

A THE MANAGER, CORPORATE EDUCATIONAL AGENCY

v.

JAMES MATHEW & ORS.

(Civil Appeal Nos. 826-827 of 2017)

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JULY 11, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Education/Educational institutions:

C *Minority Institutions – Appointment of Headmaster – Appellant-Minority Institutions chose to appoint a teacher of their choice belonging to their respective community to the post of Headmaster, ignoring the available senior teachers of the same community – High Court interfered with the same – Held: Management of a minority aided institution is free to appoint the Headmaster or the Principal as the case may be of its own choice*
 D *and has no obligation to appoint the available senior qualified member from the same community – Right u/Art.30(1) is absolute – Courts cannot go into the merits of the choice or rationality or propriety of the process of choice – Minority Institutions – Constitution of India – Art.30(1).*

E *Minority Institutions – Declaration of minority status – High Court held that declaration contained in certificate of Authority cannot have retrospective effect – Held: It is only declaration of existing status – Therefore, High Court’s view was erroneous.*

F *Jurisdiction of National Commission for Minority Educational Institutions – High court held that declaration of minority status by National Commission is of no avail since appellant was an already existing institution and that certificate of Commission is meant for minority educational institutions to be newly established – Correctness of – Held: Not correct – After the*
 G *establishment of the National Commission for Minority Educational Institutions Act, 2004, it is also within the jurisdiction and mandate of the National Commission to issue the certificate regarding the status of a minority educational institution – Once the Commission issues a certificate, it is a declaration of an existing status – National Commission for Minority Educational Institutions Act, 2004*
 H *– s.2(ca).*

Allowing the appeals, the Court

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HELD: 1. The emerging position is that, once the Management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute. [Para 5] [503-G]

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Secy. Malankara Syrian Catholic College v. T. Jose and Others, (2007) 1 SCC 386 : [2006] 9 Suppl. SCR 644; *T M A Pai Foundation v. State of Karnataka* (2002) 8 SCC 481; *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537 : [2005] 2 Suppl. SCR 603; *State of Kerala v. Very Rev. Mother Provincial* (1970) 2 SCC 417 : [1971] 1 SCR 734; *The Ahmedabad St. Xavier's College Society v. State of Gujarat* (1974) 1 SCC 717 : [1975] 1 SCR 173; *Frank Anthony Public School Employees' Association v. Union of India* (1986) 4 SCC 707 : [1987] 1 SCR 238; *Rev. Sidhajibhai v. State of Bombay* [1963] 3 SCR 837; *D.A.V. College v. State of Punjab* (1971) 2 SCC 269; *All Saints High School v. Government of A.P.* (1980) 2 SCC 478 : [1980] 2 SCR 924; *St. Stephen's College v. University of Delhi* (1992) 1 SCC 558 : [1991] 3 Suppl. SCR 121; *Board of Secondary Education & Teachers Training v. Joint Director of Public Instructions* (1998) 8 SCC 555 – relied on.

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2. There is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence. [Para 6] [504-A-B]

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3. The Commission was established under the National Commission for Minority Educational Institutions Act, 2004 for the purpose of constituting the National Commission for Minority Educational Institutions and to provide assistance for matters connected therewith or incidental thereto. Chapter III deals with rights of minority educational institutions. Under Section 10, whosoever desires to establish a minority educational institution,

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A has to apply to the competent authority for a ‘no objection certificate’. The ‘competent authority’ is defined under Section 2(ca) of the Act to mean, the authority appointed by the appropriate government to grant ‘no objection certificate’ for the establishment of any educational institution of their choice by the minorities. Under Section 11(f), the Commission has been vested with the power rather the mandate to decide all questions relating to the status of any institution as a minority educational institution and declare its status as such. Therefore, after the introduction of the Act, 2004, it is also within the jurisdiction and mandate of the National Commission to issue the certificate regarding the status of a minority educational institution. Once, the Commission thus issues a certificate, it is a declaration of an existing status. [Paras 7-10] [504-F-H; 505-A-B; 506-A-B]

N. Ammad v. Manager, Emjay High School (1998) 6 SCC 674 : [1998] 1 Suppl. SCR 453 – relied on.

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Case Law Reference

	[2006] 9 Suppl. SCR 644	relied on	Para 5
	(2002) 8 SCC 481	relied on	Para 5
E	[2005] 2 Suppl. SCR 603	relied on	Para 5
	[1971] 1 SCR 734	relied on	Para 5
	[1975] 1 SCR 173	relied on	Para 5
F	[1987] 1 SCR 238	relied on	Para 5
	[1963] 3 SCR 837	relied on	Para 5
	(1971) 2 SCC 269	relied on	Para 5
G	[1980] 2 SCR 924	relied on	Para 5
	[1991] 3 Suppl. SCR 121	relied on	Para 5
	[1998] 1 Suppl. SCR 453	relied on	Para 5
	(1998) 8 SCC 555	relied on	Para 5

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 826-827 of 2017. A

From the Judgment and Order dated 31.03.2014 of the High Court of Kerala at Ernakulam in WA No.568 and 580 of 2013

WITH B

C. A. No. 828 of 2017.

Romy Chacko, Subham Singh, Varun Mudgal, E.M.S. Anam, Advs. for the Appellant.

Prasanth P., C. K. Sasi, Ms. Venkita Subramoniam T. R., Rahat Bansal, Advs. for the Respondents. C

The Judgment of the Court was delivered by

KURIAN, J. 1. The appellants-minority educational institutions chose to appoint a teacher of their choice belonging to their respective community to the post of Headmaster, ignoring the available senior teachers from the same community. The High Court interfered and thus aggrieved, the appeals. D

2. In the case of the appellant in Civil Appeal Nos. 826-827 of 2017, the learned Single Judge of the High Court was in favour of the appellant, but in the case of the other, being Civil Appeal No. 828 of 2017, both the learned Single Judge and the Division Bench of the High Court held against them. E

3. In the impugned judgment, the Division Bench has taken the view that the Management of a minority educational institution has no absolute freedom to appoint a person of their choice, and they cannot overlook the qualified and senior teachers belonging to the same community. It has also been held that declaration of minority status in the case of the appellant in Civil Appeal Nos. 826-827 of 2017 by the National Commission for Minority Educational Institutions is of no avail since the appellant was an already existing institution and that the certificate of the Commission is meant for minority educational institutions to be newly established. Still further, the court has taken the view that the declaration contained in the certificate of the Authority cannot have any retrospective effect. F
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A 4. We are afraid, the stand taken by the High Court cannot be appreciated. On all the three points, the position is well settled by the Judgments of this Court.

B 5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in Secy. Malankara Syrian Catholic College Vs. T. Jose and Others, reported in (2007) 1 SCC 386, after referring to all the celebrated cases on minority rights, viz. *T M A Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481], *P.A. Inamdar vs. State of Maharashtra* [(2005) 6 SCC 537], *State of Kerala v. Very Rev. Mother Provincial* [(1970) 2 SCC 417], *The Ahmedabad St. Xavier's College Society v. State of Gujarat* [(1974) 1 SCC 717], *Frank Anthony Public School Employees' Association v Union of India* [(1986) 4 SCC 707], *Rev. Sidhajibhai v. State of Bombay* [(1963) 3 SCR 837], *D.A.V. College v. State of Punjab* [(1971) 2 SCC 269], *All Saints High School v. Government of A.P.* [(1980) 2 SCC 478], *St. Stephen's College v. University of Delhi* [(1992) 1 SCC 558], *N. Ammad v. Manager, Emjay High School* [(1998) 6 SCC 674], *Board of Secondary Education & Teachers Training v. Joint Director of Public Instructions* [(1998) 8 SCC 555], has held in Paras 27 to 29 that the Management of a minority aided educational institution is free to appoint the Headmaster or the Principal, as the case may be, of its own choice and has no obligation to appoint the available senior qualified member from the same community. Paras 27, 28 and 29 are quoted hereunder :-

F “27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

G 28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching

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staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate, or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority run educational institutions even if they are aided.

(Emphasis supplied)

The emerging position is that, once the Management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.

6. As far as the validity of the declaration of minority status is concerned, this Court in N. Ammad Vs. Manager, Emjay High School and Others, [(1998) 6 SCC 674], has held that the certificate of the

A declaration of minority status is only a declaration of an existing status. Therefore, there is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence. Paras 12 and 13 of the Judgment are quoted hereunder :-

B *12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school. If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. Declaration by the Government is at best only a recognition of an existing fact. Article 30(1) of the Constitution reads thus:*

C *“30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”*

D *13. When the Government declared the school as a minority school it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only after the Government declared it as a minority school on 2-8-1994.”*

E *7. We also have to refer to another faulty stand taken by the High Court in the impugned Judgment regarding the jurisdiction of the National Commission for Minority Educational Institutions. The Commission was established under the National Commission for Minority Educational Institutions Act, 2004 for the purpose of constituting the National Commission for Minority Educational Institutions and to provide assistance for matters connected therewith or incidental thereto.*

F *8. Chapter III deals with rights of minority educational institutions. Under Section 10, whosoever desires to establish a minority educational institution, has to apply to the competent authority for a ‘no objection certificate’. The ‘competent authority’ is defined under Section 2(ca) of the Act to mean, the authority appointed by the appropriate government to grant ‘no objection certificate’ for the establishment of any educational institution of their choice by the minorities.*

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9. Chapter IV deals with functions and powers of the Commission. Under Section 11(f), the Commission has been vested with the power rather the mandate to decide all questions relating to the status of any institution as a minority educational institution and declare its status as such. Section 11 of the Act is quoted hereunder :-

"11. Functions of Commission - Notwithstanding anything contained in any other law for the time being in force, the Commission shall - (a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) enquire, suo motu or on a petition presented to it by any by any minority educational institution or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission."

(Emphasis supplied)

A 10. Therefore, after the introduction of the National Commission for Minority Educational Institutions Act, 2004, it is also within the jurisdiction and mandate of the National Commission to issue the certificate regarding the status of a minority educational institution. Once, the Commission thus issues a certificate, it is a declaration of an existing status.

B 11. Therefore, on all counts, the legal position is wholly covered in favour of the appellants. The impugned Judgment of the High Court is, hence, set aside and the appeals are allowed.

There shall be no order as to costs.

Devika Gujral

Appeals allowed.