

(1996) 10 AHC CK 0097
In the Allahabad High Court
Case No : Writ Petition No. 1285 (MS) of 1996

Imran Abbass and another	Vs	APPELLANT
Catholic Diocese of Lucknow and others		RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 1997 All 351

Hon'ble Judges : Jagdish Bhalla, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant; Y.S. Rathore and Mridul Rakesh, for the Respondent

Final Decision : Dismissed

Judgement

1. Imran Abbass and Rehman Abbass, the two minor sons of Smt. Mahboob Zahra were studying in a Christian Minority Institution, namely, Cathedral School, Lucknow, in the last academic session i.e. 1995-96. Imran Abbass was student of class VIC while Rehman Abbass was student of class VID.

2. It is said that petitioner no. 1, namely, Imran Abbass due to ailment could not appear in the final examinations which were held in the month of March as a consequence whereof he was declared failed. A request for promoting the petitioner no. 1 in the next class was made as the petitioner no. 1 could not appear in the examination on account of ill-health but the same was turned down. It is alleged that opposite party no. 3 was annoyed with the father of the petitioner, namely, Syed Ehsan Abbass, Advocate, who was appearing as a Counsel for opposite party No. 3 in various cases pending in the Court of Law. He had made a demand for the payment of his fee-bills and for this reason his son, Imran Abbass was denied promotion. It is further stated that to create a ground to support his illegal act of not giving promotion to the petitioner, opposite party no. 3 lodged a false FIR on 24-4-1996 against Syed Ehsan Abbass alleging therein that on 24-4-1996 he entered in the office of the Principal and demanded

that his son be promoted to Class VII or a Transfer Certificate be issued showing that his son had passed Class VI and on being refused to accede to the offer made by Syed Ehsan Abbass, he misbehaved with the principal and physically assaulted the office-in-charge and further threatened-him with dire consequences.

3. On 8th May, 1996 the opposite party no. 3 terminated the studies of Imran Abbas and Rehan Abbass sons of Syed Ehsan Abbass and their names were struck from the Rolls of the School. Further by the said order, Syed Ehsan Abbass was declared as a "persona non-grata" having no authority to enter the school premises.

4. Imran Abbass and Rehan Abbass have now approached this Court through their mother Smt. Mahboob Zahra with the prayer to quash the aforesaid impugned order and issue a Writ of Mandamus commanding the opposite parties to readmit the petitioners in their respective classes and further to promote petitioner no. 1 from Class VI to Class VII.

5. Acounter affidavit has been filed by opposite party no. 3, Mr. Sebastian Mathias, Principal Cathedral School stating therein that the Cathedral School is a private minority institution not performing any statutory function and is only engaged in a social work i.e. in imparting education to the children hence this writ petition is not maintainable as by no stretch of imagination the school can fall within the meaning of Article 12 of the Constitution. He has further justified his action in passing the impugned order. It is said in the counter affidavit that in the course of education of children, a parent is an important and integral part of the process but when a parent conducts himself in a manner unbefitting his role as Syed Ehsan Abbass has done then the process is bound to collapse and the educational institution is bound to see that such situations are not allowed to continue in future.

6. On 12th July, 96 when the matter came up for hearing, to satisfy my judicial conscience, I called upon the learned Members of the Bar to assist and address this Court on the question of maintainability of a writ petition against a society running minority educational institution. Initially till the arguments were concluded and judgment was reserved, may be due to rush of work in the month of July, no Member of the Bar came forward to address the Court on the question of maintainability of the writ petition except Sri Ralhore, learned Counsel for the respondent No. 3. Later on, a Civil Misc. Application No. 2616 (w) of 1996 was moved by Ku. Mridul Rakesh on behalf of Catholic Education Society, Lucknow, praying therein that the abovenamed society may be permitted to make humble submissions and address this Court in the capacity of intervener. It is mentioned in the application that area of operation of the society comprises of a number of Educational Institutions names of which are detailed in para 3 of the application. At serial no. 7 the name of the Cathedral High School finds place where the petitioners were studying prior to their expulsion.

7. Since this Court itself had invited the Members of the Bar or any other person to address this Court on maintainability of the writ petition, the Catholic Education Society was allowed to make submissions in this respect.

8. Sri R.N.Trivedi, Senior Advocate appearing for the intervener, namely, Catholic Education Society stated that the Cathedral School or any other institution coming within the area of the operation of the Society has no financial or otherwise control of the Government and none of these institutions had any nexus with the government, none of the institutions referred to above is an instrumentality or Agency of the Government. The Cathedral School is a minority institution established by minorities and the administration of this educational institution is within the constitutional rights of the minority. Learned Counsel, therefore, contended that a Writ of Mandamus cannot be issued against a Society which is neither a State nor is an instrumentality or agency of the State.

9. Sri Arif Khan, learned Counsel for the petitioners vehemently opposed the objections raised by Sri R. N. Trivedi Regarding maintainability of the writ petition and submitted that a Mandamus can be issued for the enforcement of the Scheme if proposed by the Court. In order to treat a right as a fundamental right if it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Part III and IV are supplementary and complimentary to each other. Fundamental rights are but a means to achieve the goal indicated in Part IV and must be construed in the light of directive principles.

10. In support of his contention, learned Counsel for the petitioners placed reliance on the decision rendered by Hon"ble Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and stated that without education being provided to the citizen of the country the objectives set forth in the preamble to the Constitution cannot be achieved.

11. Learned Counsel for the petitioner next submitted that while considering the scope of the Mandamus in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Hon"ble Supreme Court had observed (Para 14):

"If the rights are purely of a private character no mandamus can be issued, if the management of the College is purely a private body with no public duty mandamus will not lie. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied, It can be issued for the enforcement of any of the fundamental rights and for no other purpose."

Learned Counsel for the petitioners relying upon the said case asserted that the writ petition is maintainable and this Court has power to issue a Writ of Mandamus against the respondents.

12. The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the Cathedral School comes within the area of the operation of Catholic Education Society which is a society

registered under the Societies Registration Act, 1860, therefore, it is not amenable to writ jurisdiction of the High Court. In other words, the contention is that Cathedral School is a private minority institution unaided, unfunded and not at all managed by the government. In support of his contention, Sri R. N. Trivedi relied upon the decision reported in (1976) 2 SCC 58: AIR 1976 SC 888; Executive" Committee of Vaish Degree College, Shamli v. Lakshmi Narain, in which it was held :

"Before an institution can be considered a statutory body it must be established that it was created under the statute and owes its existence to the statute. This is distinct from an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. The adoption of certain statutory provisions by itself is not sufficient to clothe the institution with a statutory character. The institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute could the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions, it cannot be said to be a statutory body."

13. Learned Counsel for the intervener next drawn my attention towards the decision rendered in the case of Tekraj Vasandi v. Union of India AIR 1998 SC 469 in which status of the Institute of Constitutional and Parliamentary Studies (ICPS) which was a body registered under the Societies Registration Act, 1860 was examined and the Hon'ble Supreme Court while refusing to hold that ICPS is either an agency or instrumentality of the State within the purview of other authorities observed:

"This Court was required to determine whether the Institute of Constitutional and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was then Speaker of the Lok Sabha. Out of the five Vice-Presidents three were the then Central Ministers; the other two were the then Chief Justice of India and the Attorney General. The objects of the society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation. It found further that though the annual financial contribution from the State was substantial, it was entitled to receive aid from the public and in fact, received contributions from other sources. Its objects were not governmental business. As regards the argument that the government exercised pervasive control over ICPS, the court said (at Page 481 to

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"In a Welfare State.....Governmental control is very pervasive and touches all aspects of social existence.....A broad picture of the matters has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

14. In *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and others* [OVERRULED], the question for consideration before the Hon'ble Supreme Court was whether the NCERT which is a society registered under the Societies Registration Act was a set-up within the meaning of Article 12. Hon'ble Supreme Court while answering in negative held that (Para 3):

"Art. 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control, however, vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of the State aid coupled with an unusual degree of control over the management and policies of the body, and rendering an important public service being the obligatory functions of the State may largely point out that the body is "State" if the Government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Art 12 of the Constitution."

The Apex Court, no doubt, has held in *Miss. Mohini Jain Vs. State of Karnataka and others*, that every citizen has a "right to education" under the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right but it does not mean that one can insist to pursue his studies in an institution of his choice.

15. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc.*, the Hon'ble Supreme Court observed that it would be unrealistic and unwise to discourage private initiative in providing educational facilities, particularly for higher education. Private sector should be involved and indeed encouraged to augment the much needed resources in the field of education, thereby making as much progress as possible in achieving the constitutional goals in this respect. The Hon'ble Supreme Court while emphasising that the private colleges are the felt necessities of time held that (Para 80):

"A private educational institution either by recognition or affiliation to the University cannot ever be called an instrumentality of the State. Recognition is for the purposes of conforming to the standards laid down by the State. Affiliation is with regard to the syllabi and the courses of study. Unless and until

they are in accordance with the prescription of the University, degrees would not be conferred. The educational institution prepare the students for the examination conducted by the University. Therefore, they are obliged to follow the syllabi and the courses of the study."

16. Having given my anxious consideration to the facts of the case and in view of various decisions rendered by the Hon''ble Supreme Court, I am not in a position to hold that the Cathedral Educational Society which runs the Cathedral School, a private minority institution, is either an agency or instrumentality of the State so as to come within the expression "State" as contemplated under Article 12 of the Constitution.

17. Before I part with this case, I must indicate that in the present writ petition Mr. Sebastian Mathias, Principal Cathedral School has been arrayed as one of the respondents and not the Cathedral School, where the petitioners were studying prior to their expulsion from the College.

18. For the reasons stated hereinabove, this writ petition is not maintainable and is accordingly dismissed.

19. Parties to bear their own costs.

20. Petition dismissed.