

(1988) 04 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 4863 of 1985

Arya Prathamik Teachers Sikkcha Mahavidyalaya and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 27-04-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 29, 30

Citation : (1989) 37 BLJR 457

Hon'ble Judges : S.C. Mookherjee, J; P.S. Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.S. Mishra, J.—The petitioners herein and the intervenors, who have joined them, have maintained that Arya Samaj, which is a religious minority in the State of Bihar, established Arya Prathamik Teachers Sikkcha Mahavidyalaya at Chhatwara Raibhan, P. S. Mahua district Vaishali for imparting training to primary school teachers at a meeting held on 15-5-1979 and resolved accordingly. The institution, thus, established, created necessary funds and arranged for such training in the same year. Students who completed two years session in 1983-85 and obtained intensive teachers training as per the course of studies, however, were denied permission to appear in the examination conducted by the Bihar School Examination Board. The petitioners found it irreparable if students were denied permission to appear in the examination and accordingly moved this Court.

2. Students of the session 1983-85 were allowed to appear in the examination. Their results, however, have been withheld awaiting final adjudication. Students who completed two years session in 1984-86 and 1985-87 have also been allowed to deposit their fees and forms. Their examination, it is said, is scheduled sometimes in May 1988.

3. The contentions would have remained confined to the question whether

students of the petitioners" institution should be allowed to appear in the examination or not had the respondent-State not raised a controversy as to the fulfilment of the conditions of recognition and not produced before this Court a communication by the Joint Secretary to the Government in the department of Education dated 31-7-1986 to the effect that recognition was not granted to the petitioners" institution, for it failed to fulfil certain prescribed conditions as enumerated in the said communication. This has introduced a new dimension and learned counsel for the parties have taken us through the various statements of facts and the provisions of law applied to the institution of the petitioners.

4. It has not been disputed before us that Arya Samaj although a denomination of Hindus its rights are protected by Articles 29 and 30 of the Constitution of India. There could hardly be any dispute to it, as this Court has consistently maintained that Arya Samaj, Brahmo Samaj and like them other denominations, who satisfy adherence to a faith peculiar to them constitute a religious minority for the purpose of Articles 29 and 30 of the Constitution of India.

5. There has been some controversy as to whether the law as made for the non-Government Teachers Training Colleges, like the institution of the petitioners by the Legislature of the State of Bihar will apply to the institution of the petitioners or not. Bihar Act 21 of 1982 contains, inter alia, a provision to the effect that no institution for the purpose of imparting training to teachers of primary schools can be established or recognised unless prior permission is given to it by the State Government for its establishment and unless it fulfils such terms and conditions which are prescribed or provided for it by the State Government.

6. A Bench of this Court in *Zakia Afaque Islamia College, Siwan Vs. State of Bihar and Others*, , has taken the view that application for affiliation of a teachers training college established and administered by a religious minority cannot be rejected on the ground that it did not conform to the conditions as prescribed in Section 2 of the Predecessor Ordinance of the Bihar Act 21 of 1982. Section 2 of the said Ordinance was similar to Section 2 of the Act. The Court has expressed its view in the following words-

...It is well established canon of construction of statutes that if two views are possible, namely, one which could render the statutory provisions ultra vires and the other which would maintain its validity, the construction which ought to be put upon such statutory provisions is that which will not render them ultra vires. There is nothing in the Ordinance which goes to show that it specifically governs the Minority Institutions declared so under Article 30 of the Constitution. In our view, therefore, the construction which learned counsel for the University and learned Government Pleader, appearing on behalf of the State, seek to canvass before us that the provisions of the Ordinance would also govern the Minority Institutions must be overruled. This is for the simple reason that if the provision of Section 2 of the Ordinance or for that matter the entire Ordinance in question is to govern the Minority Institutions also there would be a likelihood of infringement of the provisions of Article 30 of the Constitution.

7. The above statement in the judgment of this Court is, however, subject to a further statement of law that regulatory measure for affiliation for the purpose of uniformity, efficiency and excellence in educational course cannot be said to infringe the provisions of Article 30 of the Constitution.

8. It is well settled that there is no fundamental right of affiliation of any educational institution to any course of study of any University or Board, yet, if such affiliation is refused on the ground of not fulfilling the conditions or limits, which are not regulatory in character, but are introduced to squeeze the character of a Minority Institution, courts have intervened and held that refusal is bad and unconstitutional.

9. In the instant case, however, we are not inclined to endeavour any further on the question, because except what is stated in Section 2 of the Act, no condition whatsoever, either regulatory or otherwise framed by the State Government for the non-Government Teachers Training Institutions has been brought to our notice, Section 2 has to be got a condition of prior approval of the State Government for establishment of such an institution which may be granted by the State Government on such terms and conditions which it may find reasonable and necessary. Even a minority institution, which may otherwise qualify, may fail to get affiliation if regulations having reasonable nexus with the proficiency and excellence in the standard of courses of study etc. are not fulfilled. In Zakia Ajaque Islamia College's case, observations by a Bench of this Court that provisions of Section 2 of the Ordinance or for that matter the entire Ordinance may not apply to a Minority Institution, however, has to be taken with the reservation that by making separate conditions to apply to institutions protected under Articles 29 and 30 of the Constitution and institutions not so protected, the State Government can extend application of Bihar Act 21 of 1982 to Minority Institutions also. Having so clarified the law, when we proceed to examine the provisions, we cannot but take note of the absence of any prescribed terms and conditions, either by a statute or otherwise under any executive instruction for minority institutions. Government's order conveyed by the Joint Secretary, vide his letter dated 31.7.1986 has referred to the conditions of affiliation which apparently are not specifically made for minority non-Government Teachers Training Colleges.

10. We may at this stage refer to Section 30 of the Bihar Secondary Education Board Act, 1976 which has been repealed and replaced by a new Act under which all Non-Government secondary schools have been taken over by the State Government. Until, however, the non-Government secondary schools existed and they were affiliated or recognised for examination conducted by the Bihar Secondary Schools Examination Board, they were required to conform to the conditions like a building, land a play ground etc. The Act itself carried a prescription to the said effect and also gave to the State Government power to add further conditions. The conditions enumerated in the Joint Secretary's letter dated 31.7.1986 which are similar to the conditions applied to the Non-

Government Secondary Schools Teachers Training Colleges are given a separate identification and treated as a separate clause. By the Bihar Act 21 of 1982 the State Government has been empowered to lay down terms and conditions of affiliation of such institutions. Since the Executive Government of the State has been vested with the powers to lay down terms and conditions of affiliations, it may in exercise of its executive powers do it, but executive power conferred upon the State Government must conform to the rules of natural justice as laid down in Article 14 of the Constitution of India, inasmuch as the State cannot discriminate, it cannot act arbitrarily, as discrimination and arbitrariness are one and the same and if there is any purposeful or intentional discrimination that is worst arbitrariness.

11. While on the one hand it appears in the case of the petitioner that affiliation has been refused, on the ground that certain conditions have not been fulfilled by it, on the other hand the petitioners have produced before us orders passed by the State Government granting affiliation to certain other institutions who have not fulfilled such conditions. This has occurred only because no policy statement as to the terms and conditions has been issued by the State Government and conditions are altered or introduced as desired and felt convenient by the authorities concerned. Refusal in the case of the petitioner in such a situation, in our view, is hit by Article 14 of the Constitution.

12. We, however, find that the Act has a definite purpose of avoiding mushroom growth of Teachers Training Colleges. Last underserving and unscrupulous institution may not grow, control of the sort envisaged in Section 2 of the Act is the best and desired requirement. So long the State Government maintains a predictable course and acts to end unscrupulous institutions it shall receive wide approval. If, however, it deviates from the said course and fails to maintain a predictable course, its action shall become suspect. If we interfere with the Government's decision not to accord affiliation to the petitioner's institution, we do so because we find that the State Government has not yet determined any predictable course as a policy laying down terms and conditions of affiliation.

13. Section 2 of the Act has given to the State Government wide power to not only lay down terms and conditions for the institutions, which are yet to be affiliated, but also for the institutions which have enjoyed some sort of affiliation but now are brought under Bihar Act 21 of 1962. The State Government's rule making power is quite comprehensive. If it has got reasons to think that institutions which have already been affiliated are not proving their worth and unless they improve themselves, their affiliation should not be continued, it may introduce such terms and conditions affording time to already affiliated institutions to comply with terms and conditions which have nexus with the proficiency, and efficiency and excellence that the system of education must achieve.

14. On the facts of this case, we quash the order of the State Government as contained in Annexure "A" of the counter-affidavit filed on behalf of respondent

No. 2, that is to say, letter dated 31.7.1986 of the Joint Secretary to the District Education Officer, Vaishali, and direct the respondent-State to consider the case of the petitioners-institution for affiliation in accordance with such terms and conditions which are uniformly applied to the non-Government Teachers Training Institutions with particular reference to the provisions which may apply to the religious and linguistic minority institutions protected under Articles 29 and 30 of the Constitution of India. We may, however, add that we have not determined the question whether the petitioners-institution is established by the Arya Samaj and being administered by Arya Samaj or not. It shall be open to the State Government to take such materials into consideration which may show whether the petitioner's institution is established and administered by Arya Samaj or not and apply the terms and conditions accordingly.

15. Coming to the students who have already appeared in the examination, it appears that the Supreme Court has in S. L. P. (Civil) Nos. 7432 and 7433 of 1987, vide order dated 23.7.1987, stayed publication of their results until further orders. We, accordingly, direct the respondents to await further orders from the Supreme Court in the matter. Those of the students, who have deposited fees and forms for the ensuing examination, in our view, shall be permitted to appear in the examination and their results will be published.

16. With the direction as above, this application is allowed. Let an appropriate direction accordingly issue.

S.C. Mookherji, J.

17. I agree.