

Asan Memorial Association Vs The State of Tamil Nadu

Court: Madras High Court

Date of Decision: Aug. 18, 2009

Acts Referred: Constitution of India, 1950 " Article 30(1)

Citation: (2009) WritLR 897

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: Habibullah Basha for K. Ilias Ali, for the Appellant; R. Balakrishnan, A.G.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

The prayer in this writ petition is to issue a writ of prohibition, prohibiting the respondents from insisting that the

petitioner seek declaration of its minority character every year for the Asan Memorial Institute of Hotel Management and Catering Technology.

2. The case of the petitioner association is that it is a Society registered under the Societies Registration Act, and it was formed in the year 1965

with the main object to promote the interest in Malayalam literature among other linguistic groups and especially to propagate the yeoman service

rendered by late Mahakavi Kumaran Asan to Malayalam literature, to start educational and cultural institutions in Chennai City and other places in

India to promote and subserve the interests of Malayalees, etc. As per Clause 9(a) of the Memorandum of the rules and regulations of the

association, the membership is restricted to Malayalees and as such the Society is a linguistic minority, coming within Article 30(1) of the

Constitution of India. The petitioner association has established and is administering the following institutions:

- (a) Asan Memorial Matriculation Higher Secondary School (State Board)
- (b) Asan Memorial Senior Secondary School (CBSC)
- (c) The Asan Memorial Institute of Hotel Management and Catering Technology
- (d) The Asan Memorial College of Arts and Science
- (e) The Asan Memorial Institute of Management.

The Society established and is administering Asan Memorial Hotel Management and Catering Technology in the year 1986 and the same is

approved by the AICTE and Directorate of Technical Education.

3. In the year 1995, the Government of Tamil Nadu issued G.O.Ms. No. 371 Education, Science and Technology, dated 10.5.1995 and ordered

that the Government will verify and determine whether an Educational Institution is a minority institution within the meaning of Article 30(1) of the

Constitution of India. The petitioner applied on 2.6.1995 to the Government for getting its minority status (linguistic minority) declared. The

Government did not pass any order and therefore the petitioner again applied on 13.8.1996 to the Government and prayed for declaration of its

minority status. During pendency of the said application, the Government superceded G.O.Ms. No. 371 dated 10.5.1995 by issuing G.O.Ms. No.

270 Higher Education Department, dated 17.6.1998 by giving certain guidelines for determining the minority status.

4. The petitioner Society received a letter dated 19.4.1999 from the Additional Director of Technical Education, directing all managements desiring

to apply for declaration of minority status to apply on or before 30.4.1999. The petitioner applied on 26.4.1999 to the Director of Technical

Education as per the format mentioned in the above said Government Order. The first respondent failed to pass any order and again the petitioner

applied on 19.1.2000 to the first respondent through the second respondent. The second respondent by letter dated 16.2.2000 sought for certain

documents for verification viz, Trust Deed, Supplementary Trust Deed, Memorandum of Association, Community Certificate of its members, etc.

Petitioner submitted the same on 25.2.2000. Even thereafter no order having been passed, the petitioner filed W.P. No. 7943 of 2000 praying to

issue a writ of mandamus directing the first respondent to pass orders on the application of the petitioner Society seeking minority status for the

year 2000-2001. This Court by order dated 28.2.2000 directed to pass orders on or before 15.6.2000. On 14.6.2000 the first respondent

granted minority status to the Asan Memorial Institute of Hotel Management and Catering Technology. However, the said order is limited for the

year 2000-2001 and therefore the petitioner submitted representation for the grant of minority status for the year 2001-2002 and no order was

passed. Thereafter, W.P. No. 12536 of 2001 was filed for issuing a writ of mandamus directing the respondents to pass orders. The said writ

petition was admitted on 11.7.2001 and an interim injunction was granted restraining the respondents from interfering with the rights of the

petitioner to fill up its 50% minority quota in Asan Memorial Institute of Hotel Management and Catering Technology. This writ petition is filed for

the permanent relief and pending disposal of this writ petition interim injunction was granted on 27.7.2001, which was made absolute by order

dated 11.9.2003.

5. Pending this writ petition, petitioner filed an application for interim direction to send the revised list of 20 free seats and 20 payment seats to

students of Government quota and the said direction petition having been dismissed, petitioner filed W.A. No. 1483 of 2001 and this Court by

order dated 21.8.2001 ordered that the petitioner (appellant institution) was treated as minority institution for the year 2000-2001 and therefore

we do not find any reason as to why a different stand has been adopted for the present year 2001-2002. The Division Bench directed the

respondents to treat the appellant/petitioner institution as minority institution and allot seats accordingly for the year 2001-2002. Thus, during

pendency of the writ petition all these years, Asan Memorial Institute of Hotel Management and Catering Technology is being treated as minority

institution.

6. In this writ petition the main contention raised is that once the character of the institution is verified and declared as linguistic minority institution,

there is no purpose in restricting the period and G.O.Ms. No. 270 Higher Education Department, dated 17.6.1998 do not contemplate seeking

application for minority declaration every year and by virtue of the procedure adopted by the respondents in insisting the managements to seek

declaration of minority status every year, undue hardship is faced by the educational institutions, particularly with regard to the admission of

students.

7. The respondents have filed counter affidavit by stating that G.O.Ms. No. 270 Higher Education Department dated 17.6.1998 contains certain

guidelines for the grant of minority status. The said Government Order was issued superceding G.O.Ms. No. 371 Education, dated 10.5.1995 and

the Asan Memorial Institute of Hotel Management and Catering Technology, run by the petitioner associaiton was granted minority status by

G.O.Ms. No. 221 Higher Education Department, dated 14.6.2000 for the academic year 2000-2001. The Government is issuing minority status

for each and every academic year and therefore the petitioner has to apply for every year for the grant of minority status.

8. The learned Senior Counsel appearing for the petitioner submitted that the Government having verified the object of the association and after

satisfaction granted minority status for the year 2000-2001 through G.O.Ms. No. 221 Higher Education Department, dated 14.6.2000, it has no

jurisdiction to restrict the said declaration for that academic year, particularly when the Government Order nowhere states that minority status has

to be declared by the Government every year. The learned Senior Counsel also submitted that a Division Bench of this Court in the decision

reported in Thirumuruga Kirupananda Variyar Thavathiru Sundaran Swamikal Medical, Educational and Charitable Trust Vs. State of Tamil Nadu

and Another, held that the minority status once granted need not be renewed periodically like a driving licence and once the Government, after

satisfaction granted declaration, the same will hold good permanently. The learned Senior Counsel further submitted that if there is any change in

the Constitution of the educational agency or the bye-laws are amended and by virtue of the same the minority status conferred is not entitled to be

continuously enjoyable by the management, it is open to the Government to issue notice, call for objections and thereafter fresh orders can be

passed.

9. The learned Additional Government Pleader appearing for the respondents submitted that in practice, the Government is considering the

minority status of the institutions every year and the Government is entitled to consider the same every year as there is likelihood of change in the

constitution/composition of the educational agency and the management may not adhere to the object of the Society/Association, for which it was

formed.

10. I have considered the rival submissions of the learned Counsel for the petitioner as well as respondents.

11. Admittedly, the petitioner Association, which is formed and registered under the Societies Registration Act has got a memorandum of

association. The main object of the association is to promote the interest in Malayalam literature among other linguistic groups and especially to

propagate the yeoman service rendered by late Mahakavi Kumaran Asan to Malayalam literature, to start educational and cultural institutions in

Chennai City and other places in India to promote and subserve the interests of Malayalees, etc. The Government, in terms of G.O.Ms. No. 270

Higher Education Department, dated 17.9.1998 processed the application filed by the petitioner and after verifying the fact that all its members are

Malayalees, admittedly granted minority status (linguistic) to the Asan Memorial Institute of Hotel Management and Catering Technology,

established and administered by the petitioner society through G.O.Ms. No. 221 Higher Education Department, dated 14.6.2000.

12. Insofar as the restriction of the order for one year, as rightly contended by the learned Senior Counsel for the petitioner, there is no provision

to grant minority status for one year or for a limited period. The above said Government Order clearly states the guidelines for conferring minority

status and the Government is the competent authority to verify and determine the minority status of the educational institution for the purpose of

Article 30(1) of the Constitution of India. The guidelines are that the object of the institution should be for promoting the interest of the minority

concerned and the institution should have been established by the minority and should continuously administered only by the minorities and for

deciding the linguistic minority status in Tamil Nadu, any person, whose mother tongue is other than Tamil, will be treated as linguistic minority.

Thus, it is evident that the said guidelines issued by the Government do not contemplate granting minority status for a limited period.

13. Similar issue was decided by the Supreme Court in the decision reported in N. Ammad Vs. The Manager, Emjay High School and Others,

wherein it is held that "a School which is otherwise a minority school would continue to be so whether the Government declare it as such or not.

When the Government declare a school as minority school, it has recognised the factual position that the school was established and is being

administered by a minority community. The declaration is the open acceptance of the legal character, which should necessarily have existed

antecedent to such declaration." As per the above judgment of the Supreme Court, the declaration of the minority status will relate back to the

establishment of the institution.

14. A Division Bench of this Court in the decision reported in Thirumuruga Kirupananda Variyar Thavathiru Sundaran Swamigal Medical,

Educational and Charitable Trust Vs. State of Tamil Nadu and Another, took a view that there is no provision for the Government to insist on

renewal of minority status every year. When once the institution has been granted minority status, unless there is any change in the constitution of

the agency or any adverse information is received by the Government, there is absolutely no need or necessity for the Government to expect such

periodical renewal. SLP filed against the said Judgment was also dismissed by the Honourable Supreme Court. The said Division Bench decision

was followed by this Court subsequently in the decision reported in 2004 WLR 202 (C.S.I. Institute of Technology, Thovalai v. The Government

of Tamil Nadu and Anr.) and this Court held that requiring renewal of minority status every year will unnecessarily lead to delay and red-tapism,

which is totally uncalled for. By requiring such declaration every year, the administration of the institution and the plight of the students will be kept

under unreasonable suspense and doubt which is totally unwarranted. This Court held that it is totally unreasonable to expect all the minority

institutions in the State be knocking at the doors of the Government every year and the authorities pass orders only after some years.

15. Article 30(1) is a fundamental right guaranteed under the Constitution and it is a right which confers certain privileges to minority institutions.

The Government is bound to recognise the said right and imposing condition to get minority status every year is an unreasonable restriction and the

same cannot be permitted. If the procedure now followed by the Government is permitted, i.e., no order is passed by the Government even after

the beginning of the academic year, the fundamental right guaranteed to minority institutions would be a promise of unreality.

16. Applying the said principles to the facts of this case and having regard to the fact that there is no dispute with regard to the membership of the

Society and the Constitution of the educational agency and its objects, and the Government having granted linguistic minority status to the petitioner

institute, viz., Asan Memorial Institute of Hotel Management and Catering Technology, a writ of prohibition is issued prohibiting the respondents

from demanding minority status every year. It is also declared that the minority status already granted by the Government to the Asan Memorial

Institute of Hotel Management and Catering Technology, established and administered by the petitioner Society for the year 2000-2001, shall hold

good without any restriction. It is further observed that if there is any change in the educational agency or if the institution is run contrary to the

memorandum of association, it is open to the Government to issue notice and pass fresh orders in accordance with law.

The writ petition is allowed with the above observations. No costs.