

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY ,THE 04TH DAY OF DECEMBER 2018 / 13TH AGRAHAYANA,
1940

WP(C).No. 35293 of 2018

PETITIONER/S:

- 1 FATHIMA THASNEEM (MINOR) ,
AGED 12 YEARS
D/O MOHAMMED SUNIR,
STUDYING IN CHRIST NAGAR SENIOR SECONDARY
SCHOOL, (CMI EDUCATIONAL INSTITUTION) ,
THIRUVALLAM,
THIRUVANANTHAPURAM - 695 027.
- 2 HAFZAH PARVEEN, (MINOR) ,
D/O MOHAMMED SUNIR,
STUDYING IN CHRIST NAGAR SENIOR SECONDARY
SCHOOL, (CMI EDUCATIONAL INSTITUTION) ,
THIRUVALLAM,
THIRUVANANTHAPURAM - 695 027, (BOTH THE
PETITIONERS RESPRESENTED BY THEIR FATHER AND
NATURAL GUARDIAN MOHAMMED SUNIR M. , S/O
MOHAMMED HANEEFA, AGED 40 YEARS, MUNEER MANZIL,
M.C. STREET, BALARAMAPURAM, MCNRA-154,
THIRUVANANTHAPURAM-695501.

BY ADV. SRI.K.A.MANZOOR ALI

RESPONDENT/S:

- 1 THE STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

- 2 THE DIRECTOR OF PUBLIC INSTRUCTIONS,
OFFICE OF THE PUBLIC INSTRUCTION, JAGATHY,
THIRUVANANTHAPURAM-695014.
- 3 THE SECRETARY,
CENTRAL BOARD OF SECONDARY EDUCATION, (CBSE),
2ND FLOOR, LIC DIVISION OFFICE, PATTAM,
THIRUVANANTHAPURAM-695004.
- 4 THE PRINCIPAL,
CHRIST NAGAR SENIOR SECONDARY SCHOOL, (CMI
EDUCATIONAL INSTITUTION), THIRUVALLAM,
THIRUVANANTHAPURAM-695027.
- 5 THE MANAGER,
CHRIST SENIOR SECONDARY SCHOOL, (CMI
EDUCATIONAL INSTITUTION), THIRUVALLAM,
THIRUVANANTHAPURAM-695027.

BY ADVS.
SRI.NIRMAL S., SC, CBSE
SRI.R.S.KALKURA
SMT.P.ANJANA
SMT.R.BINDU
SRI.HARISH GOPINATH
SRI.M.S.KALESH

NISHA BOSE GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.12.2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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J U D G M E N T

Religious dress in a private educational institution is the issue in this writ petition. The petitioners are students, who are studying in Christ Nagar Senior Secondary School, a CMI Educational Institution. They are represented in this writ petition through their parents.

2. The school has adopted a uniform. The petitioners are girl students. They belong to the Muslim community and are followers of the Islamic faith. They want to wear the headscarf as well as full sleeve shirt. The school authority found that it is not consistent with the dress code prescribed by the school authority. The petitioners were directed to attend school with a proper dress code, but they did not relent and insisted that they should be permitted to attend classes wearing the headscarf and full sleeve shirt which is not prescribed in the dress code. Since they are not able to obey the instructions in regard to the uniform, they are before this court in this writ petition.

3. One has the liberty to follow his own notions and convictions in the matter of dress code. At the same time, when such a right is claimed against a private entity which is also having equal Fundamental Right to manage and administer an institution, the Court has to balance the competing Fundamental Rights and decide the issue.

4. This Court by judgment in **Amnah Bint Basheer v. Central**

Board of Secondary Education [2016 (2) KLT 601] had taken a view that right of woman to have the choice of dress based on religious injunctions is a Fundamental Right protected under Article 25(1) of the Constitution of India, when such prescription of dress is an essential part of the religion. Therefore, there may not be any difficulty to hold that it is the Fundamental Right of the petitioners to choose the dress of their own choice.

5. The right to establish, manage and administer an institution is equally a Fundamental Right. This Fundamental Right is traceable under Article 19 of the Constitution of India, of course, subject to reasonable restrictions. {See judgments of the Hon'ble Supreme Court in **T.M.A. Pai Foundation and Others v. State of Karnataka and Others [2002 (8) SCC 481]** and **P.A.Inamdar and Others v. State of Maharashtra and Others [(2005) 6 SCC 537]**}. This competing Fundamental Right is to be considered in this writ petition and, in what manner this matter has to be resolved is called for a Judicial decision in this case.

6. Imparting education is a State function. Therefore private educational institutions discharge public function. Assuming that it is not a public function in regard to the prescription of dress code, the Fundamental Rights can be claimed as against the private actors horizontally. Horizontal application of the Fundamental Rights has been accepted by the Apex

Court in various judgments. {See judgments of the Hon'ble Supreme Court in **I.M.A. v. Union of India [(2011) 7 SCC 179]**, **R.Rajagopal v. State of Tamil Nadu [(1994) 6 SCC 632]**, **PUDR v. Union of India [(1982) 3 SCC 235]}**}.
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7. Fundamental Rights are either in nature of the absolute right or relative right. Absolute rights are non-negotiable. Relative rights are always subject to the restriction imposed by the Constitution. The religious rights are relative rights (see Art 25 of the Constitution). In the absence of any restriction placed by the State, the Court need not examine the matter in the light of restriction under the Constitution. The Court will, therefore, have to examine the matter on a totally different angle on the conflict between Fundamental Rights available to both. The Court has to examine the prioritization of competing Fundamental Rights in a larger legal principle on which legal system function in the absence of any Constitutional guidance in this regard. The Constitution itself envisage a Society where rights are balanced to subserve the larger interest of the Society.

8. In every human relationship, there evolves an interest. In the competing rights, if not resolved through the legislation, it is a matter for judicial adjudication. The Court, therefore, has to balance those rights to

uphold the interest of the dominant rather than the subservient interest. The dominant interest represents the larger interest and the subservient interest represents only individual interest. If the dominant interest is not allowed to prevail, subservient interest would march over the dominant interest resulting in chaos. The dominant interest, in this case, is the management of the institution. If the management is not given free hand to administer and manage the institution that would denude their fundamental right. The Constitutional right is not intended to protect one right by annihilating the rights of others. The Constitution, in fact, intends to assimilate those plural interests within its scheme without any conflict or in priority. However, when there is a priority of interest, individual interest must yield to the larger interest. That is the essence of liberty.

9. The Apex Court in **Asha Renjan and Others v. State of Bihar and Others [(2017) 4 SCC 397]** accepted the balance test when competing rights are involved and has taken a view that individual interest must yield to the larger public interest. Thus, conflict to competing rights can be resolved not by negating individual rights but by upholding larger right to remain, to hold such relationship between institution and students.

10. In such view of the matter, I am of the considered view that the petitioners cannot seek imposition of their individual right as against the

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larger right of the institution. It is for the institution to decide whether the petitioners can be permitted to attend the classes with the headscarf and full sleeve shirt. It is purely within the domain of the institution to decide on the same. The Court cannot even direct the institution to consider such a request. Therefore, the writ petition must fail. Accordingly, the writ petition is dismissed. If the petitioners approach the institution for Transfer Certificate, the school authority shall issue Transfer Certificate without making any remarks. No doubt, if the petitioners are willing to abide by the school dress code, they shall be permitted to continue in the same school. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 PHOTOGRAPHS SHOWING THE PETITIONERS THE SCHOOL UNIFORM ALONG WITH THE LONG SLEEVE SHIRT AND THE HEADSCARF
- EXHIBIT P2 TRUE COPY OF THE RESULT OF THE PETITIONERS IN THE EXAMINATIONS CONDUCTED IN MARCH 2018
- EXHIBIT P3 TRUE COPY OF THE MARKS SECURED BY THE PETITIONERS IN THE EXAMINATION IN MARY 2018
- EXHIBIT P4 TRUE COPY OF THE REQUEST DATED 4.5.2018 SUBMITTED BY THE PETITIONERS' FATHER BEFORE THE 4TH RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE REQUEST DATED 26.6.2018 SUBMITTED BY THE PETITIONER'S FATHER BEFORE THE 3RD RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 4.7.2018
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 16.7.2018 SUBMITTED TO THE 4TH RESPONDENT BY PARENTS
- EXHIBIT P8 TRUE COPY OF THE REPRESENTATION DATED 28.6.2018
- EXHIBIT P9 TRUE COPY OF THE JUDGMENT DATED 26.4.2016 RENDERED BY THIS HON'BLE COURT IN WPC.6813/2016

RESPONDENTS EXTS :

Exhibit R4(a)- True copy of the certificate dated 5.6.2013 issued by the National Commission for Minority Educational Institution, Government of India

Exhibit R4(b)- True copy of the attendance register of the 1st petitioner in respect of Class VII-F

Exhibit R4(c)- True copy of the attendance register of the 2nd petitioner in respect of Class III-B

Exhibit R4(d)- True copy of the letter dated 4.7.2018 issued by the 4th respondent to the father of the petitioner

Exhibit R4(e)- The postal acknowledgement indicating receipt of the said letter by the father of the petitioners

Exhibit R4(f)- True copy of the notice dated 5.4.2018 issued by the 4th respondent and published in the notice board of the school

Exhibit R4(g)- True copy of the complaint dated 11.7.2018 submitted by the 4th respondent before the Commissioner of Police, Thiruvananthapuram

Exhibit R4(h)- True copy of the prospectus of the Christ Nagar Senior Secondary School

Exhibit R4(i)- True copy of the relevant portion of the Hand Book

Exhibit R4(J)- True copy of the application for admission of the 1st petitioner submitted by the 1st petitioner's father dated 20.2.2012

Exhibit R4(k)- True copy of the application for admission of the 2nd petitioner submitted by the 1st petitioner's father dated 28.2.2016

Exhibit R4(l)- True copy of the application for admission of Mariam Harianusia. M. submitted by the 1st petitioner's father dated 20.12.2017

Exhibit R4(m)- True copy of the report received by the respondents under the Right to Information Act along with the letter of the Director of Public Instruction dated 18.8.2018

\\True copy//

PS to Judge