
(2017) 12 OHC CK 0081
In the Orissa High Court
Case No : 25002 of 2017

Basudev Sethi & Anr

APPELLANT

Vs

State of Odisha & another

RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Constitution of India, Article 30(1), Article 21-A - Right of minorities to establish and administer educational in-stitutions
Indian Penal Code, 1860,

Citation : (2017) 12 OHC CK 0081

Hon'ble Judges : Vineet Saran, Dr. B.R.Sarangi

Bench : DIVISION BENCH

Advocate : K. Pattnaik, S. Lenka, D. Sujit and T.S.Singh, P.P. Behera, P.K.Jena, B.P. Bal

Judgement

1. Both the writ petitions, having arisen out of same cause of action, are taken up together and disposed of by this common judgment.
2. Petitioners in both the writ petitions are the students of IInd year LL.B. (Hons) of Madhusudan Law College, Cuttack (hereinafter referred to M.S. Law College). They have filed these writ petitions challenging order dated 18.11.2017 passed by the Principal-cum-Chairman, Anti Ragging Committee, M.S. Law College, Cuttack suspending them from the College from 18.11.2017 till 31.12.2017.
3. The factual matrix of the case in hand is that the general election of the College, pursuant to the Government notification, was scheduled to be held on 23.09.2017, but it was cancelled by the authority. However, on demand being made by the students, instead of election, selection procedure was adopted and representatives of the students were selected for the larger interest of the students. But a dispute arose between two groups of the students, during pre-election period, for which an FIR was lodged by one Anusuya Lenka before I.I.C. Malgodown P.S., which was registered Malgodown P.S. Case No.207 dated

19.09.2017 under Sections 469, 500, 294 and 354 of I.P.C. read with Section 66(C) of the I.T. Act, 2000 against one Radhamadhab Das and his supporters. On the next day, i.e., 20.09.2017, a counter case was registered, vide Malgodwn P.S. Case No.209/2017 under Sections 294,323,427 and 506/34 I.P.C. against the petitioners and others, at the instance of one Sujit Satapathy (supporter of Radhamadhaba Das). Due to disturbances in the College campus, for which the general election of the College was cancelled, a complaint was lodged before the Principal-cum-Chairman Anti Ragging Committee basing upon which show-cause notice was issued to the petitioners on 31.10.2017 directing them to appear before the Committee on 03.11.2017 and also present their views in writing before the Committee. In response to the same, showcause reply was filed by the petitioners denying the allegation and request was made to close the proceeding, as it was an election dispute and no way a ragging matter. On consideration of such show-cause reply, the Anti Ragging Committee, vide order dated 03.11.2017, warned the petitioners stating that by misbehaving the complainant the petitioners had not done the right thing hence they were warned not to repeat the same. But since indiscipline situation was continuing, the Anti Ragging Committee directed for appearance of the petitioners on 14.11.2017 and 17.11.2017, but the petitioners did not turn up and they tried to avoid the authorities. Therefore, taking into consideration the allegations and their non-cooperation, the Anti Ragging Committee decided to suspend them from College till 31.12.2017 from the date of issuance of notice, i.e., dated 18.11.2017, which has been communicated by the Principal of M.S. Law College to the petitioners.

4. Mr. K. Pattnaik, learned counsel for the petitioners strenuously urged that the order dated 18.11.2017 suspending the petitioners from the College till 31.12.2017 has not been passed by following due procedure of law. More so, before passing the impugned order, the petitioners have not been given opportunity of hearing and, as such, there is violation of principle of nature justice. Therefore, the impugned order is liable to be quashed.

5. Mr. P.P. Behera, learned counsel, who usually appears for M.S. Law College, vide order dated 04.12.2017, was served with copies of the writ petitions and called upon to obtain instructions. The matter was next listed on 13.12.2017, when this Court directed to list it again on 18.12.2017 indicating the name of Mr. P.P. Behera in the cause list. Today, when the matter is taken up, Mr. P.K. Jena, learned counsel appearing on behalf of Mr. P.P. Behera, learned counsel for opposite party no.2 states that the order dated 18.11.2017 passed by the authority is appealable, but instead of availing the alternative remedy, the petitioners have approached this court by filing these writ petitions and, as such, the same are liable to be dismissed.

6. Having heard Mr. K. Pattnaik, learned counsel for the petitioners, and Mr. P.K. Jena, learned counsel appearing on behalf of Mr. P.P. Behera, learned counsel for opposite party no.2 and on perusal of the records, we dispose of both the writ petitions finally at the stage of admission with the consent of learned counsel for

the parties.

7. Admittedly, the petitioners are the students of M.S. Law College, Cuttack and they are prosecuting their study in 3rd Semester of IInd year LL.B. three years course. Due to Government notification, the general election of the College, which was to be held on 23.09.2017, was cancelled. During pre-election period, between two groups of the students of the College there was conflict, which, as already mentioned, led to registration of case and counter case in Malgodown P.S. In the meantime, a complaint was lodged before the Anti Ragging Committee, basing upon which the petitioners were called upon to show cause and, on receipt of their reply, order dated 03.11.2017 was passed warning the petitioners not to repeat the same once again. Since the petitioners continued with their indiscipline behaviour, they were called upon to appear on 14th and 17th November, 2017 before Anti Ragging Committee, but they avoided to appear. Consequentially, Anti Ragging Committee passed the impugned order in Annexure-6 dated 18.11.2017 suspending them till 31.12.2017.

8. It is quite unfortunate that when the parents are spending money for betterment of their children, but the children, without realizing their own position, parental status and their survival in society, are indulging themselves in inter se disputes creating an indiscipline situation in the campus of the educational institution.

9. In *Aruna Roy v. Union of India*, (2002) 7 SCC 368, the apex Court held as follows:

"Value-based education is likely to help the nation to fight against all kinds of prevailing fanaticism, ill will, violence, dishonesty, corruption, exploitation and drug abuse."

Similarly, in *Rohit Singhal v. Principal, Jawahar N. Vidyalaya*, (2003) 1 SCC 687, in the words of Justice R.C. Lahoti, it is stated:

"Education is an investment made by the nation in its children for harvesting a future crop of responsible adults productive of a well-functioning society. However, children are vulnerable. They need to be valued, nurtured, caressed and protected."

10. M.S. Law College has got its own importance in the field of legal education of the State. Many of the students of this institution have adorned the highest chair of the country as well as the State and many of them are also good professionals in their career and, more so, many statesmen have also been created by this institution. It has got its prestigious glory and the institution itself has its own name and fame in imparting legal education with its rich heritage and culture. Therefore, any indiscipline within its campus would definitely frustrate the very purpose for which the institution is established.

11. In *Unni Krishnan v. State of A.P.*, (1993) 1 SCC 645 the apex Court held as follows :

"Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. It has been treated as a charitable activity."

12. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi*, (1991) 2 SCC 716 the apex Court held as follows:

"Education means a process which provides for intellectual, moral and physical development of a child for good character formation; mobility to social status; an opportunity to scale equality and a powerful instrument to bring about social change including necessary awakening among the people."

In the said case, their Lordships have further held as follows:

"In nation building activities, education is a powerful lever to uplift the poor. Education should, therefore, be co-related to the social, political or economic needs of our developing nation fostering secular values breaking the barriers of casteism, linguism, religious bigotry and it should act as an instrument of social change. Education system should be so devised as to meet these realities of life. Education nourishes intellectual advancement to develop dignity of person without which there is neither intellectual excellence nor pursuit of happiness. Education thus kindles its flames for pursuit of excellence, enable and ennoble the young mind to sharpen his/her intellect more with reasoning than blind faith to reach intellectual heights and inculcate in him or her to strive for social equality and dignity of person."

13. No doubt, M.S. Law College is an "Educational Institution" imparting "education" to its "students", whose moral duty and responsibility to acquire knowledge and come out from the institution with flying colors obtaining degree maintaining discipline. Then question comes to consideration, who is a student? A student means, a person who is admitted to an educational institution and whose name is lawfully borne on the attendance register thereof and undergoing a course of studies for obtaining a degree, diploma or other academic distinction duly instituted.

In Oxford Advanced Learners' Encyclopedic Dictionary, it means a person who is studying for a degree, diploma etc. at a university or some other place of higher education or technical training, school student, a B.A. student, a medical student, a student nurse, teacher, etc. a boy or a person who is studying or has a particular interest in study. Therefore, the petitioners being the students are enrolled in M.S. Law College and undergoing course of studies of law for obtaining degree, diploma or other academic distinction. More particularly, M.S. Law College is an educational institution where education is being imparted.

In "India - Vision 2020" published by the Planning Commission of India, it has been specifically mentioned that "education is an important input both for the

growth of the society as well as for the individual. Properly planned educational input can contribute to increase in the gross national products, cultural richness, build positive attitude towards technology and increase efficiency and effectiveness of the governance. Education opens new horizons for an individual, provides new aspirations and develops new values. It strengthens competencies and develops commitment. Education generates in an individual a critical outlook on social and political realities and sharpens the ability to self-examination, self-monitoring and self-criticism."

In *Loka Shikshana Trust v. I.T. Commissioner, Mysore*, AIR 1976 SC 10, 14 (1976), the apex Court held that the sense in which the word "education" has been used is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling. Similar view has also been taken by the apex Court in *Gujarat University v. Shri Krishna Ranganath Madholkar*, AIR 1963 SC 703.

In *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 the apex Court held that the expression "education" occurring in various Articles of the Constitution of India means and includes education at all levels, from the primary school level up to the postgraduate level and professional education.

While considering Article 21-A of the constitution of India, the apex Court in *Avinash Mehrotra v. Union of India*, (2009) 6 SCC 398 held as follows :

" "Education" today remains liberation- a tool for the betterment of our civil institutions, the protection of civil liberties, and the path to an informed and questioning citizenry. Education is of transcendental importance in the lives of individual and in the very survival of our Constitution and Republic."

14. Now question comes, M.S. Law College being an educational institution, what should be its function?

In *S. Azeez Basha v. Union of India*, AIR 1968 SC 662, while considering the provisions contained in Article 30(1) of the Constitution of India, the apex Court held that the words "educational institutions" are of very wide import and would include a university also.

In *Aditanar Educational Institution v. Addl. C.I.T.*, AIR 1997 SC 1436, while considering Section 10(22) of the Income Tax Act, the apex Court held that the expression "educational institution" occurring in Section 10(22) of the Act includes a society which imparts education at the levels of colleges, and schools.

In *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 450, the apex Court held that the expression "educational institutions" occurring in various Articles of the Constitution of India means institutions that impart education from primary school level upto the post graduate level and includes professional educational

institutions.

15. In view of the above mentioned analogy, it can be safely concluded that a student, who prosecutes his education in an educational institution, has to maintain discipline.

Discipline or management of the school shall mean and include, all matters respecting the conduct of the masters or scholars, the method and times of teaching, the examination into the proficiency of the scholars, of any school; and the ordering of returns or reports with reference to such particulars, or any of them. In a way, it includes the whole conduct of the orderly running of the institution.

In *Cleary v. Booth*, (1893), 1 QB 465, discipline has been explained in following manners :

"Training, especially use of training which produces self-control, obedience, orderliness; maintenance of a proper sub-ordination in the army or school or the like (as, military discipline; school discipline). The discipline of school children is not confined to school hours; but extends to acts done by a pupil out of school."

In *M.P. Electricity Board v. Jagdish Chandra Sharma*, AIR 2005 SC 1924, discipline has been explained by the apex Court, which reads thus :

"A form of civilly responsible behaviour which helps to maintain social order and contributes to the preservation, if not advancement, of collective interest of society at large."

16. In view of the aforesaid law laid down by the apex Court and meaning attach to the word "discipline", it can be safely concluded that a student has to possess civilly responsible behavior, which helps to maintain social order and contributes to the preservation, if not advancement, of collective interest of society at large. Therefore, it is expected from the petitioners, who are nonetheless students of M.S. Law college prosecuting their studies in an educational institution to get education has to maintain "discipline" so as to project themselves a good citizen of India.

17. If this avowed objective of an educational institution, which is imparting education to the students, is frustrated by some of the persons for ulterior motive, the same cannot and should not be tolerated. As such, "ragging" now-a-days has become a fashion, which has to be curbed in a drastic manner so that the academic atmosphere of the institution is not impaired. With a view to curbing "ragging", if the Anti Ragging Committee, after examining the occurrence, has imposed some penalty, that cannot be said to be illegal or arbitrary. Rather, the interest of justice requires that academic atmosphere of an educational institution has to be maintained so as to allow every student to prosecute his/her study without any hindrance.

18. In the circumstances, we do not find any illegality or irregularity committed

by the Anti Ragging Committee suspending the petitioners from the College from 18.09.2017 to 31.12.2017 in order to maintain peace and tranquility within the premises of the College. But at the same time, it cannot be lost sight of that children are vulnerable and they need to be valued, nurtured, caressed and protected. As a matter of fact, meanwhile one month, from the date of passing the impugned order, has already elapsed. Therefore, taking a lenient view, we hold that the order of suspension passed on 18.11.2017 will continue till 18.12.2017, instead of 31.12.2017. In other words, the period of impugned order of suspension from 18.11.2017 to 31.12.2017 is reduced from 18.11.2017 to 18.12.2017. Needless to say that this order of reduction of period of suspension will have no impact on the career of the petitioners, other than a caution not to commit any indiscipline in the premises of the College in future, so that they shall mend themselves and their conduct and see that the glory of the noble institution remains unimpaired.

19. With the above modification of the impugned order of suspension, the writ applications are allowed in part. No order as to cost.