

**(1973) 11 KL CK 0027**

**High Court Of Kerala**

**Case No:** O.P. No. 1138 of 1973

Rt. Rev. Dr. Aldo Maru Patroni

APPELLANT

Vs

X AEO, Tellicherry and others

RESPONDENT

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**Date of Decision:** Nov. 29, 1973

**Acts Referred:**

- Constitution of India, 1950 - Article 30, 30(1), 30(1), 39

**Citation:** (1974) KLJ 16 : (1974) KLJ 1

**Hon'ble Judges:** G. Viswanatha Iyer, J

**Bench:** Single Bench

**Advocate:** Joseph Vithayathil, for the Appellant; O.V. Radhakrishnan for Respondent 3 and V.M. Nayanar for Respondent 4, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Justice G. Viswanatha Iyer

1. This original petition is directed against the orders Exts. P8, P10, P13 and P14 passed by the Assistant Educational Officer, Tellicherry South. The 1st petitioner is the Bishop of Catholic Diocese, Calicut, and the 2nd petitioner is the Manager of St. Peter's U.P. School, Chalil, Tellicherry. The permanent Headmistress of the school retired on 31-3-1969. The 4th respondent was then ordered to be the Headmaster-in-charge of the said school. The 3rd respondent who is the senior most teacher in the school questioned the action of the 2nd petitioner in putting the 4th respondent in charge of the office of the Headmaster. The Assistant Educational Officer upheld her objection and directed the 2nd petitioner to appoint the 3rd respondent as the Headmistress. Though this order of the Assistant Educational Officer was taken up in appeal and revision by the 2nd petitioner, he did not succeed. Thereafter, the 2nd petitioner filed O.P. No. 2506 of 1972 challenging the orders passed by the educational authorities. In that petition the 2nd petitioner alleged that the St. Peter's U.P. School is one established by a religious minority

community and therefore the 2nd petitioner is entitled to administer the said school in the best way considering the interests of the minority community. It was contended that it was in exercise of such a right that the 4th respondent was put in charge of the post of the Headmaster until a permanent Headmaster is appointed. As the averments and pleadings made in that case were found to be inadequate to enter a decision whether the school is established and administered by a minority community and since the orders challenged related only to the entrustment of the charge of the Headmaster to the 4th respondent, without prejudice to the petitioner's claim that the said school is a school established and administered by a minority community the original petition was dismissed. It is thereafter that the 2nd respondent appointed the 5th respondent as the Headmistress and directed the 4th respondent to hand over charge to her. When this order of appointment was communicated to the Assistant Educational Officer, he refused to approve the same. According to him, the appointment was highly irregular and contrary to the rules of the K.E.R. The 2nd petitioner's representation claiming protection and right under Art. 30 of the Constitution in making the appointment of the 5th respondent as the Headmistress of the school was not accepted by the Educational Officer and he threatened to take further action against the 2nd petitioner if the 3rd respondent is not appointed Headmistress and charge handed over to her immediately. This is challenged in this original petition. The District Educational Officer and Respondents 3 and 4 have filed counter-affidavits disputing the claim of the petitioners that the St. Peter's U.P. School is established and administered by a minority community. They also contend that even if the school comes under the scope of Art. 30 (1) of the Constitution, R. 44 and 45 of Chapter XIV-A of the Kerala Education Rules framed under the Kerala Education Act are only regulatory measures framed in the interests of educational institution and the teaching staff and they must be obeyed. They do not violate the fundamental rights claimed by the petitioners.

2. In the light of these contentions two questions arise for determination, namely, whether St. Peter's U.P. School managed by the 2nd petitioner is one established and administered by the Roman Catholic Diocese of Calicut, and secondly, whether the 2nd petitioner can ignore R. 44 and 45 of Chapter XIV-A in appointing the 5th respondent as the Headmistress of the said school. I shall consider these questions one by one.

3. In order that the petitioners may claim protection under Art. 30(1) of the Constitution they will have to show that the school is established and administered by a religious minority. It is not disputed that Roman Catholics of Kerala form a religious minority community. But that is not enough. It has to be shown that the school is established and administered by this religious minority. St. Peter's Church, Chalil, Tellicherry, is a Roman Catholic Church. The school is situated within the church compound and bears the name of the patron of the church. It is admitted that the school was established in 1891. In the original petition the petitioners stated that the school was established and is administered by the Catholic Diocese

of Calicut of which the 1st petitioner is the Bishop. It is further stated that the school was established by the Bishop of Calicut for the purpose of giving Catholic education to Catholic students although students of other communities are also admitted to the school. The Catholic Diocese of Calicut was formed in 1923 only. This is also not in dispute. From this the respondents took up the stand in their counter-affidavits that the claim of the petitioners that the school was established by the Catholic Diocese of Calicut is unsustainable. Until 1923 this area where the school is situated was part of the Catholic Diocese of Mangalore. The petitioners' answer in the reply affidavit is that the church and the school established by the Catholic Diocese of Mangalore were passed on to the Catholic Diocese of Calicut when the Mangalore Diocese was bifurcated in 1923 into the Catholic Diocese of Mangalore and Catholic Diocese of Calicut, and that their statements in the original affidavit that the school was established and is administered by the Catholic Diocese of Calicut was intended only to mean that the school belongs to the Roman Catholics now forming the Catholic Diocese of Calicut. In the reply affidavit full particulars of the original Catholic Diocese of Mangalore, its bifurcation in 1923 and the functioning of the Catholic Diocese of Calicut separately from that of Mangalore are all stated clearly. Though the respondents have filed supplementary counter-affidavits after this reply affidavit was filed, this fact is not disputed. So the petitioners' explanation in this regard can be accepted.

4. The further aspect which has to be considered is whether the school was really established by the Catholic Diocese or whether it was established by any other organisation or individual. The respondents have got a case that this school was established by the Basel German Mission under the name "B.G. Fisher Village School" and recognition was given to it under the Madras Educational Rules. In support of that the extract of the Malabar Gazette dated 1-10-1891 is produced as Ext. R1. Ext. R. is a notification to the effect that certain upper primary schools in the Malabar District are recognised under the Madras Educational Rules. In that notification an upper primary school in B.G. Fisher Village within Tellicherry Municipality is also mentioned. That this cannot relate to the St. Peter's U.P. School will be clear from the fact that this school was upgraded into an upper primary school only after 1942. Till then the disputed school was only a lower primary school and therefore the reference in Ext. R1 to an upper primary school at B.G. Fisher Village, Tellicherry Municipality, cannot be to this school at all. There is no evidence let in by the respondents to show that this school was established by the Basel German Mission. Ext. R2, which is an extract from the list of elementary schools for boys and girls in the District of Malabar during the years 1936-37, produced by the respondents shows that the St. Peter's Primary School managed by one Rev. R. Mayars was given recognition in 1891. The date of the Malabar Gazette is given as 1-10-1891. Both sides have not produced any notification published in the Gazette dated 1-10-91 regarding the recognition of this elementary school. As already stated, Ext. R1 does not relate to this school at all. The manager, mentioned in Ext.

R2, is stated by the petitioners, in their reply affidavit, to be the person appointed as manager by the Bishop of Calicut. There is nothing to show that the manager referred to in Ext. R2 is one appointed by anybody else. In such circumstances, the affidavit of the petitioners on this point seems to be true. Further, the petitioner has produced Ext. P16 dated 10th August, 1942, a copy of a letter sent by the correspondent of the St. Peter's Elementary School, Chalil, seeking to upgrade the school into an upper primary school. Ext. P16 clearly shows that this school is claimed as a school belonging to the Christians and managed by the correspondent of the school. Exts. P15 and P17 are produced by the petitioners to show that the school is established for Roman Catholics. It is not possible to rely on Exts. P15 and P17 for the reason that they do not purport to be even reports signed by any officials. So I am not relying on them in this connection. Ext. P18 is the proceedings of the Regional Deputy Director of Public Instruction, Kozhikode, approving the constitution of the corporate agency and also approving the continuance by Manager J. B. Rodrigues as the Corporate Manager. This was in 1965. This further shows that this school is within the Roman Catholic Diocese of Calicut and administered by the diocese through a Corporate Manager. Ext. P19 is a Catholic Directory for the year 1972, wherein the details regarding the various schools and other institutions run by the Catholic Diocese of Calicut are given for the information of the public. Ext. P20 is the constitution of the Corporate Educational Agency approved by the Regional Deputy Director of Public Instruction under R.2 of Chap. III of the K.E.R. No doubt, this Ext. P20 is the proceedings passed by the R.D.D. subsequent to the filing of this writ petition. It is relied on by the petitioners only to show that the Department has recognised this school as having been established and administered by the Roman Catholic Diocese and this is consistent with Ext. P18 proceedings passed in 1965. The respondents rely on Ext. R1 (filed by the 2nd respondent), a communication issued by the Secretary to the Bishop of Calicut on 19th May, 1972, intimating the Assistant Educational Officer that there is no Corporate Management for the schools under the diocese of Calicut. From this it is argued that this school is not run by the Catholic community. I am afraid, this contention cannot stand. The fact that in Ext. R1 it was stated that there was no Corporate Management for schools will not lead to the inference that the school is not run by the Bishop of Calicut or that it does not belong to the community. Ext. R1 will only show that the democratic set up of management was not being followed by the Bishop of Calicut. In other words, the administration had not been decentralised and passed on to a committee but is only directly managed by the Bishop. From that it does not follow that the school is not administered by the minority community. The minority community represented by the Bishop administers the school. To claim protection under Art. 30 it is not necessary that there should be a corporate management for the school. Even if it is managed by the individual or the religious head of a community the protection under Art. 30 will be available to that school as well. It is not disputed that the various teachers in the school were appointed by the Manager. The Manager the 2nd petitioner has clearly stated that he is functioning

under the 1st petitioner, the Bishop of Calicut The school is situated in the Church compound and bears the same name as the patron of the Church, namely, St. Peter's Church. For upgrading the elementary school to an upper primary school steps were taken by the correspondent of the school and he made the request to upgrade the school only to cater to the needs of the Christian Community. The difficulty of the Christians in attending the Mopla School in the town is also stated as a ground for upgrading the school. As a result of the steps taken by the correspondent the school was upgraded to an upper primary school later. From all these facts and circumstances the proper inference to be drawn is that the school is established and administered by the Roman Catholics who form a minority within the meaning of Art. 30 of the Constitution.

5. A contention is taken on behalf of the respondents that the school was having successively a non-Christian as the Headmaster of the school which would show that this is not a school established and administered by the Christian community. This fact is relied on to show that the decision of this Court in *Rt. Rev. Aldo Maria Patroni v. E.C. Kesavan & Others* (1964 KLT. 791) can be distinguished. In that case one of the circumstances relied on to show that the school is established and administered by the Christians is the continuous holding of the post of the Headmaster by Christians. May be that if that fact is there that may be an additional evidence to prove that the school is established and managed by the minority community. But the absence of it will not lead to the inference that the school is not established and administered by the Roman Catholic community. Certain decisions were relied on by the respondents in support of their contention that in order to claim protection under Art. 30 what should be proved is that the school is established and administered by the minority community. The decisions of the Supreme Court in [In Re: The Kerala Education Bill, 1957. Reference Under Article 143\(1\) of The Constitution of India, , S. Azeez Basha and Another Vs. Union of India \(UOI\), , State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , and finally D.A.V. College, Vs. State of Punjab and Others](#), are cited in this connection. In all these cases it was held that in order to claim protection under Art. 30 it should be proved that the school is established by the minority community. The fact that a college is founded by a minority community was held to be not sufficient to claim protection under Art. 30 in [S. Azeez Basha and Another Vs. Union of India \(UOI\)](#). In the above Aligarh University case it was held that the words "established and administered" in Art. 30(1) must be read conjunctively and so read it clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. Though some of the educational institutions now administered by Aligarh University were originally founded by Muslims or societies registered under the Societies Registration Act, as they were transferred to and vested in the University established by an Act of Parliament thereafter it was held to be a University not established by the minorities but established by the State under Act of Parliament. The conversion of the nucleus

college, namely the M.A.O. College, into a University was however not by Muslim minority. It took place by virtue of an Act of Central Legislature. From that it was held that it is the Central Legislature that established the said University. This decision really supports the petitioners in countering the argument of the respondents that the school was originally established by the Basel German Mission. I have tried to show that there is no evidence in support of it. Even assuming that to be correct, what we have to see is whether the school is established by the Roman Catholics minority. For establishment it is not necessary that the school must be constructed by the community. Even if a school previously run by some other organisation is taken over or transferred to the Church and the Church reorganises and manages the school to cater to and in conformity within the ideals of the Roman Catholics, it can be safely concluded that the school has been established by the Roman Catholics. As stated by me earlier, the various exhibits produced in this case clearly justify a conclusion that the school is established and administered by the Roman Catholic community represented by the Bishop of Calicut now. The other decisions of the Supreme Court relied on by the respondents are not in any way against the petitioners. The petitioners on whom the burden of proving that the school is established and administered by the minority community has, according to me, satisfactorily proved that fact. Therefore, on the first point I come to the conclusion that the petitioners are entitled to protection under Art. 30 (1) of the Constitution.

6. The further question that arises for determination in this case is whether R.44 and 45 of Chapter XIV-A of the K.E.R control the freedom of the petitioners to appoint the 5th respondent as the Headmistress of the school. According to the respondents, R. 44 and 45 are only in the nature of a regulatory measure in the best interests of the school and they do not in any way affect the fundamental right under Art. 30 R.44 provides that ordinarily a Headmaster must be appointed by promotion of the senior most teacher in the school and R. 45 is an exception to that in the case of upper primary schools. In order that exception may apply, the teacher who is sought to be appointed as the Headmistress must be a graduate with at least five years" teaching experience and must have put in service equal to one-third of the service put in by the senior most teacher. These R. 44 and 45 are not rules fixing the qualification for being appointed as the Headmaster. No doubt, even if the institution is protected under Art. 39, the State can make laws regulating the appointment of teachers in the interested of the school. But the regulation must be limited to the qualification that a teacher must possess and to the experience which he should have to discharge the duties in the school, R.44 and 45 do not relate to these two requirements. The 5th respondent has the requisite educational qualifications. She has some experience also. In such circumstances the appointment of the 5th respondent cannot be said to be in violation of the rules regarding qualification and experience. As stated in *Rt. Rev. Aldo Maria Patron v. E.C. Kesavan & Others* (1964 KLT. 791) the post of a Headmaster occupies a pivotal

position. The whole institution is controlled by him and R.44 and 45 cannot interfere with that freedom which the management has in appointing the Headmaster. As stated earlier, the 5th respondent has got the educational qualifications to hold the post. The decisions cited, namely, *Manager, Corporate Educational Agency v. D.E.O.* (1973 KLT. 603), [Mrs. Rachel Phillip Vs. State of Kerala and Others,](#) and *Rev. Fr. Daniel v. Director of Public Instruction* ( 1965 KLT. 927) do not in any way affect this question. The decision reported in *Rt. Rev. Aldo Maria Patroni v. B.C. Kesavan & Others* (1564 KLT. 791), *v. Rev. Mother Provincial & Others v. State of Kerala & Others* (1969 KLT. 749) and *State of Kerala v. Mother Provincial* (1970 KLT. 630) clearly apply to the facts of this case. In the latter two cases the question directly arose whether the minority community had the freedom to appoint a Headmaster of a school or Principal of a college and in dealing with that question it has been recognised by this Court and the Supreme Court that the position of a Headmaster or a Principal is a vital matter from the point of view of administration of the institution. Provisions which in any way interfere with that freedom are stated to be violative of Art. 30 of the Constitution. The management has the freedom to choose the person competent and qualified and to appoint him or her in the institution. In this case all the teaching staff in the school except the 3rd respondent had given the consent by Ext. P2 to appoint the 5th respondent as the Headmistress. Not that their consent is called for, but I am referring this only to show that in the appointment of the 5th respondent there is the cooperation of the other teaching staff. The 3rd respondent did not file any appeal to the educational authorities against the appointment of the 5th respondent. The 4th respondent, a signatory to Ext. P2, took up the matter in appeal and so the Assistant Educational Officer refused to approve the appointment as per Ext. P8 order. In the circumstances, the decision of the Assistant Educational Officer cannot stand. The petitioners are within their rights in appointing the 5th respondent as the Headmistress. In the result, this original petition is allowed, the orders Exts. P8, P10, P13 and P14 are quashed, and the 1st respondent is hereby directed to approve the appointment of the 5th respondent as the Headmistress of the St. Peter's U.P. School, Chalil, Tellicherry. The parties shall bear their costs.