SUPREME COURT OF INDIA

Manager, St. Thomas U.P. School, Kerala

Vs.

Commissioner and Secretary To General Education Department

(S.R.Babu and Ruma Pal JJ.)

25.01.2002

JUDGMENT

Ruma Pal, J.

1. The appellant No. 1 is a School which claims the right to establish and administer its affairs as a minority institution Under Article 30(1) of the Constitution of India. The claim was turned down by the Kerala High Court on an application file under Article 226 by the respondents Nos. 5 and 6 in which they challenged the appointment of the appellant No. 2 as the Headmaster of the School.

2. The School was initially set up in 1964 by one P.J. Thomas. In 1980, it was bought by the then Archbishop of Thiruvanthapuram, of the Malankara Syrian Christians. According to the appellants, P.J. Thomas was a Christian and from 1964 the School has been administered for the benefit of the Christian community. The Government of Kerala has recognised the School as a minority institution and allowed it to enjoy the special rights available to minority institutions under Article 30.

3. In 1988, there was a vacancy for the post of Headmaster in the School. The appellant and the respondents 5 and 6 were all teachers in the School, the respondents 5 and 6 being senior to the second appellant. Under Rule 44, Chapter XIV-A of the Kerala Education Rules, 1959 the appointment of the Headmaster is required to be made according to seniority. However, relying on its status as a minority institution and its right to manage its own affairs, the School appointed the second appellant as its Headmaster. The Government provisionally approved the appointment. The respondent No. 5 challenged the approval by way of a statutory appeal before the Education Department of the State Government. By an order dated 18^th March 1981, the appeal was rejected on the ground that the School was a minority institution and "the right of the management to exercise absolute discretion to choose qualified hands of their choice to be the Head of the Institution has, time and again, been established through verdicts of Courts of Law. The Government have also acknowledged this right in giving approval of such appointments".

4. The respondent Nos. 5 and 6 then challenged this decision under Article 226 before the Kerala High Court on the ground that the School was not a minority institution and could not

act contrary to Rule 44 of Chapter XIV-A of the Kerala Education Rules. The learned Single Judge allowed the writ application and the appellate Court dismissed the appellants' appeal. Both the Courts held on the evidence that the appellants had been unable to substantiate that the School was a minority institution within the meaning of Article 30(1). Their reasoning was based primarily on the fact that the School had not been established by the minority community but by an individual and, therefore, it could not rely on Article 30 to avoid compliance with the statutory provisions generally applicable to all schools.

5. The question before us is whether the High Court was correct in taking the decision it did. Under Article 30(1), all minorities whether based on religion or language, have been guaranteed the right to establish and administer educational institutions of their choice. It is not in dispute that Christians form a minority in this country. The right of minorities under Article 30(1) to establish and administer educational institutions has been judicially construed as defining minority institutions. What is expressed in terms of a right under Article 30(1) in fact describes the institution in respect of which the protection of Article 30(1) can be claimed. It has, therefore, been held that unless the educational institution has been established by a minority, it cannot claim the right to administer it under Article 30(1). Thus the critical issue is was the School established by a minority. The issue has to an extent become academic as both the respondents 5 and 6 have since retired and we are given to understand that they have been paid the salary of a Headmaster for the period they would have served had the decision of the High Court been given effect to. However, the issue is still alive as far as the appellants are concerned. The second appellant is still in service and he has, because of the decision of the High Court, been asked by the School to refund the salary paid to him as Headmaster. Also if the decision is allowed to stand, the status of the School would be finally determined without scrutiny entailing far reaching consequences in its day to day administration.

6. At the outset, we record our disapproval of the High Court's entertaining the writ application at all. Both the Single Judge and the Division Bench have determined what were clearly disputed questions of fact without the benefit of a full scale trial. The appellants have drawn our attention to evidence which, according to them, conclusively proves that the School was a minority institution and which was not considered by the High Court. We do not propose to commit the same mistake as the High Court. Given the nature of the dispute, the issue of the status of the School should have been left to the fact finding authorises whether executive or judicial for determination in jurisdictions equipped for the purpose. As far as the legal aspect is concerned, the High Court denied the School minority status under Article 30 of the Constitution because "the School was established by an individual who is the buyer of the land in question under Ext. P5 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" and because "there is no contribution from any member of the minority community for the purchase of the property".

7. Assuming that the School was established for the purpose of Article 30(1) when P.J. Thomas started it, the reasoning is erroneous and contrary to the ratio of the decision of this Court in State of Kerala v. V.R.M. Provincial where construing Article 30(1), Hidayatullah,

C.J. said that the right to establish an institution would include a case where "a single philanthropic individual with his own means, founds the institution".

8. Learned counsel for the appellants has submitted that with the purchase of the School in 1980, the School was in fact 'established' in its present form and that when the School was purchased by the Archbishop of Thiruvanathapuram, he did so as the Corporate Manager of the Malankara Syrian Christian Schools so that the School was in fact established by the Malankara Syrian community represented by the Archbishop of Thiruvanathapuram. However, we express no view in the matter as this was not an argument made at any stage of the proceedings before the High Court by the appellants.

9. For the reasons stated, the appeal is allowed and the decision of the High Court is set aside. The approval of the Government of the appellant No. 2's appointment as Headmaster would necessarily revive. There will as such be no question of the recovery of any amount from the appellant No. 2. We also make it clear that our decision will not entitle the School to recover any amount which may have been paid to the respondents Nos. 5 and 6 by reason of the reason of the decision of the High Court. No order as to costs.