
(2004) 03 MAD CK 0118
In the Madras High Court
Case No : S.A. No. 1215 of 1993

The State of Tamil Nadu

APPELLANT

Vs

St. Alphonsal High School

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 2 MLJ 356

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : S. Sathiamurthy, A.G.P.C.S, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This Second Appeal has arisen from the Judgment of the learned Principal Judge, City Civil Court, Madras in

A.S.No.20/1992 wherein the Judgment of the trial Court, refusing to grant the relief of declaration to the plaintiff was reversed.

2. The following facts are noticed in the pleadings of the parties.

The plaintiff school was established and is being administered by its Correspondent A.Sathidas who is a Latin Catholic Christian; that the

Correspondent of the plaintiff School got married under the Latin Catholic rites on 9.7.85 and he was a member of St.Antony's Church of

Thundathuvilai, thus, the Correspondent of the plaintiff School belonged to Christian religious minority community entitled to establish and

administer the educational Institutions of his choice and the same has been guaranteed under Article 30(1) of the Constitution of India; that the

plaintiff School is having sufficient infra structure in terms of Tamil Nadu Minority

Schools (Recognition and Payment of Grant) Rules 1977; that the competent authorities have given necessary certificates regarding the fulfillment of the conditions; that the plaintiff School is having sufficient strength in each Sections and majority of the students belonged to Christian religious minority community; that there are 8 teachers at present working in the School and majority of them are also belonged to the Christian religion; that the Correspondent of the plaintiff School applied for recognition on 4.9.1989 and the same was rejected by the second defendant by raising certain defects on 12.10.1989 and after complying with the defects pointed out, the recognition application was submitted on 13.7.90 and the same was rejected by the second defendant on 30.1.91 on the ground that the Correspondent has not produced any declaration from the Civil Court to show that he belonged to minority community; that the said order was challenged in W.P.No.3859/1991 and this Court had passed an order dated 5.4.1991 holding that since the Correspondent minority status is disputed, he has to file a suit for declaration for claiming the minority status and further directed the competent authority to pass fresh order since the original order was passed in violation of rules; that the Correspondent of the plaintiff School belonged to Latin Catholic community has been declared in O.S.No.655/1983 on the file of the Principal District Munsif court, Padmanabhapuram; that the said suit was filed by Wesley School Committee, Ilandaivilai, for declaration as minority School and the suit was decreed and in the said School Managing Committee, the Correspondent of the plaintiff School was a Vice President; that the defendant required a separate declaration of the Correspondent of the plaintiff's School as Christian religious minority through a Court of law and hence, the suit has been filed.

3. The suit was vehemently resisted by the defendant stating that the suit is lacking material particulars; that the pleadings are insufficient and there is no whisper about the persons who had established the said school though it was stated that the School is being administered by the Correspondent; that the plaintiff had not submitted the returns pertaining to the School as mandated by the provisions of Tamilnadu Recognised Private Schools (Regulations) Act; that under such circumstances, the plaintiff cannot be entitled to claim minority status; that the suit is not

maintainable for non-joinder of necessary parties; that the suit is not maintainable as the provision u/s 79 C.P.C. has not been complied with and hence, has got to be dismissed.

4. The trial Court framed necessary issues, tried the suit and dismissed the same. Aggrieved plaintiff took it on appeal wherein the judgment of the trial Court was reversed and decree was granted in favour of the plaintiff. Hence, the defendant in the suit has brought forth this Second Appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court.

1. Whether the institution founded belonging to the minority community acquire the status of the minority institution merely because it was founded

by a person belonging to the minority community?

2. Whether commercial ventures without any direct reference to the betterment of the people of the minority community would also be considered

as minority institutions for the purpose of protection as a minority institution?

3. Should the prime aim of the institution be for the benefit of the people of the minority community?

6. Heard, learned counsel for the appellants. There is no representation for the respondent, despite service of notice.

7. After considering the submissions made and scrutiny of the available materials, the Court is of the considered opinion that the judgment of the

First Appellate Court has got to be set aside and the judgment of the trial Court has got to be restored.

8. The plaintiff/respondent sought declaration that the plaintiff St.Alphonsal High School, Kattukadai, Palapallam Post, Kanyakumari District, was

a Christian Religious Minority School within the meaning of Tamilnadu Minority School(Recognition and Payment of Grant) Rules 1977 and for

consequential injunction alleging that the said School was established and was being administered by the Correspondent, Sathiadas who was a

Latin Catholic Christian and belonged to minority community; that he was a member of St.Antony's Church, Thundathuvalai; that the

Correspondent of the plaintiff married under Latin Catholic rites on 9.7.85. and thus, the Correspondent belonged to Christian religion minority

community and entitled to establish and administer the educational institution of his choice; that the plaintiff School was having sufficient infra-

structure in terms of Tamilnadu Minority Schools (Recognition and Payments of Grant) Rules 1977. The competent authorities have also given

necessary certificates; that the plaintiff was having sufficient strength in each section and the majority of the students belonged to the Christian

religion minority community; that there were 8 teachers working in the School and majority of them belonged to Christian religion; that he applied

for the recognition on 4.9.89 but the same was rejected by the second defendant by raising certain defects; that again the application was

submitted on 13.7.1990 but again, the same was rejected on the ground that the Correspondent had not produced any declaration from the Civil

Court to show that he belonged to minority community. A writ petition was filed by the plaintiff and order was also passed by this Court stating

that since the Correspondent minority status was disputed, he has to file a suit for declaration claiming the minority status and directed the competent

authority to pass fresh orders since the original order was passed in violation of the rules. After issuance of pre-suit notice, the plaintiff has filed a

suit for the said declaration. It was contended by the said Correspondent Sathiadas that he belonged to Latin Catholic Community and he was

declared so in O.S.No.655/83 on the file of Principal District Court, Padmanabhapuram. At this juncture, it has to be pointed out that the suit was

filed by one Wesley School Committee, Ilandavilai, for declaration as minority School and the suit was decreed. Much reliance was placed by the

plaintiff on Ex.A4. The plaintiff has also relied on Ex.A5 document marked in O.S.No.655/83. Relying on those Exs.A4 & A5, the plaintiff

projected his case that he belonged to Latin Catholic Community and that he was so declared in the said suit, but no material was placed before

the trial Court to show that the School in question was being run for the benefit of the minority Community. A perusal of Exs.A4 to A6 would

indicate that they were in respect of one Wesley School, Ilandavilai, pursuant to which declaration was issued declaring the said School as minority

school and was being run for the minority community. Relying on those documents, a declaration cannot be granted that the present School

St.Alphonsal High School, Kattukadai, Palapallam Post, Kanyakumari District, was being run for the minority community. Though, it was averred

and asserted by P.W.1, Sathiadas that he married under Latin Catholic rites on 9.7.85, no documentary evidence was placed before the Court.

Though it was contended by the plaintiff side that the plaintiff School was commenced on 9.6.89, no material was placed to accept the same and thus, the trial Court has clearly pointed out that there is no evidence to show that the School was either commenced or run in the interest of minority community but on the contrary it would clearly show that the said school was run in order to serve the benefit of the said Correspondent in appraising of the situation and hence, in the absence of any documentary evidence, the concerned authorities rejected the request for declaring the said School as one constituted for the minority.

9. Learned counsel for the appellants relied on St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., wherein the Supreme Court has held as follows:

Constitution of India - Article 30(1) - Right of minority educational institutions under - Scope - Principles laid down No fault can be found with the following legal principles culled out by the High Court:

(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 Article 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 societal necessities.

(7) The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and

other employees of the institutions and in the true interests of efficiency of institutions, principle, 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.

10. The trial Court has thoroughly discussed and had found that there was no materials available to hold that the plaintiff, St.Alphonsal High

School, Kattukadai, Palapallam Post, Kanyakumari District, is a Christian religious minority institution and rightly to. The First Appellate Court

without considering the insufficiency and lack of evidence has granted the relief by reversing the judgment of the trial Court which has got to be

necessary set aside.

11. Hence, the judgment of the First Appellate Court is set aside and the judgment of the trial Court is restored. The Second Appeal is allowed

leaving the parties to bear their costs.