
(1993) 04 MAD CK 0016
In the Madras High Court

Rev. Sr. Margaret Mary, Correspondent, Sacred Heart High School and Another APPELLANT

Vs

The Government of Tamil Nadu and Others RESPONDENT

Date of Decision : 01-04-1993

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1993) 2 MLJ 303

Hon'ble Judges : Janarthanam, J

Bench : Division Bench

Judgement

Janarthanam, J.—The Congregation of Nuns of the Immaculate Heart of Mary, Kanyakumari District, it is said is engaged in religious and

social work and has established educational institutions in several places in Tamil Nadu and Pondicherry. Schools run by the said Congregation

had been recognised as minority institutions entitled to the protection guaranteed under Article 30(1) of the Constitution of India, viz. the

fundamental right to religious minorities to establish and administer educational institutions of their choice. Sacred Heart Primary School,

Kadiapattanam, situate within the educational district of Thuckalay, was established by the said Congregation in 1928 and was granted affiliation

by the Director of Public Instructions in the same year. The said school is a full fledged primary school for girls having a strength of 639 students as

on 31.7.1985. The teacher-pupil ratio laid down in G.O.Ms. No. 250, Education Department, dated 29.2.1964 permits the appointment of one

teacher for the first 35 students and two teachers for a total of 60 students and one additional teacher for every 20 more students. The total

strength of 639 students requires the appointment of 19 teachers, 19 teachers

having the requisite qualifications in fact have been appointed to man the school, but nonetheless grant-in-aid in respect of six teachers are yet to be released, although there is no impediment for payment of the teaching grant.

2. The said Congregation was also running a middle school, Sacred Heart Middle School, Kadiapattanam which was upgraded into a High School

during 1982-83. Standard IX had been opened on 16.6.1982 and Standard X on 20.6.1983. The third respondent in W.P. No. 5702 of 1986,

Joint Director of School Education (Secondary), Madras-6, in his proceedings dated 31.10.1983 accorded temporary recognition without aid

from the date of opening of the new Standards till 31.5.1984. As on 1.8.1985, the strength of the school was 595. The appointment of teaching

and non-teaching staff having the requisite qualifications had been made as per the rules. Even though six additional teachers in the middle school,

three additional school assistants, two additional special teachers and six non-teaching staff in the High School have been working, in anticipation

of allotment of posts for the past two years or more, the respondents have failed and neglected to grant aid in respect of them.

3. Repeated representations to the respondents for grant of aid in respect of the above staff members were in vain. The Schools, it is said, are non-

fee levying ones. The inordinate delay in releasing the teaching grant, as requested, is unjustified and causes undue hardship to the Management and

the teachers concerned. No uniform standards are adopted by the respondents in respect of the disbursement of teaching grant.

4. The first respondent, Government of Tamil Nadu, by G.O.Ms. No. 1244, Education Department, dated 16.10.1985, granted aid to about 85

schools totally, neglecting the petitioner schools. Further, in G.O.Ms. No. 1080, Education Department, dated 20.8.1984, the first respondent

granted aid by allotting minimum aided teachers' posts to several private non-minority schools in Tamil Nadu. The action of the respondents in

neglecting the petitioner schools is discriminatory and violative of Articles 14 and 30(2) of the Constitution of India.

5. The present actions had been laid by the petitioner praying for issue of writs of mandamus to the respondents to release financial aid to the

petitioner schools.

6. The petitioner also filed W.M.P. Nos. 17357 and 17358 of 1987, seeking interim direction to the respondents to order for the release of the

grant to the petitioner schools and this Court, by order dated 10.12.1987 granted the interim directions as prayed for; in the following terms:

In these two petitions, it is not in dispute that the authorities concerned have granted recognition for running of the schools. However; necessary aid

was not granted. Therefore, the present writ petitions. In a similar matter, Sathiadev, J. in W.M.P. No. 12318 of 1985 has directed the authorities

to grant the aid on condition of the petitioner furnishing bank guarantee or immovable property as security for the aid to be received. Following

that, I direct the respondents to release the grant on the petitioner furnishing bank guarantee or immovable property as security for the amount of

aid to be received, these petitions are ordered accordingly. The authorities will release the grant within four weeks from the date of receipt of this

order.

It is said, the interim direction has been complied with and the petitioner schools had been receiving the grants.

7. Learned Counsel for the petitioner would press the following contentions into service:

(i) The first respondent/State is under a positive obligation to give equal treatment in the matter of aid to all educational institutions, including those

of the minorities, religious or linguistic, like the petitioner, and the refusal to release the grants in aid to the petitioner merely on the ground that the

petitioner Institution is a minority institution, is nothing but sheer practice of hostile discrimination, which is not permissible on the face of Article 30

of the Constitution of India.

(ii) Refusal to release the grants-in-aid on the ground that no previous permission had been obtained by the petitioner for the upgrading of the

Middle School into High School is altogether untenable, in as much as no previous permission is required for any minority institution to establish

and administer any private school as per the provision of Section 9 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (for

short, "the Act") and what is required after the establishment of such an institution is to send to the competent authority, u/s 10, a statement

containing particulars specified in Section 5(2)(c) of the Act within a period of

three months from the date of opening of the school as prescribed under Rule 8(2) of the Rules framed under the Act.

8. Learned Counsel for the respondents would, however, repel such submissions and what he would contend is that at the time of recognition to the various educational courses in the petitioner schools, the position had been made clear to them no aid is possible and the petitioner did not demur over this and accepted recognition and consequently they cannot now claim aid, and they will be debarred from putting forth such a claim.

9. It is not as if the rival submissions, as now put forth, did not arise for consideration before the Apex Court and other High Courts of this country and the plain fact is that such questions came to be considered on innumerable occasions. Worthwhile it is to refer to the proposition of law laid down by the Apex Court as well as the High Court and such a ritualistic exercise, if undertaken, will solve the tangle posed in this case with ease and grace.

10. In *In re Kerala Education Bill*, 1957 AIR 1968 S. C. 956, Venkatarama Aiyar, J., while concurring with the majority view, stated in his separate judgment as follows:

The result of the constitutional provisions bearing on the question may thus be summed up:

(1) The State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions, including those of the minorities religious or linguistic.

(2) The State is under a negative obligation as regards those institutions, not to prohibit their establishment or to interfere with their administrative.

11. In the same judgment of the Supreme Court, Das, C. J., who spoke of the majority, made certain observations on the question of aid to educational institutions and they are reproduced hereunder:

It is, however, well known that in modern times the demands and necessities of modern educational institutions to be properly and efficiently run require considerable expense which cannot be met fully by fees collected from the scholars and private endowment which are not adequate and, therefore, no educational institutions can be maintained in a State of efficiency and usefulness without substantial aid from the State. Articles 28(3),

29(2) and 30(2) postulate educational institutions receiving aid out of State funds.

We are thus faced with the problem of considerable complexity apparently difficult of solution. There is, on the one hand the minority rights under

Article 30(1) to establish and administer educational institutions of their choice and the duty of the Government promote education, there is on the

other side the obligation of the State under Article 45 to endeavour to introduce free and compulsory education, we have to reconcile between these

two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The directive principles cannot

ignore or override the fundamental rights but must, as we have stated, subserve the fundamental rights, we have already observed that Article 30(1)

gives two rights to the minorities. (1) To establish, and (2) to administer, educational institutions of their choice. The right to administer cannot

obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in

unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair

standard of teaching or which teachers matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to

administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the

State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.

No educational institution can in actual practice be carried without aid from the State and if they will not get it unless they surrender their rights they

will, by compulsion of financial necessities, be compelled to give up their rights under Article 30(1).

The State Legislature cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the

same result. Even the Legislature cannot do indirectly what is certainly cannot do directly.

There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture

and religion. These concessions must have been made to them for good and valid reasons. Article 45, no doubt, requires the State to provide for

free and compulsory education for all children, but there is nothing to prevent the State from discharging that solemn obligation through

Government and aided schools and Article 45 does not require that obligation to be discharged at the expense of the minority communities. So

long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby

honour our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of and diverse creeds,

cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals- have come to this ancient land from

distant regions and climes. India has welcomed them all. They have met and gathered given and taken and got mingled, merged and lost in one

body. India's tradition has thus been epitomised in the following noble lines,

None shall be turned away from the shore of this vast sea of humanity.

That is India

Indeed India has sent out to the world her message of good will enshrined and proclaimed in our National Anthem;

Day and night, the voice goes out from land to land,

calling Hindus, Buddhists, Sikhs and Jains round thy throne

and Parsees Mussalmans and Christians Offerings are brought to thy shrine by the East and the West to the woven in a garland of love. Though

bringest the hearts of all people into the harmony of one life, Thou Dispenser of India's destiny, Victory, Victory, Victory to thee

It is thus that the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures. Our Constitution

accordingly recognises our sacred obligations to the minorities.

12. In *The All Saints High School v. Government of A.P.* (1980) 2 S.C.J. 273, Chandrachud, C.J., commenting on the question of granting aid to

educational institutions, observed as follows:

In the case of institutions that receive State aid it is the duty and obligation of the Government which grants aid to see that public funds are usefully

and properly expended. If the expenditure incurred for paying the emoluments of the State is subsidised or financed from out of State funds, it

becomes the duty of the State to see that no one who does not possess the

minimum qualifications is appointed on the staff the pay and other emoluments of the staff are guaranteed and their service conditions secured. Minority institutions which receive State aid cannot complain of conditions subject to which the aid is granted, so long as such conditions do not amount to discrimination against them on the ground of language or religion and so long as the aid is not made to depend upon the performance or observance of conditions which amount to deprivation of the right guaranteed by Article 30(1). There is also no doubt that minority institutions cannot be discriminated against in the matter Of granting State aid.

Articles 30(1) confers a fundamental right on the minorities to establish and administer educational institutions of their choice. Article 30(2) enjoins on the State that in granting aid to the educational institutions it shall not discriminate against any educational institution on the ground that it is under the management of a minority. Whether based on religion or language. Thus, it would appear that Article 30(1) even in the matter of receiving aid by the educational institution established by the minority community.

Articles 28(3), 29(2) and 30(2) deal with educational institutions receiving aid out of State funds. Certain restrictions are placed and obligations cast on institutions recognised by the State or receiving aid. Article 28(3) provides, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instructions that maybe imparted in such institutions Or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or if such person is a minor, his guardian has given his consent thereto. Under the sub article a person attending an institution recognised by the State or receiving aid cannot be compelled by the institution to take part in any religious instruction or to attend religious worship without his consent. Article 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Under Article 29(2) in institutions receiving aid a citizen is entitled to seek admission and the institution is forbidden to deny admission to a citizen on grounds of religion, race, caste or language. While Articles 28(3) and 29(2)

impose certain restrictions on institutions receiving aid. Article 30(2) forbids the State from discriminating against any educational institution in

granting aid on the ground that it is under the management of a minority, whether based on religion or language. The Constitution does not confer

any right on the institution to receive any aid. It however forbids the State in granting aid to educational institutions from discriminating an

educational institution on the ground that it is under the management of a minority whether based on religion or language. This would imply that the

State has a right to grant or not to grant aid. It may be that the State is not in a position to grant aid to educational institutions. In such

circumstances, nobody can force the State to grant aid. But if the State grants aid to educational institutions, there should not be any discrimination.

It is open to the State to prescribe relevant conditions and insist on their being fulfilled before any institution becomes entitled to aid. No institution

which fails to conform to the requirements thus validly prescribed would be entitled to any aid. Educational institutions receiving aid whether they

are managed and administered by minorities or not have to conform to the requirements prescribed by the State in order to enable the institutions

to receive aid. The requirements prescribed shall not be discriminatory on the ground that it is under the management of a minority whether based

on religion or language. The character of the minority institution should not also be destroyed. The right of the State to ensure that its funds are

properly spent cannot be denied.

13. In *Church of South India v. The Government of Tamil Nadu*, 1988 Writ L.R. 130, a Bench of this Court, dealing with the plea of financial

constraints, put forth by the State in answer to the claim for aid after recognition, observed,

As for financial liabilities, being fully aware of the protection conferred under Article 30(2) of the Constitution and being fully conscious that

minorities have the right to open schools and when such schools are being opened year after because of public demand and due to increase in

population; There could not be any difficulty for the State to provide for contingency funds under the head of "education in formulating the Budget.

Not less than rupees two hundred crores is spent for free education and hence a few more lakhs is not an unmanageable financial capabilities for

this welfare State. Therefore, it is not impossible of performance to comply with the constitutional requirements. Directing the payment of aid to the appellant Institution cannot therefore be opposed by State, when it is for public good.

14. K.S. Bakthavatsalam, J., following the pronouncement of the Bench of this Court observed, in T. Sekara Pillai, Manager, Arumanai Higher Secondary School, Arumanai v. State of Tamil Nadu, W.P. No. 4570 of 1987 dated 21.9.1989, as follows:

It is highly surprising for the State to take the contention that they are not able to pay the grant due to non-availability of finance. I do not understand the attitude of the department that after sanctioning the subject for the Higher Secondary School to run the school without teachers. For that, the department should have taken steps to sanction the post. For imparting education the fundamental thing is to have teachers to coach the students properly, that too, trained teachers for the respective subjects. I think a duty is cast upon the State to see that the posts are sanctioned expeditiously, if they have sanctioned subjects or groups for the school. There is no point in sanctioning the groups to the school and leave the matter at that. If the State feels that they will have financial strain, they ought not have sanctioned the groups.

15. The above order of the learned single Judge has been confirmed in appeal by a Bench of this Court in WA. No. 24 of 1990 dated 23.8.1990, except for a slight modification regarding unsanctioned courses.

16. A Division Bench of this Court, consisting of Nainar Sundaram, J., as he then was, and Somasundaram, J., in Roman Catholic Society v. The Government of Tamil Nadu, 1991 Writ L.R. 130, held that paucity of finances could not be a valid ground for denying aid to minority schools, and observed,

On behalf of the respondents, it is contended that at the time of grant of recognition to the various educational courses in the minority schools, the position has been made clear to them that no State aid is possible and the minority schools did not demur over this and accepted recognition and hence they cannot now claim aid and they will be debarred from putting forth such claim. We could not appreciate and accept this stand put forth on behalf of the respondents. What Article 30 enshrines as a fundamental right,

cannot be bartered away or surrendered by any voluntary act and it cannot be waived. While there may not be a fundamental right to aid, yet if in the matter of grant of aid the State chooses to discriminate the voice of protest in this behalf by the aggrieved minority cannot be stifled on any principle of waiver. The docility with which the minority schools accepted the recognition with any tail annexed that aid is not possible will not estop them for voicing forth a grievance of discrimination coming within the ambit of Article 30(2) of the Constitution.

Thus the grounds put forth for not granting aid to the minority schools in the present cases cannot stand scrutiny of judicial review and they are totally unreasonable and arbitrary and they brought about the discrimination against the minority schools in the matter of grant of aid and that discrimination comes within the scathe of Article 30(2) of the Constitution.

17. In *St. Stephen's College v. University of Delhi* (1992) 1 S.C.C. 588, a Constitution Bench of the Supreme Court, while dealing with aid to

educational institutions, pictures squarely expressed in paragraph 89 thus,

The educational institutions are not business houses. They do not generate wealth. They cannot survive without public funds or private aid. It is said that there is also restraint on collection of students fees. With the restraint on collection of fees, the minorities cannot be saddled with the burden of

maintaining educational institutions without grant-in-aid. They do not have economic advantage over others. It is not possible to have educational

institutions without State aid. This was also the view expressed by Das, C.J., in *Ningawwa Vs. Byrappa and Others*, . The minorities cannot

therefore, be asked to maintain educational institutions on their own.

18. In the epoch making judgment by another Constitution Bench of the Supreme Court in *Unnikrishnan, J.P. v. State of A.P.* (1993) 1 J.T. 474,

dealing with the fundamental right to education, the Supreme Court observed in a scintillating fashion in paragraph 134 thus:

1. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute

right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a

right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity

and development of the State.

19. In the backdrop and setting of the principles of law as evolved by the various decisions referred to above, let me endeavour to give a legal

fitment to the factual situation emerging from the present actions. There is no pale of controversy that the schools are minority institutions or

institutions established and administered by the minority. Yet another fact about which there cannot be any dispute, is that a minority institution like

the petitioner can very well be, established and administered without seeking the prior permission from the concerned authorities and what is

required is, as stated earlier, a statement has to be furnished to the authorities concerned u/s 10, as per the salient features adumbrated u/s 5(2)(c)

read with Rule 8(2) within three months of the opening of the Standards. There is also no denial of the fact that the teachers appointed in the

institutions of the petitioner are all qualified teachers and the teaching as well as non-teaching staff had been appointed within the para-meters fixed

by the concerned Government Orders. Further, the grants-in-aid sought for by the petitioner schools for teaching and non-teaching staff, according

to the eligible criteria, are only upto Standard X viz. to impart education to students under 14 years of age.

20. Considering the facts and circumstances of the case and the judgments referred to above, these writ petitions will have to be allowed and they

are, accordingly allowed. The rule nisi issued in each case is made absolute. There will be no order as to costs.