
(2002) 05 OHC CK 0042
In the Orissa High Court
Case No : O.J.C. No. 3451 of 1994

Rt. Rev. Lingaraj Tandy and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2002) 94 CLT 307 : (2002) 2 OLR 265

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, S.P. Mishra, R.K. Patnaik, A.K. Mishra, M.R. Mohanty, Sk. Q. Mohammad, for the Appellant; A.A. Das, P.K. Nayak, Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The case of the petitioners in the writ petition is that in the year 1963 a group of enthusiastic Christian educationists of Bolangir established the Nav Jeevan Vidyapitha, a High School. The classes of the School were held in a building provided by the Baptist Missionary Society in Bolangir Mission Compound. In the year 1964, the Baptist Mission Organisation took over the School and the Management of the School vested in the Bolangir pastorate Union, which was a Regional Organisation of the Baptist Mission Organisation. The Bolangir Pastorate Union nominated the Managing Committee of the School from time to time for day to day administration and development of the School. In the year 1970, the Baptist Mission of Bolangir got merged with the Churches of North India (CNI) and the administration of the School was with the Diocese of Sambalpur with the Head Office at Bolangir Mission Compound. In the year 1974, the land in plot No. 515/1533 on which the building of the School was located was donated by the Baptist Missionary Society Corporation, London through their Attorney Rt. Rev. Jugal Kishore Mohanty by a registered Gift Deed in favour of the School. The Diocese Management continued to pay the land revenue and the

Municipal dues for the land and the School building. The members of the Managing Committee of the School were nominated initially by Bolangir pastorate Union from amongst the elite and renowned educationists of the local Christian community and after merger by the Diocese of Sambalpur. Nav Jeevan Vidyapitha is therefore, a School founded and established by the Christian minority community and under Article 30(1) of the Constitution of India the Christian minority community has the fundamental right to administer the School. Further, under Article 30(2) of the Constitution of India, the State cannot also discriminate while granting aid to the educational institution on the ground that it is under the management of the Christian minority. Despite these fundamental rights under Articles 30(1) and 30(2) of the Constitution of India, the authorities are from time to time interfering with the administration and management of the School. The petitioners in particular have prayed for quashing Annexures-6, 11, 15, 16, 19, 23 and 28 to the writ petition on the ground that the orders and communications in the said Annexures are violative of the fundamental rights guaranteed under Articles 30(1) and 30(2) of the Constitution of India.

2. Mr. J. Patnaik and Mr. D. Chatterji, learned counsel for the petitioners relied on the averments in the writ petition as well as the report of the Inspector of Schools, Bolangir Circle, Bolangir annexed to the writ petition as Annexure-14 to show that Nav Jeevan Vidyapitha, Bolangir was established by the Christian minority community. They further submitted that the fact that the School has been receiving grant-in-aid from the State Government will not take away the minority character of the educational institution. They further argued that in the year 1973, Bolangir Pastorate Union after nominating the Managing Committee sent the names of the members of the Managing Committee to the Inspector of Schools, Bolangir Circle, Bolangir only for his information. According to Mr. Patnaik, the fact that the Inspector of Schools, Bolangir Circle, Bolangir approved the Managing Committee of the School on the basis of the said information will not take away the minority character of the aforesaid School. Mr. Patnaik cited the decision of this Court in Managing Committee, Baptist Church Middle English School, Berhampur and Another Vs. State of Orissa and Others, for the proposition that the pleas of waiver of fundamental rights under Article 30 of the Constitution of India cannot be taken by the authorities against the minority community. Mr. Chatterjee also relied on a decision of this Court in Berhampur Diocesan Catholic School Managing Committee Vs. State of Orissa and Others, wherein it was held that the State Educational authorities have no right to encroach upon the right of the minority community that has established an educational institution in the matter of constituting or reconstituting the Managing Committee of the institution and that the State educational authorities only have the power to regulate in the interest of excellence of education.

3. Mr. Behera, learned Additional Standing Counsel, on the other hand, relied on the Counter Affidavit filed on behalf of opposite party No. 3 and in particular paragraphs 6, 7, 8, 9 and 10 of the said counter affidavit. In the counter

affidavit, it has been stated that the School though privately managed received 2/3rd grant-in-aid from 28.2.1974 and has been enjoying direct payment from 1.3.1974, It is also stated that the Managing Committee was constituted and approved by the Inspector of Schools from time to time as per the provisions of Orissa Education Code. Further, members from religious community other than Christian community have been nominated to the Managing Committee. It has been stated that Shri P. Ch. Kuanr was nominated during the years 1981 and 1984 and Shri N. Gurua, a prominent local pleader was nominated to the Management also. Moreover, the teaching staff of the institution are from all communities. An allegation has also been made in the counter affidavit that as per the Audit report of the Local Fund Audit, the Secretary and the Head Master have misappropriated the School funds and have not deposited the misappropriated amount inspite of the repeated demands.

4. Mr. Behera also relied on the affidavit filed on behalf of the opposite party No. 2, the Director of Secondary Education, Orissa. He has stated in the counter affidavit that Nav Jeevan Vidyapitha, Bolangir has not been declared as a minority community institution by the Government since 1.7.1963 and the management of the institution never claimed it's establishment by the Christian community at the time of establishment nor has it refused to accept the direct payment scheme as per Government order No, 15893 dt. 12.6.1974 and the Inspector of Schools has been paying salary to the employees of the institution directly under the State Government Order dt. 12.6.1974. According to Opp. party No. 2, had the institution been a minority institution, there would not have been any direct payment system under the order dt. 12.6.1974 of the Government. The rest of the averments in the affidavit of opposite party No. 2 are reiteration of the averments made by opposite party No. 3 in his counter affidavit.

5. Mr. Behera finally referred to the order dated 22.10.1990 of the Government of Orissa, Education Department which deals with the guidelines for recognition of minority Managed Educational Institutions. By the said order, the Government of Orissa has adopted the guidelines for determination of the minority status and recognition matters in respect of Minority Education Institution laid down in the Circular dt. 27.6.1990 of the Government of India Minorities Commission and the Circular dt. 5.10.1989 of the Government of India, Ministry of Human Resources Development.

6. The questions to be decided in this writ petition are whether the Nav Jeevan Vidyapitha, Bolangir is an educational institution established by a religious minority, and if so, whether it is entitled to the protection of Article 30 of the Constitution. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, the Supreme Court held that:

"Article 30(1) postulates that the religious community will have the right to establish an educational institution of their choice meaning thereby that where a religious minority established an educational institution it will have the right to

administer that."

Thus, if the Court holds that a religious minority has established an educational institution, it will have a right to administer the said institution under Article 30(1) of the Constitution of India. What falls for consideration, therefore, is whether the Christian community, which is admittedly a religious minority community in the State of Orissa, has established the Nav Jeevan Vidyapitha, Bolangir. It appears from Annexure-14 to the writ petition that the Inspector of Schools, Bolangir Circle had conducted an enquiry on the affairs of the Nav Jeevan Vidyapitha, Bolangir and has submitted a report dt. 25.4.1986 to the Deputy Director, Secondary Education, Orissa. A copy of the enquiry report of the Inspector of Schools has been enclosed along with the letter dt. 25.4.1986 of the Inspector of Schools, to the Deputy Director, Secondary Education, Orissa (Annexure-14 to the writ petition). The findings of the Inspector of Schools, Bolangir Circle, Bolangir in the enquiry report in paragraphs-1 to 7 are extracted hereunder :

- "1. That the School was founded by the local Christian Community i.e. Baptist Missionary Society during 1963.
2. The above community prevailed upon their Church Union, a controlling body of the Churches in the District to provide a suitable accommodation for the school and take up the management through the above Church Union,
3. That the above Church Union provided a suitable building for the function of the school.
4. That in 1974 the above promoting agency transferred the plot of land with building standing thereon to the Managing Committee through a registered gift deed. The above land owner being Baptist Missionary Society Corp. New World Street, London was the owner of that land to which the promoter community are associated.
5. The above doner agency undertook to pay the land revenue taxes to the Govt. and the Municipality which they are doing till to-date.
6. That in the campus where the Nav Jeevan Vidyapitha is having its school, there are three more schools with one L. P. School, one Girls" M. E. School and one Boys" M. E. School which are being managed by the Managing Committee formed by the above Church Union for the last 70 years or so.
7. That the Managing Committee members who established the school are all from Christian community as reported by the Tahasildar vide his No. 3724 dt. 5.7.85 on a reference made by the Circle Inspector of Schools, Bolangir vide this Office No. 4976 dt. 27.6.1985."

From the findings of the Inspector of Schools, Bolangir Circle, Bolangir, it is clear that Nav Jeevan Vidyapitha, Bolangir was established by the Christian community, which is a religious minority community in the State of Orissa. Once

the School is held to have been established by a religious minority community, it will have the right to administer the school under Article 30(1) of the Constitution of India.

7. It, however, appears from the affidavits filed by opposite parties 2 and 3 that Nav Jeevan Vidyapitha has been receiving grant-in-aid from the State Govt. of Orissa under the direct payment scheme. But the fact that the School has been receiving grant-in-aid under the direct payment Scheme from the Government of Orissa will not take away the minority character of the institution if the same has been established by the minority community. Article 30(2) itself provides that "the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority whether based on religion or language." Thus, the Constitution itself makes a provision enabling the educational institution established by a religious minority community to receive grant-in-aid and prohibits the State from discriminating any educational institution while granting aid on the ground that it is under the management of a religious minority and the contention of opposite parties 2 and 3 in their respective affidavits before this Court that Nav Jeevan Vidyapitha, Bolangir is not a minority institution as it has been receiving grant-in-aid under the direct payment scheme has no merit.

8. Another contention raised on behalf of Opposite parties 2 and 3 in their affidavits is that Nav Jeevan Vidyapitha, Bolangir has been managed by Managing Committees constituted and approved by the Inspector of Schools from time to time as per the provisions of Orissa Education Code, As has been indicated above, once it is held by the Court that an educational institution has been established by a religious minority community, under Article 30(1) of the Constitution such religious minority will have the right to administer the education. This fundamental right guaranteed to a religious minority community under Article 30(1) of the Constitution will not be affected by the approval of the institution of Managing Committee of the education institution by the Inspector of Schools under the provisions of Orissa Education Code.

9. Yet another contention raised by the opposite party No. 3 in his counter affidavit is that there have been members in the Managing Committee of Nav Jeevan Vidyapitha, Bolangir; who did not belong to the Christian community. Once an educational institution has been established by a religious minority community, the religious minority community will have the right to administer such educational institution and such right to administer will obviously include the right to choose members of the Managing Committee of any community they like. A contention has also been raised in the counter affidavit of the opposite party No. 3 that the teaching staff of Nav Jeevan Vidyapitha, Bolangir are from all communities. The fact that the teaching staff of an educational institution established by religious minority are also from other religious communities will not affect the minority character of the educational institution.

10. Perhaps these contentions have been raised by opposite parties 2 and 3 in

their counter affidavit by way of pleas of estoppel and waiver against the petitioners. The plea of opposite parties 2 and 3 seems to be that right from 1963 when Nav Jeevan Vidyapitha, Bolangir was established, the management of the School has surrendered its right to constitute the Managing Committee of the School and has been receiving aid from the Government on direct payment scheme and therefore, cannot claim the rights under Article 30(1) of the Constitution. It is settled law that pleas of estoppel and waiver are not available against fundamental rights. In fact, the specific question as to whether the pleas of estoppel and waiver can be raised against the right of a minority community under Article 30 of the Constitution arose for decision in Managing Committee, Baptist Church Middle English School, Berhampur and Anr. v. State of Orissa and Ors. (supra) and a Division Bench of this Court after referring to the observations of the Supreme Court in Ahmedabad St. Xaviers College Society v. State of Gujrat AIR 1974 SC 1389 and in G. F. College v. University of Agra in AIR 1975 SC 1281 held that it would be difficult to accede to the claim of the Government that the institution though admittedly a minority one ceased to be so by voluntary action of its management. The Division Bench further held that since the fundamental right is vested in the community itself which has established it and has right to administer it, such right cannot be abandoned by the Managing Committee of the Institution.

11. For the aforesaid reasons, we held that the Nav Jeevan Vidyapitha, Bolangir is a minority educational institution established by the Christian Community and the Christian Minority community which has established the institution has the right to administer the School under Article 30(1) of the Constitution and any interference in the right of the aforesaid religious minority to administer the School, will have to be quashed by the Court. This is not to say that the State cannot impose reasonable regulations in the best interest of the education or to regulate the recruitment or termination of the staff of the minority institution. Similarly, the State can also stipulate conditions for grant-in-aid to the minority institution and will have also the power to ensure that the funds allotted to the institution through grant-in-aid are properly utilised and so long as such regulatory measures adopted by the State are reasonable and do not destroy the right of the minority institution to administer the education institution under Article 39(1) of the Constitution of India, the Court will not interfere with the same.

12. Bearing in mind these principles of law we will now examine Annexures-6, 11, 15, 16, 19, 23 and 28 impugned in this writ petition. Annexure-6 is a circular issued by the Inspector of Schools, Bolangir Circle to different authorities of Bolangir district regarding constitution of Managing Committee of Aided High School. Obviously the said Circular will not apply to a minority institution which has a right to administer the institution under Article 30(1) of the Constitution. Annexure-11 is letter dt. 29.3.1985 of the Inspector of Schools, Bolangir Circle to the Secretary of Nav Jeevan Vidyapitha, Bolangir stating inter alia that Nav Jeevan Vidyapitha, Bolangir is not taken as an institution administered by

minority community. Since we have held that Nav Jeevan Vidyapitha is a minority institution, the observation of the Inspector of Schools in the letter that the institution is not an institution administered by minority community is quashed. Annexure-15 is letter No. 164 dt. 10.3.1988 of the Director, Secondary Education, Orissa to the Circle Inspector of Schools, Bolangir Circle, stating inter alia that the manner of constitution of Managing Committee of Nav Jeevan Vidyapitha does not justify the institution to be a minority institution and the matter has been referred to the Finance Department and till the conclusion with regard to the minority character of the Institution is clear, the Circle Inspector of Schools, Bolangir should function as Special Officer in place of the Managing Committee. In view of our finding in this judgment that Nav Jeevan Vidyapitha is a minority institution and the Christian community which has established the institution has the right to administer the same, Annexure-15 is quashed, Annexure-16 is an order dt. 19.3.88 of the Inspector of Schools, Bolangir Circle, Bolangir giving effect to the letter No. 164 dt. 10.3.1988 of the Director of Secondary Education, Orissa in Annexure-15. Since we have quashed Annexure-15, Annexure-16 is also quashed. Annexure-18 is a letter addressed by the Head Master of Nav Jeevan Vidyapitha on 5.3.1994 to the Inspector of Schools, Bolangir Circle pursuant to Annexure-16 that the Secretary of Nav Jeevan Vidyapitha, Bolangir has not handed over charge to him and for this reason, the order of the Inspector of Schools, Bolangir Circle dt. 19.3.1988 under Annexure-16 has not been implemented. Since we have quashed Annexure-16, we also quash Annexure-19. Annexure-23 is the letter dt. 6.7.1993 of the Tahasildar, Bolangir to the Head Mater, Nav Jeevan Vidyapitha, Bolangir stating inter alia that it was not desirable to allow the previous Managing Committee and requesting the Head Master to go through the rules relating to constitution of Managing Committee and to submit a list of the Managing Committee members. As we have held that Nav Jeevan Vidyapitha, Bolangir has been established by a religious minority and the religious minority has right to administer the School under Article 30(1) of the Constitution, the Tahsildar, Bolangir will have no power to interfere with the administration of the School and call for a list of members of the Managing Committee of the School. Annexure-23 is accordingly quashed.

13. Annexure-28 is a letter dt. 7.4.1994 of the Inspector of Schools, Bolangir Circle, Bolangir to all the Head Masters of Aided High Schools informing them that the Government has decided to form a common cadre of Assistant Teachers of Aided High Schools of the State separately in each category. The common cadre in relation to any class of employees or any category of Aided "Educational Institutions is contemplated u/s 10(C) of the Orissa Education Act, 1969. But Section 2 of Orissa Education Act, 1969 makes it clear that the Act does not apply to educational institutions established and administered by minorities having the right under Clause-1 of Article 30 of the Constitution. The said Section 2 of the Orissa Education Act is quoted herein below :

"2. Act not to apply to certain institutions : Nothing contained in this Act shall apply to educational institutions of their choice established and administered by

minorities having the right under Clause (1) of Article 30 of the Constitution.

Provided that the State Government may, by notification apply or adopt to an educational institution established and administered by minorities, such the provisions of the Act, so however that the rights under Article 30 of the Constitution are not infringed."

It is clear from the main provision in Section 2 of the Act that educational institutions established and administered by religious and languishing minorities which are protected under Article 30(1) of the Constitution are outside the perview of the Education Act, 1969. The proviso to Section 2, however, states that the State Government may by notification apply or adopt to an educational institution established and administered by minorities such provisions of the Act so however that the rights under Article 30 of the Constitution are not infringed. No Notification under the said proviso to Section 2 has been brought to our notice by Mr. Behera, learned Standing Counsel, to show that the provisions of Section 10(C) of the Education Act, 1969 relating to constitution of common cadre has been made applicable to educational institutions established and administered by minorities and protected under Article 30(1) of the Constitution. In the absence of any such Notification the provisions of Section 10(C) relating to constitution of common cadre will not apply to the Nav Jeevan Vidyapitha, Bolangir held by us as a minority institution established by the Christian community and protected under Article 30(1) of the Constitution.

14. It is stated by Mr. Patnaik, learned Counsel for the petitioners, that on account of the pendency of this case, salary of four members of the teaching staff of Nav Jeevan Vidyapitha have been withheld by the Government from September, 1997. The Opposite parties 2 and 3 will ensure that the salary of the four members of the teaching staff namely Mr. Kishore Bagh, Mrs. Suprava Barik, Mrs. Minati Barik and Mr. Sanjaya Kumar Naik are no longer withheld merely on account of pendency of the writ petition since we have disposed of the writ petition today by this judgment.

The writ petition is allowed, but considering the facts and circumstances of the case, the parties are to bear their own costs.

M. Papanna, J.

15. I agree.