

(1980) 07 CAL CK 0034
In the Calcutta High Court
Case No : Appln. No. Nil

In Re: Krishnadas Mondal and Others

Date of Decision : 15-07-1980

Acts Referred:

Constitution of India, 1950 — Article 37, 46

Citation : AIR 1981 Cal 11

Hon'ble Judges : Bankim Chandra Ray, J

Bench : Single Bench

Advocate : H. Chakraborty, for the Appellant; R.N. Datta Gupta, for State, for the Respondent

Final Decision : Dismissed

Judgement

Bankim Chandra Ray, J.—This application is directed against two orders issued by the Government, one is dated 23-7-1979 and the other is dated 3-6-1980. By these orders certain guidelines have been laid down in regard to payment of grants to students belonging to Scheduled Castes and Scheduled Tribes who are residing in hostels to defray their hostel charges. The attack on these two orders has been primarily directed on the ground that these two orders clearly laid down restriction that parents who have annual income of Rs. 3,600/- will not be eligible to apply for these grants in respect of their wards residing in hostels.

2. This condition has been challenged in this writ petition on the ground that it is contrary to the provisions contained in Article 46 of the Constitution and secondly it creates unreasonable restriction inasmuch as there was previously no such restriction to obtain grants in respect of students belonging to Scheduled Castes and Scheduled Tribes residing in hostels and on these grounds this writ petition has been filed. Article 46 of the Constitution clearly enjoins on the State that it will try to promote with special care the educational and economic interest of weaker sections of the people and in particular those belonging to Scheduled Castes and Scheduled Tribes. Article 37 clearly provides that these directive principles of State policy laid down in part IV of the Constitution are not enforceable by any court but they are fundamental in the governance of the

country and it shall be the duty of the State to apply these principles in making laws. Undoubtedly in passing these two orders the State had before it the directive principles of State policy. So it cannot be said that these orders are directly contrary to the directive principles of State policy. The argument that these orders laying down pecuniary qualifications is contrary to the provisions of Article 46 is unsustainable for the simple reasons that in view of the provisions contained in Article 37 the directive principles if for argument's sake are not observed they are not enforceable in a court of law and this has been clearly held in several decisions. The first of such decision was reported in *Fram Nusservanji Balsara Vs. State of Bombay and Another*, where it has been clearly observed that directive principles are in the nature of an instrument of instruction which both legislature and the executive are expected to respect and to follow. In a later decision of the Supreme Court reported in *Deep Chand Vs. The State of Uttar Pradesh and Others*, it was observed that a law otherwise valid would be valid notwithstanding that it violated directive principles of State policy and this view has also been repeated in a later Supreme Court decision in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . It has been observed as follows: Part IV of the Constitution contains directive principles of State policy. Article 37 specifically provides that the provisions contained in this part shall not be enforceable by this Court but the principles therein laid down are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It is clearly so and it has also been laid down by this Court that these provisions are not justiciable and cannot be enforced by any court. In view of the decisions referred to above I do not find any substance in the challenge thrown in the instant writ petition.

3. This application is, therefore, dismissed without any order as to costs. The interim order is vacated.

4. The prayer for stay is refused as in my opinion no prima facie case has been made out for the issuance of a Rule.