

(1986) 03 DEL CK 0022

In the Delhi High Court

Case No : C.W.P. No's. 613 and 614 of 1985

Indian Institute of Islamic Studies

APPELLANT

Vs

Delhi Administration and others

RESPONDENT

Date of Decision : 06-03-1986

Acts Referred:

Citation : (1986) 2 LLJ 480

Hon'ble Judges : Sunanda Bhandare, J;H.L. Anand, J

Bench : Division Bench

Judgement

H.L. Anand, J.—These petitions by the Indian Institute of Islamic Studies, a minority "research and educational institution", for short, the Institute, are directed against two separate notifications of the Delhi Administration, respondent No. 1, in each of the petitions, purporting to refer to the Labour Court, Delhi, respondent No. 2, alleged industrial disputes between the Institute and its workmen in respect of termination of the services of an employee K. S. Durrany, respondent No. 3, in C.W.P. 613/85, and of three other employees, respondents 3 to 5, in C.W.P. 614/85, under Ss. 10(1)(c) and 12(5) of the Industrial Disputes Act, 1947. C.W.P. 613/85 additionally assails the interim Award, made by the Labour Court in the proceedings arising out of the reference which is challenged in that petition. The common question that these petitions raise are : Is a minority institution beyond the reach of the Industrial Disputes Act by virtue of the constitutional guarantee of a minority based on religion, to administer educational institution of its choice ? If not, whether the provisions of S. 10 of the Industrial Disputes Act and certain other provisions of the Act, insofar as they are applicable to such a minority institution, are ultra virus by virtue of being an infraction of the said fundamental right ?

2. The petitions have been filed in the back drop of the following circumstances. The institution claims to be a minority educational and research institute, said to have been established for the purpose of enhancing appreciation of Islam "in its manifest culture and diversity", and to make available "modern methods of

investigation and research in the field of Islamic studies". Among the objects of the Institute are "the promotion and study of Islamic culture and civilization" and "imparting of education". The institute claims that in pursuance of its objectives it is running a school, conducting courses in Arabic and Persian, besides holding seminars, conferences and sponsoring religious projects and publishing a quarterly journal. It claims to have certain other projects in view pursuant to its various objects. In the course of its function, the Institute employs various persons for carrying out its activities, besides given "fellowship to scholars" for research in various areas within the compass of its objectives. According to the Institute, Dr. K. S. Durrany, respondent No. 3, in C.W.P. 613/85, was given a "fellowship for a period of 2 years", besides certain perquisites. The Institute also gave employment to respondents 3 and 4, in C.W.P. 614/85, as Library Assistants, and respondent No. 5, as an Attendant. For reasons, which are not relevant for our present purpose, the Institute terminated the services of the said 4 persons and after the usual conciliation proceedings, and the failure report, Delhi Administration purported to refer the said disputes, by two separate notifications, under Ss. 10(1)(c) and 12(5) of the Industrial Disputes Act, to the Labour Court, Delhi. In the case of Dr. Durrany, the Labour Court also made on his motion an interim Award allowing Dr. Durrany to keep the residential accommodation in his occupation and directed the Institute to pay him Rs. 500/- per month, from the date of his application, till further orders within one month from the date of the publication of the Award. Before the Labour Court, the Institute raised a number of contentions, both in reply to the statement of claim, and in resisting the application for interim relief, inter alia, that the Institute was not an "industry", that Dr. Durrany was not a "workman"; and that there was no ground for interim relief. The petitions assail the references in the two cases, as also the interim Award in one of them, not only on the grounds, which were raised before the Labour Court, but also on the additional ground that the Industrial Disputes Act was not applicable to the Institute by virtue of the Institute being a minority institution, a contention that was not raised before the Labour Court.

3. However, at the hearing, the assault on the orders of reference, the interim Award, and the proceedings based on the orders of reference, were solely mounted on the impressive edifice of the constitutional guarantee of a minority institution to "administer" as educational institution of its choice, as enshrined in Art. 30(1) of the Constitution of India. The other grounds were apparently not urged because in case the main attack failed, it would naturally be for the Labour Court to determine the other questions, if the Institute was an "industry" and what was referred was an "industrial dispute" or not, as indeed, the various other questions on the merits.

4. Mr. Pathak, who appeared for the Institute made a strong plea for the judicial protection of the fundamental right of a minority institution to administer its educational institution, without any interference by the State, almost with the zeal of a crusader and relied heavily on a series of decisions of the Supreme

Court 1958 SC 956; 1974 SC 1389; 1963 SC 540; 1970 SC 207; 1979 SC 52; 1975 SC 1821 dealing with the scope and ambit of the fundamental right; and of a decision of the Division Bench of the Madras High Court, 1983 2 L.L.J 372 directly on the point. He further urged, and, we think with considerable justification that the case of the Institute was at a higher pedestal than the cases of minority institutions, with which the Courts were hitherto concerned, including the Madras High Court, in that the Institute was admittedly neither recognised nor aided by the State. Ms. Ashoka Jain, Ms. Pinki Anand and Ms. Nandita Chandra, who appeared for the respondents, on the other hand, put up an equally vigorous defense on behalf of the working people employed in minority institutions all over the country and pointed out that inspired by the language of the Article, the Fundamental Right of a minority to "administer" its institution, though absolute in nature, was nevertheless subject to the regulatory power of the State with a view to ensure proper administration of these institutions and cautioned against any interpretation, which may deny to the employed force the salutary protection of social legislation, like the Industrial Disputes Act and in consequence virtually create an island of "hire and fire" in an otherwise growing employment environment in the country to ensure greater job security and more employment opportunities. They also relied on the various judgments of the Supreme Court, dealing with the ambit and scope of the fundamental right, and saw in these decisions a clear authority for State intervention to ensure proper administration of minority institutions as a permissible area within the compass of the constitutional guarantee. They were, however, highly critical of the decision of the Madras High Court, 1983 2 L.L.J 372 on the ground that it was not a decision based on any logic or reasons and did not take into account the sinister implications if the protection of the Act was denied to the large employed force in the minority institutions. It was, however, not disputed that the institution had been established by a religious minority and was neither recognised nor State aided. They, however, made a strong plea that the imperative mandate of the Constitutional guarantee should be suitably harmonised with the equally imperative need to prevent mal-administration of the minority institution and the further need to ensure that the "industry" is not deprived of a valuable machinery for peaceful settlement of industrial disputes, so necessary in a developing economy.

5. Rival contentions raise some intercasting, as indeed, difficult questions of interpretation of Art. 30 of the Constitution, as to the true ambit and scope of the fundamental right incorporated in it, as to the nature of the power of the State to refer an industrial dispute for adjudication, the object and purpose sought to be achieved by the Industrial Disputes Act, and interaction between the said fundamental right and the regulatory power of the State to ensure peaceful settlement of industrial dispute, as indeed, between the rights and obligations of the employer and employees in the institutions. Is the fundamental right of a minority institution to administer educational institution of its choice as absolute as the language of the Article may appear to suggest ? How far is the

fundamental right incorporated in the Article nevertheless subject to the regulatory power of the State to ensure proper administration in the interest of the institution, its employees and public interest ? What happens where the fundamental right to administer the institution comes in conflict with the fundamental right of the employees of such institution to form a trade union, to protect their interest in relation to their employment, conditions of service, conditions of work, job security ? What are the objects and purposes sought to be achieved by the Industrial Disputes Act, and if the Act is intended to provide a machinery for a peaceful settlement of industrial disputes in the industry, can the employees of such institutions be denied this instrument of social justice ? How far is it possible to harmonise the conflicting claims of the fundamental right of the minority and the rights, fundamental or otherwise, of the employed force in these institution ? Whether, having regard to the scheme of the Industrial Disputes Act, and the true scope and meaning of some of its provisions, reference of industrial disputes for compulsory adjudication and the proceedings pursuant thereto in Industrial Tribunals or Labour Courts constitute "interference" in the administration of the institutions or are merely permissible acts of State "Intervention", both by the executive and the judicial wings of the State, in larger public interest, namely, industrial peace, and in the common interest of the employer and the employees concerned ? If the machinery provided by the Industrial Disputes Act constitutes impermissible interference and the Act would, Therefore, be not applicable to minority institutions, what would happen where an institution may be a minority institution in one State of the country but not in the others ? Would the employees of the Institution in different States be liable to be governed by a different set of laws in relation to their conditions of service, job security, disciplinary proceedings and other matter connected with employment ? Would it lead to anomaly where these employees are liable to be transferred by the institution from one State to another ? If the State has the regulatory power and is entitled to subject these institutions to "reasonable regulations" to prevent "mal-administration" or for other legitimate purposes, could the position be any different if the institutions concerned are neither recognised nor aided by the State ? What would be the comparative position of the regulatory power of the State in relation to the civil and criminal justice system operating in the country to which all citizens have access in their relations with each other, whether arising out of contract, tort or otherwise. Whether any judicial intervention, at the instance of any person having a contractual or other relationship with a minority institution, nevertheless constitute interference by the judicial wing of the State and be incompatible with the fundamental right of the minority institution to administer its affairs ? Is there a difference in the quality of intervention by the ordinary civil or criminal process, on the one hand, and by the process of industrial adjudication, through the intervention of the administration, on the other ? Some of these questions have apparently been answered by the decided cases, while the others appear to be in the twilight region calling for further investigation and juristic and/or judicial elucidation.

6. The Preamble to the Constitution provides a key to its understanding. It embodies the hopes and aspirations of the people and contains a solemn declaration that the people of India have resolved to constitute India, inter alia, into a secular democracy and, among other, to secure to its citizens, "justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation". Social and economic justice has been given a place of pride in the Constitution, 1958 2 L.L.J 479. It has been inextricably woven into the Preamble.

7. Article 19(1)(c) guarantees the fundamental right "to form associations or unions". Article 21 provides that no person shall be deprived of his "life" or personal liberty except according to procedure established by law. Article 30, as it stands after its amendment by the Constitution (Forty-fourth Amendment) Act, 1978 is as under :-

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

(1A) 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".

8. Part IV of the Constitution enumerates the Directive Principles of State Policy. Article 37 states that the provisions in the Part are not enforceable by any Court but the principles therein laid down are "nevertheless fundamental in the governance of the country" and "it shall be the duty of the State to apply these principle sin making laws". Article 38 enjoins on the State to "secure a social order for the promotion of welfare of the people" and in particular, "to strive to minimise the inequalities in income, status, facilities and opportunities". Article 39 enjoins the State to direct its policy towards securing, inter alia, "that the citizens have the right to an adequate means of livelihood". Article 39(a) enjoins the State to provide opportunities for securing justice. Article 41 deals with the "right to work" and provides that the State shall within the limits of its economic capacity and development, make effective provision "for securing the right to work", to education and to public assistance in cases of unemployment, old age, sickness and other cases of undeserved want. Article 42, enjoins the State to make provision for securing "just and humane conditions of work". Article 43 deals with the concept of "living wage" and runs thus :

"43. The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or

otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas."

Article 43A deals with participation of workers in management of industries, and runs thus :

43-A. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry."

9. It is an irony of fate that while right to property and a variety of other rights which may or may not be instruments of socio-economic change, were made part of the guaranteed fundamental rights and incorporated in Part III of the Constitution, some of the rights which, though equally fundamental, from the point of view of the common man, such as, the right to work, right to socio-economic justice, the right to equality in income, status, facilities and opportunities, the right to an adequate means of livelihood, the right to a living wage and the right to just and humane conditions of work, found no place in the fundamental rights chapter and were relegated to the chapter dealing with Directive Principles of State Policy. It is common knowledge that even after more than three decades of Constitution making, none of these directive principles have graduated into a position where they could be raised to the status of fundamental rights. To an extent, Therefore, directive principles merely indicate the future direction of State Policy and embody constitutional goals to be achieved by the State by legislative and other measures but are not enforceable as rights. The wide gap between the promise held out in the Directive Principles of State Policy and their realisation as an instrument of economic change and the void created by insufficient legislative action pursuant to the directive principles posed a serious challenge for the judicial wing of the State and the judicial activists found in them an opportunity to bring about a near transformation in the parameters of some of the fundamental rights by the known device of interpretation with the result that in course of time some of the doctrines embodied in the directive principles have become an integral part of the fundamental rights with the result that abstract and near inert doctrines virtually became enforceable fundamental rights with reference to and/or as emanations of the existing fundamental rights. The near transformation of Article 14 of the Constitution by the highest Court, by the process of interpretation, leading to the decisions in the cases of *Royappa*, 1974 2 L.L.J 172 *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, and still later *Randhir Singh* 1982 1 L.L.J 344 are sufficient pointers to this development.

10. The industrial disputes Act as its Preamble and the long title shows, was enacted to provide a machinery and a forum for the investigation of industrial disputes and for the settlement thereof and for the purposes analogous and incidental thereto. The essential object of all recent labour legislation has been

not so much to lay down categorically the mutual rights and liabilities of employer and employees as to provide recourse to a given form of procedure for the settlement of disputes in the interests of the maintenance of peaceful relations between the parties, without apparent conflicts such as are likely to interrupt production and entail other dangers 1951 2 L.L.J 19. The Act is a piece of legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing about harmony and cordial relationship between the two, AIR 1958 Mad 102. In other words, the purpose of the Act is to settle disputes between workers and employers which, if not settled, would result in strike or lockouts and entail dislocation of work essential to the life of the community, 1949 1 L.L.J 3. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and, if necessary, by approaching the tribunal constituted under the Act. The principle objects of the Act have been summarised, 1958 1 L.L.J. 500 by the Supreme Court thus :

- (i) promotion of measure for securing and preserving amity and good relations between the employer and workmen;
- (ii) an investigation and settlement of industrial disputes, between employers and employees, employers and workmen or workmen and workmen, with a right to representation by registered trade union or a federation of trade unions or an association of employers or a federation of associations of employers;
- (iii) prevention of illegal strikes and lock-outs.
- (iv) relief to workmen in the matter of lay-off and retrenchments; and
- (v) collective bargaining."

The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interest between labour and capital. Such norms have been evolved and devised by industrial adjudication keeping in view the social and economic conditions, the needs of the workmen, the requirements of the industry, social justice, relative interest of the parties and common good (See. O. P. Malhotra Law of Industrial Disputes). "Social and economic justice is the ultimate ideal of industrial adjudication." 1958 1 L.L.J 1.

11. There are thus two broad parameters within which the controversy before us must be resolved. One parameter relates to the ambit and scope of the fundamental right of a minority to administer educational institution of its choice. The other parameter is the genesis, object and purpose of the Industrial Disputes Act. There is no paucity of judicial precedent with regard to any of these parameters.

12. The highest Court has occasion to consider the ambit and scope of Art. 30 of the Constitution in a series of cases. These decisions are reported in In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of

India, . Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, Rev. Father W. Proost and Others Vs. The State of Bihar and Others, State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., ; D.A.V. College, Vs. State of Punjab and Others, ; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another, , Lily Kurian Vs. Sr. Lewina and Others, and the All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, . While the examination of the matter by the highest Court on a number of occasions has not produced judicial unanimity, the true scope and ambit of the Article could be said to have been fairly delineated by the 9 Judge Bench decision of the Court in the case of St. Xavier College (supra). It must, however, be pointed out that an attempt by Fazal Ali, J, in the case of All Saints High School (supra) to summarise principles and propositions emerging from the various divisions of the Supreme Court prior to that case into nine formulations provoked Chandrachud, C.J., who was a party to the said decision, to draw up a separate judgment because on his "inability to agree wholly with the various observations made by Justice Fazal Ali and with some of the propositions which he has formulated as emerging from the decisions referred to by him." It can, however, be said to be well settled that even though the said fundamental freedom is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in the Art. 19 may be subjected to, the fundamental guarantee of Art. 30 is nevertheless subject to the regulatory power of the State so that the State may regulate the exercise of the right of administration but it has no power to impose any "restriction" which may be destructive of the right itself. The question in controversy in all these cases was if the regulatory power of the State was so uncanalised or unguided that it degenerated into an "interference" in the administration of the institution, and was, Therefore, beyond the permissible limit. A review of these cases clearly brings out that, whatever may have been the difficulties in the delineation of the limits to which the State action could extend without impinging on the fundamental right of a minority, the real difficulty arose in applying these principles to then fact situations and the relevant provisions, which fell for construction in these cases.

13. It is well settled that the object and purpose of the Industrial Disputes Act is to provide an effective and efficacious remedy for settlement of industrial disputes to ensure industrial peace. It is equally well settled that neither the power of the appropriate government to make a reference of an industrial dispute to an Industrial Tribunal or a Labour Court nor the jurisdiction of the Tribunal or the Court, to which the reference is made, can by any stretch of imagination be described as being unguided, uncontrolled, uncanalised or otherwise arbitrary. If, Therefore, the true test to determine, if a permissible intervention or regulatory measure transgresses the legitimate limits and degenerates into interference or impinges on the right to administer be whether the power or the discretion of an authority or body, as the case may be,

is so "unguided, uncontrolled, uncanalised" as to be "arbitrary", the power of the "appropriate government" under the Industrial Disputes Act, and the jurisdiction of the Industrial Tribunals or the Labour Court should prima facie be able to pass constitutional muster without difficulty. It has been held by the Supreme Court see 1957 1 LLJ 460 that the Industrial Disputes Act is a valid piece of legislation conceived in an anxiety to ensure industrial peace. It has also been held by the highest Court that the power to make a reference, as indeed, the jurisdiction of the various bodies under the Act are clearly defined and properly controlled and regulated and do not suffer from the vice of arbitrariness or hostile discrimination. Unfortunately, however, in the various cases referred to above, dealing with Art. 30, the Supreme Court was not concerned with the question in the context of the power to make a reference to an Industrial Tribunal or a Labour Court and none of the Judgment, except the dissenting Judgment of Dvivedi, J. in the case of St. Xavier College (supra) referred to the Industrial Disputes Act. This is perhaps partly because in the state of the law as it stood then "education" was generally understood as being outside the purview of "industry". Dvivedi, J. in his dissenting opinion, however, had expressed a categorical view that the Industrial Disputes Act, having been held to be a valid piece of legislation, its provisions could not be construed as Constituting any "interference" in the administration of an institution.

14. The question as to the interaction between Art. 30 and the Industrial Disputes Act arose only before this Court in the case of S. S. Jain Sabha (1976) II 2nd Delhi 61 and before the Madras High Court (supra) and the examination of the question produced a sharp conflict of judicial opinion. Unfortunately, the Division Bench in the case of S. S. Jain Sabha (supra) even while holding that certain provisions of the Delhi Education Act were inapplicable to a minority institution expressed the need that the staff of such an institution nevertheless have the protection of the Industrial Disputes Act. It did not elaborate, and we say so with respect. A question arose before one of us (Anand, J.) if this case was correctly decided and by an order of July 27, 1983 made in C.W.P. 1259/78, certain questions arising out of the Judgment were referred to a larger Bench. Before the larger Bench the dispute between the parties was settled and the reference became infructuous. It is equally unfortunate that the Division Bench of the Madras High Court (supra) which came to the contrary conclusion, did not spell out its reasons and it also fell in a grave error in commending the machinery under the Industrial Disputes Act with the power of the various university authorities, which had been described by the Supreme Court in these cases as "uncanalised and unregulated", and we say so with respect. The question before us, is indeed, of considerable importance as well as of difficulty. The interaction between the fundamental right and the right to invoke the machinery of industrial adjudication can have serious implications besides leading to certain anomalies to which we have drawn attention above. Recent judicial thinking on the interaction between the fundamental rights and the directive principles of State Policy have also brought about significant changes.

Two characteristics of the present case constitute important points of distinction. All the earlier cases, whether of the Supreme Court, or of this Court and the Madras High Court, dealt with minority institutions which were either recognised, or State aided, or both. In the present case, it is neither. This characteristic may perhaps tilt the balance in favor of the institute. The other characteristic is that none of the earlier cases, except the case before the Madras High Court, dealt with the Industrial Disputes Act but were concerned with various university ordinances, statutes or Education Act. This characteristic may perhaps have the effect of tilting the scale in favor of the respondent.

15. Having regard to all the circumstances we are of the view that it is a fit case in which two petitions are referred to a larger bench for consideration. We accordingly direct that the petitions be placed before the Hon'ble Chief Justice for appropriate directions.