

(1977) 12 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ. No. 1465 of 1976

Haji Islam Qureshi

APPELLANT

Vs

Director of Education, U.P., Allahabad and others

RESPONDENT

Date of Decision : 17-12-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 226A, 30
Uttar Pradesh Intermediate Education Act, 1921 — Section 16D(5A)

Citation : (1977) 12 AHC CK 0032

Hon'ble Judges : D.M.Chandrashekhar, CJ and J.L.Sinha, J

Final Decision : Allowed

Judgement

J. M. L. Sinha, J.

This writ petition has been filed by Haji Islam Qureshi claiming himself to be the Manager, Shuaib Mohammadia Anglo Oriental enter College, Agra. The aforesaid institution belongs to the Muslim minority community and is run by a society known as AnjumansMohammadia, Agra. The petitioner claimed that he was working as the Manager of the said institution since 15th January, 1973. On 27th of June, 1973, the Director of Education served a notice on the President and on him pointing out some irregularities and calling upon them to submit their explanation. It was also mentioned in the notice that in the event of default, action would be taken under section 16D(5A) of the U. P. Intermediate Education Act, 1921. The petitioner sent a detailed reply to the notice and, according to the petitioner, that explanation satisfied the education authorities as a result of which the grantinaid of the institution, which had previously been with held, was released. It is further alleged that on account of political pessure and extraneous considerations a second notice dated 211175 (Annexure "Q" to the writ petition) was issued on the same charges as were mentioned in the earlier mentioned notice. The petitioner again submitted his explanation to that notice. Despite it, however, on 1131976 the Director of Education sent another notice stating that the explanation furnished by the institution was not satisfactory and that serious irregularities were being committed by the institution, and further calling upon

the institution to submit Its comments within seven days. It was also stated in the notice that, If the comments were not found satisfactory, an authorised controller shall be appointed under section 16D(5A) of the Intermediate Education Act. The petitioner now challenges the aforesaid notices.

The contention raised on behalf of the petitioner before us that the institution, of which he is the Manager, is a Muslim minority institution and, in view of the provision contained in Article 30 of the Constitution, the Government cannot interfere with the right of the minority to administer the institution. Learned counsel stressed that the threat to appoint an Authorised Controller to take over the administration of the institution, is a direct interference with the fundamental right of the minority community guaranteed under Article 30 of the Constitution,

The fact that the Shuaib Mohammedia Anglo Oriental College, Agra, is a Muslim minority institution has not been controverted en behalf of the respondents. The contention raised, however, is that Article 30 of the Constitution does not stand in the way of the Government taking regulatory steps to ensure smooth working of the institution. The learned Standing Counsel pointed out that litigation is taking place challenging the right of the petitioner to manage the institution. It was further pointed out that, according to the charges mentioned in the various notices sent by the Education Department, the management was guilty of having committed serious irregularities and, consequently, the Education Department proposes to temporarily take over the administration of the institution by appointing an Authorised Controller, According to the learned Standing Counsel this is a regulatory measure and is not hit by Article 30 of the Constitution.

For the purpose of this petition, we shall assume that litigation is going on challenging the right of the petitioner to manage the institution. We shall also assume that some irregularities as pointed out in the notice sent by the Education Department, have been committed by those who have been running the institution. The question, however, is whether because of the alleged maladministration or because of the aforesaid litigation it is open to the State Government to take over the administration of the institution.

Now, so far as the litigation is concerned, it should be sufficient to say that the petitioner's right to hold the office of the manager of the Institution at present is protected by the order of the District Judge in suit No. 36 of 1973, a fact conceded by Seth Mazhar ilahi (respondent impleaded at a later stage) in paragraph 22 of his counteraffidavit, Since the right of the petitioner to manage the institution is for the time being protected by the order of a competent court, the mere fact that the cases in which the right of the petitioner to manage the institution is challenged are still pending, should not constitute a compelling ground for the State to take over the Administration. There thus remains the allegation that serious irregularities have been committed by those who are at present managing the institution. Assuming that it is so, it can afford an opportunity to the State to take only such regulatory measures to remedy those defects as do not run counter to the provisions contained in Article 30 of the

Constitution. As already pointed out earlier, Article 30 guarantees to the minority community the right to administer the institution established by them. If the administration of the institution is taken over by an Authorised Controller to be appointed by the State Government, the minority community shall be divested of the right to administer the institution which is guaranteed under Article 30 of the Constitution.

In the case of *V. Rev Mother Provincial v. State of Kerala* (1970 Ker. (F.B.) 196 on p. 204), the provisions contained in section 63 of the Kerala University Act together with some other provisions were challenged as ultra vires of Article 30. Section 63 said that, if a grave situation arises in which the working of a college cannot be carried on because of default in the payment of the salary of the members of the staff of the college for a period of not less than three months, or the wilful closing down of a college except during a vacation for a period not less than one month, or persistent default or refusal to carry out the duties imposed on the authorities of the College by the Act, Statutes, Ordinances or Regulations or Rules, or Byelaws or lawful orders made there under, the Government may, after giving the managing body, the manager, and the educational agency, a reasonable opportunity of showing cause against the proposed action, appoint the University to manage the affairs of the college temporarily for a period not exceeding two years. The Full Bench upheld the contention and observed: (Para 46 page 216).

"We have no doubt that in the emergency contemplated by section 63, when it has become impossible to run the college because of nonpayment of the salary of the staff for a period of not less than three months (which means the inextinguishable closure) except during vacation for a period not less than one month, or persistent (which means frequent and contumacious) default or refusal by the authorities of the College to carry out the duties lawfully imposed on them, there should be provision for the suspension or removal of the management and the appointment of some other management in its stead, (the Section, it might be noted, also provides for a showcause to all persons affected). That would be necessary in the public interest no less than in the interest of the institution itself and would come within the saving in Article 19(5). But, it is to be noticed that, even so, it would not be noticed that, even so, it would not be a regulatory measure passing the test of Article 30(1) (from which test Article 31A gives no absolution) if it involves the taking over of the management, even for a temporary period, from the minority concerned."

The case went up to the Supreme Court and the decision of the Supreme Court is *State of Kerala v. Very Rev. Mother Provincial* (A. I. R. 1970S. C. 2079), The Supreme Court concurred with the, aforesaid view expressed by the Full Bench of Kerala High Court and held that section 63 which contained the impugned provision was ultra vires of Article 30(1) of the Constitution in respect of minority institution.

In view of the aforesaid decision of the Full Bench of the Kerala High Court and of

the Supreme Court, the contention raised on behalf of the respondent, that a temporary taking over of the administration is a regulatory measure and does not violate Article 30 of the Constitution cannot be accepted,

Learned counsel for the respondent then contended that the right guaranteed under Article 30 is the right of the minority community and not of any individual. It was urged that, consequently, it is not open to the petitioner to invoke the aid of Article 30 of the Constitution for getting quashed the notice issued by the Department for appointment of an Authorised Controller. The argument fails to impress us. As already stated earlier, the petitioner claims to manage the institution on behalf of the Muslim minority and his right to manage the institution at present is protected by an order of the competent court passed in suit No. 36 of 1973. What the petitioner, therefore, seeks through this petition is the protection of the right of the minority to administer the institution. The contention raised on behalf of the respondent is, accordingly, rejected.

A technical objection was also raised by the learned Standing Counsel, namely, that Article 228A of the Constitution would stand in our way of granting the relief asked for by the petitioner. It was pointed out by the learned Standing Counsel that, for granting that relief, we shall have to hold that section 16D(5A) is ultra vires of Article 30 of the Constitution in so far as the minority institution are concerned, and such a declaration cannot be granted by a Bench consisting of less than five Judges. We have given our careful thought to the contention raised, but we do not find any force in it. We do not think that, in order to grant the relief asked for, we have to declare section 16D(5A) of the Intermediate Education Act as ultra vires of the Constitution. It is well settled rule of construction that there is a presumption in favour of constitutionality of a law and that if a statutory provision is capable of two constructions, one which is consistent with its constitutionality and another which renders it unconstitutional, the former construction should be preferred; it is only when the former construction is not reasonably possible, that such statutory provision has to be struck down as being unconstitutional. Section 16D(5A) is a general provision. It has not expressly been made applicable to minority institutions. That section can be regarded as not unconstitutional by construing it as not being applicable to minority educational institution. Hence it is not at all necessary to strike down the aforesaid provision as being unconstitutional. The contention raised by the learned Standing Counsel is, accordingly, not accepted.

In the result, this petition is allowed and the notices dated 21111975 and 1131976, in so far as they propose to appoint an Authorised Controller under section 16D(5A) of the Intermediate Education Act, are hereby quashed. No order, however, is made as to costs.