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Court : Andhra Pradesh

Decided On : Feb-27-2001

Reported in : 2001(3)ALD72; 2001(2)ALT587

Judge : E. Dharma Rao, J.

Acts : [Constitution of India](#) - Articles 15, 29, 30 and 351; Minorities Commission Act, 1998 - Sections 2

Appeal No. : WP No. 23719 of 2000

Appellant : M. David

Respondent : Convenor, Eamcet-2000 and Commissioner of Technical Education, Hyderabad and Other

Advocate for Def. : Government Pleader for Higher Education, ;Mr. K. Ramesh Babu, SC for ;A.P. State Council for Higher Education and ;Mr. E. Manohar for ;Mr. P. Dharmesh, Adv.

Advocate for Pet/Ap. : Mr. P. Balakrishna Murthy, Adv.

Judgement :

1. Mr. M. David son of M. Danam, filed this writ petition to issue writ of mandamus or any other appropriate writ to direct the respondents to admit the petitioner to B.Tech., (Computers) course in the 4th respondent College for the academic year 2000-2001 by declaring the action of the respondents 4 and 5 as illegal and they cannot deviate or depart from the rank assigned by the EAMCET-2000 examination and cannot admit any other candidate who has got lower rank than the petitioner and to pass any other orders which are deemed to be fit and proper in the circumstances of the case.

2. The petitioner is stated to be an Indian Christian professing Protestant faith, one of the faiths in Christianity and that he passed Intermediate Examination in second Division with MPC group from St. Mary's Junior College, Himayathnagar, Hyderabad in April, 1999, and that he appeared for EAMCET-2000 Examination, which is combined and common entrance test for admission into Medical, Engineering and Agricultural Courses, has secured 486 15th rank. The petitioner intended to prosecute BE., (Computers) Engineering Course in one of the Engineering Institutions run by Christian Minority Community. Therefore, in pursuance of the notification dated 21-7-2000 issued by the 4th respondent inviting applications from Catholic Christian Minority candidates qualified in EAMCET-2000/ECET-2000. Accordingly, the petitioner approached the 4th respondent institution for application seeking admission to BE., Course. But the 4th respondent bluntly refused on the ground that the petitioner profess Protestant faith. Thereafter the petitioner approached the second respondent through a representation dated 23-9-2000 seeking his intervention in the matter and to direct the 4th respondent college to give him the application form. On the basis of the representation, directions were given to the 5th respondent by the 1st respondent to issue application form for admission. Accordingly, on 23-11-2000 the 5th respondent issued necessary application form and registered his name after payment of necessary fee for registration, but he was not allotted a seat but rejected his application on the ground that he professes Protestant faith. Aggrieved of such action of the respondents, the present writ petition is filed seeking the above said relief.

3. Mr. Balakrishna Murthy, the learned Counsel for the petitioner submitted that the Government has issued certificate of Christian Minority Status to the 4th respondent institution and therefore, the 5th respondent has an obligation to admit all the Christian students irrespective of their faith in accordance with the rank they obtained in the EAMCET/ECET-2000 Examination and the 5th respondent has no right to segregate the students on the basis of their faith for admission into his college. It is further contended that as per the G.Os. issued by the Government from time to time, 50% of the seats shall be filled by the management of such Minority Professional Colleges from among the candidates of minority community on the basis of merit and such merit shall be on the basis of rank secured in the Common Entrance Test. It is further submitted that insofar as the Christian Minority Educational Institute is concerned, no distinction can be made between the Roman Catholics and Protestants, inasmuch as both the sects come under the definition of Indian Christian, which is a minority community.

4. He further submitted that Section 2(d) of the A.P. State Minorities Commission Act, 1998 defines Minority as the persons who profess faith in Buddhism, Christianity, Islam, Sikhism Zoroastrianism and, therefore, any further classification of Christians as Protestants and Catholics is un-warranted and it is contrary to the provisions of the Act. It is further submitted that even Articles 29 and 30 of the [Constitution of India](#) do not make any distinction between the Protestants and Catholics. Since the 4th respondent in the information brochure invited applications from the candidates professing Catholic faith only, the impugned action of the respondents is contrary to law and offending Articles 29 and 30 of the [Constitution of India](#).

5. At the time of admission of the writ petition on 4th December, 2000, this Court has granted interim direction directing the respondents 4 and 5 to admit the petitioner to B.Tech, (Computers) Course as per the rank assigned by EAMCET-2000 Examination. Now a petition is filed to vacate the said interim direction, WV MP No.3387 of 2000, and both the learned Counsel agree to dispose of the main writ petition as the matter is ready for disposal.

6. The respondents 4 and 5 who filed counter along with WV MP No.3387 of 2000 contended that the writ petition is misconceived and not maintainable. It is submitted that the petitioner, who is Protestant, has no enforceable right to claim a seat in the 4th respondent college which was established and administered by Roman Catholic Christian Minority Community, that for admission in the academic year 2000-2001, the college has rejected applications of 44 candidates on the ground that they are not Catholics and among them, according to the ranking, the petitioner obtained 20th rank and as such there are 19 candidates who obtained higher rank than the petitioner. Thus the petitioner has no chance of securing admission in Computer Science Engineering Branch and it is only during the counselling, the candidate chooses the subject according to availability. It is further submitted that the 4th respondent college was established in the year 1998 by the Warangal Diocesan Society (Religious and Charitable Society) under Registration No.291 of 1968, that one of the aims and objects of the Society is to promote social, religious, educational, agricultural welfare of the Christians and in particular Roman Catholics in the field of education. It is submitted that in 1997 the Society submitted an application to the AICTE for establishment of the Engineering College during the academic year 1998-99 and in the application submitted to the A.P. Government for issuance of letter of viability, it was specifically mentioned that the proposed college is a private Catholic Christian Minority Institution and the permission was accorded by the AICTE to start the college during the academic year 1998-99; that the Society submitted an application to the Government for the issuance of Minority Certificate as per G.O. Ms. No.23 Minority Welfare (M and R) Department dated 10-3-1999 wherein also it was stated in column No.6 as under:

'6. Name of the community Roman - Catholic -

(religious or linguistic) to Religious Minority

which the educational - Community

agency belong and claims

the status of minority

community

Accordingly, the Government issued the Minority Status Certificate dated 23-7-1999 and that right from the year 1998-99 the college has been issuing information brochure and also admission notification calling for applications only from the Catholic Christian Minority candidates qualified in EAMCET/ECET, that during 1998-99 due to lack of enough applications from Catholics, five seats were allotted to non-Catholic Christian Minority candidates and during the year 1999-2000, all the seats were filled only by Catholics, Likewise for the academic year 2000-2001, applications were called only from candidates professing Catholic faith of Christian Community and against the admission notification, they have received 192 applications from the candidates belonging to Roman Catholics for 108 seats, that apart from 192 applications, they have also received applications from 44 candidates belonging to non-Roman catholic and were rejected, among whom the petitioner was at 20th rank. The respondent further denied that insofar as Christian Minority Educational Institutions are concerned, no distinction has been made between Catholic and Protestant and both come under the common name of Indian Christian. It is submitted that the division and the distinction are matters of history and exists all over and throughout the world, that there are major differences between the two sects in the area of administration, practice of religion and dogma, that the constitutional and other legal provisions as well as the minority certificate issued by the Government should be understood in the right perspective keeping in view the noted differences between the two sects.

7. On the other hand, Sri E. Manohar, the learned Senior Counsel appearing on behalf of the respondents 4 and 5 further submitted that the candidates who profess Roman Catholic faith of Christianity, formed it to a Society under the name of Warangal Diocesan Society as a non-profit society to serve the Roman Catholic Christian, to promote social, religious educational and agricultural welfare, to own, manage and run schools, churches, clubs, orphanages, boarding and other institutions which may help to achieve the aims of the Society, etc., etc.....Accordingly, it obtained certificate from the Government of Andhra Pradesh as a Christianity Minority Community Certificate, that while making application for issuance of the certificate, it has categorically stated in the application form that

the Society is consisting of members professing Roman Catholic faith and obtained Christian Minority Certificate, therefore, there is no wrong in admitting the candidates who profess Roman Catholic faith of Christianity and rejecting the admission to the candidates who profess other than Roman Catholic faith.

8. Although both the learned Counsel appearing on behalf of the parties have cited catena of decisions in support of their respective contentions, across the Bar, I need not dwell upon the same, inasmuch as the ratio that emerges from the decisions cannot be disputed and made applicable to the facts and circumstances of the case on hand.

9. The main issue involved in this writ petition for my consideration is when once the 4th respondent is registered as a Christian Minority Institution, is it permissible under law to admit only one sect of candidate who profess Roman Catholic and reject admission to the candidate who profess other than Roman Catholic faith?

10. In the background of these facts and circumstances, let us examine the sacrosanct provisions of the Indian Constitution having a bearing on the subject.

11. Marginal note of Article 29 reads 'Protection of interests of minorities', This Article is incorporated in Part III under Chapter Fundamental Rights viz.. Cultural and Educational Rights. Article 29(1) contemplates any section of the citizens residing in the territory of India or any part thereof having distinct language, script or culture of its own shall have the right to conserve the same. Article 29(2) contemplates that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State Fund on the grounds only of religion, race caste, language or any of them. Article 29(1) protects right to culture of minorities, if there is cultural minority which wants to conserve its language, script and culture, the State shall not impose upon it any other culture which may be local or otherwise, that where a law passed by the State Legislature extends to the whole of the State, the minority must be determined with reference to the population of the entire State. A minority community can effectively conserve its language, etc., only through the educational institutions and the right to establish and maintain educational

institutions of its choice is a necessary concomitant of the right conferred by clause 1 of Article 29. This right however is subject to the limitations in clause 2, if such institutions receive State aid. The right to conserve the language includes right to agitate for the protection of that language, including political agitation. Clause (2) of Article 29 is a counterpart of the equality clauses of Article 15, that there should be no discrimination against any citizen on the ground of religion, etc., in the matter of admission into any educational institution maintained or aided by the State. Thus while clause (1) protects the right of a section of the citizens, the right conferred by Clause (2) is an individual right given to the citizens as such and not as a member of any community. It gives an aggrieved person, who has been denied admission on the ground of his religion, etc., a remedy even though other members of his religion, etc., have been admitted. If a citizen who seeks admission into any such educational institutions has not the requisite academic qualifications and is denied admission on that ground, he certainly cannot be heard to complain of any infraction of his Fundamental Right under Article 29(2). On the other hand, if he has the academic qualifications but is refused admission only on grounds of religion, race, language or any of them, then there is a clear breach of his Fundamental Right under the said clause. The above words show that educational institutions coming within this clause are not debarred from imposing conditions or limitations other than those specified such as previous training, physical fitness, vaccination, dissociation from injurious associations and the like, and, thus the reservation of certain seats in a Medical Institution for students who have passed the Higher Secondary Examination is not hit by this Article.

12. Marginal note of Article 30, reads 'Right of Minorities to establish and administer educational institutions' It says that all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It implies that the right of a minority community to impart instruction to the children of its own community in institutions run by it and in its own language and if such right is infringed, as institution run by the community may seek relief for violation of the Fundamental Right. Even though Hindi is the national language of India and Article 351 provides a special directive upon the State to promote the spread of Hindi, nevertheless, the object cannot be achieved

by any means which contravenes the rights guaranteed by Articles 29 and 30. To claim the benefit of Article 30(1), the community must show that it is a religious or linguistic minority and that the institution was established by it. Without satisfying these two conditions, it cannot claim the guaranteed right to administer it. If these two conditions are satisfied, the right extends to the institutions established prior to the Constitution as well as to those established after its commencement. The key to the understanding of the meaning of the clause is the expression 'of their own choice' and the content of the clause is as wide as the choice of the particular community may make it. This right will follow as soon as it is shown that the institution was established by a minority community. It follows that in order to claim the right conferred by the clause it is not necessary that the curriculum of the institution must be confined to the teaching of religion only or of the language of the minority community only. There is no limitation on the subject to be taught in such institution and they are not debarred from giving general education as well as in such institution.

13. The minority referred to in Article 30 must be a minority based either on religion or language, need not be both. While Article 29(1) gives a culture or linguistic minority community the right to conserve its language or culture, Article 30(1) confers on religious or linguistic minorities the right to establish educational institutions of their own choice, inasmuch as it is through the education of the children that the group culture can be maintained. The scope and object of Article 30(1) is wider than the mere conservation of the culture, script, which will effectively serve the needs of the community and the scholars who resort to such institutions. The word 'establish' means to bring into existence an educational institution while the word 'administer' means the right to manage and conduct the affairs of the institution.

14. The word 'minority' is not defined in the Constitution and in common parlance it should be referred to any community which is numerically less than 50% of the population of the State concerned. Either religious or cultural minority, they have a right to conserve its script or culture of their own and the State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion

or language. Such religious and cultural minorities have Fundamental Right to establish and administer educational institutions of their choice. These rights conferred on the other minorities cannot be complained against the majority in the country.

15. The above settled principles of law makes it clear that any section of citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to conserve the same by establishing and administering the educational institutions of their choice. They have right to conserve their script and culture, right to profess the religion and right to establish and administer educational institution of their choice. Therefore, the institutions established by the Minorities cannot be discriminated in the matter of State aid on the ground that it is maintained by the Minority and for admission into grant-in-aid cannot be denied only on the ground of caste, religion or language.

16. With the backdrop of the facts and the legal position and that to appreciate the contention of the learned senior Counsel appearing on behalf of the respondents 4 and 5, that the 4th respondent institute is established and administered by the members of the Roman Catholic faith of Christianity and to that extent, the State has recognised it and issued the Christianity Minority Status Certificate, it has a right to admit only those candidates who profess Roman Catholic faith and deny admissions to the candidates profess faith other than Roman Catholic faith, I have gone through the material placed before me.

17. A careful reading of the Certificate No.043.2871/M and R/A2/99 (C) 23-7-1999, issued by the Government of Andhra Pradesh, prima facie discloses that the Minority Status Certificate was issued by the Government as Christian Minority Educational Institution. Though the 4th respondent has categorically stated in his application that members of the Society represents Roman Catholic faith, the Government after careful examination of the details furnished by the petitioner as per notification under G.O. Ms. No.23 Minority Welfare Department, dated 10-3-1999 appeared in the newspapers dated 3-5-1999, therefore, the respondents 4 and 5 have been granted the Minority Status Certificate representing the Christian Community as a whole by the Government of Andhra Pradesh, Hyderabad, and

they cannot say now that they will intake only those candidates who profess Roman Catholic faith and not candidates who professing Protestant faith. The said certificate is a general certificate issued by the Government for commencement of the 4th and 5th respondents institution. Had it been the intention of the Government to grant certificate to 4th and 5th respondent to admit the candidates professing only Roman Catholic faith, it would have certainly made it clear in the certificate and directed the 4th and 5th respondents to restrict the admission only to the candidates professing Roman Catholic faith. I am fortified in my view by the Memo No.E2/8832/2000 dated' 5-8-2000 issued by the Commissioner of Technical Education, A.P., Hyderabad, whereby the Principals and Secretaries/Correspondents of the Christian Minority Engineering Colleges including the Respondents 4 and 5 institutions were informed that it was brought to the notice of the Commissioner that some of the Christian Minority Engineering Colleges are differentiating between Catholics and Protestants while making admissions in their institutions under Management quota. It was reiterated that the Minority status is given to the institutions only as a Christian Minority Institutions and no further classification is made, and therefore, the denial of seats to candidates based on whether they are Catholics or Protestants is against Rules. Therefore, the managements were requested not to deny seats to any particular sect of Christianity. This Memo makes it abundantly clear that the certificate issued to the 4th respondent is a general certificate recognising the 4th respondent institute as a Christian Minority Institute, irrespective of the fact that the petitioner has given in his application that the members of the Management belong to Roman Catholic. Even in column No.6 of the application required the information to be furnished is the name of the community, religion or linguistic to which the educational agency belongs and claim the status of minority community, but it did not ask to which sect of minority community the respondents 4 and 5 belong.

18. Articles 29 and 30 of the [Constitution of India](#) recognises only religious and linguistic minority. To recognise, a particular community, either religious or linguistic, it is on the basis of the population. If the population of a particular religious or linguistic community is less than 50% of the population of the State, then it is held to be religious or linguistic minority to conserve their distance

language, script or culture and it has to be done through establishment of educational institutions and administer them, and they have got a Fundamental Right to impart education in their own language. Though the Christian Minority Community is having number of sects and faith, but the Constitution recognises it as a Christian Minority Community. When once the Government, after considering the required information furnished by the 4th respondent, recognised it as a Christian Minority Institute and issued, Christian Minority Status Certificate after scrutinising the application submitted by the fourth respondent, it is in consonance with Articles 29 and 30 of the [Constitution of India](#). If the protestant faith in Christian Minority is having population of more than 50% of the State, it will become a majority community and the Fundamental Rights guaranteed under Articles 29 and 30 of the [Constitution of India](#) are not available to them. Whatever may be the faith in the Christianity, the Christianity as a whole constitute population less than 50% of the State. Therefore, the State Government has recognised the people who profess Christianity, as a minority community and issued the Minority Status Certificate. If once the Christianity is recognised as a minority religion, there should not be any sub-classification among the Christians, on the basis of their faith, which is not permissible under the Constitution. Though there are different sects and faiths in Christianity, but all the sects and faiths constitute homogenous group of Christian Community. What the respondents 4 and 5 are unable to do directly, they cannot do it indirectly.

19. Concise Oxford Dictionary, 10th Edition, 1999 defines the word 'Community' as a group of people living together in one place, especially one practising common ownership, a place considered together with its inhabitants, a rural community means the people of an area or country considered collectively; society, a group of people having a religion, race, or profession in common; the scientific community means, the condition of having certain attitudes and interests in common, joint ownership or liability, a group of interdependent plants or animals growing or living together. Therefore, the meaning of the word 'Community' makes it clear that the group of people having a religions race or profession in common. Therefore, the people who are possessing different faith in Christian Community who are less than 50% of the population of the State, constitute religious Christian Minority Community. Therefore, on a wrong interpretation of the Minority Certificate issued

by the State Government, as Christian Minority Community, denying admission to the candidates who are professing other than Roman Catholic faith, is nothing but playing a fraud on the Constitution and public. Till the time the 4th respondent obtains a certificate of Roman Catholic Christian Minority Status Certificate from the Government of Andhra Pradesh, it has no right to deny admission to the candidates who profess other than Roman Catholic faith.

20. It is pertinent to mention here that the Government also ordered an enquiry with regard to the affairs of the 4th respondent institution in respect of the fact that they are denying admission to the candidates professing other than Roman Catholic faith.

21. Therefore, in view of my discussion supra, it is clear that the 4th and 5th respondents have flagrantly violated the rights of the Christian Minority candidates who profess other than Roman Catholic faith from the date of establishment of the institution. Therefore, the misinterpretation which is given by the respondents 4 and 5 to the Minority Status Certificate issued by the Government, in respect of the Christianity as a whole, and that they can admit only the candidates who profess Roman Catholic and to deny admission to the candidates professing other than Roman Catholic, is illegal, unconstitutional and in violation of the orders issued by the Government from time to time. As stated by the respondents 4 and 5 in their counter-affidavit as many as 44 candidates, other than Roman Catholics have applied in response to their notification, were been rejected, but they are not before the Court. The petitioner is the only candidate who is fighting for his legitimate right for admission in the 4th respondent college. Therefore, the question of considering their cases does not arise, but the case of the petitioner deserves to be considered and he deserves to be admitted to the course. The petitioner has been prosecuting this case before this Honourable Court for all these days. Therefore, while calculating the required percentage of attendance, the 5th respondent is directed to take necessary steps to condone the same, as a special case, in view of the facts and circumstances of this case.

22. The respondents 4 and 5 who deliberately denied admission in the 4th respondent college, as admitted by them, from the academic year 1998-1999

knowing fully well that the Minority Status Certificate is a General Certificate issued to them as a Christian Minority Institution, as a whole, and no further classification can be made, have deprived the rights of eligible candidates who got rank in Common Entrance Examinations conducted by the Government. This matter deserves to be viewed seriously to prevent recurrence of the same in future. Since an enquiry was already initiated in the matter, the respondents 1 to 3 are directed to expedite the enquiry preferably within a period of two months from the date of receipt of a copy of this order and take appropriate action as per law, on the basis of the enquiry report, and intimate to this Honourable Court, as to action taken against 4th and 5th respondents.

23. The writ petition is accordingly allowed without costs.

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