

(1992) 02 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 2940 of 1979

Badrul Hasan Qadiri

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Citation : AIR 1992 All 220 : (1992) 2 AWC 941 : (1992) 1 UPLBEC 362

Hon'ble Judges : R.K. Gulati, J;A.N. Verma, J

Bench : Division Bench

Advocate : Mr. S.C. Budhwar, for the Appellant; S.C. and Mr. M.A. Qadeer, for the Respondent

Judgement

A.N. Verma, J.—This is the second time that the petition has come up for hearing before the court. Earlier by our order dated May 24, 1984, the petition had been dismissed on the ground that in view of the consistent stand taken by him throughout his tenure as a principal of the institution that it was a minority institution, it was not open to the petitioner to turn round and contend that it was not a minority institution and, therefore, the disciplinary action initiated against him by the Management was subject to the control of the educational authorities u/s 16-G(3) of the Intermediate Education Act. The petitioner appealed to the Supreme Court. By its order dated October 29, 1984, the Supreme Court granted Special Leave to the petitioner setting aside the judgment of this Court and remanded the case for the determination of the question whether the institution is or is not a minority institution.

2. Upon remand, we heard learned counsel for the parties again at some length on the issue whether the institution of which the petitioner was the principal, bears the character of a minority institution protected by Art. 30(1) of the Constitution of India, the main and the principal contention of the learned counsel for the petitioner was that the institution was neither established by the

minority community nor run as a minority institution. The words "establish and administer", it was argued, must be read conjunctively, i.e., not only should the institution be administered by the minority but it should have been established, i.e., brought into existence by the minority. Both the requirements, namely, the establishing as well as the administering of the institution must be fulfilled. Article 30(1) of the Constitution which states-

"30. Right of minorities to establish and administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

has been the subject of numbers pronouncements of the Supreme Court, but it is not necessary to burden this judgment with all those decisions. We will refer only to the barest minimum.-In S. Azeez Basha and Another Vs. Union of India (UOI), Chief Justice Wanchoo speaking for the Constitution Bench of the Court observed in paragraph 19 of the judgment thus (at pages 669 & 670) :

"Under Article 30(1), "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice". We shall proceed on the assumption in the present petitions that Muslims are a minority based on religion. What then is the scope of Art. 30(1) and what exactly is the right conferred therein on the religious minorities? It is to our mind quite clear that Art. 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the constitution came into force. We are not prepared to accept this argument. The article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it."

3. The same view was reiterated in the case of Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, Their Lordships observed that the right guaranteed to religions and linguistic minorities under Article 30 is two-fold: to establish and administer educational institutions of their choice. Both the requirements must exist before the institution could claim the right guaranteed to religious and linguistic minorities by Article 30(1). That is, it

must be shown that the institution was established by the minorities, whether religious or linguistic, and, having been so established, it was being administered by them as an institution for imparting education.

4. The first question that falls for consideration, therefore, is whether the institution was established as a minority institution. For the decision of this question we will have to go back to the origin of the institution and ascertain whether the institution was established by the minority community the Muslims -- for imparting education to the members of that community. "Establish" under Article 30(1) obviously implies and means "to bring into existence". The question, therefore, is; who brought the institution into existence and with what aim in view? Fortunately, the parties have brought on record quite a fair bit of material bearing on the point from which the following facts clearly emerge. Certain prominent citizens of Bilthara Road, district Ballia, including Dr. Baij Nath Sahi, Dr. Hari Charan Lal, Sarvsri Kailash Kumar Gupta, Mathura Prasad, Gauri Shanker along with some muslim residents of that village started in the twenties an educational institution known as Mohd. \\\ AH Memorial School named after the late Maulana Mohd. Ali, one of the two famous Ali Brothers associated in the Khilafat Movement started during the freedom struggle. The school was an Anglo-Vernacular institution run on the lines prescribed by the Education Department of U.P.

5. Subsequently, a society known as Mohd. Ali Memorial Trust, was constituted and registered with the Registrar of Societies in 1945. According to the Memorandum of Society, the aims and objects of the Trust, Inter alia, were: (a) to impart general and technical education and to provide facilities for the spread and promotion of education in general, (b) to maintain the Anglo-Vernacular School called the Mohd. Ali Memorial School Siyar, Ballia already established for boys on the lines prescribed by the Education Department, U.P., (c) to establish and maintain a girls school and (d) to establish and maintain a library and reading room for General use. The aforesaid institution was subsequently raised to the status of a Junior High School in the year 1945, a High School in 1948 and thereafter to the status of an Intermediate college in 1950 and was duly recognised under the Intermediate Education Act.

6. In the year 1958, the Intermediate Education Act was amended according to which a scheme of administration for running the institution was prepared and submitted for approval of the Deputy Director of Education, Varanasi. The duly approved scheme of administration has been annexed as annexure 2 to the petition. The scheme provides for the constitution of a committee of Management for managing and conducting the affairs of the institution. It provides that the authority to manage and conduct the affairs of the institution shall vest in the Committee of Management which shall be responsible for running the institution properly and in accordance with the provisions of the Act, regulations and instructions received from time to time by the authorities of the Education Department U.P.

7. It will thus be seen that the institution was established by prominent citizens which included not only Muslims but also several Hindus. And the institution was established for the spread and promotion of the education in general and not merely for the benefit of any particular community. Still further, according to the aims and objects of the Society which brought into existence this institution, the basic object was to impart general and technical education to all and it was provided that the institution shall be run on the lines prescribed by the Education Department, U.P. It is also significant to note that the membership of the Society was open to all and not confined to any particular Community. It was not a closed house confined only to any particular section of the society. In other words, the institution was established by prominent citizens of Bilthara Road Ballia, for the spread of the education in general and the education which was to be imparted in the institution was also of a general character as was common in those days in the Anglo-Vernacular schools.

8. The Scheme of Administration which was approved by the Education Department after 1958 also reflects the same characteristics and totally negatives the contention raised by the respondents regarding the minority character of the institution. We are, however, not so much concerned with the subsequent changes which might have been introduced in the Scheme of Administration in later years. As stressed above, we have to go to the origin of the institution and see who established the institution and with what aims and objects. Viewed in this light, we have not the slightest doubt that the institution was not established as a minority institution by the members of any particular community for its own benefit or for the promotion of any religious thoughts and ideals. The institution was established purely as an Anglo-Vernacular School for the spread and promotion of general and technical education for the benefit of all.

9. The first and one of the twin requirements of Art. 30(1) of the Constitution is, therefore, absent in the present case. The institution was, in our opinion, not established as a minority institution. As observed by their Lordships of the Supreme Court in the case of *S. Azeez Basha*, the words "establish and administer" in Article 30(1) must be read conjunctively. So read, it clearly means that the minority shall have the right to administer the educational institution of their choice only if it was established by them and not otherwise. In the present case, it cannot be said that it was so established.

10. In any case, both from the aims and objects of the society as well as from the Scheme of Administration as approved by the educational authorities immediately after the amendment of the Intermediate Education not in 1958, it is apparent that the institution was not established by any particular religious or linguistic minority but by a broad cross-section of the society comprising both Hindus and Muslims and that the institution was designed and conceived to subserve general societal interest, that is, for the spread and promotion of education generally for the benefit of all and not merely as a vehicle for serving educational interest of the minority community.

11. We, therefore, reject the claim of the Management that the institution is protected under Art. 30(1). The stand taken by the Management of the respondent, that the provisions of Section 16-G(3) of the Intermediate Education Act could not abridge or curtail or inhibit the exclusive right enjoyed by the Management to take disciplinary action against its teachers must also be rejected. The impugned order passed by the Deputy Director of Education dismissing the petitioner's appeal filed under clause (c) of Section 16-G(3) as incompetent on the supposition that the institution is a minority institution cannot be sustained and must be quashed.

12. We may recall that the petitioner was the principal of the respondent institution. A disciplinary action was initiated against the petitioner and eventually the proposal of the Managing Committee for the removal of the petitioner from service was approved by the District Inspector of Schools. Aggrieved by the order passed by the District Inspector of Schools, the petitioner preferred an appeal before the Deputy Director of Education under clause (c) of Section 16-G(3). The Deputy Director of Education by the impugned order dated January 22, 1979, declined to entertain the appeal on the ground that the same was not maintainable, the institution being, in the opinion of the Deputy Director of Education, a minority institution. We have been demonstrated that the institution is not entitled to the protection of Article 30(1) of the Constitution, not having been established as such.

13. This brings us to the submission advanced by the learned counsel for the petitioner in the alternative. It was urged that even if it be assumed that the institution was established by a religious minority and was being administered by it and even if it be further assumed that S. 16-G(3)(a) which requires prior approval of the District Inspector of Schools before the discharge, removal or dismissal from service of principal or a teacher of the institution, clause (c) of Section 16-G(3) which confers a right of appeal against the order of the Inspector according approval to the proposed punishment could not be ignored as the provision for appeal does not in any way, impinge upon the essentials of the constitutional guarantee envisioned by Article 30(1) of the Constitution. In support, learned counsel placed strong reliance on the observations made by their Lordships of the Supreme Court in paragraphs 18 and 20 of the judgment in Frank Anthony's case (supra).

14. It is apparent that if the above contention is sustained the impugned order dismissing the petitioner's appeal as incompetent on the supposition that the institution bears the character of a minority institution cannot survive. We, however, do not propose to pronounced on this contention except to make an observation in passing that Section 8(3) of the Delhi School Act was upheld by their Lordships of the Supreme Court in Frank Anthony's case on the consideration that the appeal lay to the District Judge and not to any departmental official. Their Lordships stressed that "the appeal is not to any departmental official but to a tribunal manned by a person who has held office as

a District Judge and is required to emphasize his powers not arbitrarily but in the same manner as the court of appeal under the Code of Civil Procedure. That feature is possibly missing in the present scheme of the Act. We, however, refrain from pronouncing finally on this aspect of the matter and leave the question open. We must, however, hasten to add that the alternative submission advanced by the learned counsel for the petitioner was based on the hypothetical supposition that the institution was protected under Article 30(1). We have already demonstrated above that the institution is not so protected.

15. Before concluding, we may observe that the petitioner has already retired on superannuation. The petitioner, however, survives as if the petitioner succeeds in appeal and the order of removal is set aside, the petitioner would be entitled to the monetary benefits flowing directly from the annulment of the punitive action.

16. In the premise, the petition succeeds and is allowed. The impugned order dated January 22, 1979 passed by the Dy. Director of Education vide Annexure 20 to the petition, is quashed. The Dy. Director of Education shall decide the petitioner's appeal afresh on merits and expeditiously, latest within 2 months of the date on which a certified copy of this order is submitted before him.

17. A copy of this judgment and order may be given to the learned counsel on payment of the requisite charges within a week.

18. Petition allowed.