

(1999) 08 KL CK 0008
In the High Court Of Kerala
Case No : W.A. No. 401/97

The Manager, St. Thomas U.P. School and Another	APPELLANT
Vs	
The Comissioner and Secretary to Government and Others	RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1), 30(1A)
Kerala Education Act, 1958 — Section 2(5)
Kerala Education Rules, 1959 — Rule 36A, 44

Citation : (1999) 08 KL CK 0008

Hon'ble Judges : T.M. Hassan Pillai, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : George Varghese Kannanthanam, for the Appellant; N. Santha, Government Pleader and Roy Thomas, for Respondents 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

K. Narayana Kurup, J.—Respondents 5 and 6 in the Original Petition who were the Manager and Headmaster respectively of St. Thomas U.P. School, Vakayar are the Appellants. The appeal is directed against the judgment of the learned Single Judge quashing Ext. P-4 and declaring that the Appellants/Respondents 5 and 6 in the O.P. are not entitled to the protection under Article 30(1) of the Constitution of India and holding that the first Petitioner k entitled to be considered for appointment as Headmistress in accordance with her seniority and qualification in the vacancy which arose on 1st July 1988. In this appeal the challenge is directed only against the finding of the learned Single Judge on the question of the minority status of the 5th Respondent's educational institution. The brief facts necessary for the disposal of the Writ Appeal are as follows:

2. Petitioners/Respondents 5 and 6 in this appeal are the two seniormost teachers in the first Appellant's school. The aforesaid school was originally started by one P.J. Thomas who subsequently sold the school to Rt. Rev. Benedict

Mar Gregorious Arch Bishop of Thiruvananthapuram (Corporate Manager, M.S.C. Schools, Pattom). The first Appellant manager of the school requested to treat the school as a separate unit and the Corporate Manager also agreed to treat the school as a separate unit. Thus, the Director of Public instruction, the second Respondent in this appeal passed, Ext. P-1 order by which sanction was accorded to treat the teachers of the school of the first Appellant who were in service on the date of transfer as a separate unit as per Rule 36(A) of Chapter XIV A K.E.R. from the date of transfer of management. A vacancy of Headmaster arose in the school on 1st July 1988. The 5th Respondent/first Petitioner being the seniormost teacher in the school staked a claim to be appointed as Headmistress in accordance with her seniority. But the first Appellant appointed the second Appellant who was junior to the Petitioners. The objection of the first Petitioner/5th Respondent against the appointment of the second Appellant was rejected and. the 4th Respondent Asst. Educational Officer approved the appointment pf the second Appellant as Headmaster. The matter was taken up in revision before the first Respondent Commissioner and Secretary to Government, General Education Department who as per Ext. P-4 rejected the revision petition and confirmed the approval of appointment of the second Appellant. Ext. P-4 was challenged in the Original Petition contenting inter-alia that the first Appellant manager has no right to appoint the Headmaster at his whim and fancy against the mandate contained in Rule 44 of Chapter XIV A K.E.R. and that the management is not entitled to the protection under Article 30(1) of the Constitution of India in administering the school and therefore the ordinary rule of seniority need to be followed in the matter of appointment of Headmaster. A counter-affidavit was filed by the Appellants justifying she appointment of the second Appellant "based on the minority right and taking into account the educational excellence, discipline, etc." A learned Single Judge on a consideration of the rival contentions, allowed the Original Petition in the manner indicated above and hence this appeal.

3. At the hearing stage, learned Counsel for the Appellants confined his argument to the minority status of the school managed by the first Appellant. According to learned Counsel, the school in question managed by the first Appellant Manager is a minority educational institution entitled to protection under Article 30(1) of the Constitution of India. In support of the aforesaid contention learned Counsel brought to our notice the fact that it was one P.J. Thomas who effected the purchase of the land for the school as per Ext. P-5 sale deed and the school in question after its construction by the aforesaid Thomas was managed strictly in accordance with Christian tenets and discipline. He has a further contention based on Ext. P-6 sale deed under which the school in question was sold by the aforesaid Thomas to Rt. Rev. Benedict Mar Gregorious that the school was established and managed for the benefit of minority community. Respondents 5 and 6/Petitioners in the O.P. have filed a reply affidavit repudiating the stand taken by the Appellants.

4. Having considered the rival contentions and having perused the pleadings, we

are of the opinion that the Appellants are not entitled to succeed in this appeal. It is by now settled by a catena of decisions of the Supreme Court and of this Court that in order to claim protection under Article 30(1) of the Constitution of India, it will have to be shown that the institution is established and administered by a religious minority. On the materials placed, before us there is nothing to indicate that the school in question was established as a minority school. On the other hand, it was come out on record that the school was established by an individual who is the buyer of the land in question under Ext. P-5 document of sale making use of his own personal funds which negatives any intention on the part of the vendee to establish a minority institution. There is no recital in Ext. P-5 or Ext. P-6 to show that the intention of the parties is to establish and administer a minority educational institution. As already noted, admittedly it was one P.J. Thomas who started the school in his individual capacity after purchasing the property with his own funds. There is no contribution from any member of the minority community for the purchase of the property. In the aforesaid view, we are of opinion that it was an individual adventure and nothing more. The Corporate Manager purchased the property and the school by paying consideration by registered document, Ext. P-6. There also, there is no mention of the fact that the school was established as a minority institution or with the help of any person belonging to the minority community. Therefore, we find no merit in the contention of the Appellants that the school in question was established for the benefit of any minority community. The question is no longer res-integra. In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, the Apex Court ruled as follows:

8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the. initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution-for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the major it community can take advantage of these institutions. Such other communities bring in income and they do act have to be turned away to enjoy the protection.

9. The next part of the right relates to the administration of such institutions. Administration means "management of the affairs" of the institution. This management must be free of control so that the founders or their nominees can mould, the institution as they think fit, and-in accordance-with their ideas of how the interests of the community in general and the Institution in particular wilt be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

This Court had occasion to consider the scope of Article 30(1) of the Constitution in the decision reported in *Rev K.C. Seth v. State of Kerala* 1991 (2) KLT 662 in which it was held as follows:

Section 2(5) of the Kerala Education Act defines minority schools as not only established and administered, but also schools administered by the minority. The definition of minority school in the Act is wider than what is contemplated in Article 30(1) of the Constitution. Article 30(1) confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. The words "established and administered" will have to be held as ultra vires Article 30(1) of the Constitution of India. Minorities may be based on religion or language but the rights is to established then to administer. The right is not available to institution not established, by the minority but administered by the minority. Article 30(1A) also emphasises this requirement. Hence, if Article 30 of the Constitution is the ground norm and if that is to be given effect to, the words "or administered" In Section 2(5) of the Kerala Education Act will have to be ignored. Section 2(5) of the Kerala Education Act has to be read down in conformity with the requirement of Article 30 of the Constitution and, so read, the words "or administered" occurring in the Sub-section will have to be ignored.

The aforesaid decision was affirmed by a Division Bench of this Court in the decision, reported in *Rev. K.C. Seth v. State of Kerala* 1992 (1) KLT 754.

5. In the light of the aforesaid decisions, there is no room for any controversy that the words "established and administered" in Article 30 of the Constitution of India must be read conjunctively. As observed by the learned Single Judge, the mere fact that the educational institution is now being administered by a minority community is not sufficient to claim protection under Article 30(1) of the Constitution of India. It must also be proved that the institution was established by a minority community. The basic fact to be proved is that initially the institution was established by a minority community. Establishment in this context means the bringing into being of an institution. Therefore, it is quite clear that the minority community must have some role to play not only in the, subsequent administration of an institution, but also in the initial establishment of the institution. Here, the minority institution is nowhere in the picture in the process of establishing the institution. A subsequent entry by the minority community into the area will not help them to claim protection under Article 30(1) of the Constitution of India. In the aforesaid view, we are of the opinion that the learned Single Judge was right in allowing the Original Petition, quashing Ext. P-4 and declaring that the educational institution managed by the first. Appellant is not a minority institution entitled to protection under Article 30(1) of the Constitution of India. This appeal accordingly fails and we dismiss the same.