

(2007) 10 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 18479 of 2004

Canara High School Association

APPELLANT

Vs

State of Karnataka and The Karnataka State Minority
Commission

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Constitution of India, 1950 — Article 16 (4), 30, 30 (1)

Citation : (2008) 2 KarLJ 736

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Madhusudan Rao, for K. Raghavedra Rao, for the Appellant; Sheela Anish, AGA for R-1 to 3, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a society registered under the Societies Registration Act, 1860, claiming the right of minorities to establish and administer educational institutions of its choice in accordance with the provisions of Article 30 of the Constitution of India, who has questioned the action of the educational authorities of the state of Karnataka in disapproving the appointment of lecturers in the subjects of statistics and economics, appointing petitioners 2 and 3 for the posts by the first petitioner-management in terms of the order dated 30-5-2000 [Annexure-G] passed by the director of pre-university education and order dated 23-3-2000 [Annexure-H] also passed by the very authority, apprising the petitioners that the appointments are not approved for the reason that the first petitioner-society was required to follow the policy of reservation and that in terms of the provisions of the Karnataka Scheduled Caste/ Scheduled Tribe & Other Backward Classes (Reservation in Appointments etc.) Act, 1990 [for short, the 1990 Act] and the government order No. ED 227 SEP 94 dated 21-4-1995, posts were required to be filled up by appointing persons belonging to scheduled caste/tribe communities as backlog vacancies.

2. It is not only these orders but also the common appellate order dated 19-12-2003 [Annexure-L to the writ petition] passed by the Government of Karnataka u/s 131 of the Karnataka Education Act [for short, the Act], dismissing both the appeals of the management for the reasons that the petitioners' contention that the first petitioner-society is not "state" for the purpose of Article 16(4) of the Constitution of India, being a minority owned institution, is not tenable, as the institution is receiving aid; that its claim to be treated as Konkani linguistic minority institution cannot be acceded to for the reason that Canara Pre-university college, where the appointments were made has not been recognized as a linguistic minority college by the government and therefore it cannot claim any exemption in the matter of reservation in appointment and further that the stand of the management that insisting on reservation to fill up posts of lecturers in statistics and economies in the college amounts to 100% reservation and therefore the petitioners would not come within the roster system and the policy of reservation is not tenable as the provisions for reservation, if should have been worked in respect of the cadre of lecturers in common to all subjects, the theory of 100% reservation will not hold water.

3. It is aggrieved by these orders, the petitioners have approached this Court seeking for quashing these orders and for a direction to the respondents to approve the appointments so that the petitioners 2 and 3 can draw aided salary. In this petition, the petitioners have sought for the following prayers:

a) declare the petitioner No. 1 is a linguistic minority institution entitled to protection under Article 30 of the Constitution of India and that all educational institutions established and managed by petitioner No. 1 are entitled to the same treatment;

b) Issue a writ of mandamus directing the first respondent to issue necessary certificate/endorsement to the effect that the Canara pre-university college run by the petitioner No. 1 is a linguistic minority institution.

4. Writ petition having been admitted, the respondents having been put on notice, respondents 1 to 4 have entered appearance through Government Advocate and have filed statement of objections. The fourth respondent, though served, is not represented.

5. The main contentions urged in the writ petition in support of the prayers are that:

It is an undisputed fact that the first petitioner-society is a linguistic minority institution; that this fact has also been recognized by the respondents 1 to 3; that as many as six other educational institutions, viz., Canara High School, Mangalore, Canara High School, Mangalore-3, Canara Girls High School, Dongarakeri, Mangalore-3, Canara Higher Primary School, Urva, Mangalore, Canara Higher Primary School, Dongarakeri, Mangalore-3 and Canara English Medium Primary School, Mangalore-3, which are managed and administered by the first petitioner-society have been so recognized and accorded the status of

linguistic minority institutions; that the authorities cannot make a distinction between such other institutions, owned, managed and administered by the first petitioner-society and the educational institutions wherein the appointments made have been disapproved as per the orders at Annexure-G and H i.e. in the Canara pre-university college, Mangalore, wherein such appointments were made and which had been sent for approval of the competent authority; that the reason given for the disapproval viz., that the posts should have been reserved and filled up as backlog vacancies by persons belonging to SC/ST communities is a condition, which cannot operate on the first petitioner-society; that it interferes directly with the right of minority status of the first petitioner-society guaranteed under Article 30 of the Constitution of India and therefore not sustainable in law, that assuming the situation is governed by any regulatory measure, all such regulations will have to yield to the right of the first petitioner-society under Article 30 of the Constitution of India and therefore the impugned endorsements should be quashed and directions issued to the respondents to approve the appointments of petitioners 2 and 3 etc.

6. In this regard, the petitioners have relied upon the judgment of this court in their own case in terms of the order dated 15-1-1993 passed in WP No. 12555 of 1992, a copy of which is produced as Annexure-B to the writ petition, wherein also, the first petitioner-society had occasion to approach this Court in the light of some adverse action viz., not granting permission to the first petitioner-society to start an English medium school and not granting such permission being in violation of the rights guaranteed under Article 30 of the Constitution of India in favour of minority institution and that position was recognized and declared to be by this Court, the state was directed to grant permission to the first petitioner-society to start the school, after quashing the order declining permission etc., and this decision is cited to claim that when once the first petitioner-society, which has the benefit of Article 30 of the Constitution of India, it automatically extends to all educational institutions owned, administered and managed by the first petitioner-society; that the state cannot make an artificial distinction on such rights, on the premise that the government has not recognized the minority status [of the first petitioner-society] in respect of the pre-university college, though it is also owned and administered by the very society.

7. It is also urged that the provisions of reservation, assuming that it is made applicable to the private aided educational institutions also, cannot operate on the first petitioner-society, for the reason that it is a society having minority status and the rights guaranteed under Article 30 of the Constitution of India, which cannot be taken away or denied to the first petitioner-society on the premise of government policy or providing reservation to socially backward classes.

8. Reliance is also placed on the very recommendations made by the director of pre-university education in terms of the communication dated 22-4-1995 [Annexure-D to the writ petition], wherein the director has addressed a

communication to the secretary to government, department of education, that the pre-university college managed by the linguistic minority management [the first petitioner-society] is also entitled to be declared as a minority status institution and if the government has not acted on such recommendation and its inaction cannot be pleaded as a defence to say that the pre-university college owned by the first petitioner-society is not an educational institution having the minority status.

9. I have heard Sri Madhusudan Rao, learned Counsel for the petitioners and Ms Sheela Anish, learned AGA for respondents 1 to 3 at some length.

10. What is submitted by Sri Madhusudan Rao, learned Counsel for the petitioners, is that the grounds urged in support of the writ petitions are self-evident; that it is not in dispute that the first petitioner-society is a society having the rights envisaged under Article 30 of the Constitution of India; that it is not open to the state government to say that it has not recognized that right and therefore it will not extend the benefit of such right to a other educational institution started by the very society; that non-approval of the appointments made by the first petitioner-society to the post of lectures in statistics and economics, while is per se bad, if such is the reasoning, the orders are also bad as it is a case of not approving the appointment for the reason that the first petitioner-society is not following reservation policy in terms of the 1990 Act or the government order referred to and relied upon by the appellate authority; that the provisions of the 1990 Act and the government order cannot have the effect of either taking away or overriding the rights of the minority status conferred on the first petitioner-society under Article 30 of the Constitution of India.

11. It is submitted that there is no need for the first petitioner-society to seek a declaration at the hands of the state government; that the minority status is one which the first petitioner-society can claim as a matter of right, provided it is one which conforms to the specification as mentioned in Article 30 of the Constitution of India and that nothing more is required to be looked into and therefore the impugned orders are bad in law.

12. In support of the submission that the right of the first petitioner-society under Article 30 of the Constitution of India overrides all other provisions which have an effect of denying the right of owning and administering an educational institution and the right of appointment of teachers in such educational institution, which is an incidental right of administering and managing the educational institution owned by the minorities, learned Counsel for the petitioners has placed reliance on the following decisions:

(1) Ahmedabad ST Xavier's College Society v. State of Gujarat (1994) 1 SCC 717 - PARA-19 & 103

(2) Brahmo Samaj Education Society v. State of West Bengal AIR 2004 SC 3358 - PARA-5, 6, 7 AND 8

(3) The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others,

and in support of the submission that in respect of minority status institutions, reservation cannot be imposed, reliance is placed on a full Bench decision of the Bombay High Court in the case of ST Francis De Sales Education Society v. State of Maharashtra 2001 LAB IC 3415

13. Placing reliance on these decisions, it is submitted by the learned Counsel for the petitioners that the right guaranteed under Article 30(1) of the Constitution of India is paramount right and that cannot be in any way whittled down with reference to reservation made in favour of socially backward groups under the enabling provisions brought into effect in terms of the Article 16(4) of the Constitution of India; that interfering with the right of a management having minority status in making appointment of teachers in its institutions, with reference to the provisions providing for reservation in appointments, by insisting appointment of persons belonging to SC/ST category, though is under the protective provisions of Article 16(4) of the Constitution of India, is nevertheless bad and therefore the impugned orders of disapproval of the appointment should be quashed and the respondents directed to approve the appointment of petitioners 2 and 3, as otherwise it again amounts to denial of right of the first petitioner-society guaranteed under Article 30(2) of the Constitution of India, as in respect of the person appointed by the first petitioner-society, the state will be denying aid for not getting the approval of the appointments, which the first petitioner-society is otherwise entitled to as a right in view of Article 30(1) of the Constitution of India, but disapproving by the state for the reason that the first petitioner-society has not followed the reservation policy and the consequence being one of denial of aid by the state to these posts.

14. Sri Madhusudan Rao, learned Counsel for the petitioners, has also drawn attention of the court to Section 141 of the Act, which provides for exemption from the applicability of the Act itself in respect of any provision of the Act or the Rules framed thereunder to the extent such provisions are inconsistent with the minority right guaranteed to persons like the petitioners under Article 30 of the Constitution of India and therefore submits that when the very Act itself is not applicable, conditions imposed under the provisions of the Act to insist upon the private educational institution and more so in the case of a minority private educational institution to follow the policy of reservation in the matter of appointment to such institution, particularly when the Act itself is not made applicable, as such insistence acts at variance to the right guaranteed to persons like the first petitioner-society under Article 30 of the Constitution of India and therefore the action on the part of the respondents is also in violation of the provisions of Section 141 of the Act.

15. Countering such submissions on behalf of the respondents 1 to 4, Ms Sheela Anish, learned Additional Government Advocate submits that while the first petitioner-society may have the right of minority status guaranteed under Article 30 of the Constitution of India, it can nevertheless be regulated, as it is not an

absolute right and as the first petitioner-society has not yet been recognized by the state government particularly the education institution [of pre-university college] run by the first petitioner-society, which is of a recent origin, having not been granted that status by the state government in accordance with the procedure that it follows for grant of such status, the first petitioner-society cannot claim it as a matter of absolute right for claiming the benefit under Article 30 of the Constitution of India; that it can claim such light only alter the government if and as and when accords that status to the pre-university college run by the first petitioner-society and till then the impugned orders will sustain the field.

16. Learned AGA would also submit that as it is by now well settled by a catena of Judicial pronouncements that all rights in Part-III are not absolute rights and they can be regulated, Article 30 of the Constitution of India is not an exception, as has been indicated in the very cases referred and relied upon by the learned Counsel for the petitioners and the petitioners have to subject themselves to the regulatory measure; that the policy of reservation having found express in the statutory provisions of 1990 Act and the first petitioner-society though a minority institution, receiving aid from the state, has to necessarily conform to the requirements of this statutory provision, particularly as the reservation policy only ensures opportunity or representation to socially backward group and only to an extent of 15% and does not interfere with the entire management or all appointments of teachers made in the institution managed by the first petitioner-society and therefore the impugned action cannot be found fault with on the premise of right under Article 30 of the Constitution of India.

17. The learned AGA has also drawn the attention of the court to Section 49 of the Act, particularly Sub-section (2), which reads as under:

49. Government to set apart sum for giving grant-in-aid to certain recognized institution - (1) The state government shall, within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid to local authority institutions and private institutions in the state recognized for this purpose in accordance with rules made in this behalf.

(2) The rules made under Sub-section (1) may also require the institution receiving the grant to comply with any provision for the reservation of appointments or posts in favour of scheduled castes, scheduled tribes and any backward class subject to such modification, if any, which the state government may make in the application of such provision to any class or classes of such institutions.

and submits that while no one has a right in itself for seeking aid and it is well within discretion of the state to extend or not to extend aid and even extent of providing aid also cannot be a matter of right, but depends upon the financial exigency of the state government and when once the rules have been framed under Sub-section (2), which provides for insisting of private educational

institutions to make appointments or to fill up posts in favour of SC/ST persons or backward class in accordance with the statutory provisions, such as reservation, the first petitioner-society receiving aid to terms of Section 49(1) of the Act cannot avoid the application of Section 49(2) and therefore unless the first petitioner-society also abides by the reservation provision, the state government is definitely entitled to deny them not only the aid but also to approve what appointments made by the first petitioner-society in violation of such provisions and therefore submits that the impugned orders are justified and are not liable to be quashed and urges for dismissal of the writ petition"

18. In the light of these submissions by the parties, while the question that perhaps could have arisen or could have considered in this writ petition is as under:

Whether the state, which extends aid to a private educational institution and which wants to ensure that out of the aid extended to a private educational institution, a part of the aid should necessary reach the identified socially backward classes of persons in the matter of public employment, particularly in the wake of the provisions under Article 16(4) of the Constitution of India and when such aid is extended to a minority private educational institution, in the sense, an organization which has the right to administer an educational institution of its choice, as guaranteed under Article 30(1) of the Constitution of India, if insists that as a condition for granting aid, the minority institution also should provide for reservation in the matter of appointment of teachers in the educational institution, and if so, insisted, whether such insistence violates the right guaranteed under Article 30(1) of the Constitution of India, particularly, as such right is sought to be protected even in terms of Section 141 of the Karnataka Education Act, 1983 by excluding the operation of the provisions of the Act to the extent they are inconsistent with the rights guaranteed under Article 30?

I find that the state and its authorities have faulted at the very step in proceeding on the premise that the pre-university college run by the first petitioner-society cannot be accorded minority status and the rights under Article 30 of the Constitution of India, for the reason that the state has not declared that it is a minority educational institution. It is against such stand of the state, learned Counsel for the petitioners has placed reliance on the decision of the Supreme Court in the case of N. Ammad Vs. The Manager, Emjay High School and Others, . It is vehemently urged that the status of an institution as to whether it is a linguistic minority institution or religious minority institution cannot be made dependent on such declaration being granted or made by the state government. Assuming that the state government has not made a declaration or not granted such a status, it does not mean that the institution which to fact and in reality is a linguistic minority or religious minority, ceases to be one such.

19. In the present case, the first petitioner-society in fact has been recognized to

be a linguistic minority status by the very first respondent state government, although it may be pursuant to the direction issued by this Court in the earlier round of litigation, but nevertheless it has been so recognized. If it is so recognized, the state government cannot make a distinction of one educational institution in respect of which it has granted that declaration and status and another educational institution managed, owned and administered by the very linguistic minority institution or other educational institutions, which according to the state government, having not yet been so recognized or the state government has not granted that status etc. and therefore is not entitled to claim the benefits protected under Article 30 of the Constitution of India. If some of the educational institutions owned, managed and administered by the first petitioner-society have already been recognized by the very state government as linguistic minority institutions, it is inevitable that the other educational institution, also owned, managed and administered by the very society, have the same character, unless the state government has found that some other institution owned and managed by some other management is trying to usurp the minority status of the first petitioner-society and which is not the case of the state government nor is it urged so during the course of arguments, the state cannot make a distinction.

20. A perusal of the appellate order gives an impression that the decision could have been different if the appellate authority could have proceeded on the premise that the pre-university college run by the first petitioner-society is also a minority status institution. As the authority has not examined other question like the consequences of pre-university college being not a minority status institution, particularly on the applicability of the provisions relating to the reservation and non-approval of the appointments in that context, and the development hitherto in respect of the other educational institutions managed by the first petitioner-society to which the state government has accorded minority status and the manner in which these institutions are treated for the purpose of enforcing reservation policy in appointment made in those institutions being not disclosed before the court by either side, I deem it proper that the matter may have to be re-examined by the appellate authority in the light of the status of the pre-university college owned and managed by the first petitioner-society also being on par with the minority educational institution.

21. Though it is true, as pointed out by the learned AGA, that the rights under Part-III of the Constitution of India can be regulated and in this regard attention is drawn not only to the 1990 Act but also to the provisions of the National Commission for Minority Educational Institutions Act, 2004, the learned AGA is not able to point out any specific provision in either of these enactments, which could be sought to be a provision for regulating the right guaranteed under Article 30(1) and 30(2) of the Constitution of India. In the absence of an express regulatory provision put in place by a competent body, general submission that even the right under Article 30 of the Constitution of India can be regulated in terms of the law as has developed in the context of right under Article 30 of the

Constitution of India cannot be accepted, as no specific provision for such regulation is pointed out by the learned AGA. In the absence of any such regulatory put in place by the state government, it should be taken that the right under Article 30 of the Constitution of India has not been subject to any restrictive regulation of the lights.

22. In the result, this writ petition is allowed to the extent of quashing of the orders of disapproval [of appointment of petitioners 2 and 3] for the reason that the pre-university college wherein the appointments have been made by the first petitioner-society cannot be approved for the reason that the institution is not a minority status institution. It is also directed that the authorities should proceed on the premise that the pre-university college owned and managed by the first petitioner-society should be examined only on the premise that it is an educational institution owned, administered and managed by the first petitioner-society, which enjoys the status of linguistic minority status and it is only on such premise the examination should be made.

23. As the matter is being remanded to appellate authority, the other question canvassed is left without examination at this stage, particularly as if the state government has not been insisting on the enforcement of the provisions of reservation in respect of other institutions owned and managed by the first petitioner-society, then the question may become academic. The appellate authority i.e. the second respondent is hereby directed to restore Appeal No. 35 of 2001 to its file and dispose of the same on merits after examining various contentions urged on behalf of the petitioners-appellants and on the premise that the pre-university college wherein the appointments have been made by the first petitioner-society in respect of the posts of lecturers in statistics and economics, is a linguistic minority educational institution. The appellate authority is directed to dispose of the appeal within a period of six months from the date of receipt of a copy of this order.

24. The writ petition is allowed to the above extent. Rule made absolute.