

(1992) 04 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7985 of 1990

Al Karim Educational Trust and Another and All India
Janasangh, Bihar State Branch and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0037

Judgement

G.C. Bharuka, J.—These two writ petitions have been referred to me under Clause 28 of the Letters Patent because of the difference of opinion on certain points between S.B. Sanyal, J, and Aftab Alam, J.

2. In the present cases the difference of opinion is only on the question as to whether the provisions of the Bihar Medical Institutions (Regulation and Control; Act, 1981 (hereinafter to be referred to as the "Regulation Act" only) will apply to the Medical Colleges sought to be established and administered by religious and linguistic minorities. S.B. Sanyal, J. has opined that such institutions can be established and administered only subject to the provisions of the Regulation Act, whereas Aftab Alam, J. has taken the view that in the light of the Constitutional guarantee as envisaged under Article 30 of the Constitution, the provisions of the Regulation Act can not have any application to the minorities Institutions.

3. For deciding the points of law, which have fallen for consideration, it is not necessary to consider the factual aspects of the case in any greater details. But for the proper appreciation of the reliefs claimed by the Petitioners in the present writ applications, it is necessary to state some of the relevant facts. AlKarim Educational Trust is the first Petitioner in C.W.J.C. No. 7985 of 1990. It is a registered Society. Its claim is that in its meeting held on 31-5-1987 it was resolved to establish a Medical College to be known as Katihar Medical College, Katihar. But, curiously, in contemplation of establishing a Medical College at Katihar, the first year class of the first M.B.B.S. course was started in a rented building at Patna. This was for the session 1987-88. Admittedly, before admitting

the students to the M.B.B.S. courses, neither permission was obtained from the Government as envisaged u/s 2 of the Act nor any affiliation was accorded to the College by the University. On 16-5-83 an application was made by the Petitioner-society to L.N. Mithila University, Darbhanga, for affiliation of the College and to allow its students to appear at the first M.B.B.S. Examination conducted by the said University. It appears that pursuant to this application the University constituted an Inspection team which inspected the College situated at Patna on 15-3-89 and submitted its report on 15-4-89 (Annexure 5/A of C.W.J.C. No. 7985 of 1990). The report recommended for grant of temporary affiliation; for three years on fulfilment of certain conditions. Accordingly the Registrar of the University forwarded the said report to the State Government for its approval and appropriate decision. But, according to the Petitioners, no Government decision in this regard has yet been communicated to them. On the other hand in para 12 of the counter-affidavit filed on behalf of the Government it has been stated that on the basis of the materials available on the record, the State Government was satisfied that the Institution did not qualify for recognition/affiliation and, therefore; rejected the claim of the Institution for recognition.

4. I may first deal with the technical objection raised by Mr. Basudeo Prasad, based on the construction of Clause 28 of the Letters Patent. His claim is that these cases can not be heard by me as a third Judge because two Hon'ble Judges have not stated the points upon which they have differed. The order dated 19-4-91 merely states that, "in view of the difference on some major points, let this case be placed before the Hon'ble the Chief Justice for being referred to a third Judge." I need not detain myself to consider this objection at any greater length because similar objections were raised on earlier occasion before this Court and the same has always been dispelled. In this connection, I may refer to the case of *Mt. Rulia Devi and Others Vs. Raghunath Prasad*, wherein it has been held by L.M. Sharma, J. that, "it is nowhere peremptorily prescribed that the difference of opinion has to be formulated by a joint order. Besides, the irregularity is not doing so, if at all, is of formal nature and does not vitiate the proceeding including the reference".

5. Now, before proceeding to examine the main questions, which have fallen for consideration, I must place on record that u/s 3 of the Bihar State Universities Act, 1976 (hereinafter to be referred to as the "Universities Act" only), L.N. Mithila University with its headquarter at Darbhanga has territorial jurisdiction only over, whole of Darbhanga and Koshi division which does not include the territory of Patna. Rather, the whole of Patna and Magadh division are under the territorial jurisdiction of Magadh University with its headquarter at Bodh Gaya except for the Colleges governed and falling within the territorial jurisdiction of Patna University. Admittedly, pursuant to the application made by the Petitioner-Society to L.N. Mithila University, an inspection was conducted of the College at Patna, which was situated beyond its territorial jurisdiction and thus the same was without any authority. Moreover, an inspection report pertaining to a College or the institution running at Patna, could not have formed a basis for according

permission/recognition or affiliation to a College or Institution which was to be set up at a far off place like Katihar in some future days.

6. The provisions of the Regulation Act as well as the Universities Act do not draw any distinction between a minority institution or non-minority institution so far as their applicability to the Institutions are concerned. Section 2 of the Regulation Act reads as under:

Section 2 : Regulation and control on Medical Educational Institutions : Except as otherwise provided in this Act no person shall:

(a) Organise, maintain, manage or promote any institution to undertake, conduct, provide or offer any instruction in the branches of learning known as medical education or allied branches of learning in modern medicines;

(b) Admit or offer admission to a course of study of a University incorporated by any law of the Central or the State Government which leads to examination and to grant and confer degrees, diploma, and certificates in the branches of the medical education or allied branches of learning in modern medicines;

(c) Provide instructions, lectures, tutorials, practical work in the laboratories in medical education irrespective of whether it leads to an examination and to grant of degrees, diplomas or certificates in medical science or allied branches of learning:

Provided that no medical courses of study shall be opened by any individual or body or institution registered under the Societies Registration Act, 1860, or by any unregistered agency without the prior permission of the State Government.

"Provided further that the permission mentioned above shall be obtained before admitting or enrolling any student for the proposed course of medical study.

Explanation - The terms "person" used in the first proviso includes a body institution or organisation mentioned in the first proviso.

7. The relevant provisions of the Universities Act are contained in Section 21(2) (d) with provisos, which are quoted hereunder;

21. Power and duties of the Senate - (1) Subject to the provisions of this Act and statutes the Senate shall be the supreme governing body of the University, and shall exercise control over all the affairs and properties of the University, and shall exercise all such powers as are not otherwise specified by this Act.

(2) In particular and without prejudice to the generality of the foregoing powers the Senate shall exercise the following powers and perform the following duties, namely,

(a)

(b)

(c)

(d) of exercising the powers for the our pose of control in Colleges and ToIs, and of Superintendence which includes affiliation and disaffiliation of Colleges:

Provided that affiliation or disaffiliation of Colleges or Tols shall not take effect, unless it is approved by the! State Government:

Provided further that no medical College shall be affiliated except with the prior approval of the State Government.

Before granting such an approval the State Government shall consider the financial viability of the College, the nature and form of the proposed management of the College, the viability of the academic standard and all other conditions which are likely to have adverse effect on the interest of students admitted to such a College.

8. From the second proviso to Section 2 of the Regulation Act, it is clear that the statutory permission as contemplated under this Section is to be obtained before admitting or enrolling any student for the proposed course of medical study.

9. Section 3 of the Regulation Act, inter alia, provides for the Institution intending to impart medical course of study to apply to the State Government in the Health Department. The format of the application requires the Institution to disclose relevant information regarding, establishment, financial resources, details about land, and building for the College, the attached teaching hospital, which are already available for starting medical course, details of the qualification of the technical staff that is available at the time of opening of the College, details of equipment and laboratory and library set up for the functioning of the course of study, details of bed strength and the teaching hospital, the projection or, annual plans leading to setting up the required number of hospital beds according to the recommendation of the Medical Council of India and the managment control over such hospitals, methods of recruitment of teaching staff and the conditions of service of such teaching staff, the proposed number of students to re admitted in the year of starting the course of medical Study, the basis of their selection, the scale of fees to be charged etc.

10. It is obvious that if the Government on consideration of all relevant materials and on fulfilment of statutory requirements accords permission to an Institution under the provisions of the Regulation Act for admitting or enrolling the students for the proposed course of medical study, it will be duty [bound to grant approval for affiliation as envisaged u/s 21(2)(d) of the Universities Act and for that very reason the Senate of the University, subject to fulfilment of the procedural and incidental requirements, will be also duty bound to grant affiliation.

11. So far as the question of applicability of regulatory Act is concerned, in my opinion the question is squarely covered by a decision of the Full Bench of this Court in the case of Rahmania Primary Teachers Training College and Ors. v. the State of Bihar land Ors. reported in 1991(1) PLJR 595 and a recent decision of

the Supreme Court in the case of State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, .

12. Coming first to the the Full Bench judgment of this Court in the case of Rahmania Primary Teachers Training College (Supra), though it related to the statute relating to the establishment and running of Training Colleges, but the question for consideration was the same as is, involved in the present cases. There too the question was whether the provisions of Bihar Non-government Physical Training College and Non-government Teachers Training Colleges and Nor-Government Primary Teachers Education Colleges (Control and Regulation) Act, 1982, necessitating permission for the establishment of the Institution covered by that Act will apply to the Institution established by linguistic and religious minorities in view of Article 30(1) of the Constitution. After examining all the relevant case-laws on the subject touching the question, it was held in para 68 at page 514, that.

Section 2 of the Act read with Rules 3 and 5 of the Rules makes it mandatory that even for the establishment and organisation of a Teachers' Training College it is incumbent upon the management to obtain prior permission. This does not stand to reason. Mere establishment or organisation of a Teachers' Trainings College per se can not be held to be defeating any of the objects of the Act. Provisions to this extent can not be held to be regulatory either in general public interest or in the interest of the educational institutions in question. But the State can definitely regulate the activities incidental to the admission of the students to the Colleges, may be minorities, to ascertain that the institution does not fall short of the norms or the index laid down by the legislature. Therefore, the provisions of the Act and the Rules for seeking permission and/or recognition of the Government can be enforced only after the College is established but before it intends to invite applications from the students to take admission in those institution on an assurance to impart training leading to the examination (s) contemplated u/s 2(1)(b) of the Act.

13. Recently a Constitution Bench of the Supreme Court in the case of St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., has held that,

The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of the students and teachers, arid to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority instutions can not claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts, etc. which are applicable to all communities. So long as the basic right of minorities to manage educational

institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the light conferred by Article 30(1).

14. Now, subsequently, after the opinion was rendered by the Judges of the Division Bench in the present case, the Supreme Court in the case of State of Tamil Nadu and Ors. (supra) has now finally concluded the issue. In para 7 at page 90, it has been held that:

Smt. Nalini Chidambaram contended that u/s 9 of the Tamil Nadu Act a minority community is entitled to establish an educational institution without obtaining permission from the Government and the students of such institution are entitled to appear at the public examinations. We find no merit in the submission. Under Article 30 of the Constitution minorities based on religion or language, have fundamental freedom to establish educational institutions of their own choice, but the State has right to prescribe regulatory provisions for ensuring educational excellence, Minority institutions which do not seek recognition are free to function according to their own "choice, but if such an institution seeks recognition from the State, it has to comply with the prescribed conditions for granting recognition and in that event the minority institution has to follow prescribed syllabus] for examination, courses of study and other allied matters. These conditions are necessary to be followed to ensure efficiency and educational standard in minority institutions. See All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, . We are, therefore, of the opinion that even if a minority Community has fundamental right to establish and administer educational institution, it has no right to insist upon the State to allow students to appear at the public examinations without recognition or without complying with the conditions prescribed for such recognition.

15. The Supreme Court in the case, referred to above, in para 6, has noticed with concern that the practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by the apex Court. In this connection their Lordships have referred to the case of State of West Bengal and Another Vs. Laisal Haque and Others, wherein it was observed that if permission was granted to the students of an unrecognised institution to appear at the examination, it would amount to encouraging and condoning the establishment of unauthorised institutions. The Court declared that the jurisdiction of the Supreme Court under Article 32 or of the High Court under Article 226 of the Constitution should not be frittered away for such a purpose. Their Lordships have also referred to the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, where a similar request made on behalf of the institution and the students for permitting them to appear at the examination even though affiliation had not been granted, was rejected by the apex Court. It was observed that, "any direction of the nature sought for

permitting the students to appear at the examination without the institution being affiliated or recognised would be in clear transgression of the provisions of the Act and the Regulations. The Court cannot be party to direct the students to disobey the statute as that would be destructive to the rule of law."

16. In the case of State of Tamil Nadu gad others (Supra) the High Court had on humanitarian grounds" issued directions to the State Government and Education Department to hold supplementary examination for enabling the students of the concerned unrecognised institution to appear at the examination with a condition that declaration of their result will be subject to settlement of question of recognition. The Supreme Court held this direction to be unauthorised, wholly unjustified and unsustainable in law and, accordingly, all such similar orders were set aside.

17. Keeping in view the law laid down by the Full Bench of this Court and the Supreme Court, as discussed above, I am in full agreement with S.B. Sanyal, J. who has opined that the Bihar Medical Institution and Control Act, is intra vires and does not infringe the fundamental right guaranteed under Article 30 of the Constitution. Accordingly, in my opinion, the provisions of the Regulation Act will apply to the Medical College of the Petitioner-Society.

18. Mr. Basudeo Prasad appearing for the Petitioner-Society has also ventured to place reliance on certain subsequent facts regarding shifting of the College to Katihar and their arrangement with the Railway Administration for providing the facility in Railways hospital for teaching of the students and has submitted that keeping in view these facts a writ of mandamus should be issued directing the State Government and the University to grant permission/recognition/affiliation to the said College and allow its students to appear at the examination. In my opinion, it is beyond the scope of this reference to take into account subsequent facts and issue any direction as prayed for. If the assertions of the Petitioners are correct then pursuant to the application filed by the Petitioner-Society, in accordance with the provisions of the respective Act, it will be for the Government to take a decision in accordance with law.

19. In view of the discussions made above in my opinion, in the facts of the present case, this Court is not competent to issue any mandamus directing the University to permit the students of Katihar Medical College to appear at the M.B.B.S. Examination conducted by the University unless the statutory requirements with regard to permission and affiliation are fully complied with. Anyhow if any application as prescribed under the Regulation Act filed by the Petitioners has not been disposed of so far, the same should be disposed of within three months from toe ay or within three months from the date of filing of such an application, if not already filed. The said application has to be disposed of by a reasoned order after giving a reasonable opportunity of hearing to the Petitioner-Society. In the circumstances of the case, there shall be no order as to costs.