

A. P. Christians Medical Educational Society

Vs

Government of Andhra Pradesh and Another

Alice Manoranjani M, And Others

Vs

Government of Andhra Pradesh and Another

Civil Appeal No. 5497 Of 1985 With Writ Petition (Civil) No. 12929 Of 1985

(O. Chinnappa Reddy, G. L. Oza, K. N. Singh JJ)

24.04.1986

JUDGMENT

CHINNAPPA REDDY, J. –

1. A brazen and bizarre exploitation of the naive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses, behind the smoke-screen of the right of the minorities to establish and administer educational institutions of their choice - is what this case is about. A society styling itself as the 'Andhra Pradesh Christian Medical Educational Society' was registered on August 31, 1984. The first of the objectives mentioned in the memorandum of association of the society was, to establish, manage and maintain educational and other institutions and impart education and training at all stages, primary, secondary, collegiate, post-graduate and doctoral, as a Christian Minorities' Educational Institution.

Another object was to promote, establish, manage and maintain Medical colleges, Engineering colleges, Pharmacy colleges, Commerce, Literature, Arts and Sciences and Management colleges and colleges in other subjects and to promote allied activities for diffusion of useful knowledge and training.

Other objects were also mentioned in the memorandum of association. All that is necessary to mention here is that none of the objects, apart from the first extracted object, had anything to do with any minority. Even the first mentioned object did not specify or elucidate what was meant by the statement that education and training at all stages was proposed to be imparted in the institutions of that society "as Christian Minorities' Educational Institution". Apparently the words "as a Christian Minorities' Educational Institutions" were added in order to enable the society to claim the rights guaranteed by Article 30(1) of the Constitution and for no other purpose. This will become clearer and clearer as we narrate further facts.

2. It is also worthy of note that neither the memorandum of association nor the articles of association make any reference to any amount of corpus with which the society and the institutions proposed to be founded by it were to be financed initially. It was admitted before us in answer to a question by us to the learned counsel for the appellant-society that the society had no funds of its

own apart from what was collected from the students.

3. On August 27, 1984, one Professor C.A. Adams who was one of the signatories to the memorandum of association of the society, claiming also to be the President of a self-styled National Congress of Indian Christian addressed a letter to Smt. Indira Gandhi, late Prime Minister of India, requesting that the Central Government may grant them permission to establish a Central Christian University of India in Andhra Pradesh, where Christian children would be provided with facilities for education in arts, sciences, engineering and technological courses, medicine, law and theological courses. The Petitions Officer attached to the Prime Minister's office informed Prof. Adams that his letter had been forwarded to the Ministry of Education and Culture for further action. On September 20, 1984, the Deputy Secretary to the Government of India, Ministry of Education and Culture wrote to the President. National Congress of Indian Christians to the effect that universities could only be established under Acts of Parliament or of State legislatures and there was, therefore, no question of giving permission to any organisation to establish a university. However, it was pointed out that it was open to private organisations to establish colleges of higher education which could seek affiliations to the universities in whose jurisdiction they were established. Such colleges could offer courses leading to university degrees only if they were affiliated to a university. Prof. Adams then wrote to the Government of India claiming that there was no legal impediment to the grant of permission by the government to the establishment of a university. It was said that if necessary, the government could initiate legislation also. In order to avoid further delay, the letter proceeded to state, they were starting professional courses in rural areas at Vikarabad in Rangareddy District. It was stated "to start with, as per your advice, we are proposing to start the following faculties at Vikarabad where we have our Christian Hospital, High School, Church and other vacant buildings and plenty of vacant land suitable for further expansion belonging to our Christian Churches". The Government of India was further requested to address the University of Hyderabad to grant affiliation to their colleges and to recommend to the All India Institute of Medical Sciences to affiliate their medical college. The government was also requested to sanction 'the Central grant' for these colleges. Earlier in the letter it was also mentioned that the Prime Minister was kind enough to agree to grant permission for establishing the Central Christian University of India in Andhra Pradesh for the benefit of two crores of Christians living in India. Most of the statements in the letter are either misleading or false. That the Prime Minister had agreed to the establishment of a Central Christian University is admitted before us to be false. Similarly the reference to "our Christian Hospital, High School and Church and vacant buildings" would give an impression that hospital, high school, etc. were institutions of the self-styled National Congress of Indian Christians. None of those institutions is even remotely connected with this so called organisation. This was admitted before us in answer to a question by us. While Prof. Adams in his capacity as the so-called President of the National Congress of Indian Christians corresponded with the Central Government, the same Prof. Adams in another capacity, namely, Chairman of the Andhra Pradesh Christian Medical Educational Society, entered into a correspondence with the Chief Minister of the Government of Andhra Pradesh and the Vice-Chancellor, Osmania University. He and one Christopher, who described himself as the Secretary of the Society addressed a letter to the Chief Minister claiming that under the provisions of Article 30(1) of the Constitution, they, the Christian minority had the right to establish educational institutions of their choice and requested him to initiate necessary action for the establishment of a Central Christian University of India as suggested by the government of India and to grant permission for establishing a Christian Medical College at Vikarabad. It was mentioned in the letter that the Government of India had informed them that either Parliament or the State legislature had to initiate action for establishing a university, but the Government of India had permitted them to start professional colleges and seek affiliation of

the university within whose jurisdiction they fell. It is unnecessary to repeat that the reference to the grant of permission was false. On November 30, 1984, Christopher, Secretary of the National Congress of Indian Christians wrote a circular letter to the Vice-Chancellors of the Osmania University, the Hyderabad Central University and eight other universities all over India requesting them to grant affiliation to their colleges. On January 22, 1985, the Registrar of the Osmania University replied stating that it was necessary for the association to submit documentary evidence regarding the fulfilment of the conditions prescribed for affiliation and to submit an application in the prescribed form. The conditions of affiliation of a medical college was mentioned as :

1. There should be full-fledged hospital with at least (700) beds.
2. There should be a regular out-patient department Casualty, Dermatology, well-equipped labs., Lecture Halls, Demonstration Rooms for students.
3. There should be full-fledged theatres in the college, three with seating capacity for 150 to 200 students each and one with seating capacity for 350 to 400 students. Lecture Theatres and Demonstration rooms should be provided with necessary audio-visual aids. In addition to the Lecture Theatres, there should be an auditorium where 800 to 1000 persons could be seated.
4. Accommodation has to be provided for the following Departments : 1. Anatomy 2. Physiology 3. Bio-Chemistry 4. Pharmacology 5. Pathology 6. Micro-biology 7. Forensic Medicine 8. Social and Preventive Medicine 9. General Medicine 10. Surgery 11. Obstetrics and Gynaecology 12. Blood Bank.

#Accommodation has to be provided for the following Departments : * * *##

5. The cost of equipment for pre-paraclinical is Rs 1 crore and recurring expenditure on the pre and paraclinical staff is Rs 24-00 lakhs p.a.
6. The Management should establish the labs for anatomy, physiology and Bio-chemistry immediately.
7. Amount to be provided for the construction of the following :
#1. Hospital (700) beds .. Rs 7 crores
2. College .. Rs 3 crores
3. Library, Administrative Block, Auditor- ium Animal House and Workshop .. Rs 1 crores
4. Hospital .. Rs 1 1/2 crores
5. Equipment & furniture for (i) Hospital .. Rs 7 1/2 crores
(ii) College Hostels .. Rs 5 crores##
8. The Management should appoint a Principal with immediate effect to run the Medical College.
9. Permission letter from the Government of Andhra Pradesh to start a Medical College.
10. A Government Order indicating that the bye-laws of the Management has been registered as Minority Institution and accepted by the government as such.
11. Documentary evidence for the land for locating the college and hospital.

12. Plan of the proposed building in which the college and hospital is proposed to be started.
13. Copies of the order placed with firms for furniture, books, equipment, if any, or a resolution to the effect that the Management would provide necessary funds for furniture, equipment and books etc.
14. A copy of the constitution of the Governing Body and a copy of the Certificate of Registration of the Governing Body.

The National Congress of Indian Christians was requested to furnish information as required in the annexure in 10 copies. Thereafter on March 19, 1983, Prof. Adams as Chairman of the Christian Medical Education Society wrote to the Registrar, Osmania University informing the latter that the Management was taking necessary action in regard to the various matters mentioned in the letter of the University dated January 22, 1985 and that one Dr K. Sanjeeva Rao had been appointed as Principal of that college. It was stated in the letter that there was no need to get the permission of the State Government as the Christian Community had a right to establish its own educational institutions under Article 30 of the Constitution. But if permission was necessary permission had already been granted by the Central Government in their letter dated September 20, 1984. It was also mentioned that 'plans and estimates' of the proposed medical college at Muttangi, Medak District were enclosed. The University was further informed that 60 students had already been admitted to the first year of University MBBS course of 1984 session and that classes were functioning from February 25, 1985. The University was requested to send its screening Committee to inspect the college. The University was also requested to grant temporary affiliation. The letter contained the usual false statements. The statement that the Central Government had granted permission was of course false. The statement referring to 'plans and estimates' of the proposed college building at Muttangi, Medak District was again a misleading statement as it is now admitted that the society does not own any land in Muttangi. Though the University had called upon the society to fulfil several conditions before affiliation could be granted, it is clear from the letter that apart from appointing somebody as Principal of the college, noting whatever had been done to comply with any of the other conditions. The society itself did not refer to any effort made by it to fulfil any of the other conditions. The admission of 60 students into the first year MBBS course was in defiance of the conditions laid down by the University. It was audacious since the society had no right to admit any student without getting affiliation from the University. By purporting to admit students into the so-called medical college, the society had perpetrated a huge hoax on innocent boys and girls. The University wrote to the society on May 23, 1985 pointing out that according to the procedure laid down, affiliation could not be granted without obtaining the feasibility report of the Screening Committee. It was also pointed out that it was necessary to obtain the permission of the State Government and the Medical Council of India in order to start a medical college. The society was informed that their action in admitting students in the first year MBBS courses was highly irregular and illegal and the society was asked to cancel the admissions made by them. It was also pointed out that attendance at the institutions not affiliated or recognised by the University would not qualify a candidate for admission to any examination conducted by the university.

4. At this juncture, it is necessary to mention that the Andhra Pradesh Christian Medical Education Society inserted an advertisement in the 'Deccan Chronicle' of December 9, 1984 inviting applications from candidates for admission to the first year MBBS course of the Andhra Pradesh Central Institute of Medical Sciences. When the advertisement came to the notice of the University authorities, they published a notification informing the public in general and the student community

in particular that the Osmania University had neither permitted nor granted 'affiliation in the MBBS course of the above institution' and 'whoever seeks admission in the above institution will be doing so at his/her own risk'. The society appears to have been inserting advertisements off and on inviting applications for admission to the MBBS course. So on March 4, 1985, the University once again published a notification in the newspapers containing a similar warning. The warning was also broadcast on the radio and telecast on the television. Despite all this, the society again inserted an advertisement in the newspapers inviting applications from candidates for admission to the first year MBBS course for the 1985 session. The University once again, had to publish a notification warning the public. On June 5, 1985, the society inserted an advertisement in the 'Deccan Chronicle' styled as a 'reply notice', signed by an advocate. The notice contained the oft-repeated false allegation that the Central Government had granted permission to the society to start professional colleges and that the Prime Minister herself had recommended the grant of permission. It was claimed that the Osmania University had no power to interfere with the affairs of the Christian Medical College and that the notification published by the Osmania University was unconditional and uncalled for. It was also stated that the management was seeking affiliation with other universities and had made good progress. This of course is another false statement. There is nothing whatever to indicate that the institution had made any progress in obtaining affiliation from any other university.

5. On July 24, 1985, the Government of Andhra Pradesh wrote to the society informing them that permission to start a private medical college could not be granted as it was the policy of the Government of India and the Medical Council of India not to permit opening of new medical colleges. Before us, the petitioner-society disputed the statement that there was any policy decision of the Government of India or the Medical Council of India not to permit opening of new medical colleges. But two letters - one from the Medical Council of India to the Government of Andhra Pradesh and another from the Government of India to the Medical Council of India - have been brought to our notice. In the letter dated January 16, 1981 from the Medical Council of India to the Government of Andhra Pradesh it is stated :

The Council is against the starting of any new medical colleges until all the existing ones are put on a firm footing.

In the letter of the Government of India to the Medical Council of India it is stated :

At present there are 106 medical colleges in the country with an annual out turn of 12,500 medical graduates per year. This output is considered sufficient to meet the medical manpower requirements of the country. Therefore, the present policy of the Government of India is not to permit setting up to new medical colleges.

6. On the refusal of the Government of Andhra Pradesh to grant permission to the society to start a medical college, the society filed a writ petition in the High Court of Andhra Pradesh seeking a writ to quash the refusal of permission by the Government of Andhra Pradesh and to direct the government to grant permission and the University to grant affiliation. The claim for the issue of a writ was based on the fundamental right guaranteed by Article 30(1) of the Constitution. The writ petition was dismissed in limine by the High Court by a speaking order on the ground that there were no circumstances to justify compelling the government to grant permission to the society to start a new medical college in view of the restriction placed by an expert body like a Medical Council of India that no further medical college should be started. The society has filed this appeal by special leave of this Court under Article 136 of the Constitution.

7. Even while narrating the facts, we think, we have said enough to justify a refusal by us to exercise our discretionary jurisdiction under Article 136 of the Constitution. We do not have any doubt that the claim of the petitioner to start a minority educational institution was no more than the merest pretence. Except the words, "as the Christian Minorities' Educational Institutions" occurring in one of the objects of the society, as mentioned in the memorandum of association, there is nothing whatever to justify the claim of the society that the institutions proposed to be started by it were 'minority educational institutions'. Every letter written by the society whether to the Central Government the State Government or the University contained false and misleading statements. As we had already mentioned the petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the government for the starting of the medical college and without any affiliation being granted by the University. The society did this despite the strong protest voiced by the University and the several warnings issued by the University. The society acted in defiance of the University and the government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as Principle. No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and sculduggery. By no stretch of imagination, can we confer on it the status and dignity of a minority institution.

8. It was seriously contended before us that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do under the Constitution and neither the government nor the University could deny the society's right to establish a minority institution, at the very threshold as it were, howsoever, they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument insofar as the instant case is concerned lies in thinking that neither the government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well-founded or ill-founded. The government, the University and ultimately the court have the undoubted right to pierce the 'minority veil'- with due apologies to the corporate lawyers - and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Article 30(1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence' not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They

may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit of it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. We have already said that in the present case apart from the half a dozen words 'as a Christian minorities' institution' occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by us these half a dozen words were introduced merely to found a claim on Article 30(1). They were a smoke-screen.

9. It was contended before us that the permission to start a new medical college could not be refused by the government nor could affiliation be refused by the University to a minority institution on the ground that the Government of India and the Medical Council of India had taken a policy decision not to permit the starting of new medical colleges. It was said that such a policy decision would deny the minorities their right to establish an educational institution of their choice, guaranteed by Article 30(1) of the Constitution. The argument was that the right to establish an educational institution was an absolute right of the minorities and that no restriction, based on any ground of the public interest or State or societal necessity could be placed on that right so as to destroy that right itself. It was said that to deny permission to a minority to start a medical college on the ground that there were already enough medical colleges in the country was tantamount to denying the right of the minority guaranteed under Article 30(1). On the other hand, it was said, when in the pursuit of general or professional education for its members, a minority community joins the mainstream of national life, it must subject itself to the national interest. The right guaranteed by Article 30(1) gives the minority the full liberty to establish educational institutions of its own choice. If the minority community expresses its choice and opts to join the scheme of national educational policy, it must naturally abide by the terms of that policy unless the terms require the surrender of the right under Article 30(1). It was said that a medical college needed very heavy investment and that to produce doctors beyond need would be a national waste apart from creating a problem of unemployment in a sphere where there should be none. It appears, if one may borrow the words of Sir Roger De Coverlet, 'there is much to be said on both sides. In view of our conclusion on the other issues we do not want to venture an opinion on this question.

10. Shri K.K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the medical college established by the Daru-Salam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interest of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. The case of the medical college started

by the Daru-Salam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Daru-Salam Medical College as a precedent in the present case to direct the University to do something which it is forbidden from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wakefully, issuing timely warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the University and refrained from seeking admission to the institution. If some did not heed the warnings issued by the University, they are themselves to blame. Even so if they can be compensated in some manner, there is no reason why that may not be done. We are told that the assets of the institutions, which have sprung out of the funds collected from the students, have been frozen. It is up to the State Government to devise suitable ways, legislative and administrative, to compensate the students at least monetarily. The appeal filed by the society is dismissed with costs which we quantify at Rs 10,000. The writ petition filed by the students is dismissed but, in the circumstances, without costs.

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