

(2001) 07 MAD CK 0038

In the Madras High Court

Case No : W.A. No. 1714 of 1999

Thirumuruga Kirupananda Variyar Thavathiru Sundaran
Swamigal Medical, Educational and Charitable Trust

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92(3)
Constitution of India, 1950 — Article 14, 30(1)

Citation : AIR 2002 Mad 42 : (2001) 3 MLJ 433

Hon'ble Judges : K. Narayana Kurup, J;A. Ramamurthi, J

Bench : Division Bench

Advocate : Mohan Parasaran, for the Appellant; G. Masilamani for Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—The Managing Trustee of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical, Educational

and Charitable Trust, Salem (hereinafter referred to as the Trust""") had submitted an application to the Government of Tamil Nadu in terms of the

guidelines laid down by the Government in G.O.Ms. No. 371, Education, Science and Technology Department, dated 10-5-1995, for declaring

the medical institutions (subject-matter of this writ appeal) run by it at Salem as a Linguistic minority institution. The Government, after verification

of the documents produced by the Trust, declared, vide G.O.Ms. No. 532, Health and Family Welfare Department, dated 27-10-1997, that the

Vinayaga Missions" Kirupananda Variyar Medical College run by the appellant/Trust is eligible for minority status on linguistic basis for 1997-98

(?) and the Chairman of the appellant/Trust was directed to admit students in the

medical College run by it for the aforesaid year in the ratio of 50 :

50. Thereafter, the appellant sent a letter dated 20-1-1998 claiming extension of minority status to the institutions run by it for the year 1998-99.

However, the Government, as per letter No. 3549/MCA 2/98, dated 29-9-1998 held that the institutions run by the appellant/Trust does not

satisfy the guidelines, and therefore, the request of the appellant for extension of minority status came to be rejected. The rejection was in the light

of the guidelines contained in G.O. Ms. No. 270, Higher Education (J1) Department, dated 17-6-1998. The appellant challenged the validity of

the order of rejection passed by the Government in letter No. 3549/MCA 2/98, dated 29-9-1998 in W.P. No. 15517 of 1998, contending inter-

alia that the status of the appellant, having been already declared by the Government in G.O.Ms. No. 532, dated 27-10-1997 as a linguistic

minority, the subsequent guidelines issued in G.O.Ms. No. 270, Higher Education (J1) Department, dated 17-6-1998, will apply only

prospectively to new institutions and pending applications not affecting declarations already issued; the earlier order conferring linguistic minority

status being one issued in the name of the Governor, the subsequent administrative order cannot override the earlier order, the reasons mentioned

in the impugned order passed by the Government dated 29-9-1998, which run counter to the earlier order, cannot be substituted by raising new

grounds in the counter affidavit, and since the community certificates issued by the competent authorities have not been invalidated, the impugned

order dated 29-9-1998 passed by the Government which says that there is no evidence that all the Trustees have their mother-tongue as Telugu, is

factually incorrect. A counter affidavit was filed by the Government to the said writ petition, sustaining the impugned order of rejection dated 29-9-

1998 and traversing the various contentions raised by the appellant. Learned single Judge, as per order impugned herein, dismissed the writ

petition holding that the appellant/Trust is not established by a linguistic minority, and on the other hand, it is established by an individual and his

wife for a general purpose of the benefit of the Hinduism, and not to any particular community, and hence, this writ appeal by the appellant/Trust.

2. We heard Mr. Mohan Parasaran, learned counsel for the appellant/Trust and learned Senior Counsel Mr. G. Masilamani for the respondents.

3. According to learned counsel for the appellant, once linguistic minority status has been conferred upon the appellant/ Trust on a meticulous appraisal of the materials produced before it, it is legally and constitutionally impermissible for the Government to go back upon it applying certain guidelines which are applicable only to pending applications, and that too, without affording an opportunity of being heard to the appellant in consonance with the principles of natural justice.

4. In our considered opinion, the appellant is well founded in its submission. It is on record that the appellant submitted an application claiming minority status, giving the following declarations :--

(1) All the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date.

(2) The Trust has not included any new member in the Trust so far.

(3) The Trust has also stated that the Management is a registered Charitable Trust and the Board of Management belong to Ariya Vaisya Telugu speaking Chettiar.

(4) The additional Deed executed by the Trust reflects the main objective of subserving the interests of the said Minority community.

(5) The Founders Trustees, namely,

(a) Thiru. A. Shanmughasundaram S/o late Arunachalam

(b) Tmt. Annapoorani,

W/o Thiru. A. Shanmughasundaram and

(c) Thiru. Saravanan,

S/o Thiru. A. Shanmughasundaram belong to Telugu speaking Ariya Vaisya Chettiar community and their mother-tongue is Telugu.

It is only after verification of the documents produced by the appellant including the additional Deed, which reflects the main objectives of

sub-serving the interest of the minority community, that the Government issued the declaration in G.O. Ms. No. 532, dated 27-10-1997 that the

educational institutions run by the appellant are eligible for minority status on linguistic basis. Accordingly, the Government declared as follows :--

4. Accordingly, the Government declare the Vinayaka Missions, Kripananda Variyar Medical College, run by the Thirumuruga Kirupananda

Variyar Thavathiru Sundara Swamigal Medical, Educational and Charitable Trust,

Salem as Linguistic Minority institution for the purposes of

Article 30(1) of the Constitution of India for the purpose of admission of medical students for 1997-98.

5. The Government also direct the Chairman of the Vinayaka Missions" Kirupananda Variyar Medical College run by Thirumuruga Kirupananda

Variyar Thavathiru Sundara Swamigal Medical, Educational and Charitable Trust, Salem to admit students in Medical College for the year 1997-

98 in the ratio of 50 : 50, keeping in view the orders of the High Court, Chennai dated 27-3-1997 in W.M.R No. 9703 of 1996 in W.P. No.

6252 of 1996 to convert 15 payment seats into that of free seats.

(By order of Governor)

Sd/- S. Ramakrishnan,

Secretary to Government.

A cursory look at the aforesaid Government Order dated 27-10-1997 would reveal that the application for minority status preferred by the

appellant had been finally disposed of by the Government and the order was also issued duly authenticated according to the Rules of Procedure

and Conduct of Business of the Government in the name of the Governor. It was only after reaching the requisite satisfaction about the minority

status of the appellant, taking into consideration all relevant facts including the language, the persons who established the institution and the persons

who are administering the institutions, that the Government passed the order declaring the educational institutions established and administered by

the appellant as linguistic minority institutions for the purpose of Article 30(1) of the Constitution of India. Though the declaration was confined for

the year 1997-98, it is clear from paragraphs 3 and 4 of G.O.Ms. No. 532, dated 27-10-1997, namely,

3. The Government after verification of the documents produced, consider that Vinayaka Missions, Kirupananda Variyar Medical College run by

the Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical, Educational and Charitable Trust, Salem is eligible for Minority

status on linguistic basis.

4. Accordingly, the Government declare the Vinayaka Missions Kirupananda Variyar Medical College, run by the Thirumuruga Kirupananda

Variyar Thavathiru Sundara Swamikal Medical. Education and Charitable Trust, Salem as Linguistic Minority institution for the purposes of Article

30(1) of the Constitution of India for the purpose of admission of medical students for 1997-98.

that the minority status have been conferred taking into consideration all material and relevant facts which have a bearing on the subject. We fail to

appreciate how the minority status can be conferred on the appellant for a particular period to be renewed periodically like a driving licence. In our

considered opinion, it is not open for the State Government to review its earlier order conferring linguistic minority status on the appellant unless it

be shown that the appellant had suppressed any material fact while passing the earlier order dated 27-10-1997 or there is fundamental change of

circumstances warranting cancellation of the earlier order. It is not the Government's case that there is any suppression of any material facts or any

fundamental change of circumstances warranting cancellation of the earlier order. The Government's contention appears to be that in the light of

the new guidelines issued by it in G.O. Ms. No. 270, Higher Education (J1) Department, dated 17-6-1998, modifying the guidelines issued on 10-

5-1995 (based on which the linguistic minority status was given to the appellant), the appellant is not eligible to linguistic minority status. However,

paragraph 8 of the said Government Order dated 17-6-1998 makes the position abundantly clear that the new guidelines were to apply only to

pending applications claiming minority status and also to applications which will be received in Future from educational institutions. On a reading of

the said Government Order dated 17-6-1998 itself, it is evident that the appellant had also complied with the conditions therein, and in particular,

Clause 8 (vii) thereof, which states that insofar as the State of Tamil Nadu is concerned, any person whose mother-tongue is any language other

than Tamil, shall be considered as linguistic minority in the State and in respect of religious minority, any person whose religion is other than

Hinduism, shall be considered as religious minority in the State.

5. To recapitulate, the appellant had made an application to the Government for being recognised as a linguistic minority in terms of the guidelines

as laid down in G.O. Ms. No. 371, Education, Science and Technology Department, dated 10-5-1995 and the appellant was granted linguistic

minority status by executive order in G.O. Ms. No. 532, Health and Family Welfare Department, dated 27-10-1997 issued in the name of the

Governor after being fully satisfied that the appellant had fulfilled all the conditions prescribed in the guidelines by the Government in G.O.Ms. No.

371, dated 10-5-1995 for being recognised as a linguistic minority institution. The Government had also duly taken into account the additional

Deed executed by the appellant before granting minority status as would be evident from paragraph 2(iv) of G.O.Ms. No. 532, dated 27-10-

1997. By the said Government Order dated 27-10-1997, the Government, while considering the application made by the appellant, duly took into

account the fact that, (i) all the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date; (ii) the Trust has not

included any new member in the Trust so far; (iii) the Trust has also stated that the Management is a registered Charitable Trust and the Board of

Management belong to Ariya Vaisya Telugu speaking Chettiar; (iv) the additional Deed executed by the Trust reflects the main objective of

subserving the interests of the said minority community; (v) the Founders-Trustees, namely, (a) Thiru. A. Shanmughasundaram (b) Tmt. S.

Annapoorani and (c) Thiru. Saravanan who became a major at that time, belong to Telugu speaking Ariya Vaisya Chettiar Community and their

mother-tongue is Telugu. By the aforesaid order dated 27-10-1997, the Government after verification of the documents produced, issued orders

in the name of the Governor declaring the medical college run by the appellant as a linguistic minority institution for the purpose of Article 30(1) of

the Constitution of India. In the face of the uncontroverted facts and circumstances brought on record, we are of the considered opinion that this is

a fit case where the appellant/Trust is entitled to its rights declared by the Government as a linguistic minority institution, as per G.O.Ms. No. 532,

dated 27-10-1997 and the appellant will be eligible to continue to exercise its constitutional rights as recognised by the Government and the same

is not liable to be effeced by the subsequent letter of the Government which is Impugned in the writ petition out of which the present writ appeal

arises. In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution

of India, unless there is fundamental change of circumstances or suppression of facts, the Government has no power to take away that cherished

constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural Justice.

6. To advert to the next contention of the appellant that since the community certificates issued by the competent authorities have not been

invalidated, the impugned order dated 29-9-1998 which says that there is no evidence that all the Trustees have their mother-tongue as Telugu, is

factually Incorrect, it has to be held that the same is not factually correct and tenable. The fact that the mother-tongue of the Founders-Trustees is

Telugu, is clear from the certificates issued by the Revenue Divisional Officer, Salem in proceedings dated 28-7-1998 and the veracity of the said

documents is not disputed before us. From the factual narration, we find that right from the inception till date, the appellant/Trust is being

administered only by persons belonging to linguistic minority and It was also established by persons belonging to linguistic minority, namely, Telugu

speaking people residing in the State of Tamil Nadu. Article 30(1) of the Constitution cannot be read in a narrow and pedantic sense and being a

fundamental; right, it should be given its widest amplitude. Since the Founders of the appellant/ Trust Indisputably belong to a linguistic minority, as

borne out by unimpeachable documents, the choice to administer the Institution as a minority institution, completely lies with them. Therefore, we

have no hesitation in holding that the mother-tongue of the Trustees of the appellant/ Trust is Telugu.

7. It is further contended by learned counsel for the appellant that the impugned order dated 29-9-1998 has been issued in flagrant violation of the

principles of natural justice. It is by now well settled that any, administrative order involving civil consequences has to be passed strictly in

conformity with the principles of natural justice. Since admittedly, the impugned order dated 29-9-1998 has been passed without, affording an

opportunity of being heard to the appellant, it gets vitiated.

8. Of course, learned Senior Counsel for the respondents would vehemently contend that the appellant is not entitled to alter the nature and

character of the Trust, that in the absence of any recitals in the Trust Deed to the effect that the Trust was created to benefit the linguistic or

religious class, it must be treated as a general public Trust, which will enure to

the benefit of all and that in the document of Trust, there is no recital that it has been created for the benefit of the linguistic minority.

9. Having bestowed our anxious consideration to the abovesaid contentions of learned Senior Counsel for the respondents, we are afraid we

cannot grant our imprimatur to the aforesaid contentions in the face of the unimpeachable facts brought on record, which would go to show that the

appellant is eligible for minority status on linguistic basis. The question was examined threadbare by the Government at the relevant time before the

declaration was issued in favour of the appellant, and therefore, they cannot back-track, blowing hot and cold for reasons best known to them. As

already noticed, Article 30(1) of the Constitution of India cannot be read in a narrow and pedantic sense and being a fundamental right, it should

be given its widest amplitude. Since it has been factually found that the founders of the appellant/Trust belong to linguistic minority, as borne out by

overwhelming materials, the right to administer the institution as a linguistic minority institution, completely lies with them. Therefore, we reject the

abovesaid contentions of the respondents as devoid of any merit.

10. It was further contended by learned Senior counsel for the respondents that in the absence of an express clause in the original Trust Deed, the

appellant cannot legitimately claim linguistic minority status. This again is a contention which cannot be legally countenanced. In our opinion, once it

is established that the Institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for

claiming the fundamental right guaranteed under Article 30(1) of the Constitution. In the present case, there is no denial of this fact either in the

counter affidavit filed to the writ petition or in the impugned order passed by learned single Judge that the institution of the appellant was not

founded by persons belonging to linguistic minority. On the other hand, the express finding in the impugned order of learned single Judge is that the

institution is not entitled for being conferred with linguistic minority status as the original Trust Deed did not expressly contain a clause that it was

founded by members of linguistic minority. In our considered opinion, such a prescription is not warranted on a reading of Article 30(1) of the

Constitution of India read with several pronouncements of the Apex Court.

11. It was finally contended by learned Senior Counsel for the respondents that

in the absence of leave of Court u/s 92(3), CPC (CPC), the amendment to the Deed of Trust cannot be given legal effect to. We find no substance in the said contention now advanced by the respondents.

Nowhere, in the impugned order of learned single Judge, or in the counter affidavit filed to the writ petition, it is stated that the appellant which claimed the linguistic minority status, ought to have moved the Civil Court and obtained the leave of the Court u/s 92(3), CPC by amending its object to subserve the interest of a linguistic minority that founded it. Such a stand, in our considered opinion, cannot be countenanced, because, such a reasoning is not there in the impugned order of learned single Judge or in the counter-affidavit filed by the Government to the writ petition.

Secondly, even otherwise in the light of the Government Order themselves, and in the light of the orders passed by the Supreme Court of India, it is the State Government which has to decide the minority status of any educational institution. That being so, the State Government cannot once again relegate this issue to be decided by the civil Court. Once the civil Court permits the amendment and thereafter the State Government refuses to grant the minority status on a different interpretation of the amendment, it will tantamount to the Government sitting in judgment over the civil Court, which again is a position unwarranted in the eye of law.

12. At any rate, the provisions of Section 92(3), CPC cannot at all be invoked, since there is no mention of invocation of that particular Section in any of the Government Order issued in 1995 and 1998, based on which the minority status was granted, nor, in the impugned order of learned single Judge, nor, in the counter affidavit filed by the Government to the writ petition. That is not one of the reasons mentioned by the Government which form the basis for refusing the claim of the appellant for being continued to be recognised as linguistic minority. In any event, Section 92(3), CPC is inapplicable to the facts of this case. Section 92(3), CPC which underwent an amendment in the year 1976, empowers the Court to alter the original purpose of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied ""Cy press"" in one or more of the circumstances laid down therein. It cannot be said that any of the original purposes of the Trust, either in whole or in part had been

fulfilled or remains partly fulfilled or cannot be carried out at all or cannot be carried out according to the directions given in the instruments creating the Trust. Section 92(3), CPC. only empowers the use of the property of the Trust for religious object in "Cy press" when the property is otherwise not capable of being used for purposes for which the Trust has been created. The "Doctrine of Cy press" would only apply where a charitable bequest fails or incapable of being fulfilled in accordance with the spirit or when directions of the Founder cannot be carried out for the purpose and the spirit for which the Trust was created. That is not the case here. There is no failure of fulfilment of any definite object. Further, a Division Bench of this Court in Ravanna Koovanna Karuppannan Ambalam and Others Vs. Vana Pana Tirumalai Ambalam and Others, : while considering the "Doctrine of Cy press" had observed that the Doctrine applies in India only to Wills and not to Deeds or settlement or transfers inter-vivos. The principle upon which the Doctrine is founded, namely, the giving effect to the intention of the testator as far as possible, cannot apply to Deeds. Literally, expression "Cy press" means approximation. The Courts have acted on the principle that where a gift is made to charity and that charity failed for any reason, the object of the donor or testator should not be defeated, but the property endowed should be applied to another object approximating as clearly as possible to the objects which the testator had in view. This was the fundamental basis of "cy press" rule. In the present case, the Founders of the Trust themselves are still administering the Trust and the object for which the Trust was founded still exists and the Founders want to exercise their fundamental right which cannot be waived or tampered with on technical grounds as in the present case, and therefore, the invocation of Section 92(3) CPC is thoroughly misconceived.

13. In conclusion, we hold that the impugned order passed by the Government is liable to be struck down as arbitrary and violative of Article 14 of the Constitution of India. It is also illegal since it has failed to take into account the relevant considerations and has proceeded on wrong assumptions. In the absence of there being any suppression of facts or fraud played by the appellant, or any fundamental change of circumstances, there is no warrant for the issuance of the impugned order passed by the

Government, cancelling earlier order granting minority status to the appellant.

14. In the result, we set aside the order of learned single Judge in W.P. No. 15517 of 1998, quash the impugned order of the Government in proceedings No. 3549/MCA 2/98, dated 29-9-1998 and allow this writ appeal as prayed. Consequently, there will be a declaration that the appellant/Trust will be entitled to linguistic minority status as envisaged under Article 30(1) of the Constitution of India. No costs.

15. We have today rendered our judgment setting aside the order of learned single Judge in W.P. No. 15517 of 1998 granting declaration that the appellant therein is entitled to linguistic minority status as envisaged under Article 39(1) of the Constitution of India. Since in the present writ appeal also, identical questions are involved and the appellant and respondents are also same, the present writ appeal is also to be allowed on like terms.

Accordingly, we set aside the order of learned single Judge in W.P. No. 10616 of 1998, quash the impugned order in proceedings of the Government in Lr. (Ms.) No. 373, dated 23-7-1998 and allow this writ appeal as prayed. Consequently, there will be a declaration that the appellant will be entitled to linguistic status as envisaged under Article 30(1) of the Constitution of India. No costs.