

(1982) 09 KAR CK 0027
In the Karnataka High Court
Case No : WP 1012 & 5655/80

Basel Mission Higher Education Centre, Dharwad and Another
Vs
Manohar Harris Walters and Others

APPELLANT
RESPONDENT

Date of Decision : 06-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 1 KarLJ 294

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. Both these cases are interconnected and are directed against a common order. Hence, I propose to dispose of them by a common order.
2. In Dharwad city, the district Head quarter of the same District, there is a society called the Basel Mission Higher Education Centre, Dharwad (hereinafter referred to as "the society")-petitioner No. 1 in WP No. 1012 of 1980, and respondent No. 1 in WP No. 5655 of 1980-established and functioning under the provisions of the Societies Registration Act. The society is running various educational institutions, one of which is "the Kittel College, Dharwad" (hereinafter referred to as "the college")-petitioner No. 2 in WP No. 1012 of 1980 and respondent No. 2 in WP No. 5655 of 1980-named after that great German missionary that did yeoman service for about 50 years from 1853 to 1903 in South India and in particular in several parts of Karnataka and whose Kannada English Dictionary is still an authority. Both the society and the college will be hereafter referred to as the petitioner.
3. Sometime in 1968, the petitioner appointed one Manohar Harris Walters-respondent No. 1 in WP No. 1012 of 1980 and petitioner in WP No. 5655 of 1980-who will be hereafter referred to as the respondent, as a lecturer in Chemistry in the college. Sometime in 1971 or so, the respondent seems to have been promoted as a senior lecturer in the college, which appears to have triggered of a series of disputes between him and the petitioner.
4. On or about 2-7-1975 the petitioner placed the respondent under suspension

and started a domestic enquiry for insubordination and other charges and appointed one Sri M.H. Shirkol, a retired Dist. Judge as the Enquiry Officer. Notwithstanding the non-co-operation of the respondent at later stages of the inquiry, the Enquiry Officer conducted the enquiry and submitted his report to the petitioner holding that the respondent was guilty of the charges levelled against him. On a consideration of the report submitted by the Enquiry Officer and the reply filed by the respondent, the petitioner by its order dt. 10-1-1976 dismissed the respondent from service (Annexure-H in WP No. 1012/1980).

5. On 9-2-1976 the respondent filed an appeal under S. 8 of the Karnataka Private Educational Institutions Act, 1975 (Kar. Act 10 of 1978) (hereinafter referred to as "the Act") against his dismissal before the Educational Appellate Tribunal and Dist. Judge, Dharwad (hereinafter referred to as "the Tribunal") on a large number of grounds. On 26-11-1979 the Tribunal allowed the appeal of the respondent and directed his re instatement without making any order for back wages (Annexure-L in WP No. 1012 of 1980 and Annexure A in WP No 5655 of 1980). The Tribunal invalidated the order made by the petitioner on two grounds viz., (1) that the Board of Management that had appointed the petitioner had not dismissed him from service; and (2) that the enquiry conducted by Sri Shirkol only and not by a committee consisting of Sriyuths Shirkol, Bangera, Tergaonkar and Kulkarni, was illegal. On the claim of the respondent for backwages, with a long common to both the parties, the Tribunal did not decide the same as it was expected to do.

6. Aggrieved by the order of the Tribunal, in so far as it directs the re-instatement of the respondent, the petitioner has filed in WP No. 1012 of 1982 and has obtained stay of the operation of the same. Aggrieved by that part of the order of the Tribunal that did not grant backwages, the respondent has filed in WP No. 5655 of 1980. In the course of my order hereafter, reference will be made to the pleadings and the documents produced in WP No. 1012 of 1980.

7. Before the Tribunal, the petitioner did not contend that it was a minority institution protected by Art. 30 of the Constitution and, therefore, the Act was inapplicable to it or was invalid on any ground. But, in this Court, the petitioner has specifically urged that plea in IA No. II which has been allowed by this Court on 21-8-1980. On this plea of the petitioner that it was a Christian minority institution, the respondent in his memo dt. 8-8-1982 has accepted that the society and the college are minority educational institutions of the Christian community within the meaning of Art. 30 of the Constitution. Even otherwise, the pleadings and the materials placed before this Court, without a shadow of doubt, establish that the society and the college are Christian minority Educational Institutions protected by Art. 30 of the Constitution.

8. While asserting that the society and the college are Christian minority institutions protected by Art. 30 of the Constitution, the petitioner at the forefront has contended that Ss. 8 and 10 of the Act had no application to them, and if applicable, were violative of Art. 30 of the Constitution and, therefore, the

appeal filed by the respondent before the Tribunal was incompetent and the order made thereto was wholly without jurisdiction

9. Without disputing the factual correctness of the aforesaid assertion of the petitioner, the respondent has urged that the said plea urged for the first time before this Court should not be permitted to be urged much less decided in its favour.

10. Sri V. Tarakaram, learned counsel for the petitioner, has contended that the society and the college being Christian minority institutions, Ss. 8 and 10 of the Act, that provided for an appeal and the order to be made thereto, had no application and therefore, the appeal filed by the respondent was not maintainable and the order made thereunder was wholly without jurisdiction. In support of his contention Sri Tarakaram has strongly relied on a Division Bench ruling of this Court in *Anjuman Mani-E-Muslimeen, Bhatkal v. Education Appellate Tribunal, U.K.*, (1981) ILR Kar. 304.

11. Sri B.P. Holla, learned counsel for the respondent has urged that the plea that, the society and the college were Christian minority institutions, protected by Art. 30 of the Constitution, taken for the first time before this Court, should not be allowed to be urged and decided in favour of the petitioner. On the merits of the plea, Sri Holla has urged that the Division Bench ruling in *Anjuman's*, (1981) ILR Kar. 304, case was patently erroneous, calls to be dissented and referred to a Division Bench to enable that Bench to refer to a larger Bench to examine the correctness of that ruling.

12. Before the Tribunal, the petitioner did not plead that the society and the college were Christian minority institutions and, therefore, the Act had no application, is not disputed by Sri Tarakaram. But, he has urged that the said plea, the correctness of which is not even disputed by the respondent, and does not involve any investigation of facts, goes to the very jurisdiction of the Tribunal to entertain the appeal and make an order and, therefore, the same should be permitted to be urged and decided by this Court.

13. Whatever be the default of the society and the college before the Tribunal, their assertion that they are Christian minority institutions is not now disputed by the respondent. Earlier, I have found that the documents also establish that fact beyond any shadow of doubt.

14. The plea urged by the society and the college does not involve any investigation of facts. The plea urged by the petitioner really touches on the very jurisdiction of the Tribunal. As by the time, the Tribunal decided the case, this Court had not also decided the question directly. A question of jurisdiction, that too want of inherent jurisdiction, can be raised at any stage of the proceedings.

15. In any view of the matter, the question raised by the petitioner, on facts that are not disputed and admitted by the respondent, who was the appellant before the Tribunal, is a pure question of law. A pure question of law, that does not

involve investigation of facts, should normally be allowed to be urged before this Court, for the very first time to do full and complete justice in the case. For all these reasons, I permit the petitioner to urge this plea, overruling the objections of the respondent to the contrary.

16. In *Anjuman's*, (1981) ILR Kar. 304, case the facts were there: Anjuman Mani-E-Muslimeen was an educational trust established by the Navayat Muslims of Bhatkal Taluk of of Uttara Kannada Dist. founded for establishing and administering educational institutions and imparting education to the members of the Muslim community in general and Navayat Muslims in particular. The trust had established and was running a college called "Anjuman Arts, Science and Commerce College" at Bhatkal. Both the trust and the college were religious minority institutions to which Art. 30(1) of the Constitution was attracted.

17. One Dr. Syed Anwar Ali, who was appointed as the Principal of the college in 1972 was dismissed from service on 8-4-1980 by the Trust on certain charges proved in a domestic enquiry, which was challenged by him before the Educational Appellate Tribunal at Karwar, constituted under the Act. On entertaining the said appeal, the Tribunal by its order dated 25-7-1980 stayed the operation of the same, the validity of which was challenged by the Trust and the college before this Court even before the appeal was heard and decided by the Tribunal, on the plea that the provisions of the Act had no application to religious minority institutions, relying on an earlier Division Bench ruling of this Court in *Holy Christ Education Society, Bangalore v. State of Karnataka*, ILR 1979 Kar. 2255, wherein this Court had ruled that the Grant in Aid Code rules had no application to religious and linguistic minority institutions. In answer to the same, the respondent urged that that ruling was no longer good law in the light of the principles enunciated by the Supreme Court in *All Saints High School v. Government of A.P.*, AIR 1980 SC 1042.

18. On a consideration of the rival contentions urged before Mm. Rama Jois, J. by his order dt. 10-9-1980 referred the case to a Division Bench for disposal, which was heard by the very Bench that had earlier decided *Holy Christ Education Society's* case, ILR 1979 Kar. 2255.

19. Before the Division Bench elaborate arguments were addressed by both sides in support of their respective contentions. On an examination of all the questions that arose for consideration, the Division Bench referring to all the decisions of the Supreme Court on the true scope and ambit of Art. 30 of the Constitution, the Andhra Pradesh Recognized Private Educational Institutions Control Act (11 of 1975) (hereinafter referred to as the Andhra Act) and the Act, expressed thus:

"It is seen that provisions of S. 4 of the "Andhra Act" and provisions of Ss. 8 and 10 of the "Act" we are concerned with, are intended to serve similar purposes. The grounds on which Supreme Court found S. 4 of the "Andhra Act" infringing Art. 30 (1) are:

"11.The conferment of such a power on an outside authority the exercise of

which is made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Art. 30 (1). x x x

"16. This provision in my opinion is too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Art. 30(1). In the first place, the section confers upon Government the power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. It would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible".

By the same token Ss. 8 and 10 of the "Act" which create a wide appellate jurisdiction in an outside body are not limited merely to the examination whether the rules of natural justice have been violated in the course of the domestic inquiry culminating in the imposition of the penalty or to the limited question whether the order was mala fide. Jurisdiction of the appellate body is not like the limited jurisdiction that the Civil Court exercises in examining the validity of the findings of a domestic inquiry. S. 10 (4), more or less, creates a jurisdiction co-extensive with that of a Court of first appeal under the CPC. The Appellate Tribunal can take such fresh evidence as it considers necessary and in cases where there is dismissal or removal, if the appellate Tribunal is satisfied that such dismissal or removal was not justified, it may set aside the order and direct reinstatement on such terms and conditions as it may think fit. Even if the findings of misconduct recorded at the domestic inquiry are unexceptionable, the Tribunal can interfere even in regard to the nature and quantum of the penalty. Even in cases of penalties other than "dismissal" or "removal", the appellate Tribunal can interfere with the quantum of punishment and award a lesser punishment. Even if two views are reasonably possible the appellate Tribunal can substitute its own views for that of the management. This jurisdiction is not a limited jurisdiction which can be said to be co-relative of the rights of the employees under S. 6 (1). Provisions in the "Act" touching the scope of the appellate jurisdiction cannot be read down in relation to minority institutions as suggested by Sri T.S. Ramachandra, as being limited to the nature of jurisdiction which a Civil Court exercises in examining the validity of the finding of a domestic inquiry. "It is the creation of the power" it is said "and not its exercise that is subject to objection and the objection would not be removed even though the powers conferred were never exercised at all" (See *Ottawa v. Ottawa Corporation* AIR 1919 PC 96).

12. The foregoing discussion would show that appellate jurisdiction created under Ss. 8 and 10 of the "Act" in regard to minority institutions offends the

fundamental rights guaranteed under Art. 30(1). x x x x

15. Indeed, our earlier pronouncement in Holy Christ Education Society's case, ILR 1979 Kar. 2255, is consistent with the above principles and is not inconsistent with the pronouncement of the Supreme Court in All Saints High School's 3 case and our decision in Holy Christ Education Society's case, ILR 1979 Kar. 2255, does not require reconsideration."

On the very question that arises for determination in these cases, the Division Bench ruling in Anjuman's case, (1981) ILR Kar. 304, is directly on the point and the same is also binding on me, is not disputed by Sri Holla. In this view, WP No. 1012 of 1980 filed by the petitioner has to be allowed and WP No. 5655 of 1980 filed by the respondent is liable to be dismissed. But, notwithstanding this, Sri Holla made a very determined effort before me and argued these cases at great length relying on a large number of rulings.

20. Sri Holla argued that the, Act was not in pari materia with the Andhra Act, the fundamental rules of construction of statutes had been ignored by the Division Bench, that the ratio of the Supreme Court in All Saints High School's case, AIR 1980 SC 1042, had been misunderstood and misapplied by the Division Bench, that the built in safeguards found in S. 10 of the Act for interference had been totally ignored. On these and other grounds Sri Holla urged that the Division Bench ruling was erroneous and that I should, therefore, dissent and refer these cases to a Division Bench to enable that Bench in turn to refer them to a larger Bench for disposal. Sri Holla has also filed two written notes of arguments.

21. In Anjuman's case, (1981) ILR Kar. 304, the Division Bench refused to grant a certificate of fitness to appeal to the Supreme Court sought by the respondents. But, still the Supreme Court has granted special leave to appeal to the State and the appeal filed by the State and the special leave petition filed by Dr. Syed Anwar Ali are still pending disposal before that Court.

22. In Mount Carmel College, Bangalore v. Sudha Rao, (1982) 2 Kar. LJ 479, a similar attempt made by Sri Holla was rejected by Chandrakantaraj Urs, J. and the Division Bench ruling in Anjuman's case, (1981) ILR Kar. 304, was followed.

23. When the question is concluded by a direct ruling of a Division Bench, rendered on a reference made on an earlier occasion, a single Judge of this Court will be only wasting the precious time of this overburdened Court where litigants are crying for justice and disposal of their cases, if he were to allow counsel to contend that that ruling is erroneous and requires to be dissented, as urged by Sri Holla. But, still out of deference to his standing, persistence and determination and to avoid all unpleasantness in Court, I heard Sri Holla fully for five days. With regret and pain, I must confess that it was an agonising and painful experience and was almost a torture inflicted on a helpless Judge.

24. In Somawanti v. State of Punjab, AIR 1963 SC 151, the correctness of an

earlier ruling of the Supreme Court in *State of Bombay v. Bhanji Munji*, AIR 1955 SC 41, that had directly decided a point, was challenged on the ground that certain arguments had not been urged and considered. In repelling that contention the Supreme Court observed thus:

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided".

25. In *Ambika Prasad v. State of U.P.*, AIR 1980 SC 1762, an attempt was made to challenge the validity of Art. 31A of the Constitution, though its validity had been uniformly upheld by the Supreme Court commencing from *Kameshwar Singh* to *Kesavananda Bharti*'s case (AIR 1952 Supreme Court 252 to AIR 1973 Supreme Court 1461) and the other cases that followed them. In repelling such an attempt, an unanimous Constitution Bench of the Supreme Court speaking through Krishna Iyer, J. observed thus:

"Even so, it is fundamental that the nation's Constitution is not kept in constant uncertainty by judicial review every reason because it paralyses, by perential suspense, all legislative and administrative action on vital issues deterred by the brooding threat of forensic blow-up. This, if permitted may veil be a kind of judicial destabilisation of State action, too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake up. It is surely wrong to prove Justice Roberts of the United Supreme Court right when he said *Smith v. Allwright*, (1944) 321 US 649, 669 and 670-

"The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this Tribunal into the same class as a restricted fair-road ticket good for this day and train only... ..

It is regrettable that in an era marked any doubt and confusion, an era whose greatest need is steadfastness of thought and purpose, this Court which has been locked to as exhibiting consistency in adjudication, and a steadiness which would hold the balance even in the face of temporary ebbs and flows of opinion, should now itself become the breeder of fresh doubt and confusion in the public mind as to the stability of our institutions.

It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death, because a decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned (*Salmond "Jurisprudence"* p. 215 (11th Edn.)).

The above observations of the Supreme Court, though made in the context of repelling an argument addressed before it for not following its earlier rulings applies with greater force to the submissions made by Sri Holla.

26. A reading of the ruling in Anjuman's case, (1981) ILR Kar. 304, shows that it has been decided after considering the rival arguments addressed by both sides. But, I will also assume that Sri Holla is right that various aspects or arguments addressed before me were not addressed and the Division Bench decided the same without the benefit of those arguments. Even in such an event also, the binding effect of that decision is in no way weakened. In this context it is well to refer to the statement made by Rupert Cross in his treatise "Precedent in English Law" under the heading "Decisions without Argument" (page 148) which reads thus:

"Reference is made in some of the quotations in the previous paragraphs to cases which were not argued or in which there was no argument on both sides. What precisely is the position of such cases from the point of view of the doctrine of precedent? It seems clear that the mere fact that a case was inadequately argued does not affect its binding authority as a decision, although the weakness or absence of argument on one side may render a superior Court more ready to overrule a case.

The reason why the mere inadequacy of argument cannot affect the authority of a case as a precedent, which must, where necessary, be followed, is that the point in question will probably have been brought to the attention of the Court. A Court may come to a decision on a point although no argument on the subject was addressed to it or although the point was only argued on one side".

On the above statement of law also, it is not possible to accede to the submissions of Sri Holla.

27. A casual or a careful reading of the Division Bench ruling in Anjuman's case, (1981) ILR Kar. 304, shows that it has carefully and critically analysed the provisions of the Act the Andhra Act and the rulings of the Supreme Court and has reached its conclusions. In my view, to say that the Division Bench has not kept before it, the true principles bearing on the construction of statutes, has failed to grapple the distinguishing features of the Andhra and the Karnataka Acts, have not properly understood the true ratio in All Saints High School's case, AIR 1980 SC 1042 and has misapplied the same as contended by Sri Holla, to say the least would be; the height of impudence and arrogance for any Judge of this Court. Any such attempt by a single Judge of this Court, however intelligent and eminent he may be, is the very antithesis of all judicial discipline and propriety and is destructive of the very legal and judicial system established in our country.

28. Every one of the principles of law of precedent firmly rooted in English Legal and Judicial system transplanted and firmly established in our legal and judicial system, constitutionally recognised by Art. 141 of the Constitution, does not justify me to doubt the correctness of the ruling of the Division Bench in Anjuman's case, (1981) ILR Kar. 304. Any such attempt will strike at the very root of the law of precedents. At least, one of the cardinal principles, on which

the law of precedents is built and accepted is that the valuable judicial time of a Court should not be wasted by unnecessary and needless arguments, when a similar question arises in another case on a later occasion. On all these grounds, I hold that there is no merit in any of the contentions urged by Sri Holla and I reject them. From this also it follows that WP No. 1012 of 1980 filed by the petitioner has to be allowed and WP No. 5655 of 1980 filed by the respondent has to be dismissed.

29. In the normal and usual circumstances, that too having regard to the fact that a dismissed employee is losing a case before this Court on a different ground that had not been urged by the Management before the Tribunal, this is a fit case in which I should direct the parties to bear their own costs. But, that is not the position in the present cases.

30. Sri Holla argued this case concluded by a direct binding ruling of this Court for more than four days. On the second day, after listening to Sri Holla at some length, whose diligence, industry and thoroughness, I have always admired, I told him that on principle, it is improper for me to doubt the correctness of a considered ruling of a Division Bench and that it would be proper for his client to carry the matter directly to the Supreme Court and urge the very contentions before that Court rather than before me. But, still Sri Holla insisted to make all his submissions. Even though I would have been justified in not allowing Sri Holla to address his lengthy arguments on the correctness of the Division Bench ruling in Anjuman's (1) case, I allowed him to make all his submissions, which were fortunately concluded on 17-8-1982 at 4.35 PM leaving me no time to dictate my orders in open Court and compelling me to reserve my orders on that day.

31. At one stage of the arguments of the cases and even now, I feel that a somewhat sollicitious interim order made by me on 17-4-1980 had been taken full and undue advantage by the respondent and it looked as though he had determined to drag on these proceedings as long as it could be before this Court. With anguish and distress, I am constrained to observe that the valuable time of this overburdened Court, where litigants are crying for justice was not usefully spent at least for four days out of five days that these cases occupied the time of this Court. In these circumstances, I consider it proper to award costs of Rs. 500 to the petitioner to be paid by the respondent.

32. In the light of my above discussion, I make the following orders and directions:

(a) I allow WP No. 1012 of 1980 and quash the order dt. 26-11-1979 of the Educational Appellate Tribunal and Dist. Judge, Dharwad in Misc. Appeal (KPEI) No. 3 of 1976 (Annexure L in WP No. 1012 of 1980) by issue of a writ of certiorari.

(b) I dismiss WP No. 5655/1980.

33. Rule issued in WP No. 1012 of 1980 is made absolute with costs and the rule

issued in WP No. 5655 of 1980 is discharged with costs. But, in both these cases, I direct respondent No. 1 in WP No. 1012 of 1980 who is the petitioner in WP No. 5655 of 1980 to pay a sum of Rs. 500 as Advocate's fee to the petitioners in WP No. 1012 of 1980 who are respondents Nos. 1 and 2 in WP No. 5655 of 1980.