
(2005) 02 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 1266 of 2005

Christian Inter College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1), 15(3), 28(3), 29(2)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 11, 16, 8(1)

Citation : (2005) 5 AWC 4287 : (2005) 2 ESC 828

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : Y.K. Saxena, for the Appellant;

Final Decision : Allowed

Judgement

Janardhan Sahai, J.—The petitioner, Christian Inter College, is recognised under the provisions of the U.P. Intermediate Education Act. The petitioner's case set out in para 7 of the writ petition is that it has been granted recognition by the Board of High School and Intermediate Education as an institution for boys and girls both. A copy of the letter of recognition, dated 2.8.1955, has been filed by the petitioner as Annexure-1 to the writ petition. The petitioner claims that in this college boys and girls have been studying since the very beginning and have been appearing in the Board examinations without any objection of the Departmental authorities, or of the Board itself. The grievance of the petitioner is that the girl students admitted by it are not being allowed to take the 2005, examinations of the Board, and a letter, dated 21.12.2004, has been sent by the Board to the District Inspector of Schools to forward the forms of boy students alone.

2. The stand in para 4 of the counter-affidavit filed on behalf of the Board is that the college was not granted recognition for both boys and girls but was granted recognition for Intermediate classes for boys alone. The copy of the letter dated 2.8.1955 granting recognition has been filed as Annexure C.A.I. This letter

clearly Indicates that against the words Balak/Balika printed in the letter "Balika" has been scored out. There are certain special conditions added in ink in this letter which do not occur in the copy filed by the petitioner. It is stated that the copy of the letter filed by the petitioner is a forged one. In the rejoinder affidavit there is no denial of the fact that the copy of the recognition letter filed with the counter-affidavit is a correct copy but it has been reiterated that the institution was granted recognition for both boys and girls. The denial is evasive. As such, it is to be taken that the Principal of the college has not come with clean hands and has filed a forged copy of the letter of recognition. When this aspect was being considered, counsel for the petitioner submitted that the students should not be made to suffer on account of fault on the part of the Principal, or the management and submitted that equities could be balanced by imposing costs. After taking instructions from his client, the Counsel offered to pay costs of Rs. 10,000/-. In this background of the facts, I am of the opinion that the students of the college should not be made to suffer on account of misconduct on the part of the Principal, or the management. Therefore, the offer of costs which appears to be a fair one is accepted and the case is being examined on merits.

3. The Christian Inter College, Mainpuri is a minority institution which it is said, was established in 1838 by the wife of one James Scot who it is said established the institution seeing the status of the minority community of the area. These averments made in paras 2, 3 and 4 of the petition have not been denied in the counter affidavit. In para 5 of the petition it is stated that there is no other minority institution in the city and hence boys and girl students of the minority community are studying in the institution. In the writ petition as well as in the rejoinder affidavit a large number of documents have been filed which establish that girls have also been studying in this college and have been allowed to appear from the institution in the Board's examinations in previous years and have also been awarded certificates of merit by the Educational Authorities. These averments have not been specifically denied in the counter-affidavit but what has been stated is that there are several other girls institutions in Mainpuri city such as G.G.I.C. in which girls can study. It has also been stated that the institutions are given recognition by the Board as boys or girls institutions and not as institutions of any religion or caste. In the absence of any specific denial of the averment that the institution is a minority one and as the name of the institution itself suggests it has to be accepted that the institution is a Christian minority institution.

4. The question that arises in this case is whether even if the college has been granted recognition as a boys college, girls can be admitted and permitted to appear in the Board's examinations. The relevant Regulation as it stood then came up for consideration before a Single Judge of this Court in Rama Nath Tewari and Others Vs. Committee of Management, Allahabad Intermediate College and Others, . This was Regulation 8(1) of Chapter VII of the Regulations which was as follows "girls shall not be admitted into boys institution without obtaining prior approval of the Inspector." This Court was of the view that the

Regulation is arbitrary and violative of Article 14 and that segregating educational institutions on basis of sex is a sign of backwardness." The Court relied upon Article 39(f) of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and observed that development in a healthy manner is best possible in co-education. It was held that the right to education in Articles 41 and 45 must be construed consistently with Article 39(f). The Court also relied upon the view of experts in the subject, Komila Thapa and of Kakkar stating the advantages of co-education. The decision of the Single Judge was relied upon by a Division Bench in Special Appeal No. 255 of 2002. It appears that subsequently the Regulations have been amended. Learned Standing Counsel relied upon Regulation 16 of Chapter VII of the Regulations framed under the U.P. Intermediate Education Act. This Regulation reads as under :

^^16- ekU;rk vkosnu i= esa laLFkk }kjk ftu vH;fFkZ;ksa ds iBu ikBu ds fy, ekU;rk vkosfnr gks dk Li"V mYys[k djuk vfuok;Z gksxk rFkk laLFkk esa mUgha vH;fFkZ;ksa dk izos"k fy;k tk;sxk ftu vH;fFkZ;ksa ds v/;;u v/;kiu d fy, ekU;rk vkosfnr dh xbZ gS A vkosfnr ekU;rk ls brj vH;fFkZ;ksa dk laLFkk esa izos"k vfu;fer gksxk rFkk laLFkk ds fo:) dk;Zokgh dh tk ldrh gS A**

The effect of this Regulation is that the college can admit only such students in respect of whom recognition has been sought. Reliance has also been placed upon Regulation 11 (ta) of Chapter VII of the Regulations

framed under the Act, which reads as under :

^^11- ifj"kn }kjk laLFkk dks ftu vH;fFkZ;ksa ds iBu ikBu ds fy, ekU;rk iznku dh x;h ds laLFkk esa mlh izdkj ds vH;fFkZ;ksa dk izos"k v/;kiu dj;k tk,xk vFkkZr ckyd ds :i esa ekU;rkizkIr fo|ky; esa ckyd rFkk ckfydk ds :i esa ekU;rk izkIr fo|ky; esa ckfydk vH;FkhZ gh v/;u ds ik= gksa A

izfrcU/k ;g gS fd] xzkeh.k {ks= esa tgk? LFkkuh; :i ls ckfydk fo|ky; miyC/k ugha gaSa ckfydk;sa ckydksa dh laLFkk esa fujh{k dh iwoZ Loh?fr izkIr dj izfo"V dh tk ldsxh A xzkeh.k vFkok uxjh; {ks= ds ckfydk fo|ky;ksa ds :i esa ekU;rk izkIr fo|ky;ksa esa ckydksa dk izos"k fdLh Hkh n"kk esa ugha fy;k tk;sxk A**

The effect of this Regulation is that in an institution recognised as a boys institution only boys would be admitted and in an institution recognised as a girls institution only girls would be admitted. There is however an exception made in the Regulation for rural areas where locally there are no girls institutions and in these areas the Regulation provides that girls may be admitted in a boys institution after prior permission of the District Inspector of Schools. But in no case can boys be admitted in a girls institution whether in urban or rural area. The difference between the Regulation that was struck down by this Court in, R.N. Tewari's case (supra) and the present Regulation is that in the earlier provision there was a bar on admission of girls in a boy's institution without permission of the Inspector. Girls could however be admitted in a boys institution

both in urban and rural areas with the permission of the Inspector. Under the present Regulation girls cannot be admitted in a boys institution in an urban area at all but they can be admitted in a boys institution in a rural area where there is no girls institution. In other words the policy of segregation in education on the basis of sex which was considered arbitrary in Ram Nath Tewari's case has been applied over a wider area than under the earlier Regulation by taking away the Inspector's discretion to grant permission for admission of girl students in boys institutions even in urban areas. The present Regulation in so far as it prohibits the admission of girls in boys institutions runs against the dictum laid down in Ram Nath Tewari's case. It is however not necessary to go into the question whether the present Regulation is arbitrary in its application to all institutions recognised as boys schools for we are here concerned with a minority institution which stands on a privileged footing. Before considering this question however a decision cited by the learned Standing Counsel may be noted. Learned Standing Counsel relied upon the decision of a Single Judge in Committee of Management, Anglo Vaidik Balika Inter College, Auraiya v. Board of High School and Intermediate Examination, U.P., 2002 (4) ESC 254. In that case the question which was under consideration was whether the restriction on the right of admitting boys in a girls institution could be imposed. In holding that such a restriction was valid the Court relied upon the scheme of the Act and the Regulations which provide for a separate machinery of administration for girls institutions on the one hand and for boys institutions on the other hand. The decision in that case is not applicable to the present case as we are dealing with a case of a boys institution and not with a girls institution which was under consideration in the case of Anglo Balika Inter College. The decision in R.N. Tewari (supra) is closer to the issue involved although some of the observations made in the case of Anglo Balika inter College case may also be relevant.

5, That the State can make special provisions for women in view of Article 15(3) and Article 29(2) of the Constitution cannot be denied. In fact relying upon these provisions and some of the decisions interpreting them it was held in the Anglo Vaidic Balika case that separate educational institutions for women could be made. The learned Judge relied upon the observations of the Madras High Court in University of Madras v. Shantha Bai, a portion of which is extracted below :

"The combined effect of both Articles 15(3) and Article 29(2) is that while men students have no right of admission to women's college, the right of women to admission in other colleges is a matter within the regulation of the authorities of these colleges. In Anjali Roy Vs. State of West Bengal and Others, . Bose J. was of the view that Article 29(2) would be controlled by Article 15(1). But on appeal, the learned Judges left the point open. We are of opinion that Article 29(2) is a special Article and is the controlling provision when the question relates to the admission to colleges."

6. In view of the ratio laid down in the Anglo Vaidic Balika case the validity of the condition contained in the impugned Regulation that only girls students can be

admitted in a girls institution cannot be questioned in so far as non-minority institutions are concerned. The bench in that case however was not considering the rights of a minority institution. The question relating to the validity of the Regulation in its application to an institution run by a minority may now be considered. Article 30 of the Constitution of India provides :

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

(I-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1) the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language."

7. In Order to test the validity of the Regulation in its application to a minority institution on the anvil of Article 30, it is necessary to examine the scope of the Article and of the extent of protection it provides. Article 30(1) has been the subject of interpretation in a long line of decisions. The latest pronouncement is the authoritative decision of the eleven Judges bench in *T.M.A. Pai Foundation v. State of Karnataka*, 2002 (5) ESC 1 (SC). In para 149 of the judgment the Apex Court held that "the right to administer includes within it a right to grant admission to students of their choice." However a minority institution which receives grant-in-aid is subject to Article 29(2) and it cannot deny admission only on grounds of religion, race, caste, language or any of them. The learned Judges while considering the Interplay between these two Articles quoted with approval a passage from the *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* , on the point that as long as a minority institution admits students of the non-minority class to a reasonable extent based on merit it will not be an infraction of Article 29(2) even though the institution admits students of the minority group of its choice for whom the Institution was meant. In his concurring judgment Khare, J. while considering the earlier view of the Apex Court in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, that Article 30(1) is in its terms absolute and subject to no restrictions diluted that statement of the law and held in para 225 that although Article 30(1) strictly may not be subject to reasonable restrictions but it is subject to Article 28(3) which puts restrictions upon an institution receiving grants-in-aid to impart religious instructions to a student without his consent. Article 30(1), said the learned Judge is also subject to general laws and laws made in the interest of national security, public Order, morality and the like. It is also now settled by a chain of decisions that a minority institution cannot in the name of administration, mal administer, and that regulatory measures can be taken by

the State for maintaining excellence in the standards of education imparted in these institutions. It has also been laid down that an institution seeking affiliation must conform to the Rules made for the purpose but conditions which whittle down the very right provided to it under Article 30(1) cannot be applied to a minority institution. In the T.M.A. Pai Foundation case the Apex Court has also Ruled that the State exercises relatively greater powers of interference in institutions providing teaching in professional courses.

8. The validity of the Regulation is to be tested on the touchstone of these principles. Providing co-education in an institution is neither an infraction of Article 28(3) nor of Article 29(2) nor against the national interest, nor against the general law of the land, nor of the laws of morality. In Ram Nath Tewari's case this Court held that co-education is necessary for the healthy development of the student. We need not go that far when dealing with the case of a minority institution for even if that is a matter of some debate the right to admit students of its choice is a right implied in the right to administer under Article 30(1). Even if the advantages or disadvantages of co-education is a contentions issue the choice has to be left to the minority. A Regulation which prohibits co-education even if not regarded as a backward step cannot be accepted to be a measure taken for maintaining excellence in education. Such a regulation would therefore offend Article 30(1).

9. There is, however, no express provision under the Intermediate Education Act or the Regulations to which attention may have been drawn prohibiting co-education in the private institutions. At best the inference that the education code and the Regulations contemplate separate schools for boys and girls can be gathered from the provisions which deal with girls and boys institutions separately and a different administrative machinery of educational authorities has been provided for them. Nor has any express condition been referred to that only an institution meant exclusively for a single sex would be granted recognition. Even if there were such a provision it would offend Article 30(1). The Regulations that have been referred to only provide that if an institution is recognised as a boys institution, girls would not be admitted and in an institution recognised as girls Institution boys would not be admitted. There is no express bar under the Regulations against an institution being recognised as an institution for boys and girls both, but the bar created is that if in fact an institution is recognised as a boys or girls institution alone, it cannot admit students of the sex for which it was not recognised. The right to admit students of its choice is, as we have seen, a right implied under Article 30(1) to which the Regulations must yield. The Board, therefore, cannot compel a minority institution to admit students of a single sex alone by limiting the recognition granted to it as a boys or girls institution alone. If a minority institution wants to provide co-education, the Board cannot limit the recognition granted to the institution as a boys, or girls institution alone. It is open to the minority community also to change its policy and to convert an institution from an institution meant for one of the sexes into a co-educational one and vice versa.

The Christian Inter College, as we have seen, has been admitting boys and girls both in earlier years without objection by the Board which has rather allowed girl students of the college also to appear in the past in its examinations. In this background of the facts the Board cannot object to the admission of girl students in the institution in the face of the constitutional protection under Article 30(1) available to the institution.

10. It was then contended by the learned Standing Counsel that the forms were submitted by the institution beyond the prescribed time and the Board could reject them. However, he concedes that the forms of the boys students have been accepted. This fact is also clear from the letter dated 21.12.2004 sent by the Board to the District Inspector of Schools. It therefore does not lie in the mouth of the State to contend that the forms of the girls students can be refused on ground of delay in submitting them when forms for both girls and boys were sent together by the college and the Board is ready to accept the forms of boys students.

11. The writ petition is accordingly" allowed. However, costs of Rs. 10,000/- are to be paid by Promod Francis Kewal, the Principal of the Institution who has sworn the affidavit. The costs be paid to the Madhyamik Shiksha Parishad within one month from today failing which the Board apart from other measures which it may take may get them recovered by moving the Collector and the amount shall be recoverable as arrears of land revenue. The condition contained in Regulation 11 (ta) of the Regulations in so far it prohibits girls students from being admitted in a boys institution is therefore liable to be struck down in its application to minority institutions. As some of the conditions in the Regulation are valid in their application to non-minority institutions it is not necessary to quash it. The Regulation 11 (ta) of Chapter VII in so far as it prohibits girl students from admission in boys school shall be thus read down as inapplicable to a minority institution. The Madhyamik Shiksha Parishad, U.P. will process the forms even of girls students of the institution and will not reject them only on the ground that they were admitted in a boys institution. However, if there be any other defects, it is open to the Board to reject the forms.

12. A copy of this Order may be issued to the Counsel for the parties on usual charges within 24 hours.