
(1998) 11 MAD CK 0106
In the Madras High Court

T. Michael

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Citation : (1999) 1 LW 153 : (1999) 1 MLJ 338

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Division Bench

Judgement

M. Karpagavinayagam, J.—The plaintiff is the appellant. He filed a suit for declaration that St. Antony's Elementary (Primary) School in Nelakarisalkulam, Rayagiri Post, Sankarankoil Taluk, Tirunelveli District was a minority institution within the meaning of Article 30(1) of the Constitution of India and the Tamil Nadu Recognised Private Schools Regulation Act and for permanent injunction restraining the defendant Government from enforcing several provisions of the said Act and the Rules to the said school. The defendant/ the respondent herein resisted the suit stating that the plaintiff/appellant did not establish that it was a minority institution and that merely because the school was started by a Christian it would not become a minority institution.

2. The trial court, on consideration of the evidence of the plaintiff, who was examined as P. W. 1 and Ex.A-1 to Ex.A-9 which marked through him, decreed the suit as prayed for.

3. Aggrieved by the said decree and judgment dated 7.12.1982, the respondent/ State of Tamil Nadu preferred an appeal before the lower appellate court which in turn allowed the same by dismissing the suit filed by the plaintiff by the decree and judgment dated 31.7.1984. Hence, the second appeal by the plaintiff.

4. This Court, while admitting the second appeal, formulated the following substantial question of law arising for decision in this second appeal:

Whether the lower appellate court has not properly appreciated the principle of Article 30((1) of the Constitution of India in holding that the plaintiff-Institution is

not a minority Institution?

5. In elaboration of the substantial question of law, Mr. Peppin Fernando, the learned Counsel appearing for the appellant, would strenuously contend that the lower appellate court reversed the well considered judgment of the trial court on an erroneous View of the Article 30((1) of the Constitution of India by holding that the appellant-school was not established as a minority school. He would also point out by reading the relevant portions of the evidence of P.W.I and the plaint that the majority of the students are belonging to the Christian community and that they are being taught Bible.

6. By way of repelling such submission, the learned Additional Government Pleader appearing for the respondent, in justification of the decree and judgment of the lower appellate court, would contend that the lower appellate court appreciated the materials in the correct perspective and rightly held that there are no sufficient materials to hold that the plaintiff was minority institution.

7. The counsel for both the parties would cite several authorities to substantiate their respective contentions. It is unnecessary to refer all the decisions, since most of those decisions have been referred to in the judgment in Elkay Higher Secodary School v. State of Tamil Nadu (1997)2 L. W. 213, rendered by Hon"ble Justice D. Raju (as he then was).

8. The lower appellate court based its conclusion mainly on the decision reported in Chikkala Samuel Vs. District Educational Officer, Hyderabad and Another,

9. A perusal of these judgments would clearly show that the plaintiff has to establish by adducing sufficient materials that it is a minority institution. As defined in Sub-section (6) of Section 2 of the Tamil Nadu Recognised Private Schools Regulation Act, 1973. The said section provides thus:

Minority school" means private school or its choice established and administered or administered, by any such minority whether based on religion or language as has the right to do so under Clause (1) of Article 30 of the Constitution.

10. Mr. Peppin Fernando, the learned Counsel for the appellant, would point out the relevant portions of evidence of P.W. 1 the plaintiff. The extract of the said evidence is as follows:

11. On the basis of the deposition given by P.W. 1, it is argued by the counsel for the appellant that the plaintiff has established that it was a minority school and as such, he is entitled to the decree for declaration and injunction as prayed for.

12. But, the close reading of the entire deposition, as correctly pointed out by the lower appellate court, would reveal that it was not sufficient to establish the case of the plaintiff. It cannot be debated that the school was started by the plaintiff with his own funds. It cannot also be disputed that the plaintiff is a Christian. But, that is not enough. The plaintiff has to further establish that the school was intended for teaching or promoting the religious tenets of the

minority community. There should be evidence to show that the institution was serving the interest of the minority community. Merely because the plaintiff belongs to minority community and established an institution, it would not by that alone make the same as a minority institution.

13. Exs.A-1 to A-9 would go to establish that the institution was started by the plaintiff and run by him. Either from the oral evidence of P.W. 1 or from the documentary evidence, it cannot be said that the institution was established either in the interests of religion or in the interests of minority community. It is also seen that the plaintiff did not adduce any evidence by production of the school records to show that the majority of the students in the school belonged to R.C. Christian community. There is also no record to show that the education was imparted to protect and promote the religious tenets of the Roman Catholic Community. It should also be shown that the minority concerned, or a considerable section thereof, is benefited by that institution. In the absence of those materials, there can be no nexus between the institution and the minority.

14. On the meticulous appreciation of the materials, the lower appellate court found that there is absolutely no evidence to prove that the institution was serving the interests of the Roman Catholic Christian community by promoting its tenets, philosophy, of culture, though it was established that the plaintiff belongs to the minority community. What is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minority community.

15. In the words of the Apex Court, as laid down in St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., the Institutes must be educational Institutions of the minorities in truth and reality and not mere masked phantoms.

16. In the light of the principles laid down by the Apex Court, in my view, the factual materials produced by the plaintiff in this case do not go to show that the plaintiff institution has been established and is administered by a minority community for the benefit of and for promoting the interests of the minority community. As indicated earlier the mere fact that the founder of the school happens to be a Christian, by itself is not sufficient or conclusive proof of the fact that the educational institution can claim to be a one established and administered as a minority institution.

17. The learned first Appellate Judge has chosen to correctly analyse the evidence on record and the factual findings which would go to show that the institution in question has not substantiated its claim of possessing the essential attributes to render it eligible to claim the minority status and to be granted with a consequential declaration.

18. The very fact that the Biblical teaching to the Christian students was being given after the school hour would itself indicate that the institution started by art individual, who belongs to Roman Catholic Christian Community, was not

established to have been with the object of furthering primarily and mainly, "the interest and welfare of the community as such.

19. For the reasons stated above, I am of the view that the lower appellate court gave correct reasons by pointing out the correct position of law, denying the claim of minority status to the plaintiff-institution. Therefore the decree and judgment dismissing the suit filed by the plaintiff by the first appellate court, cannot in any manner be said to, be contrary to law or vitiated by perversity of approach. Consequently, the appeal fails and shall stand dismissed. No costs.