

(1998) 12 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No's. 12809 and 14588 of 1998

The Correspondent, St. Ignatius Higher Secondary School,
Kurumbanai-629 251, Kanyakumari District and others

APPELLANT

Vs

Director of School Education, College Road, Chennai 6 and
others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Constitution of India, 1950 — Article 30

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 9(2)

Citation : (1999) 1 CTC 121 : (1999) 1 LW 394

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. G.S. Thamby and Mr. Isac Mohanlal, for the Appellant; Mr. M. Rathinam, Government Advocate, for the Respondent

Judgement

1. In both these Writ Petitions, petitioners seek the issuance of writ of mandamus forbearing the respondents from insisting on the petitioner-

School to create an endowment of Rs. 25,000/- as a pre-condition for the grant of recognition to its Higher Secondary School classes, and pass

such further or other orders as this Court may deem fit and proper in the circumstances of the case.

2. Both these petitioners claim the status of minority institution and they wanted to start Higher Secondary Courses for which the School has got

necessary infrastructural facility. The Management sent statements in the prescribed form as required under the Tamil Nadu Recognised Private

Schools (Regulation) Act and Rules to the Directorate of School Education for the grant of recognition for Higher Secondary Courses. It was also

indicated that the petitioner-School, being a minority institution, is not required

to create the Endowment of Rs.25,000 as stipulated under Rule 9

(2) (c) of the Tamil Nadu Recognised Private Schools (Regulation) Rules. The District Educational Officer returned the statement by proceedings

dated 6.7.1998 directing the Management to produce records to show that the Endowment had been created and to obtain No Objection

Certificate from Schools within 8 Kms., if any, and to submit particulars regarding the Joint Account in respect of Higher Secondary Course. It is

said that the insistence for the creation of an Endowment of Rs. 25,000 has been held to be invalid in various decisions, insofar as Minority

Institutions are concerned and, therefore, they cannot demand the same. In W.P.No.14588 of 1998, a Statement was submitted to the

respondents on 12.8.1998 informing them that being a minority institution, it is not required to create an Endowment. The same was refused to be

accepted, which necessitated the filing of the writ petition.

3. A common counter affidavit has been filed for both the writ petitions. Regarding the creation of Endowment for Rs.25,000, it is said that the

Management is bound to create the endowment of Rs.25,000 since it has not satisfied the Authorities about the status of the Institution as to

whether it is a minority. It is also said that direction was also given to the petitioners asking them to deposit a sum of Rs.1 1/2 lakhs in the joint

names of Headmaster and District Educational Officer. Such a direction was given in the permission order taking into consideration the interests of

the Teachers appointed to the posts and also to ensure that salary will be paid in accordance with Government instructions. The Government is

entitled to impose such conditions taking into consideration the best interest of the teachers. It is also said that the Director of School Education is

entitled to give instructions from time to time and it is the duty of the educational agency to carry out these instructions. It is not a refusal to accord

recognition to the petitioner School. It is only for the purpose of maintaining the academic standards and also to safeguard the interest of teachers

and the pupils including the linguistic minorities, such imposition is made, and it has no extraneous consideration as alleged in the writ petitions.

Respondents prayed for dismissal of the writ Petitions.

4. In regard to the deposit of Rs.25,000 I do not think that the contention of respondents/ could be accepted, if it could be found that these

Institutions are minority institutions. In the counter-affidavit, it is only said that the petitioners have not substantiated that they are minority

institutions. Both the petitioner Institutions belong to Roman Catholic Diocese of Kottar, Nagercoil. Regarding the institutions under it, it has been

conceded even by the Government in The Diocese of Kottar v. The State of Tamil Nadu, W.P.No.497 of 1975 Order dated 24.9.1976. wherein

the Diocese of Kottar, Nagercoil filed that writ petition for issuance of writ of mandamus directing the respondents therein and their subordinates

for giving effect to certain provisions of the Tamil Nadu Recognised Private Schools (Regulation) Rules, since those provisions are not applicable

to minority institutions. In the Order passed in that Writ Petition, it is said thus:

Advocates appearing for the parties have submitted as agreed list of writ petitions which admittedly relate to minority institutions. Hence these writ

petitions will have to be allowed in view of the judgment in Order in W.P.Nos. 4478 of 1974 and 294 of 1975, etc. Accordingly, these writ

petitions are allowed...

5. At this juncture, learned Government Advocate submitted that in view of the recent Order of the Honourable Supreme Court, the Government

will have to declare the institute concerned as a minority institution and till then the same cannot have minority status. I do not think that the

submission of learned Government Advocate could be accepted since the very order of the Supreme Court was placed before me by learned

counsel for petitioner. The Order was passed in I.A.No.20, in T.M.A.Pai Foundation and others v. State of Karnataka and others, W.P. (C)

No.317 of 1993 Going by that Order, it is clear that the direction applied only to respondents Institutions which were parties to that I.A. The

Honourable Supreme Court has held thus:- (Relevant Portion):

a) We have been informed that some of the respondents/Institutions are operating as minority institutions on the strength of various orders/decrees

obtained from the Civil Courts. We pass hereby a general order staying the operation of all the decrees/orders which may have been given by any

Civil Court in respect of the minority status or otherwise of any of the institutions which have been arrayed as respondents in this I.A. All the

respondents/institutions shall be treated as non-minority institutions till they comply with the direction given by us at S1.No.2 ;

i) The Educational Institutions claiming minority status should approach the State Government and till the State Government issues an order declar-

ing the Institution to be a minority institution, it cannot operate as such.

6. Reference may be made to the decision of the Honourable Supreme Court in N. Ammad Vs. The Manager, Emjay High School and Others,

wherein Their Lordships considered what is the effect of declaration. The argument was that even if the Government had not declared the

institution as a minority institution, the status of minority institution will continue and the effect of the declaration is only a recognition of its legal

character. In Paragraph 13 of the judgment. Their Lordships have said thus:-

When the Government declared the School as a minority school, it has recognised a factual position that the School was established and is being

administered by a minority community the declaration is only an open acceptance of a legal character which should necessarily have existed

antecedent to such declaration. Therefore, we are unable to agree with the contention that the School can claim protection only after the

Government declared it as minority school on 2.8.1994.

7. In view of the judgment in The Diocese of Kottar v. The State of Tamil Nadu, W.P.No.497 of 1975 and also in view of the decision of the

Honourable Supreme Court mentioned above, there cannot be any doubt as to the minority status of the petitioners.

8. The further question that arises for consideration is, whether the respondents were justified in demanding the creation of an endowment for a

sum of Rs.25,000. This point is already covered by various decisions of this Court. A Division Bench of this Court in the decision reported in

Madras English Baptist Church, Madras-3 rep by the Minister & Chairman, Board of Trustees, J.A.L. Baynes v. State of Tamil Nadu, 1991

W.L.R. 419 has considered a similar point. The decision is by the present Chief Justice of the Supreme Court of India and by Sathiadev, J. In

paragraphs 7 and 8, Their Lordships have held thus:-

That apart, on the substantial point taken that the pre-condition to create endowment as an unreasonable restriction against a minority institution, it

is supported by the decision of the Division Bench in W.P.No.4478 of 1974 batch dated 17.12.1975, because on an identical stipulation

incorporated in R. 9 (2) (e) of the Rules framed under Tamil Nadu Act 29 of

1974, it was held that such a pre-condition is ""an inroad into the minority's right to administer the institution"". A careful reading of the judgment would disclose that it was observed as stringent because in respect of one of the co-operate institutions involved, the endowment to be created was Rs.1,00,000 for each school. But, in considering the scope of the rule as framed, the Division Bench came to the conclusion:

...This, we think, is not a valid condition as it placed a serious restriction on the freedom of the minority institution to make admissions from the stand point of conserving and promoting the interests of the minority concerned.

.. . . .

In dealing with Chapter III of the Act and Rr.9 to 11, after referring to Art.30(1) for the reasons stated therein, it was reiterated:

Nor do we find any necessity by way of requisition to call upon the minority institution to deposit a sum equivalent to a minimum of one month's salary of the staff employed in such school to serve as a working capital of that school. ...

It is in the concluding portion of the judgment in respect of the petitioner involved in W.P.No.294 of 1975, it was observed that to create a fund of Rs.1,00,000 for each school by the Management having several schools, it will be a stringent condition.

9. The rule which had been struck down when looked into discloses that the endowment required varied from Rs.10,000 to Rs.1,00,000

depending upon the nature of the school. Therefore, whether it is Rs. 10,000 or Rs. 1,00,000 a pre-condition of this nature was considered as an

unreasonable restriction, and hence, the approach made by the learned Judge that the condition to create an endowment of Rs.25,000 is not a

stringent condition, is not correct. Any pre-condition for creating an endowment, be it for Rs.10,000 or Rs. 1,00,000 was treated as a strain on

the financial position of a minority school and the relevant rule was struck down by the Division Bench of this Court. Learned counsel for the

appellant is well fortified in his submission that the Division Bench did not approach the aspect of pre-condition taking into account the quantum

fixed under the Rules, but it considered that any pre-condition for recognition in the nature conceived under the said rule, is violative of Art.30(1)

of the Constitution.

9) The same principle was followed by a Division Bench of this Court in Lords and Angels Teacher Training Institute v. State of Tamil Nadu,

W.P.No.1079 of 1996, etc. batch - Order dated 11.2.1997.

10) Even though the writ petitions challenge only the condition for creation of an endowment of Rs.25,000, from the counter-affidavit it could be

seen that the direction was not only for the deposit of Rs.25,000 but also for depositing a sum of Rs.1 1/2 lakhs jointly in the name of Headmaster

and District Educational Officer. In the counter-affidavit, the respondents have also justified the request of such a demand. I do not want to go into

the merits of that contention so long as the writ petitions are silent as to the said demand and no relief is also claimed in regard to the same.

11) In the result, the writ petitions are allowed. I hold that the direction to create an endowment of Rs.25,000 each, as pre-condition for

recognition of Higher Secondary course under Rule 9 (2) (e) (i) is not valid and I hold that the respondents are not entitled to make such a demand

as a pre-condition for grant of recognition. There will be a direction as prayed for. No costs. Connected W.M.Ps. are closed.