
(1973) 08 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 1704 of 1970 and 1409 of 1971

Choudhary Janki Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-1973

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 39

Bihar High Schools (Control and Regulation of Administration) Act, 1960 — Section 5
Constitution of India, 1950 — Article 226, 227, 30

Citation : AIR 1974 Patna 187

Hon'ble Judges : S. Sarwar Ali, J; Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Gorakhnath Singh and Krishna Pd. Singh, in C.W.J.C. No. 1704 of 1970, Basudeva Pd., Radha Mohan Pd., Om Prakash Sinha, Narendra Pd. and Renuka Sharma, in C.W.J.C. No. 1409 of 1971, for the Appellant; Birendra Pd. Singh, (G.P. No. 2), K.N. Keshava and Prabhu Nath Roy, in C.W.J.C. No. 1704 of 1970, Gorakh Nath Singh, Birendra Pd. Singh, (G.P. No. 2), Prabhu Nath Roy, Awadh Kishore Pd., Krishna Pd. Singh and Narendra Kumar Ambastha, in C.W.J.C. No. 1409 of 1971, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—Both these writ applications relate to a High School in Gaya town and the main questions arising for decision are common and they, therefore, were heard together and are disposed of by this common judgment. CW.J.C, 1704 of 1970 has been filed for quashing an order passed by the Secretary, Board of Secondary Education, as contained in Annexure "2" to the writ application, whereby the Secretary has said that the Model High English School, Gaya, is fit to be recognised as an institution established by minority based on religion. C.W.J.C. 1409 of 1971 has been filed with a prayer to quash the order passed by respondent No. 1 dated 26th August. 1971 constituting an ad hoc committee consisting of respondents 3 to 5 in respect of the management of the said school as contained in Annexure "4" to the writ application.

2. The petitioners' case is that the said school was established in 1915 by the members of the Theosophical Society (hereinafter to be referred to as "the Society") and in accordance with the Memorandum of Association, a true copy whereof is annexed to C.W.J.C. 1409 of 1971 as Annexure "1", a Board of Trustees has been functioning as Governing Body of the school, and the Trustees, Under the provisions of the Memorandum of Association, elect the office bearers and other members of the Managing Committee of the school. The petitioners further claim that the members of the Society profess a system of religion on the notion that knowledge of divine things is gained by ecstasy, direct intuition or special individual intercourse with God and superior things, and form a minority based on religion in Bihar. The school, as claimed to have been founded by the Society, is accordingly protected by Article 30 of the Constitution of India and the order contained in Annexure "4" to C.W.J.C. 1409 of 1971, passed under the provisions of the Bihar High Schools (Constitution, Powers and Functions of the Managing Committee) Rules, 1964 (hereinafter referred to as "the Rules") is illegal and ultra vires. The petitioners alternatively have submitted that even if the above plea on behalf of the petitioners be not accepted, the order (Annexure 4) is still illegal because the supersession of the existing Managing Committee was permissible only under the provisions of Section 5 of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (hereinafter to be referred to as "the Act") and the essential conditions in the said section have not been fulfilled. All the three petitioners of C.W.J.C. 1409 of 1971 claim to be the members of the Model High English School Society and have filed the writ application in that capacity.

3. Two persons, namely, Harihar Prasad Singh and Jaimangal Singh claiming respectively Secretary and Member of the Board of Trustees filed an application in C.W.J.C. 1409 of 1971 for being added as respondents and they also filed counter-affidavits challenging the claim made in the writ applications. No orders were passed on this application and when the case was taken up for hearing, we permitted the intervenors to oppose the writ application. There was no opposition on behalf of the petitioners to their being added as party respondents to this writ case. I allow their prayer for being added as respondents in the writ case. They will be formally added as respondents 6 and 7 in the writ application. They have mainly asserted that the school was not established by the Society and that the Society is not a religious minority for the purpose of Article 30 of the Constitution. They have also submitted that the last committee was itself an Ad Hoc Committee framed under Rule 39 of the Rules and, therefore, the order in Annexure "4" constituting another Ad Hoc Committee is not illegal and has been validly passed under Rule 39 itself and not u/s 5 of the Act as suggested by the petitioners. They have further asserted that the writ application was premature Inasmuch as an application for recognition of the school as having been established by a religious minority is still pending before the Education Department of the State Government and also because a suit being T. S. No, 336 of 1971 filed for the same purpose is still pending in the court of the Munsif, 1st

Court.

4. The main questions which arise for decision are:

- (a) Whether the school had been established by the Society?
- (b) Whether the Society is a religious minority as claimed by the petitioners in C.W.J.C. 1409 of 1971 within the meaning of Article 30 of the Constitution?
- (c) Whether the Writ Case No. 1409 of 1971 is premature?
- (d) Whether the order contained in Annexure "4" to the writ application in C.W.J.C. 1409 of 1971 is illegal and ultra vires on account of non-fulfilment of the conditions mentioned in Section 5 of the Act?
- (e) What order should be passed in C.W.J.C. 1704 of 1970?

5. It has rightly been not disputed that if the protection under Article 30 of the Constitution is available to the school, the order (Annexure 4) has to be quashed. (See *Arya Pratinidhi Sabha and Others Vs. The State of Bihar and Others*, , *Dipendra Nath Sarkar Vs. State of Bihar and Another*, and *Md. Abu Sayeed Ahmad Khan v. State of Bihar* 1969 BLJR 343).

6. In support of his contention that the school was established by the Society, Mr. Basudeva Prasad has referred to the assertions made in paragraphs 8, 9 and 17 of the writ application, Annexure 5 series which have been annexed to the supplementary affidavit in reply to the intervention application and to Annexure 6 series to the petitioners' reply to the counter-affidavits. Annexure 6/1 is the copy of a report of Mr. Purnendu Narain Sinha, Provincial Secretary, Theosophical Society, Bihar and Orissa dated 4-10-1916 wherein the Secretary had reported that at Gaya there were two girls' schools, established by the Society which are functioning properly and a High English School also had been established in the town with the assistance of several persons named therein. Mr. Sinha had referred to those gentlemen as "our friends" which indicates that they were also members of the society. It has also stated that the school was held in "Lodge House" meaning thereby the lodge building opened in 1912 by Dr. Annie Besant, as mentioned in paragraph 3 of C.W.J.C. 1409 of 1971. Annexure 5 series as also the old original registers belonging to the school which were produced before us for our perusal clearly indicated that the full name of the school was Theosophical Model High English School, Gaya, Mr. Gorakhnath Singh, appearing for the intervenor respondents contended that it has not been established that the school was founded by the members of the Society and relied upon the recitals in Annexure "1" which do not show that the Trustees were Theosophists. He further strongly relied on the lease (Annexure A/1) to the intervention application, dated 1-5-1921 whereby it appears that a lease was granted on behalf of the Society in favour of the school. He submitted that if the school had been itself founded by the Society, there was no need for execution of the lease. He also drew our attention to paragraph 5 of the lease wherein it was stated that if the School Committee failed to make necessary repairs as undertaken by

them, the Society might get the premises vacated after giving the school three months" previous notice. I do not feel convinced by the (arguments made on behalf of the inter-venor respondents. The document indicates that a lease of the Theosophical lodge had been leased to the school for a period of 30 years on a nominal annual rent of Re. 1/- and this, to my mind, goes to support the contentions of the petitioners rather than to establish the case of the respondents. The statements made long time back in Annexures 6/1 and 6/2 and the old registers belonging to the school are important pieces of evidence which fully establish the petitioners' case and I hold, therefore, that the Model School, Gaya, was originally established by the members of the Society,

7. The main question for decision is whether the Society is a religious minority within the meaning of Article 30 of the Constitution. It may be stated here that it has not been asserted on behalf of the petitioners that the Society is a minority based on language. Mr. Basudeva Prasad has relied upon the discussion on the subject in the Encyclopaedia Britannica and the meaning given in Webster's Dictionary and at the time of the hearing of the case he also placed before us the relevant discussions in Encyclopaedia on Religion and Ethics. He has also placed great reliance on a Book "A Short History of the Theosophical Society" compiled by Josephine Ransom and a booklet "Theosophy" by Annie Besant.

8. The Encyclopaedia Britannica states that the main objects of the Society are :

- (1) To establish a nucleus of universal brotherhood of humanity;
- (2) To promote the study of comparative religion and philosophy;
- (3) To make a systematic investigation into the mystic potencies of life and matter or what is usually termed occultism.

It was contended that having regard to the objects stated above, the Society has to be held as a community of religious denomination.

9. The word "religion", to my mind, has been used in Article 30 of the Constitution in the same sense in which an ordinary man in this country understands. The word was not used in the abstract philosophical sense. It means what we understand by the word "religion" in common parlance, for example, Islam or Buddhism. The question is whether the Society is covered by the term. Mr. Basudeva Prasad argued that the Society has a prayer of its own and members are interested in religious matter and in that view the petitioner's case should be accepted. He placed several portions from the Book "A Short History of the Theosophical Society" which stated that in the last century, soon after the formation of the Society, a decision was taken to merge the Society with Arya Samaj and the decision was also implemented to some extent. However, soon the members realised that the merger had taken place under some misapprehension and the two organizations hurriedly separated. Mr. Basudeva Prasad strongly contended that this fact established that the Society had or has a religious character so as to attract the protection of Article 30 of the

Constitution.

10. I have gone through the various portions of the Book cited on behalf of the petitioners and I find that the founders of the Society did not establish another religion, rather they were interested in bringing about a cordial relation amongst adherents of different religions and foster love amongst the mankind throughout the world. The Society was established in the last century by a noble woman Madame Helena Petrovna Blavatsky in co-operation with one. Henry Steel Olcott, who are generally referred to as the founders. During formative years. Col. Olcott had stated, as mentioned at page 87 of the Book that "Society was neither a religious nor a charitable but a scientific body. Its object was to enquire, not to teach, and its members comprised men of various creeds and beliefs". It appears that the members of the Society disapproved many of the dogmas of Christian religion and supported the oriental teachings and Col, Olcott was referred to as a friend of Aryan religion. One of the bye-laws adopted by London branch of the Society stated that no religious propaganda of any kind was within their contemplation. One of the three objects of the Society, as mentioned at page 105 of the Book, was :

"(2) to oppose the materialism of science and every form of dogmatic theology, especially the Christian; to make known "the facts about Oriental religions philosophies, especially the pure esoteric teachings, in the Vedas, and in the philosophies of the Buddha, Zoroaster and Confucius"."

The fourth paragraph of the Circular on behalf of the Society, during the period when the question of its merger with Arya Samaj was under consideration, read as follows :

"(4) The Society is in connection and sympathy with the Arya Samaj of Aryavart. one object of which Society is to elevate, by a ,true spiritual education, mankind out of degenerate, idolatrous and impure forms of worship wherever prevalent."" (See page 107)

It appears, as stated on page 119 of the Book, that the decision to merge with Arya Samaj was taken by the Founders of the Society under some misapprehension and when full rules of Arya Samaj were received in August, 1878, the members of the Society were of the opinion that the view of Arya Samaj was too sectarian for the Society to approve and the situation was hastily revised. Subsequently, there were bitter criticisms by the two organizations against each other and the outcome of which was total severance of the two organisations. I am not ready to conclude from the fact, that there had been at one point of time merger of the Society with Arya Samaj that the Society is a minority based on religion. It is manifest that the Society did not intend to bring about a new religion. It endeavoured to eliminate the hostility existing between different religions and promote goodwill. It also attempted that its members should take advantage of what appeared to them better side of all religions. It was interested in philosophy and Science as also in general betterment of the

conditions of the mankind. It recognised the different religions and held them in great esteem, especially the teachings of the oriental saints. At page 127 of the Book, it is mentioned that an idea was seriously considered at one point of time to establish a Parsi section of the Theosophical Society and at page 162 it is stated that at Allahabad a branch of the Society was formed exclusively for Hindus. Col. Olcott and another important member of the Society Mr. Leadbeater, appeared to have been very sympathetic with Buddhists and the latter actually became a Buddhist, although continued as a member of the Society. When there was an attack on Buddhism by Christians, the Society gave a robust defence to the Buddhists. Priests of different religions are stated to have given great support to the Society from time to time and some important personalities in India including certain Indian Rulers either became active members of the Society or were its supports without giving up or renouncing their religions. The Prune Minister of Egypt was also made an honorary member of, the Society as stated at page 205. All these clearly go to show that the Society was not an organisation of religious denomination and it never meant to establish a new religion, Mrs. Annie Besant joined the Society and became an important member, and later its President She delivered several lectures on subjects including "A World Religion". It is stated at page 473 of the Book that "this title she presently changed to "Fellowship of Faiths", as she found the former led to the idea that "a totally new religion was to be founded". The anxiety on the part of Mrs. Annie Besant to dispel a doubt about a new religion being established is illuminating.

11. The other Booklet on which great reliance was placed on behalf of the petitioners is "Theosophy" by Mrs. Annie Besant. She has stated that "Theosophy or mysticism, the direct knowledge of God by man, belongs equally to all great religions as their sustaining life and may be possessed by any individual, even outside any religious organisation." She has further stated that "no man is truly a Theosophist who has not direct knowledge of God. but he may win this through any religion or by his own unaided efforts."

12. It was stated before us that the latest position of the Society is that admission to membership is obtained on recommendation of two members of the Society and on the acceptance of the objectives quoted from the Encyclopaedia Britannica above. In the Encyclopaedia of Religion and Ethics edited by James Hastings, it is stated that "the Theosophical Society is composed of students; belonging to any religion in, the world or to none, who are united by their approval of the above objects, by their wish to remove religious antagonisms, and to draw together men of good will; whatsoever their religious opinions, and by their desire to study religious truths and to share the results of their studies with others. Their bond of union is not the profession of a common belief, but a common search and aspiration of Truth. They hold that Truth should be sought by study, by reflexion, by purity of life, by devotion to high ideals and and they regard Truth as a prize to be striven for, not as a dogma to be imposed by authority. They consider that belief should be the result of individual study or intuition and not its antecedent, and should rest on knowledge, not on assertion.

They extend tolerance to all, even to the intolerant, not as a privilege they bestow, but as a duty they perform and they seek to remove ignorance, not to punish it. They see every religion as an expression of the Divine Wisdom and prefer its study to its condemnation and its practice to proselytism. Peace is their watchword as Truth in their aim."

13. It has not been suggested in the writ application that the member belonging to a particular religion is converted to another religion when he becomes a member of the Society. Having regard to all the circumstances which have been placed before us in this case, I think that the Society is not a minority based on religion within the meaning of Article 30 of the Constitution.

14. Mr. Basudeva Prasad next contended that the existing Managing Committee could be replaced by an Ad Hoc Committee only (by) an order passed u/s 5 of the Act and as the conditions mentioned in that section are not present in this case, the order is without jurisdiction. Mr. Gorakh Nath Singh, in reply, placed before us Annexure B/1 to the intervention application which shows that the existing Managing Committee itself was constituted under Rule 39 of the 1964 Rules by the President, Board of Secondary Education. The Managing Committee which was functioning, therefore, was not a regular Managing Committee formed under the provisions of the Act. In the circumstances, the reconstitution of the Ad Hoc Committee by Annexure 4 can be and has been made under Rule 39. Section. 5 of the Act has no application to the pre-sent case and the contention of Mr. Basudeva Prasad has to be overruled as having no force. Mr. Prasad has attempted to contend that the writ application is not premature, as was suggested on behalf of the intervenor respondents. It is not, however, necessary to decide this point. As the main point raised on behalf of the petitioners is rejected, the writ application in C.W.J.C. 1409 of 1971 is found fit to be dismissed.

15. It has been contended on behalf of the respondents that the observation of Shri Bhagwan Prasad in Annexure 2 to the writ application in C.W.J.C 1704 of 1970 (which is also annexed as Annexure 3 to the writ application in C.W.J.C. 1409 of 1971) has no force and is not a final order and the petitioners in C.W.J.C. 1409 of 1971 have moved the Education Department of the State Government for recognition of the school as a minority institution. On the above ground, it was suggested that the writ application in C.W.J.C. 1409 of 1971 was premature and should be dismissed without being considered on merits. In view of this submission, I hold that the writ application in C.W.J.C. 1704 of 1970 itself was prematurely filed without waiting for the final decision of the Education Department in regard to the claim of the School being a minority Institution. However, as I have already decided that the school has not been established by the petitioners in C.W.J.C. 1409 of 1971 as a minority Institution, so as to entitle it to the protection of Article 30 of the Constitution, the petitioner in C.W. J.C. 1704 of 1970 substantially succeeds. It is not, however, necessary to pass any formal order as prayed in this writ application,

16. It appears that no regular Managing Committee has been formed to look after the affairs of the school for a long time and it is highly desirable that steps may be taken in that direction as soon as it may be possible.

17. For the reasons discussed above, I dismiss both the writ applications in C.W.J.C. 1409 of 1971 and 1704 of 1970, but there will be no order as to costs.

Sabwar Ali, J.

I agree.