
(2013) 07 AHC CK 0184

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34881 of 2011

Dr. Madan Kumar Bansal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) 5 ALJ 686 : (2013) 4 UPLBEC 2821

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : B.N. Rai and Adarsh Kumar, for the Appellant; J.P. Singh and Miss. Seema Singh, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri. B.N. Rai, learned counsel for the petitioner, Sri. J.P. Singh, learned counsel for the contesting respondent No. 6 and learned Standing Counsel for the State-respondents. Petitioner, before this Court, is the life member of the institution established in the name and style of "Ram Ratan Intermediate College, Billari, District Moradabad".

2. Petitioner seeks quashing of the notification dated 4th May, 2009 issued by the Secretary, National Commission for Minority Educational Institution, New Delhi as well as the letter dated 5th May, 2009 issued by the same authority and the consequential order dated 16th March, 2011 issued by the District Inspector of Schools, Moradabad. Under the aforesaid documents, the petitioner's institution has been declared to be a minority institution covered by Article 30 of the Constitution of India. The District Inspector of Schools has further directed that since the status certificate has been issued by the National Commission for Minority Educational Institution, which is a statutory body, the same has to be honoured. The institution must, therefore, act accordingly.

3. On behalf of the petitioner it is contended that for any institution being treated to be minority institution covered by Article 30 of the Constitution of India, it has

to satisfy, (a) that the institution was established by a minority community, and (b) said institution is run and managed by the minority community.

4. According to the petitioner, both the conditions must co-exist. Even if one of them is found to be lacking, institution cannot be treated to be a minority institution within the meaning of Article 30 of the Constitution of India.

5. Learned counsel for the petitioner with reference to paragraphs 5 to 11 of the present writ petition submits that the institution in question established by the general public of Billari belonging to various communities and castes. It is further his case that in the memorandum of association of the society, which now manages the institution, there is no mention of any minority institution being established for protecting any of the rights of the minority community, either linguistic or religious. It is further his case that all through upto 1992-1993, the Committee of Management of the institution comprised of persons belonging to the various category and castes. Petitioner, therefore, submits that the institution was neither established by a minority nor was exclusively managed by any such minority community. He then submits that the National Commission for Minority Educational Institutions was constituted under an Act of Parliament being Act No. 2 of 2005. This Act, as amended by Act No. 18 of 2006, envisages that the minority colleges were to be established with the permission of the Commission and these colleges were to be granted recognition by the Universities as defined u/s 2(f) of University Grants Commission Act, 1956 including the deemed Universities. It is his case that very purpose of Act, 2004 is limited to the establishment of new institution with the permission of the Minority Commission (Reference Section 10 of Act, 2004). The power of the Commission to decide the status of institution and the disputes arising there-from as envisaged by Sections 11 and 12 has to be treated with reference to such colleges. Even otherwise, the certificate, which has been issued by the Commission itself is wholly illegal, inasmuch as the institution in question is not a minority institution. The consequential order issued by the District Inspector of Schools directing the institution in question to be run as a minority institution is also bad. He lastly contends that the minimum expected from the Commission was to have exercised powers as a Civil Court and to have determined after recording evidence as to whether requirement of Article 30 of the Constitution of India as explained in various judgments of the Apex Court stood satisfied qua the institution being a minority institution or not. A minority status certificate cannot be issued without relevant facts with regard to the establishment of the institution by a minority community and its management by such community having been established. For the purpose, he has referred to Section 11(f) of Act, 2004 as introduced by amending Act No. 18 of 2006, which provides that the Commission shall have all powers of Civil Court trying a civil suit particularly in respect of matters as elaborated thereunder.

6. Sri. J.P. Singh, learned counsel for respondent No. 6 in compliance to the order of the Court dated 21st February, 2013 has filed an affidavit bringing on

record all the relevant documents, which according to him, lead to the conclusion that the institution was established by a minority community and it has all along been run and managed by the same community. It is his case that the institution made an application before the National Commission for being declared a minority institution. On the application, notices were issued and after relevant records were produced by respondent No. 5, the National Commission was satisfied that the institution was a minority institution and it has accordingly issued the certificate. He further submits that against the order of the Commission, petitioner has the remedy u/s 12-C of Act, 2004 which confers a power upon the Commission to cancel the minority status conferred on an institution. He also submits that from the documents enclosed at page 17 of the Supplementary Counter Affidavit-1, it is established that the money for establishing the institution was paid by persons belonging to the Jain Community only and thereafter, they were the persons responsible for managing the institution. He, therefore, submits that both the conditions, namely, establishment of the institution by Jain community and its management by the members of the same community was a fact comply. He explains that if in between for some small period, members of other communities were included in the management of the institution; it will not mean that the minority status has been lost. He clarifies that in view of Section 11(f) of Act, 2004, the Commission has the right to declare the status of the educational institution as minority.

7. He lastly submits that in Section 2(g) of Act, 2004, use of the word "or" after establishment is purposive. Under the said provision, if the institution has been established or if it is being run by a minority community, it would become entitled to be treated as a minority institution. Both the requirements are not required to be satisfied simultaneously.

8. I have considered the submissions made by the learned counsel for the parties and have examined the records of the present writ petition.

9. So far as the law in respect of minority institutions covered by Article 30 of the Constitution of India is concerned, suffice is to refer to the judgment of the Apex Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), . The Apex Court has laid down that for an institution to be covered within the meaning of Article 30 of the Constitution of India, it must be proved that (a) institution was brought into existence (established) by a minority community, and (b) institution has all along been run and managed by the minority community, which had established the same. Relevant portion of the judgment reads as follows:

19. ...The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into

force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an education institutional provided it has been established by it....

10. The Apex Court has held that both the above conditions must be satisfied simultaneously. If one of the conditions is found to be wanting, then the institution will not be treated to be a minority institution within the meaning of Article 30 of the Constitution of India.

11. This Court may, therefore, deal with the last contention raised on behalf of respondent No. 6, first namely that the use of word "or" in Section 2(g) of Act, 2004 has diluted the law laid down by the Apex Court for the purposes of treating an institution as minority institution within the meaning of Article 30 of the Constitution of India and now satisfaction of only one of the conditions, namely, establishment or management by a minority community would suffice.

12. Contention raised on behalf of the respondent No. 6 has only been raised to be rejected. Article 30 is a part of Part-III of the Constitution of India. Scope of Article 30 of the Constitution of India cannot be diluted by any Act of Parliament. Article 30 has been explained in detail by the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . The use of word "or" in Section 2(g) of Act, 2004 has to be read in consonance with the law laid down by the Apex Court and would, therefore, necessarily mean "AND". The contention raised on behalf of the petitioner has to be rejected as being without any substance.

13. It has been specifically laid down in paragraph-19 by the Apex Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), that if an institution has not been established by any minority community, then it cannot set up a right under Article 30 of the Constitution of India only because it is started managing the same at some later point of time.

14. From the document enclosed as Annexure-1 to the counter-affidavit filed by the respondent-Committee of Management, which is said to be proceedings book (page-17 of the counter-affidavit) it is apparently clear that in the said meeting, all the prominent residents of Billari and representatives of all communities were present. It was unanimously resolved that private school (English) run by the public of Billari be taken over by the association and steps be immediately taken to raise it to the High School standard and get it affiliated and recognised by the U.P. Education Department.

15. It is no doubt true that in the said meeting, contributions were made by the members of Jains family. However, the proceedings are in themselves sufficient to establish that the institution had been established by the public of Billari belonging to the various communities. It is this established institution was sought to be taken over by the association, and a decision was taken to get it recognised by the U.P. Education Board after up-gradation upto High School. From a simple reading of the proceedings so enclosed, it is apparent that there

was decision to convert the private school (English) into any minority institution either for the purposes of protecting any minority linguistic rights or religious rights. Even the Managing Committee formed under the said resolution comprised of persons of various communities. From the said document filed by the respondent-Committee of Management itself, at least one thing stands proved beyond doubt that the institution in question was not established by any minority community/Jains. The institution in question was established and was being run and managed by the public of Bilari, members whereof belonging to the various communities upto to date of passing of the resolutions enclosed as Annexure-1 to the counter affidavit.

16. The Apex Court in the case of Azeez Bhasha (Supra) as already noticed above, has specifically laid down that if an institution has not been established by the minority community, then subsequently only on the plea that it has started managing the said institution, it cannot claim a fundamental right guaranteed under Article 30 of the Constitution of India and such institution cannot be treated to be a minority institution.

17. A constitution Bench of the Apex Court in the case of St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., , has specifically held in paragraph-29 as follows:

29. ...It should be borne in mind that the words "establish" and "administer" used in Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution....

18. In view of the aforesaid, the Minority Commission appears to be unjustified in declaring the institution in question as a minority institution. It appears that the law laid down by the Apex Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), and in the case of St. Stephen's College (Supra) has completely, been ignored.

19. Another aspect of the matter, which needs mention is that u/s 11(f) of the Commission Act, 2004, a power has been conferred upon the Minority Commission to examine the issue pertaining to the status of an institution as a minority education institution, but it has to be kept in mind that a Division Bench of this Court in Special Appeal No. 903 of 2006 (Committee of Management Inter College Dharaon, District Chandauli v. State of U.P. and others) decided on 24th August, 2006, has held that it is only for a competent Court of law to declare an institution to be minority institution and it is not within the competence of the State Government to issue any such declaration. The relevant portion of the order of the Division Bench reads as follows:

...It is not for any State Government to grant any minority status to any institution; not even the Parliament or State Legislature can do it. A minority institution has to grow by itself. Only a competent Court of law can declare such

status.

20. In light of the said judgment of the Division Bench and in view of Section 12(2) of Act, 2004 which provides that Commission for the purposes of discharging its functions under this Act, shall have all the powers of a civil court trying a suit. It logically follows that Commission while declaring the status of a institution to be a minority institution shall not only consider the material evidence relevant for the purpose, but shall also pass a reasoned order with reference to the evidence so produced for coming to the conclusions that institution in question had been (a) established by a minority community and (b) had been run and managed by a minority community since its establishment.

21. In absence of reasons having been recorded in the order passed by the Commission declaring minority status with reference to the evidence on record, the declaration issued appears to be unjustified.

22. The notification dated 4th May; 2009 issued by the Secretary, National Commission for Minority Educational Institution, New Delhi as well as the letter dated 5th May, 2009 issued by the same authority and the consequential order dated 16th March, 2011 issued by the District Inspector of Schools, Moradabad cannot be legally sustained and are hereby quashed. The present writ petition is allowed.