

(1972) 08 KL CK 0005

In the High Court Of Kerala

Case No : Original Petition No. 2649 of 1972

Rajershi Memorial Basic Training School

APPELLANT

Vs

The State of Kerala and Another

RESPONDENT

Date of Decision : 07-08-1972

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

Citation : AIR 1973 Ker 87 : (1973) KLJ 76

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : M.P. Abraham, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, J.—The petitioner is the Manager of a basic training school by name Rajershi Memorial Basic Training School, Vadavukode. She has come up to this court with this writ petition seeking the issuance of a writ of mandamus prohibiting the respondents namely, the State of Kerala and the Director of Public Instruction, Kerala from enforcing against the petitioner's school the provisions of Rules 6 to 8 of Chapter XXV of the Kerala Education Rules, 1959 relating to the selection of candidates for admission to the training course. It is alleged by the petitioner that the petitioner's school is a minority school and is, therefore, entitled to the protection of Article 30(1) of the Constitution of India. On the said basis the petitioner relies on the decision of this court reported in *State of Kerala v. Manager, Corporate Management of Schools of the Diocese of Palai* 1970 KLT 106 wherein it has been held by a Division Bench of this Court that the provisions of Rules 6 to 8 of Chapter XXV of the Kerala Education Rules in so far as they restrict the right of the management to select candidates for training cannot be enforced against schools established and administered by minorities since that would constitute a violation of the freedom guaranteed under Article 30(1) of the Constitution.

2. Two separate counter-affidavits have been filed on behalf of the first and second respondents. The counter-affidavit filed on behalf of the 1st respondent has been sworn to by a Section officer in the school education department in the Government Secretariat and the other counter-affidavit has been filed by the Director of Public Instruction. In the counter-affidavit filed on behalf of the State the petitioner's allegation that the training school in question is a minority school has been denied. In the counter-affidavit filed by the Director of Public Instruction it has been submitted that the application for sanction for the establishment of the said training school had been made by one Sri. K. P. Pathrose in his individual capacity in 1953-54 and the sanction for opening the school was also granted to him only on that basis. An extract from the register of applications for the opening of school for the year 1953-54 containing the entries relating to the application of Sri. Pathrose has been produced along with the said counter-affidavit. It is further submitted that to the knowledge of the department no community has so far claimed any interest in the said school and that the petitioner's contention that it is an institution established and maintained by a minority community is incorrect and untenable.

3. In order that the petitioner should succeed in her claim based on Article 30(1) of the Constitution she has to prove by production of satisfactory evidence that the school in question is one established and administered by a minority whether based on religion or language. The only material which she has produced before this court in this regard consists of the averments contained in the original petition and the supporting affidavit filed by the petitioner. The mere fact that the school was founded by a person belonging to a particular religious persuasion is not at all conclusive on this matter. The institution must be shown to be one established and administered by or on behalf of the particular minority community.

4. In this case, the name given to the school is of some significance because the school has been named after a former Maharaja of Cochin and if at all any inference can possibly be drawn from the said circumstance it is only that the institution was one intended for the general benefit of all the citizens of the locality. There is no evidence placed before this court to show that the local church or the parishioners attached to the church or the Christian community were in any manner associated with the founding of the school or its day-to-day subsequent administration; nor is it made out that any activity is carried on in the institution which is intended to promote the object of conserving the religion or culture of the particular minority. On the materials now available before this court I do not find it possible to conclude that the petitioner's institution is a minority institution entitled to protection under Article 30(1) of the Constitution. The original petition is dismissed on this limited ground.

5. I make it clear that nothing contained in this judgment will preclude the petitioner from re agitating before this court or before the State Government the question regarding the character of the institution in any future academic year

when Rules 6 to 8 of Chapter XXV of the Kerala Education Rules are to be enforced for the purpose of the admission of students to the school for future years, if the petitioner is able to produce better materials in substantiation of her plea that the school is a minority institution.

6. The parties will bear their respective costs.