and needy children of minority communities. Clause (g) discloses the object to institute and award scholarships and grant loans for study and research to poor and needy students of the minority communities. None among the clauses referred to above relates to any particular minority community. It refers to a very laudable object by the founders of the trust to be involved in activities for the benefit of the minority communities.

13. "Minority Communities" may be a class by themselves, but that does not disclose that it has the identity of any particular community, which can claim to be a minority community on religious or linguistic grounds and thereby seek the protection of Article 30(1). Needless to say, I find no material on the face of Ext. P-1 to show that the institution run by the Trust is one established by a minority community and, therefore, entitled to the protection of Article 30(1). I say so, because the protection granted under Article 30(1) is not to any conglomeration of the minorities, but to an individual minority community, whether it is religious or linguistic, as has been provided under the Constitution. In the impugned order, the Government have said that the fact that the majority of the beneficiaries belong to a minority community cannot give to that institution, the

status of a minority institution. In my considered view, the Government are correct. It is the identity and intention of the one who establishes the institution, that is relevant and not the beneficiary.

14. The benefit of Article 30(1) can be claimed only on proving that the institution was established by a religious or linguistic minority See *S.P. Mittal v. Union of India* AIR 1983 S.C. 1. The words "establish" and "administer" used in Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishment of the institution by a minority is a condition precedent for claiming the right to administer the institution. There must exist some positive index to enable the educational institution to be identified with the religious or linguistic minority. It may not matter whether a single philanthropic individual, within his own means, funds the institution or the community at large contributes the funds. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and no ill-fit or camouflaged institution should get away with the constitutional protection. The institution must be an educational institution of the minorities, in truth and reality and not masked phantoms see *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.,* . In *Haneefa v. Manager, M.A.S.M. High School Venmanad* ILR 1976 Ker 532, the Division Bench of this Court held that the mere fact that the School was founded by a person belonging to a particular religious persuasion is not at all conclusive of the question whether the institution is really entitled to the protection guaranteed under Article 30(1) of the Constitution. It must be shown that the institution is established and administered by or on behalf of the particular community. The institution must be shown to be one established and administered by or on behalf of the particular minority community. See *Rajeshi Memorial Basic Training School Vs. The State of Kerala and Another,* . In *The Managing Committee of Maulana Abul Kalam Azad Primary Teachers Education College Vs. State of Bihar and Others,* , the Division Bench of the Patna High Court held that sponsors of such institutions have to establish that the institutions in question have been established by the minority community. In that connection it has also to be examined as to whether such institution is a minority institution in spirit and form or is just a commercial venture. Being in respectful agreement with said views, I follow them. The mere fact that a person belongs to a minority community, by itself, does not give an institution that he establishes, the status of a minority institution. It should be an institution established by a minority, whether based on religion or language, and even if established by a single member of such a minority community, such establishment should be with the intention to establish as a member of the minority community. Any other view may also lead to commercialisation of the field of education being passed off with privileges referable to Article 30(1) of the Constitution of India. This is never intended.

15. With reference to Ext. P-1, it cannot be found that the institution is one

established by a religious or linguistic minority. Neither Ext. P-1 nor Ext. P-2 discloses that the institution is established by a minority referred to in Article 30(1) of the Constitution of India. Nor do they show any such object of the trust as is referable to Article 30(1) of the Constitution of India. This is more so because, a reading of the preamble of Ext. P-1 and Clause 9 of the said deed would evidence that what is constituted thereby is a Public Educational Charity Trust and the eligibility for being a trustee shall be a contribution of not less than Rs. 5,000 to the trust and interest in educational and other social services. The educational agency so constituted cannot be treated as one that gets confined to be identifiable on a linguistic or religious plane, much less, a minority. It has more of a cosmopolitan and secular content, with a flair to serve the minorities without any distinction.

16. The Government have the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well-founded or ill-founded. The Government and ultimately, the Court, have the undoubted right to pierce the "minority veil" and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Article 30(1) is not to allow bogies to be raised by pretenders but to give the minorities "a sense" of security and a feeling of confidence not merely by guaranteeing the right to profess, practise and propagate religion, to religious minorities and the right to conserve their language, script and culture, to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality. See *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, . The Government have, in the instant case, acted well within authority. I do not find any ground to interfere with the impugned Government Order.

These writ petitions are dismissed.