

(1989) 11 BOM CK 0034
In the Bombay High Court
Case No : W. P. No. 302 of 1988

All Goa Private Schools Pre-Primary and Primary Teachers"
Association and others

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 19(l)(g), 29, 30

Citation : (1989) 11 BOM CK 0034

Hon'ble Judges : V.A. Mohta, J;G.F. Couto, J

Bench : Division Bench

Advocate : J. Dias with Mrs. S. Albuquerque, for the Appellant; V.B. Nadkarni, Advocate-General with A.C. Navelkar, For respondent No. 1, James Siqueira with J. Coelho Pereira, For respondents Nos. 2, 3 and 5, B. F. D Souza, for the Respondent

Judgement

V. A. Mohta, J.—The Goa, Daman and Diu School Education Act, 1984 ("the Goa Act") aims at providing for better organisation and development of School Education in the State of Goa. Chapter IV of the said Act which contains sections 11 to 14, deals with the subject of terms and conditions of service of employees of recognised private schools. Subsection (1) of section 11 empowers the Government to make rules for regulating the recruitment, minimum qualifications for recruitment, and other conditions of service. Sub-section (2) mandates that the recognised private school shall not dismiss or terminate the service of an employee without the prior approval of the Director, but subject to the rule that may be made in this behalf. Sub-sections (3) and (4) create certain embargo on management's power of suspension pending enquiry. Sub-section (5) mandates that aided minority school shall not dismiss or terminate the services of an employees except after an inquiry in accordance with the procedure specified in the rule. Section 12 specifies that the employees are governed by a Code of Conduct which may be prescribed. Section 13 specifies that the scales of pay and allowances, pension, gratuity, provident fund and other prescribed benefits of the

employees of recognised private schools shall not be less than those of the employees of the corresponding status in the schools run by the Government. Section 14 makes inapplicable all these provisions to an unaided minority school. The question raised in this petition on behalf of employees of unaided minority schools is whether section 14 is arbitrary/discriminatory and, therefore, violative of Article 14 of the Constitution of India?

2. Short undisputed factual background is this : -

Petitioner No. 1 is an Association of Pre-Primary and Primary Teachers in the State and petitioners Nos. 2 to 4 are its office bearers/members. Respondent No. 1 is the State of Goa. Respondents Nos. 2 to 5 are the Educational Institutions established and administered by minority. Under their aegis pre-primary and primary education is also imparted for which they are not entitled to receive grant-in-aid from the Government. Basic pay of these teachers ranges between Rs. 165/- to Rs. 400/- per month whereas the Government scale for teachers of corresponding status is Rs. 1,200/- per month approximately. Respondents defend section 14 on the basis of right of minorities to establish and administer educational institutions contained in Article 30(1) of the Constitution.

3. Having heard Mr. Dias, the learned counsel for the petitioners, Mr. Siqueira, the learned counsel for the respondents Nos. 2 to 5 and the learned Advocate-General we are satisfied that section 14 cannot stand the scrutiny of Article 14, except to a limited extent of making inapplicable section 11(2) to an unaided minority school. Indeed our task is easy. The point appears to be no more res integra in view of the recent decision of the Supreme Court in the case of Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, relating to the Delhi School Education Act, 1973 ("the Delhi Act"), the relevant basic scheme of which appears to be in no way different than that of the Goa Act. Equivalence of relevant sections can be put thus:-

The Delhi Act

The Goa Act

Section 8(1)

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Section 11(1)

" 8(2)

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" 11(2)

" 8(3)

=

" 22

" 8(4)(5)

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" 11(3)(4)

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" 12

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" 13

12

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" 14

13 to 15

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" 15 to 17

We may mention that section 8(3) of the Delhi Act and section 22 of the Goa Act are provisions relating to employees' right of appeal and sections 13 to 15 of the Delhi Act and sections 15 to 17 of the Goa Act are provisions applicable to unaided minority schools.

4. Section 8(1) of the Delhi Act, which merely empowers the Administrator to make rules regulating the minimum qualifications for recruitment, and the conditions of service of recognised private schools has been held to be innocuous by the Supreme Court and section 13 which relates to unaided minority schools is held to be almost on the same lines as section 8(1).

5. Only section 8(2) of the Delhi Act which creates complete embargo upon minority managements' right to terminate the services of an employee or to reduce his rank without prior approval of the Director has been held to offend Article 30(1). Other provisions relating to certain control on power of suspension of an employee pending enquiry, provision against fixing unfavourable scales of pay and other service conditions of employees as compared to their counterparts either in the Government schools or aided minority schools have been held to be valid and reasonable and not against Article 30(1). The Supreme Court has in the above case taken review of almost all previous leading cases dealing with content and dimension of right of guarantee under Article 30(1) : such as (i) In

Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , (ii) Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, ,(iii) State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , (iv) The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, (Nine Judges Bench case) and (v) All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, .

6. The crux of the ultimate analysis seems to be that regulatory measures of the State aimed to achieve excellence of the institutions do not offend rights guaranteed under Article 30(1) and question in each case is whether a particular measure has that aim without of course nullifying managements cultural and educational rights of minorities contained in Articles 29 and 30. Applying these tests, blanket power in the Director contained in section 8(2) to veto in the matter of disciplinary jurisdiction of the management was in that case held to be not regulatory in nature and therefore violative of Article 30(1). It is observed :

"In the Nine Judge Bench case Ray, C. J. and Palekar, J. took the view that section 51A of the Gujarat Act which provided that no member of the Staff of an affiliated college shall be dismissed, removed or reduced in rank except with the approval of the Vice-Chancellor was violative of Article 30(1) as it conferred arbitrary power on the Vice-Chancellor to take away rights of the minority institutions. Similarly, section 52A which contemplated reference of any dispute connected with conditions of service, between the governing body and any member of the staff to an Arbitration Tribunal consisting of one member nominated by the governing body, one member nominated by the member of the staff and an umpire appointed by the Vice-Chancellor was also held to be violative of Article 30(1). It was said that this provision would introduce an area of litigious controversy in educational institutions and displace the domestic jurisdiction of the management. Jaganmohan Reddy, J. and Algiriswami, J., agreed with the conclusions of Ray, C. J., Khanna, J. though that the blanket power given by section 51A to the Vice-Chancellor to veto the disciplinary action and the power given by section 52A to the Vice-Chancellor to nominate an umpire were both objectionable, though he observed that there was nothing objectionable in selecting the method of arbitration for settling major disputes. Mathew, J., also objected to the blanket power given to the Vice-Chancellor by section 51A. He also thought that section 52A was too wide and permitted needless interference in day-to-day affairs of the institution by providing for arbitration in petty disputes also. Keeping in mind the views of the several learned Judges, it becomes clear that section 8(2) must be held to be objectionable."

7. As regards section 8(3) which provides for an appeal to the Tribunal constituted u/s 11, it has been held : -

"The right of appeal itself is confined to a limited class of cases, namely, those of dismissal, removal or reduction in rank and not to every dispute between an employee and the management. The limited right of appeal, the character of the

authority constituted to hear the appeal and the manner in which the appellate power is required to be exercised make the provision to: an appeal perfectly reasonable, in our view. The objection to the reference to an Arbitration Tribunal in the Nine Judge Bench case was to the wide power given to the Tribunal to entertain any manner of dispute and the provision for the appointment of umpire by the Vice-Chancellor. Those defects have been cured in the provisions before us."

8. Section 8(4) and (5) dealing with the power to control suspension in certain circumstances has not been held to be violative of Article 30(1) observing :

"section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to prevent an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, , where Chandrachud, C J., and Kailasam, J. upheld section 3(3)(a) of the Act impugned therein.

9. Section 12 mandating equalization of pay and other allowances has been held to be perfectly valid, since it aims at safeguarding and ensuring excellence of the Minority institutions. It is held :

"The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right .guaranteed by Article 30(1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The Management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of

Article 30(1) which is to make the institution an effective vehicle of education."

10. The learned counsel for the respondents Nos. 2 to 5 has invited our attention to several decisions of the Supreme Court under which various shades of cultural and educational rights contained in Articles 29 and 30 have been considered from time to time, including the 5 cases considered in Frank Anthony School's case (supra). As regards those 5 cases suffice it for us to say that they have been considered in depth and it is neither permissible nor proper for us to distinguish its ratio on the ground that certain shades have not been properly viewed. Frank Anthony School is a last decision on the points involved in which almost all previous cases are considered and hence is for us "law declared" under Article 141.

11. Relevant scheme of the Delhi Act and Goa Act was sought to be distinguished. But we are unable to locate any material difference. Bare comparative reading of the relevant provisions will leave no manner of doubt that not only the spirit of the provisions but even letters are almost identical. Our attention was drawn to Rule 49 of the Goa, Daman and Diu Schools Education Rules, 1986 framed under the Goa Act which makes pre-primary and primary schools ineligible for the receipt of grant-in-aid from the Government. The corresponding provision in the Delhi Act is section 6 under which such ineligibility is confined only to primary schools recognised by local Authority. The distinction is that while under the Goa Act every pre-primary or primary school is disqualified to receive grant-in-aid, under the Delhi Act only the primary school recognised by a local authority is disqualified. But we are unable to see what difference it will make as far as applicability of the ratio of Frank Anthony School is concerned. That Delhi School was and so also the several schools run by the respondents Nos. 2 to 5 are, in fact non-aided minority schools - The circumstances behind which and reasons for which a school does not receive grant-in-aid will make no difference whatsoever. We do not know the factual position about reasons-behind Delhi School not being an aided school. That apart, the following observations in Frank Anthony School are to point in this connection :

"That the Parliament did not understand sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government."

We may incidentally mention that Frank Anthony School has been approved in at least in three decisions of the Supreme Court (i) Mrs. Y. Theclamma Vs. Union of India (UOI) and Others, , (ii) Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, and (iii) All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, .

12. It was contended that in the face of disentitlement to receive grant-in-aid, the State Government cannot compel the institutions to pay salary equivalent to the salary received by the Government Teachers, since the institutions, though desirous, cannot afford to pay the same. Our attention was invited to certain figures from the audited budgets showing the weak financial position and the losses incurred in managing those schools and on that basis a submission was made that result of being compelled to pay equal salary would inevitably result in the closure of the schools. Such an argument was advanced even before the Supreme Court and it was dealt with in the following manner :

"We must refer to the submission of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to "put the teachers in their proper place." The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised."

We have nothing more to add.

13. One of the submissions before us was that obligation upon the financially weak schools to pay salary at the rates fixed for Government teachers in the absence of Government aid was violative of management's right under Article 19(1)(g) of the Constitution in the light of Directive Principles of State Policy contained in Article 39(b) - We do not see any merit in the submission, which seems to be based upon the ratio of the *The Lord Krishna Sugar Mills Ltd. and Another Vs. The Union of India and Another*, . That case related to the Sugar Export Promotion Act, 1958. Validity of provision of fixation of price of sugar meant for export at lower rates was upheld on the ground that countervailing additional rates were allowed on sale for internal use. Certain observations in *Bapuji Educational Association Vs. State*, , were also pressed into service in support of the contention. The said Karnataka High Court decision relates to the Karnataka Educational Institution (Prohibition of Capitation) Act, 1984. Proviso to section 3 of the said Act empowers the Government to fix certain number of seats as free seats and to prescribe the maximum limit of capitation fee in

respect of other seats. The said provision was held to be not violative of Article 19(1)(g) inter alia holding that the rates of capitation fee compensated the loss occasioned by keeping certain number of seats as free seats. Section 5(4) of the said Act provided for funds to be applied by minority school management as per the prescription of the Government. That restriction was not held to be a regulatory measure and was held to be an unreasonable restriction not in the interest of general public, upon rights guarantee under Article 19(1)(g).

14. The compensatory factor may protect a provision from vice of violation of fundamental right, but not in every case. All depends upon the letter and spirit of each Act and the purpose it seeks to achieve. The above two decisions have been rendered against altogether different legal and factual backdrops and will have no application to a case where there is neither any enforceable right to receive grant-in-aid nor is there any obligation to open and/or run the pre-primary and/or primary school.

15. The following lines from the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, were also strongly relied upon : -

"The difference between Part III and Part IV is that while Part III prohibits the State from doing certain things (namely) from infringing any of the Fundamental Rights, Part IV enjoins upon the State to do certain things. This duty, however, is not enforceable in law but nonetheless the Court cannot ignore what has been enjoined upon the State by Part IV, and though the Court may not be able actively to enforce the Directive Principles of State Policy by compelling the State to apply them in the governance of the country or in the making of law, the Court can, if the State commits a breach of its duty by acting contrary to these Directive Principles, prevent it from doing so."

Is there any such breach of duty on the part of the State in taking a policy decision of not giving grant-in-aid to any pre-primary and/or primary school? There is neither any challenge to the said policy decision nor any material to substantiate the challenge in the petition and therefore, we keep our hands off on that legal aspect. But we do not keep secret of our first impression that such a policy decision is somewhat unusual. We are informed that almost all other States make no such exception in their policy of giving grant-in-aid. There must be weighty reasons to resort to such policy in the State. If there are no such reasons, the State will do well in giving a fresh thought on the subject.

16. Does an appeal lie u/s 22(1)(e) of the Goa Act at the behest of an employee of an unaided minority school in the face of section 14? Answer to the question will have to be recorded in the negative taking into consideration the words "under sub-section (2) of section 11" appearing at the end of section 22(1)(a) and the provisions of section 17 which specify various conditions in the contract of service including of settlement of any dispute arising out of any breach of contract inter alia with relation to disciplinary action leading to imposition of any

punishment. There was also a debate before us as to whether an appeal by an employee of an aided minority school is maintainable u/s 22(I)(e) since his case is governed by section 11(5) which is not specifically mentioned in section 22(I)(e). Reading section 11 as a whole and taking into consideration the spirit of the scheme of appellate provision, we see no doubt in the right of appeal of such an employee. Section 11(5) merely substitutes a different embargo upon disciplinary power of management of an aided minority school in place of embargo mentioned in section 11(2). We reproduce section 11(5) for ready reference:

"(a) sub-section (2) shall have effect as if for the words "except with the prior approval of the Director", occurring therein, the words "except after an enquiry in accordance with the procedure specified in the said rule" had been substituted;

(b) sub-section (3) shall have effect subject to the modification that the requirement relating to the approval of the Director shall not apply."

Section 11(5) though not very happily worded, as rightly contended by the learned Advocate-General, appears to be virtually a proviso to section 11(2) in the matter of aided minority school.

17. In the result, (i) section 14 of the Goa Act is struck down as ultra vires of Article 14 of the Constitution (except to the extent it makes inapplicable section 11(2) to unaided minority school) and (ii) the State of Goa is directed to enforce hereafter the provisions of sub-sections (1), (3), (4) and (5) of section 11 and section 13 as against the respondents 2 to 5.

18. We have moulded the second relief by not directing enforcement of the provisions for the earlier period since such a direction will bring an unbearable and unanticipated financial burden upon the management which must have bona fide planned their affairs and budget upon the basis of section 14 of the Goa Act.

19. Rule absolute in the above terms. No costs.