

(2005) 10 AHC CK 0191

In the Allahabad High Court

Case No : Writ Petition No's. 1645 and 1649 (S/S) of 2005

Anil Kumar Srivastava and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 16, 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 7A, 9(4)

Citation : (2006) 5 AWC 5397

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—These two writ petitions have been filed by the ad hoc teachers of Kamla Nehru Institute of Child Education, Lal Diggi, Sultanpur against the oral termination order dated 5.1.2005.

2. According to the Petitioners, all the Petitioners were appointed as Assistant Teacher on ad hoc basis on different dates in Kamla Nehru Balika Sikshan Sansthan, Lal Diggi, Sultanpur. Later on the name of the school was changed as Kamla Nehru Institute of Child Education. The school imparts education upto Intermediate. The school was established in the year 1984 and was affiliated to the U. P. Board of High School and Intermediate Education upto the year 31.3.2002. From 1.4.2002, the Central Board of Secondary Education has granted the affiliation for senior secondary school examination of the Board. It is alleged that all the Petitioners have been restrained to discharge their duties by the oral order of opposite party No. 3, the manager of the Kamla Nehru Institute of Child Education.

3. It is alleged that junior to the Petitioners are still working as Assistant Teacher but the Petitioners are not being allowed to work and the opposite parties are trying to make appointment of the teachers of their own choice.

4. The case of the opposite parties Nos. 3 to 5 is that since no post of teachers were sanctioned by the authorities concerned, during the period school was affiliated and recognised by the U. P. Board of High School and Intermediate Education, formal recruitment of teachers were never made by the management but the teachers were being engaged as per the requirement and the payments were made by the management itself. The school was never taken on grant in aid. It is alleged that consequent upon the affiliation of the institution with the Central Board of Secondary Education, the management advertised a number of vacancies as per the teachers requirement on 11.8.2004 and 17.8.2004. In response to the advertisement, 542 candidates applied and 220 candidates including the Petitioners were called for interview. Petitioners have also applied for appointment. The Petitioners could not be selected and they have concealed these material facts deliberately. The Petitioners were never appointed under the written order of appointment. There were no service conditions prescribed for appointment of teachers. Writ petition is not maintainable against a private institution which is not receiving any financial aid from the Government.

5. Admittedly, Kamla Nehru Institute of Child Education is a private institution. Earlier it was recognised by the Board of High School and Intermediate Education and from 1.4.2005. It is not affiliated to the Board of High School and Intermediate Education. This institution is not on the grant-in-aid. It is admitted that no appointment letters were issued to the Petitioners but it is admitted that they were engaged for teaching and teaching work was being taken from them from different duration without any service conditions and without any sanction of post by the concerned authorities during the period it was remained affiliated with U. P. Board of High School and Intermediate Education. It is not denied that advertisement were issued inviting applications after the affiliation from Central Board of Secondary Education and certain new teachers have been selected through the selection process.

6. This fact is disputed whether the Petitioners applied for the same or not and whether they appeared in the interview or not. According to the Petitioners, they never appeared for interview while according to the opposite parties, Petitioners applied and they were interviewed but they could not be selected by the selection committee.

7. At the first instance, the learned Counsel for the opposite parties have raised an objection about the maintainability of the writ petition. Prior to the affiliation by the Central Board of Secondary Education, there was regulatory control over the institution of the opposite parties and the service conditions of the teachers and other employees were to be regularised within the purview of the Intermediate Education Act, 1921. In *T. M. A. Pai Foundation v. State of Karnataka*, 2002 (4) AWC 3297 (SC) : 2002 (1) ESC 1 (SC), it has been laid down that the private institution need not be required to seek previous approval of any governmental authority in respect of disciplinary proceedings initiated against a teacher which is a part of its right to administer an educational

institution. The provision of Intermediate Education Act, 1921 are applicable only to the institution recognised under Clause (a) of Section 7A or u/s 9 (4) of the Act. There is no case of the Petitioners that after the recognition under the aforesaid provision, any post was created and they were given appointment in accordance with the procedure prescribed under the Act on the posts sanctioned by the concerned authorities.

8. Now after the affiliation of the institution with C.B.S.E, the factual position is that the school known as Kamla Nehru Institute of Child Education is not financially, functionally and administratively dominated by or under the control of the Government. Article 16 of the Constitution provides the equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State and for the purpose of fundamental rights under Part III of the Constitution, "the State" has been defined under Article 12 of the Constitution of India which includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

9. Learned Counsel for the Petitioners has placed reliance on decision of a Division Bench in Sandeep Chauhan and others Vs. State of U.P. and others, , in which this Court after referring the decision in K. Krishnamachar Yulu and Ors. v. Shri Venkateshwar Hindu College and Anr., AIR 1998 SC 295, has held that the writ petition against the private recognised institution is maintainable. But subsequently another Division Bench of this Court in Army School, Kundri Ghat, Gorakhpur v. Smt. Shilpt Paul, 2005 (2) LBESR 457 (All), has held that every school imparting education cannot be regarded as State under Article 12 of the Constitution of India and a writ petition will not lie against a purely private educational institution not receiving funds from the Government or Government agency as it cannot be deemed to be an instrumentality of the State. In this case, the Division Bench has placed reliance on a decision of the Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others, . In this case the Supreme Court has held that the State has no control at all in the functioning of the mill much less a deep and pervasive one. Hence, it was held that Kisan Sahkari Chini Mill was not a State under Article 12 of the Constitution of India. The Supreme Court in Kisan Sahkari Chini Mills case (supra) has referred an earlier decision in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, .

10. Both the learned Counsel for the parties have referred the latest decision of the Supreme Court in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, . The relevant portion of this judgment is as follows :

Thereafter the larger Bench of this Court in Pradeep Kumar Biswas, (2002) SCC 111, after discussing the various case laws laid down the following parameters for gauging whether a particular body could be termed as State for the purpose of Article 12.

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

22. Above is the ratio decidendi laid down by a seven Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in *Pradeep Kumar Biswas* case. Before doing so, it would be worthwhile once again to recapitulate what are the guidelines laid down in *Pradeep Kumar Biswas* case for a body to be a State under Article 12. They are :

(1) Principles laid down in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must *ex hypothesi*, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.

23. The facts established in this case show the following :

1. The Board is not created by a statute.

2. No part of the share capital of the Board is held by the Government.

3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.

4. The Board does enjoy a monopoly status in the field of cricket but such status is not State conferred or State protected.

5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under the special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to Governmental functions.

6. The Board is not created by transfer of a Government owned corporation. It is an autonomous body.

24. To these facts if we apply the principles laid down by the Seven Judge Bench in Pradeep Kumar Biswas it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus, the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

11. Learned Counsel for the Petitioners relied on certain other observations in this judgment which are based on the earlier decision of the Supreme Court in which it has been observed that when a private body exercises its public functions even if it is not a State, the aggrieved person has remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.

12. In view of the decisions referred to above, it is established that for maintainability of the writ petition under Article 226 of the Constitution of India, it is to be established that the institution run by the opposite parties Nos. 3 to 5 is financially, functionally or administratively dominated by or is under the control of the Government. These elements are not established in this case. The applicability of the Intermediate Education Act, 1921 and the regulations made thereunder have also ceased to apply after the affiliation of the institution run by the opposite parties from Central Board of Secondary Education. Moreover, the Petitioners were not given any appointment on any post sanctioned by the concerned authority during the period of affiliation with the U. P. Board of High School and Intermediate Education and after recognition under the Intermediate Education Act, 1921. Therefore, the Petitioners have no right to hold the post. But question whether the Petitioners appeared in the selection in response to the advertisement or not being a disputed question, need not be decided in this writ petition because of the simple reason that the writ petition against a private educational institution which is not financially, functionally or administratively controlled by the Government, is not maintainable.

13. Therefore, in view of the reasons given above, both the writ petition are dismissed.