

(1997) 07 MAD CK 0050

In the Madras High Court

Case No : S. A. No. 1222 of 1994 and C.M.P. No. 14734 of 1994

Thalavaipuram Nadars P.M. Marimuthu Nadar Higher
Secondary School and Others

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

Citation : (1998) 3 CTC 480

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. M. Loganathan, for the Appellant; Mr. K. Elango, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiffs, who are successful before the trial Court, have preferred the present second appeal being aggrieved by the judgment and decree

of the first Appellate Court dated 21.7.94 made in A.S.No. 315 of 1993, allowing the appeal and dismissing the suit in its entirety.

2. The first plaintiff is Thalavaipuram Nadar's P.M. Marimuthu Nadar Higher Secondary Managing Board, rep. by its Secretary, the second

plaintiff is Thalavaipuram P.M.M. Ammayappa Nadar Girls' Higher Secondary School, rep. by its Secretary and Managing Board member and

the third plaintiff is Thalavaipuram Nadar's P.M.M. Ammayappa Nadar Elementary School rep. by its Secretary and Managing Board Member

and the plaintiffs have jointly instituted the suit O.S.No.9 of 1991, on the file of the District Munsif, Srivilliputhur, for a declaration that all the three

Schools are minority educational institutions and for permanent injunction forbearing the defendants from enforcing the provisions of Tamil Nadu

Recognised Private Schools (Regulation) Act, 1973. The trial Court decreed the suit holding that the suit institutions are minority institutions, in

terms of Article 26 and 30 of the constitution and also granted the relief of permanent injunction against the defendants forbearing them from

enforcing the provisions of Tamil Nadu Act 29 of 1974.

3. As against the decree granted by the trial Court on 23.3.92, the defendants preferred A.S.No. 315 of 1993, on the file of the District Court,

Kamarajar District, Srivilliputhur. The first Appellate Court allowed the appeal and dismissed the suit in its entirety by its judgment and decree

dated 21.7.94. The first appellate court held that the status of plaintiffs' institutions are not minority and not denominational. It was further held that

the claim of minority status is a factual misconception and also held that no relief either for declaration or injunction could be granted as prayed for.

Being aggrieved by the judgment of the first appellate Court, this present Second Appeal has been preferred by the appellants.

4. At the time of admission the following substantial questions of law have been framed at the instance of the appellants.

(a) Whether the lower appellate Court is justified in reversing the well considered judgment and decree of the trial Court and whether the

requirement of law enunciated in the decision reported in S.P. Mittal v. Union of India, : [1983]1SCR729 has been fully satisfied in the present

Second Appeal?

(b) Whether the Appellants are religious minority/denomination and whether the materials on record are sufficient to prove that appellant are

religious denomination?

(c) Whether the Lower Appellate Court is justified in reversing the Judgment and decree of the trial Court particularly when there is no contra

evidence let in by the respondents either oral or documentary?

(d) Whether the Lower Appellate Court's findings are contrary to the pleadings and evidence on record?

5. The entire claim of the appellants that their institutions are minority institutions, established by a religious denomination and that the provisions of

the Tamil Nadu Act. 29 of 1974 has no application to control or interfere with the plaintiff institutions, have been rightly negated by the first

appellate Court. On the pleadings it has been rightly found by the first appellate

Court that the suit claims for minority status is a total misconception and it is not known as to how the plaintiff institutions could claim minority status within the meaning of Articles 26 of the Constitution of India.

6. The first appellate Court found on evidence that the plaintiffs institutions" are neither entitled to declaration of minority status nor the Thalavaipuram Hindu Nadar Community is denomination. The factual findings rendered by the first appellate Court has to be accepted, as it has not been challenged as perverse or vitiated by misdirection.

7. It is not necessary to set out in detail the pleading set out in the plaint by the plaintiffs and the defendants and it is sufficient to state that the plaintiff claimed that all the three institutions have been established by Hindu Nadars of Thalavaipuram, which community is a denomination. The very identical claim by Vilampatti Hindu Nadars in respect of a School established at Vilampatti, was the subject matter of consideration of this Court in State of Tamil Nadu v. Vilampatti Nadar Uravinmuraikku Pathiayapatta A.V.M. Marimuthu Nadar Melnillaipalliyin Managing Committee and others, 1991 (1) L.W 382, Somasundaram, J., as he then was, after elaborate consideration of the law negated the claim. So also Kanakaraj. J., in S.A. 1108 of 1991 took the identical view and rejected the claim of the Pandiyakula Kshatriya Nadars" Girls Schools, Managing Committee, Thirumangalam, for minority status. The latest pronouncement of Raju, J. reported in Elkay Higher Secondary School and Elkay Primary School and Others Vs. State of Tamil Nadu, , was also relied upon by the counsel for the respondents. The three judgments will be referred in detail later.

8. The claim of minority status by the plaintiff is a misconception as the plaintiffs do not satisfy the conditions or the requirement of either linguistic minority or a religious minority. The plaintiffs claimed that the nadars of Thalavaipuram belong to a religious denomination and the Schools established by the said community for their community is a minority institution. On the facts of the case, the first appellate court negated the claim of the nadars of Thalavaipuram, while holding that they arc like any other Hindu in the state and they have no separate system or belief or doctrines or religious tenets peculiar to themselves other than those that are common to Hindu in general. They follow the Hindu rites and ceremonies,

profess faith in Hindu religion and they form part of the larger Section of the Hindu religion. The claim of denominational character by the plaintiffs

has been rejected. It has not been established that the plaintiffs institutions has been established by religious denominations or any section thereof.

Article 26 of the Constitution confers certain right to every religious denomination subject to public order morality and health and the rights are

capable of being enforced by or on behalf of such a denomination. The word "denomination" means a collection of individuals, classed together

under the same name; a religious sect or body having common faith and organisation and designated by a distinctive name. Article 30 of the

Constitution provides that all minorities based on religion or language, shall have the right to establish and administer educational institutions of their

choice.

9. The very plea set out in the pleadings in no way advance the plaintiffs suit claim. The claim of the plaintiffs, namely Thalavaipuram Hindu Nadar

Community is a religious denomination, within the meaning of Article 26 of the Constitution of India has been rightly negated and the learned

counsel for the appellant is unable to persuade me to take a different view. It is clear that Hindu Nadars of Thalavaipuram have no distinct or

peculiar belief or doctrines for themselves other than those that are common to Hindus in general. The oral evidence of P.W.1 does not help the

plaintiffs in any way nor the plaintiffs have placed any documentary evidence to prove their case.

10. As already pointed above, Somasundaram, J., had occasion to consider in detail the claim of Hindu Nadar Community of Vilampatti, which is

not far off from Thalavaipuram, has been considered in detail and the claim of denomination by the said Vilampatti Hindu Nadars had been

rejected. Somasundaram, J., in the said decision analysed the entire facts as well as the law on the subject and had held thus:-

Let us now consider the question, in the light of the above decisions, whether the Hindu Nadar Community of Vilampatti constitutes a religious

denomination within the meaning of Article 26 of the Constitution of India. As seen from the decisions referred to above, the words "religious

denomination" must take their colour from the word "Religion" In order to hold that the particular community constitutes a religious denomination

within the meaning of Article 26 of the Constitution, it must be proved that the said community has a system of beliefs or doctrines which the members of the community regard as conducive to their spiritual well-being. It is essential that the members of that community must have common religious tenets peculiar to themselves other than those which are common to the entire Hindu Community. In this case, there is absolutely no evidence on record either oral or documentary to prove that the members of Vilampatti Hindu Nadar Community have a common faith, that is to say, a system of beliefs or doctrines or religious tenets peculiar to themselves other than those that are common to the Hindus in general. On behalf of the plaintiffs Exs. A-1 to A-33 were marked and P.Ws. 1 to 5 were examined. P.W.1 is a member of the Hindu Nadar community of Vilampatti. He deposed that the Hindu Nadars of Villampatti established Kalamman temple and Karuppasami temple, that they also established the Higher Secondary School and Elementary School viz., A.V.M. Marimuthu Nadar Higher Secondary School and Nadar George Primary School, that the Hindu Nadars of Vilampatti were treated as untouchables by other caste Hindus and, therefore, they established their own temples, educational institutions, their own "wells for drinking water, burial grounds and other facilities. P.W.2 is another member of the Vilampatti Hindu Nadar Community. In his evidence he stated that the Vilampatti Hindu Nadars Uravinmurai had established educational institutions and financed the same. P.W.3 is the priest employed in Vilampatti Kalamman temple and Karuppasami temple. His evidence is that the two temples belong to the Nadar community and the two temples are maintained by the Nadar community. But, P.W.3 belongs to a different caste, he being a Pandaram. P.W.4 is barber and his evidence is that he is employed exclusively for the Hindu Nadars of Vilampatti Village and if any member of Vilampatti Hindu Nadar community died, double sanga would be sounded in order to communicate the death of the member of that community. His further evidence is that there is a separate graveyard and Nandavanam for the Hindu Nadar community of Vilampatti, P.W.5 is the Dhobi for the Vilampatti Hindu Nadar community. His evidence is that he is the dhobi exclusively for the Hindu Nadar community of Vilampatti. In my opinion neither the oral evidence of P.Ws. 1 to 5 referred to above nor the documentary evidence produced by the plaintiffs would be sufficient to

prove that the three conditions laid down by the Supreme Court in S.P. Mittal's case, : [1983]1SCR729 in order to make a particular community

a religious denomination are satisfied in the present case. The contention of the learned counsel for the plaintiffs that the common faith peculiar to

Vilampatti Hindu Nadar community is evident from the fact that the members of ""Vilampatti Hindu Nadar Community"" are worshipping the idols

Kaliyamman and Karuppasami cannot be countenanced, because I do not find any peculiarity in worshipping the idols of Kaliyamman and

Karuppasami, which are deities for several sections of the Hindu community. The infirmity in the judgment of the lower appellate Court is that in

coming to the conclusion that Vilampatti Hindu Nadar Community, is a religious denomination, it has not considered the issue in the proper

perspective in the light of the principles laid down by the Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri

Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., ; S.P. Mittal v. Union of India etc. : [1983]1SCR729 . The lower appellate Court also failed to

see that evidence of P.Ws. 1 to 5 relates only to certain secular practices of the Hindu Nadar Community of Vilampatti and the evidence in this

case does not show that the members of the Hindu Nadar community of Vilampatti have a common faith peculiar to themselves. In the absence of

evidence in this case to show that the Hindu Nadar community of Vilampatti have a common faith, that is to say a system of beliefs or doctrines or

religious tenets peculiar to that community, the lower appellate Court is not correct in coming to the conclusion that the Hindu Nadars of Vilampatti

is a religious denomination. In view of my discussion as above, it has to be held that the Hindu Nadar Community of Vilampatti is not a religious

denomination in order to get the benefits under Article 26 of the Constitution. From this it follows that the first plaintiff-institution is not a

denominations institution and, therefore, the first plaintiff is not entitled to the benefits of Articles 26 and 30 of the Constitution. In these

circumstances, the plaintiffs are not entitled to the reliefs claimed in the suit. The above discussion of mine obliges me to interfere with the judgment

of the lower appellate Court. Accordingly the second appeal is allowed, the judgment and decree of the lower appellate Court are set aside and

the Judgment and decree of the trial Court are restored. But, in the circumstances of the case, there is no order as to costs.

11. Identical claim in respect of P.K.N. Boys School and P.K.N. Elementary School established by Pandiakula Kshatriya Nadars" uravinmurai

was the subject matter of consideration before Kanakaraj, J., in S.A.No.1108 of 1991. Kanakaraj, J., while following the judgment of the

Supreme Court in S.P. Mittal v. Union of India, : [1983]1SCR729 , dismissed the second appeal holding that the said Nadar community is a

section of Hindu Nadars residing at Tirumangalam is not a "denomination" at all and they are not entitled for the declaration that it is a minority

institution".

12. In S.P. Mittal v. Union of India, : [1983]1SCR729 the following three tests has been laid down to find out whether the particular body of

persons is a religious denomination:

(1) It must be a collection of individuals of individuals who have system of beliefs or doctrines which they regard as conducive to the spiritual well

being that is a common faith;

(2) Common organisation; and

(3) Designation by a distinctive name.

The decision in S.P. Mittal v. Union of India, : [1983]1SCR729 has also been reiterated in K. Duraiswamy Vs. State of Tamil Nadu, .

13. The principles laid down by the Apex Court had been followed by the first appellate Court and it has been held that the nadar community of

Thalavaipuram had not shown to have a distinct or peculiar or separate doctrine or system of belief for themselves, religious faith or culture nor it

could be said that their religious faith is different or distinct from that of Hindus in general. It has not been established that the Nadars of

Thalavaipuram have a system or doctrine which is peculiar to themselves nor do they have a common organisation or that they are designated by a

distinct name with peculiar tenets or doctrines.

14. In The Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem and Others Vs. Nattainai K.S. Ellappa Mudaliar and

Others, , Srinivasan, J, while rejecting the claim of denomination of Senguntha Mudaliars of Taramangalam within the meaning of Article 260 of the

Constitution, had held thus:-

The Supreme Court had occasion to reiterate its view on the interpretation of the

words "religious denomination" in Acharya Jagdishwaranand

Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, . The question which arose for consideration in that case was whether

Ananda Marga could be accepted as a religious denomination. While answering the question in the affirmative, the Court made a reference to the

test laid down by Mukherjea, J. in the The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri

Shirur Mutt., referred to earlier and observed as follows:-

The words "religious denomination" in Article 26 of the Constitution must take their colour from the word "religion" and if this be so, the

expression "Religious denomination" must also satisfy three conditions.

1. It must be a collection of individuals who have a system of beliefs or doctrines, which they regard as conducive to their spiritual well-being, that is a common faith; 2. Common organisation; and 3. Designation by a distinctive name.

In view of the clear pronouncement made by the Supreme Court in the aforesaid case.

laying down three conditions to be satisfied by a community to fall within the expression "religious denomination" it is unnecessary for me to deal

with the various decisions of the Court cited by learned counsel for the respondents.

15. Raju, J., In Elkay Higher Secondary School and Elkay Primary School and Others Vs. State of Tamil Nadu, . had occasion to consider the

identical issue in detail and had held thus:-

In the latest decision of the Supreme Court in St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others,

etc. etc., which was a decision rendered by Apex Court in a batch of appeals from this Court, the Apex Court after adverting to the entire case

law on the subject and on an analysis of the ratio laid down therein called out the following principles as emanating from those decisions and

relevant in adjudicating upon the claims of a minority institution in respect of the minority status as such of the institution. The principles laid down

therein are as hereunder.

(1) The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures.

(2) There is no fundamental right under Articles 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought therefore.

(3) The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms

(4) There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefore.

(5) The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State.

(6) The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves and not based on State necessity or general social necessities.

(7) The regulations should be with a view to promoting excellence of educational standards and ensuring security of the service of teachers and other employees of the institutions and in the true interests of efficiency of institutions discipline, health, sanitation, morality, public order and the like.

(8) Even unaided institutions are not immune from the operations of general laws of the land such as Contract Law Tax measures, Economic laws, Social Welfare Legislations, Labour and Industrial Laws and similar other laws which are intended to meet the need of the Society

Among other things, it could be seen that the Apex Court was more concerned about the masked phantoms abusing the Constitutional Protection

when it states that the institutions must be educational institutions of the minorities, in truth and reality.

While analysing the above principles referred to supra I have held in the unreported decision in S.A. No. 1375 of 1990 and W.P.No. 10848 of 1989 as hereunder:-

The above decisions and the ratio laid down therein, in my view, extensively and to some extent exhaustively deal with the criteria and the core of

the ratio of the decisions appears to be that it should be in truth and in reality a minority institution and that it should not be a mere pretender in

order to get or usurp the constitutional right and protection. Yet another principle

emanating from the above decisions is that the minority educational institutions are entitled to prefer their community candidates to maintain the minority character of the institution, subject of course in conformity with the university standards. The State may also regulate the intake in this a category with due regard to the need of the community in the area in which the institution is intended to serve, but in no case such intake shall exceed 50% of the annual admissions and that minority institution shall also make available at least 50% of the annual admissions to the members of the community other than the minority community.

15. In the view of Raju J., it is not only the establishment of institution by a minority or denomination the further condition that the institutions so established or administered by minority is exclusively for the benefit of such minority and for promoting the interest of the particular community. In the present case also admittedly all the three schools are being run like any other private educational institutions ran by non-minority. The plaintiff school do not satisfy the requirements as laid down in the above referred decisions and their claim had been rightly rejected.

16. In the present case, the first appellate Court had analysed the evidence on record and recorded a factual finding as to the manner in which the plaintiffs' institutions in question came to be established and being run like any other Schools established by a non-minority and the claim of minority status of the plaintiffs had been rightly negated.

17. The plaintiffs, in my view, have not substantiated their claim of possessing the vital and essential attributes or indicia to render them eligible to claim the minority status and to be granted with a constitutional declaration. The claim of the plaintiff institutions are nothing but factual misconception and at any rate as found by the first appellate Court, the community of Nadars who established the plaintiffs are not denominational in character nor they could claim either religious or linguistic minority or any other status other than that of a non-minority on facts.

18. It is also to be pointed out that the plaintiffs institutions are being run like any other private institutions and their academic curriculum are the same and the plaintiffs admit not only the children of Nadar community of Thalavaipuram but also various others and these factual admissions are fatal to plaintiffs' claim.

19. It has been pointed out by the first appellate court that the Nadars of Thalavaipuram infact profess faith and follow Hinduism like the vast majority Hindus in the State. The deities, namely Padrakaliamman and Mariamman, which the plaintiffs claim that they are worshipping, are the common Hindu deities, worshipped throughout the State and for that throughout the country by a slight variation in the nomenclature. The findings is that the members of Thalavaipuram who have established a School at their place are Hindus and they follow Hindu religion, Hindu rituals and they are followers of Hinduism only. All the religious festivals of Hindu religion are being celebrated and rituals are being followed by the said community, though they have claimed that they exclusively observe particular festival, but at any rate they do not have a separate religion nor they are a "denomination", as laid down in the above decisions.

20. In any view of the matter, this Court holds that the plaintiffs have not established their suit claim nor they could claim minority status nor they could claim to be a denomination. The plaintiffs' claims have been rightly rejected by the first appellate Court. The three decisions of this Court referred to above is not only binding on this Court but also is the law on the subject and there cannot be any controversy with respect to the finding rendered by the first appellate Court. The claim of the plaintiffs had been rightly rejected by the first appellate Court.

21. In the circumstances, no case has been made out by the counsel for the appellant for interference in this second appeal and all the four questions of law raised by the appellants are rejected. The various contentions raised by the counsel for the appellants are no longer res intengra and have already been decided by this Court against the appellants by this Court as well as by the Apex Court.

22. In the circumstances, the judgment and decree of the first appellate Court is confirmed and this second appeal is dismissed without costs.

Consequently the C.M.P. No. 14734 of 1994 is also dismissed.