
(2002) 04 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5889 of 1993

Anjuman-e-Islamiah, Kurnool

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (2002) 3 ALD 501 : (2002) 3 ALT 505

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Syed Shareef Ahmed, for the Appellant; Government Pleader for School Education, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The petitioner in the instant writ petition seeks a mandamus declaring the provisions of G.O. Ms. No.524, Education (Rules) Department, dated 20-12-1988 and subsequent rejection orders passed by the 4th respondent in respect of the appointments made in proceedings dated 9-3-1990, 1-6-1990, 9-4-1990 and 15-5-1992 as illegal, arbitrary by holding that Umar Arabic High School, Kurnool is a minority institution within the meaning of Article 30 of the Constitution of India and the said G.O. has no application to the minority institutions.

2. It is averred that Umar Arabic High School, Kurnool is an oriental school imparting education in Arabic and Persian upto the standard equivalent to secondary education i.e., 10th class as defined in G.O. Ms. No. 524, dated 20-12-1988. It is averred that the said G.O. is violative of the rights of the minority institution and it does not fall within the regulatory power of the State to be exercised in the interest of excellence of education. The school is a registered society, registered in the year 1923 under the Societies Registration Act, 1860 and it is administering the following institutions:

- a. Islamiah Arabic Degree College, Kurnool.
- b. Umar Arabic High School, Kurnool.
- c. Osmania College, Kurnool.
- d. Osmania Law College, Kurnool.
- e. Dr. Abdul Haq Unani Medical College, Kurnool.
- f. Islamia Boarding Hostel for Orphanage, Kurnool.

The members of the Managing Committee are the members professing Islam religion. The aims and objectives of the society are:

1. To propagate Arabic education system.
2. To impart at all level, religious secular, and modern education.
3. To establish 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, hotels and hospitals etc.

Anjumane-e-Islamia, Kurnool is a charitable institution intended to benefit and foster the interest of the Muslim community, but the doors of the educational institutions are open to one and all irrespective of caste, creed and religion. The members of any other community may also seek admission in the educational institutions run by the society. There is no prohibition for appointment of non-Muslims either in teaching or non-teaching or in any other capacity. The properties of the Anjuman are registered with the A.P. Wakf Board, the accounts are regularly audited and the State Government and the Income Tax Department verify the budget. The Wakifs are Muslims and the institutions maintained by the society are for the real purpose of fostering the interest of the Muslim community. So far as admissions to oriental courses are concerned, no fee is charged or collected from the students, but on the other hand, the students are giving free education with board and lodging facilities. The fee charged for general education is moderate and nominal. The management has not exploited its staff. In all the institutions established and managed by the society, Arabic, Urdu and Persian languages are taught. Religious instructions are also imparted exclusively for the Muslim students. The Omar Arabic High School was established in the year 1953 by the Anjuman-e-Islamia. The institution conforms to the provisions of the Education Act and the rules made thereunder. The character of the institution is a minority institution yet, it is open to all without reference to caste, creed, language or any of them. Since the institution is conducting its affairs through Urdu medium, the candidates from other community do not ordinarily join this institution, but there is no bar from the

management to grant admission who seeks admission in the school. The Anjuman-e-Islamiah is a society maintaining 6 institutions. The Anjuman-e-Islamiah, Kurnool earlier filed WP No. 6142 of 1974 in respect of Osmania College, Kurnool, wherein this Court held that the college is a minority institution and the relevant portion of the judgment is hereby extracted:

"The society was established entirely by persons of Muslim faith. The Institution is, however, open to one and all. Members of any community may be admitted into the school and colleges run by it. There is no prohibition against the appointment of non-Muslims either to teaching or non-teaching staff or in any other capacity. However, inasmuch as it is an institution established by members professing Muslim faith and the chief aim and object of the society is to propagate Muslim faith and established institution and administered to their end. It may be held to be entitled to the fundamental rights guaranteed under Article 30 of the Constitution of India."

3. The Government of Andhra Pradesh issued G.O. Ms. No.526, dated 21-12-1988. The management has submitted the necessary application for grant of recognition as minority educational institution to the competent authority - 2nd respondent herein on 3-7-1989 duly complying all the necessary formalities as required under the rules. But the 2nd respondent failed to pass any order in this regard so far. However, the Government of Andhra Pradesh issued G.O. Ms. No.90, dated 10-3-1989 wherein the Islamia Arabic College has been recognized and accorded a minority institution status. The said institution is the sister institution under the same management and in the same campus. G.O. Ms. No. 526 deals with the appointment of staff and disciplinary committee wherein it is stated that the candidates sponsored by the Employment Exchange shall be entitled for interview for selection by the Staff Selection Committee and further states that if the Employment is unable to sponsor suitable candidates the management is entitled to make advertisement in daily news papers having wide circulation. But in G.O. Ms. No.524, dated 20-12-1988 the said right is sought to be restricted, which is violative of Article 30 of the Constitution of India. Rule 15 of the Rules framed under the said G.O. dictates that the candidate sponsored by the concerned Employment exchange shall alone be entertained for interview and selection by the Selection Committee. The said condition is wholly illegal and violative of Article 30 of the Constitution.

4. The Apex Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, held that the question whether a regulation is in general interest of the public has no relevance if he does not advance the excellency of the institution as a vehicle for general secular education, as hypothesised the only permissible regulations are those which secured the effectiveness of the purpose of the facility, namely, the excellence of the education institution in respect of their educational standards. Their Lordships made it very clear that any condition, which compels the minority to surrender its rights to establish and administer institution of its choice, will be violative of

Article 30 of the Constitution of India. Similarly they defined the scope and ambit of the word "Administer" means the right to manage and conduct the affairs of the institution. The 4th respondent accorded permission for appointing two Teachers and one Attender by proceedings dated 19-9-1989. The vacancy of Mathematics Assistant was caused due to the resignation of Sri Syed Khaja Mukharram. The society after obtaining permission from the 4th respondent passed a resolution to fill the post of School Assistant in Mathematics and also the Attender. Accordingly, one Syed Sanaullah, B.Sc., B.Ed., was appointed as Mathematics Assistant by proceedings dated 20-1-1990 and the incumbent reported for duty on 22-1-1990. Similarly an Attender by name M. Aijaz Khan was appointed by proceedings dated 17-10-1989 and he reported to duty on 20-10-1989. Another post of Teacher, which is unaided, was filled by a candidate, namely Farida Bonu by proceedings dated 10-3-1991 as the said vacancy caused due to the absorption of one Ruksana Begum who is transferred from unaided post to the aided post in the Elementary School. The 4th respondent rejected to accord approval of the said posts by proceedings dated 9-3-1990, 1-6-1990 in respect of Syed Sanaullah, Mathematics Assistant; 9-4-1990 in respect of M, Aijaz Khan, Attender and 15-5-1992 in respect of Farida Banu stating that the condition in G.O. Ms. No.524, dated 20-12-1988 has not been complied with. It is submitted that the said G.O. has no application to the minority institution and the condition imposed thereon is violation of Article 30 of the Constitution of India. Moreover, by implication of G.O. Ms. No.542, dated 30-12-1988, where the managements were given freedom to frame their own rules for appointment of staff and the rights of the management shall not be curtailed directing to consider the candidates sponsored by the Employment Exchange only.

5. The Supreme Court in Union of India (UOI) and Others Vs. N. Hargopal and Others, , while considering the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act 31 of 1959 made it clear in paras 4 and 6 of the judgment that there is no provision in the aforesaid Act that would oblige an employer to make appointments through the agency of the Employment Exchanges far from it, Section 4(4) of the Act on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchange to fill a vacancy merely because the vacancy has been notified u/s 4(1) and 4(2). In the face of Section 4(4) it cannot be said that the Act imposes an obligation on the employer apart from notifying the vacancies to the Employment Exchange. Their Lordship also made clear that the object of the Act is not to restrict but to enlarge the field of choice so that the employer may choose the best and most efficient and provide an opportunity to the worker to have his claim for appointment considered without the workers having to knock at every door for employment.

6. A reading of the above judgment which is binding under Article 141 of the Constitution of India makes it clear that the conditions imposed in G.O. Ms. No. 524 is wholly illegal and violative of Article 30 of the Constitution of India.

7. Rule 15(i)(a) and Rule 15(2) of G.O. Ms. No.524 need to be read together. A reading of Rule 15(b)(c)(d) is extension of Rule 1(a) and 1(a) is intended for non-minority institutions and rule (2) applies to institutions falling under the category defined under Rule 1(a). Thus a reading in that way Rule (2) has no application to the minority institutions. Further, Rule 15(3), which imposes the conditions for including the representatives on the selection committee, is also illegal. It is also submitted that when the S.V. University, Tirupathi directed the present society to include two of its representatives in the Selection Committee of Lecturers in the Osmania College, Kurnool, which is established and maintained by the Anjuman-e-Islamia. This Court in WP No.3574 of 1977 held that such restrictions will affect the minority rights guaranteed under the Constitution of India and also made it clear that in the guise of issuing instructions the minorities' rights guaranteed under Article 30 cannot be taken away. Though the Teacher and Attender were appointed after obtaining permission from the 4th respondent, subsequent rejection of approval by the 4th respondent on the pretext that the said Teacher and Attender were not sponsored by the Employment Exchange and the institution has not followed G.O.Ms. No. 524 is wholly illegal, arbitrary and cannot stand legal scrutiny more particularly in respect of the institutions maintained by the Anjuman-e-Islamia which is already declared by this Court as a Minority Institution.

8. Respondent filed a counter stating that the petitioner-institution has to obtain minority certificate from the Principal Secretary/Secretary to Government, Minorities Welfare Department individually, though the society is recognized as minority institution.

9. In an identical situation, this Court in WP No. 6190 of 1984 held that under Article 30(1) of the Constitution of India, minority institution, whether based on religion or language shall have the right to establish and administer educational institution of their choice. One of the vital aspects of this right is the right to select and appoint Teachers or Head Masters (or Principals) of the choice of the management and there can be no interference whatsoever with that right. The State has no right to insist that the selection should be made by a Selection Committee, consisting not only of the representatives of the management but also of the Government nor can the State assume a power to approve the choice of the candidate. All that the State can do is to prescribe qualifications for the post of Teacher or Head Master (or Principal) and see that those prescriptions are duly followed or not. Except that there is no other requirement contemplated so as to disapprove the selection made by the minority institution.

10. The Apex Court in D.A.V. College, Vs. State of Punjab and Others, , held that the provisions relating to interference with right of management as a condition of affiliation were violative of the right conferred by Article 30(1). All these cases were reviewed elaborately in St. Xaviers case (supra), where the law laid down in the earlier cases was affirmed and it was held that recognition and affiliation to a minority institution could not be offered on terms which would involve surrender

of the rights conferred in Article 30(1).

11. In *Lily Kurian Vs. Sr. Lewina and Others*, , in exercise of the powers conferred by the Kerala University Act 14 of 1957, Ordinance 33(4) was framed providing for an appeal to the Vice-Chancellor against any order passed by the management in respect of the penalties mentioned therein. It was held by Their Lordships that the expression "Conditions of Service" includes everything from the stage of appointment to the stage of termination of service and even beyond, and relates to matters pertaining to disciplinary action and that the Ordinance 33(4) forms part of the "Conditions of Service". It was contended that Ordinance 33(4) conferring a right of appeal to the Vice-Chancellor against the orders passed by the management of a minority educational institution, infringed the right under Article 30(1) of the Constitution. His Lordship Sen J., speaking for the Court held that the conferral of a right of appeal to an outside authority like the Vice-Chancellor for under Ordinance 33(4) took away the disciplinary power of a minority educational authority and that it would constitute a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs and it was unanalyzed and unguided, as no restrictions were placed on the exercise of power, and that right to the administration of institutions of minority's choice enshrined in Article 30(1) meant "management of affairs" of the institution and that right was subject to the regulatory power of the State and that Article 30(1) was not a charter for mal-administration, and that regulation for the better administration of the institution was permissible, but the moment it went beyond that and imposed what is in truth not a mere regulation but an impairment of the right to administer, Article 30(1) would come into play and the interference could not be justified by pleading the interests of the general public and that the interest justifying interference could only be the interest of the minority concerned.

12. The Apex Court in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, , held as under:

"From the aforesaid rulings, it is clear that the minority has not only a fundamental right to establish but also a fundamental right to administer the institution, and that the right of administration includes the right to manage its affairs, and that the right of management takes in the right to appoint the teaching staff and Principal, and that is not open to the Government to interfere with the said right by calling upon the institution to constitute a Selection Committee as mentioned in the impugned order of the Government in G.O. Ms. No. 905, Education dated 21-9-1976....."

13. It is represented by the Government Pleader that the petitioner-society is also running several sister institutions, which require independent Certificates from the Minority Commission as per G.O. Ms. No.23 dated 10-3-1999.

14. Admittedly, in the impugned order it is mentioned that Rule 15 as laid down in G.O. Ms. No. 524, Education Department dated 20-12-1988 has not followed.

But the 4th respondent has not assigned any reasons for rejecting the approval. The impugned order is, therefore, unsustainable because right of administration i.e., appointing their staff is the choice of the management. The only power conferred with the competent authority is to see the prescription of qualification. Except that no other conditions are contemplated.

15. It is submitted by the learned Counsel for the petitioner that with regard to sister concerns the petitioner has applied for approval, but the authorities have not passed any orders so far.

16. In these circumstances, the impugned order is set aside and the 4th respondent is directed to approve the appointment with regard to aided posts and release the aid within six weeks from the date of receipt of a copy of this order, provided they are qualified as per the rules, and with regard to unaided post the DEO shall approve the appointment.

17. The writ petition is accordingly allowed. No costs.