

(1993) 09 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No. 2590 of 1992, Contempt Petition No. 270/92 and I.A. No. 4/92

Al Karim Educational Trust and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-09-1993

Acts Referred:

Bihar Medical Educational Institution (Control and Regulation) Act, 1981 — Section 2, 3, 8

Bihar State Universities Act, 1976 — Section 21, 21(2), 4

Constitution of India, 1950 — Article 30(1)

Citation : (1993) 2 PLJR 115

Hon'ble Judges : M.M. Punchhi, J;A.M. Ahmadi, J

Bench : Division Bench

Final Decision : dismissed

Judgement

1. The Appellant, claiming to be a Minority Institution, seeks to establish and run a Medical College in the town of Katihar (Bihar) where it claims to have secured land admeasuring about 35 acres for the construction of the College. It had sought affiliation with the L.N. Mithila University within whose area of operation the proposed college was situate. The college is now within the area of operation of B.N. Mandal University. The Government of Bihar issued Ordinance No. 95 of 1980 called the Bihar Medical Educational Institutions (Regulation and Control) Second Ordinance, 1980. The Ordinance has now been turned into an Act without any change. Clause (a) of Section 2 provide that no person shall except otherwise provided in the Act organise, maintain, manage or promote any institution to conduct, provide or offer any institution in the branches of learning known as medical education or allied branches of learning in modern Medicines. Clause (c) next stipulates that no person shall provide institutions, lectures, tutorials irrespective of whether it leads to an examination and to grant of degrees, diplomas or certificates in Medical Science or allied branches of learning. The proviso to that sub-section says 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 would appear that the prior permission of the State Government would be necessary even for starting a medical college and/or for imparting instructions or conducting courses in medicine and allied subjects. Section 8 next provides that notwithstanding the provisions contained in the Acts and Regulations of the University concerned, the powers to constitute Governing Body for the private Medical Colleges shall vest in the State of Bihar. So far as this provision is concerned, the State of Bihar has in its counter affidavit clarified that it does not propose to apply this provision to minority institutions. Therefore in the instant case the question regarding the constitutional validity of section 8 has receded in the background. We, therefore, are not required to express any opinion in that behalf and we do not do so.

2. Under the Bihar State Universities Act, 1976, Section 4 lays down the purposes and powers of the University and Clause (19) thereof includes power to affiliate or disaffiliate colleges according to statutes subject to prior approval of the State Government. Section 21(2) posits that the Senate shall exercise and perform the duties enumerated therein and Clause (d) provides for exercise of powers of control in colleges and of superintendence, which includes affiliation and disaffiliation of colleges. The second proviso to that sub-section says that no college shall be affiliated except without the prior approval of the State Government. The Statute inter alia provides for the making of an application for admission of an educational institution as a college, the contents of that application and matters incidental thereto. The conjoint reading of these provisions makes it clear that the prior permissions of the State Government is required for starting or establishing an institution for imparting education in medicine and allied disciplines.

3. From the above provisions it becomes clear that the prior permission of the State Government is a must for establishing a medical college and for imparting education in the science of medicine. This restriction, argued the Learned Counsel for the appellant, violates the fundamental right conferred by Article 30(1) of the Constitution. In so far as the requirement of State Government's permission for affiliation must answer the test of reasonableness, otherwise same would also be unconstitutional. Now so far as the first part of the challenge based on Article 30(1) is concerned since lot of water has flown and many activities have already been undertaken for the grant of affiliation, we think it is too late in the day for the State Government to question the legality of the establishment of the college on that ground that prior permission was not obtained and hence we do not think it is necessary for us to examine the constitutional validity of the said provisions under Article 30(1) of the Constitution. We, therefore, are not required to express any opinion in that regard. We are of the opinion that in the present case it would suffice if we confine ourselves to the limited question in regard to the grant of affiliation.

4. Now so far as affiliation is concerned, certain condition laid down by the University statute, etc. have to be satisfied. The learned ASG, appearing on behalf of the State of Bihar emphasised before us that the institution has not complied with the conditions and has not satisfied the University as well as the State Government that it has in fact complied with all the legal requirement for the grant of affiliation. Without going into the rival contentions in this behalf, we think that the matter can be sorted out by requiring the appellant institution to forward to the B.N. Mandal University all the materials it has in its power, possession u/s 21 of the Bihar State Universities Act read with the University statute, vide letter No. BSU/16/86-1098/GS (1) dated 19th April, 1986. In doing so, the institution may also have regard to the spirit of Section 3 of the Bihar Medical Education Institutions (Regulation and Control) Act, 1981 to the extent it has relevance in regard to the grant of affiliation. The appellant may do so within a period of 15 days from today. The State Government in consultation with the University will appoint an Inspection Team within two weeks after the appellant has forwarded the basic information to the University. The Inspection Team will submit its report in duplicate within three weeks one to be forwarded to the Vice-Chancellor of the University and the another to the State Govt. The State Government will be at liberty to obtain the clearance of Medical Council of India before finalising the grant of affiliation. The Medical Council of India is requested to expedite the matter and express its opinion within three weeks from the date of receipt of the requisition from the State Government. After these formalites are completed, the appellants will be informed in writing about the outcome of its requisition for grant of affiliation.

5. The matter regarding grant of affiliation has been hanging fire since long. The results of some of the students who have appeared in response to the Court orders have been withheld. As the fate of the students hangs in a balance, we hope that all the functionaries involved in the process aforementioned will act with a sense of urgency so that the time schedule is rigidly followed. We also hope that the Medical Council of India which is not a party before us but which may be required to express its views in regard to the grant of affiliation will also appreciate our anxiety to resolve, the question of affiliation as early as possible consistently with the standard evolved by it for granting affiliation to minority institution.

6. In concluding we make it clear that we are at the post-establishment stage now and the only question which survives is in regard to grant of affiliation to the appellant. We have, therefore, refrained from going into the question whether the provision for prior permission of the State Govt. for establishment of even a minority institutions is ultra vires Article 30(1) of the Constitution. That is because we have taken note of the fact that various acts of commission have been done and orders made by court from time to time on the assumption that the institutions has come into being and the only question that survives is with regard to affiliation. Our order must, therefore, not be understood to mean that we have expressed any opinion even by necessary implication one way or the

other in regard to the constitutional validity of the provision which requires the prior permission of the State Government for establishment of a medical college. We have confined ourselves to the post-establishment stage, i.e. grant of affiliation to the Institution if it satisfies the requirements adverted to hereinbefore.

7. The matter will come up on being mentioned by the Learned Counsel for the appellants after the result of the application for grant of affiliation is conveyed to the appellant-institution. A copy of this order will be sent to the Registrar of B.N. Mandal University, to the Secretary in the department of education of the State Government and to the Medical Council of India for prompt action.