
(1997) 01 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5711 of 1993

Anjuman-e-Islamiah, Kurnool

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:

Constitution of India, 1950 — Article 166(2), 30(1)

Citation : AIR 1997 AP 164

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : D.V. Sitarama Murthy, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. Anjuman-e-Islamiah, Kurnool, represented by its Joint Secretary Sri G. Abdus Salam, correspondent of Dr. Abdul Haq Unani Medical College, Kurnool, has filed this writ petition questioning the proceedings dated 9-3-1993 of the Commissioner Indian Medicine and Homoeopathy Department, Government of Andhra Pradesh, Hyderabad, the second respondent herein, rejecting the application of the petitioner for recognition of Dr. Abdul Haq Unani Medical College, Kurnool, run by the petitioner as a minority educational institution. Originally by proceedings dated 17-1-1992, the second respondent rejected the application of the petitioner on the ground that as the institution is receiving substantial grant-in-aid from the Government, it is considered not appropriate to recognise it as minority institution. Questioning the said order, the petitioner filed W.P. No. 13809 of 1992 which was disposed of by this court on 30-1-1993 directing the second respondent to take a decision afresh based on the report of the one-man commission in the light of the judgment of the Supreme Court in the case of Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others, , and the provisions of the Government Order in G.O.Ms. No. 526 (Rules) dated 21-12-1986 within four weeks from the date of receipt of the said order. Pursuant to the said order, the second respondent reconsidered the matter and once again rejected the request of the petitioner for

recognition as minority institution by the impugned proceedings dated 9-3-1993. Aggrieved thereby, the petitioner has filed the writ petition.

2. In the impugned order it is stated that the institution in question enjoys affiliation of the University of Health Sciences, Vijaya-wada, besides getting 100% grant from the Government, thereby it is ensured that this does not suffer from semi-inferiority complex and it is already in the main stream and marching forward along with other Government Unani Colleges, as the admissions to this institution are regulated through BUMCET along with admissions in Government Unani Colleges. It is further stated that the institution does not satisfy the criteria for recognition of educational institution as minority educational institution as laid down in Rule 4 of the Rules issued in G.O.Ms. No. 526 (Education) dated 21-12-1988. Hence the application of the petitioner for recognition of the said institution as minority institution is rejected.

3. It is not in dispute that the institution in question, i.e., Dr. Abdul Haq Unani Medical College, Kurnool, is established by Anjuman-e-Islamiah, Kurnool, which is a society established by persons professing Muslim faith and which is a charitable institution registered under Societies Registration Act, 1860. The institution is managed by members professing Islam religion. It is also not in dispute that the said society is running 5 other educational institutions, namely, Islamiah Arabic Degree College, Kurnool, Umar Arabick High School, Kurnool, Osmania College, Kurnool, Osmania Law College, Kurnool and Islamiah Boarding Hostel for Orphanage, Kurnool, besides Dr. Abdul Haq Unani Medical College, Kurnool, which is the subject matter of this writ petition. The aims - and objects of the society are:

- (1) To propagate Arabic education system;
- (2) To impart at all levels, religion secular and modern education;
- (3) To establish and administer institutions of its choice, general, technical and professional;
- (4) To propagate Islamic tenets and for this purpose to establish institutions to teach Mathematics, History, Geography and modern subjects according to Islamic ethic to establish and manage boys and girls orphanages, schools, hostels and hospitals etc.

The society is intended to benefit and foster the interests of the Muslim community though the doors of educational institutions are opened to one and all irrespective of caste, creed and religion. The properties of the society are registered with A.P. Wakf Board. According to the petitioner, the salient features of the institution under consideration are as follows:

- (1) The management is Muslim;
- (2) All the 350 students of Dr. Abdul Haq Unani Medical College, Kurnool, are Muslims;

(3) The instruction in the college is through Urdu Medium and one of the papers for the examination is Arabic;

(4) All the staff employed are Muslims;

(5) The buildings of the college are the property of Anjuman-e-Islamiah constructed from the funds collected from the members of the Muslim community;

(6) The buildings are registered under the Wakf Act and the same are published in the Gazette;

(7) There is no contribution from other communities and no Government grants for buildings, furniture, play-grounds and other infrastructure;

(8) The college is following the conditions laid down by the Central Council of Indian Medicine which is a statutory body created under the Indian Medicine Act, 1970.

(9) Two other institutions established by the society, namely, Osmam'a College, Kurnool, and Thibbi College, Kurnool are recognised as minority institutions.

The petitioner, therefore, contends that the institution in question also satisfies all the tests for claiming the status of a minority institution and the impugned order is arbitrary, illegal and is vitiated by non-application of mind.

4. The only ground mentioned in the impugned order for rejecting the claim of the petitioner is that the institution does not satisfy the criteria for recognition as minority educational institution as laid down in Rule 4 of the Rules framed in G.O.Ms. No. 526 (Education) dated 21-12-1988. It is not explained as to which of the criteria mentioned in the above Rule are not satisfied by the institution. The impugned order does not contain any details or reasons whatsoever in this behalf. Even in the counter-affidavit filed on behalf of the second respondent to the writ petition, it is not explained as to how the institution does not satisfy the tests laid down in the said Rule. On the other hand, in the affidavit filed in support of the writ petition, all the relevant information is furnished with full particulars demonstrating that the institution in question fully satisfies all the requirements of the rule.

5. The learned Government Pleader, however, made a feeble attempt to support the order by contending that since the institution imparts medical education but not merely religious or linguistic instruction, it is not entitled to claim the status of a minority institution. A similar stand is taken in the counter-affidavit also but this contention has no substance whatsoever as persons belonging to minority community have a fundamental right to establish educational institutions of their choice not only to impart religious and linguistic education but also all other types of education of a secular nature. Article 30 of the Constitution in clear terms confers such a fundamental right on the minorities. A similar contention was repelled by the Supreme Court in *In Re Kerala Educational Bill, 1957*, AIR

1958 SC 956. In para 23 of the said judgment, the Supreme Court observed as follows:

"Article (Art. 30(1)) gives certain rights not only to religious minorities but also linguistic minorities,... the right conferred on such minorities is to establish educational institutions of their, choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the Article says and means is that the religious and linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities ordinarily desire that their children should be brought up properly and be eligible for higher University education and go out in the world fully equipped" with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve their religion, language or culture and also the purpose of giving a thorough good general education to their children."

6. The learned Government Pleader finally argued that since the institution of the petitioner is receiving full grant-in-aid from the Government, it cannot claim the status of a minority institution and if it wants to be treated as a minority institution, it is not entitled to receive the grant-in-aid from the Government. This argument in my view flies in the face of Art. 30(2) of the Constitution which mandates that the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. It is true that no minority educational institution can claim State aid as matter of right. But even minority educational institutions are entitled to get financial assistance much the same way as the institutions of the majority communities and the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance. Receipt of aid does not impair the rights in Art. 30(1) (see *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* .

The contentions advanced by the learned Government Pleader are thus without force.

7. It, therefore, follows that the impugned order rejecting the claim of the petitioner for recognition of its institution as a minority institution is clearly unsustainable. Accordingly the writ petition is allowed. The impugned order dated 9-3-1993 is set aside and there will be a direction to the second respondent to recognise the institution in question as minority institution. But there will be no order as to costs.

8. Petition allowed.