

(1985) 03 BOM CK 0025

In the Bombay High Court

Case No : Appeal No. 708 of 1983 (In Writ Petition No. 2070 of 1983)

Khan Abdul Hamid Abdul Rasak

APPELLANT

Vs

Mohamad Haji Saboo Siddik Polytechnic and Others

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

Citation : AIR 1985 Bom 394 : (1985) 87 BOMLR 162

Hon'ble Judges : Kurdukar, J;Kania, J

Bench : Division Bench

Advocate : V.Z. Kankaria and A.R. Shaikh, for the Appellant; C.M. Korde and A.R. Mehra, instructed by Shankersett Vaidya, P. Shankaranarayanan and R.P. Vyas, for the Respondent

Judgement

Kania, J.—This is an appeal directed against the order of Pendse, J. dated 14th September 1983 summarily rejecting the Writ Petition No. 2070 of 1983 filed by the appellant. We propose to refer to the parties by their description in the original petition.

2. The facts necessary for appreciating the controversy raised before us can be shortly stated. The petitioner is a student who passed (he Xth standard of the Secondary School Certificate (S.S.C.) Examination Board, Pune. in June 1983. HRe obtained 367 marks out of 700 and the percentage of marks obtained by him comes to about 52 percent of the total marks. The petitioner belongs to a Scheduled Tribe of Muslim known as "Tadvi". He applied to respondent No. 1 institution for admission basing his claim on a Government Resolution dated 9th June 1982, a copy of which is at Exhibit "B" to the petition. His application for admission was rejected and he was not granted admission. The reason for which he was not granted admission was that the percentage of marks secured by him was only 52 per cent whereas the last student admitted by respondent No. 1 from the academic stream had obtained 74 per cent marks. It is common ground that respondent No. 1 is a minority educational polytechnic institution

administered by Anjuman-I-Islam as the sole trustee. It appears from the affidavit filed by respondent No. 1, and there is no controversy regarding this, that respondent No.1 reserved 25 per cent of the seats for what they called the technical stream comprising students who had taken technical subjects in the S.S.C. Examination and 75 per cent of the seats were reserved for the academic stream which comprised students who had taken non technical subjects in the S.S.C. Examination. The last student admitted, as far as technical stream was concerned had secured 64 per cent marks and the last student admitted from the academic stream had secured 74 per cent marks in the S.S.C. Board Examination. the results of which were declared in June 1983. It is again common ground that the petitioner comes from the academic stream. It is thus the admitted position that if admissions are to be governed purely by the number of marks secured, the petitioner would not be entitled to admission. The claim of the petitioner is, however, based on the aforesaid resolution of 9th June 1982.

3. As far as the aforesaid resolution is concerned the Government by that resolution directed that the rules in the annexure to this resolution should be unanimously applied for admission to Government as also non-Government Polytechnics in Engineering and allied technical subjects in the State from the year 1982-83. The respondent No.1 is admittedly a polytechnic institution of the aforesaid type. Rule 4 contained in the annexure prescribes reservation of a certain percentage of seats for backward classes. The total percentage of these reserved seats comes to 34 per cent of the total seats. The percentage of seats reserved for Scheduled Tribes is 7 per cent and it is again common ground that if 7 per cent of students belonging to Scheduled Tribes have to be admitted, the petitioner would be entitled to admission. The question, therefore, clearly is whether this resolution can be made applicable to respondent No.1, which is a minority institution.

4. The contention of Mr. Korde, learned Counsel for respondent No.1, is that it has been clearly held by the Supreme Court that a resolution of this type reserving certain seats for backward classes in respect of admission to an educational institution cannot be enforced against minority institutions as it would offend the rights granted to minorities under Article 30(1) of the Constitution of India. The contention of Mr. Kankaria and Mr. Shankaranarayanan, who supported the case of the petitioner, is that the right under Article 30(1) is a limited right and the restrictions imposed by Rule 4 referred to earlier are reasonable restrictions which could be legitimately imposed on the rights of the respondent No.1 under Article 30(1) of the Constitution. It is the correctness of these contentions which has to be examined by us.

5. In doing this, we must take notice of the fact that the respondent No.1 is a grant-aided institution. We propose, therefore, to proceed on the assumption that respondent No.1 falls within the definition of the term "the State" as contemplated in Article 12 of the Constitution, because, in our view, even on that assumption, the petitioner cannot succeed. Sub-clause (1) of Article 30 of the

Constitution runs as follows:

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

In *Sidhrajibhai v. State of Gujarat*, AIR 1963 SC 540, a Bench of the Supreme Court comprising of six learned Judges of that Court unanimously took the view that unlike Art. 19, the fundamental freedom to establish and administer minority educational institutions guaranteed under cl. (1) of Article 30, is absolute in terms: it is not made subject to any reasonable restriction of the nature the fundamental freedoms enunciated in Art. 19 may be subjected to. The petitioners in that case were persons professing the Christian faith and belonged to the United Church of Northern India. They maintained a training college for teachers which was a minority institution. The Government issued an order on 28th May 1955 directing that with effect from the academic year 1955-56, 80 per cent of the seats should be reserved by the management in non-Government training colleges for the District and Municipal School Board teachers to be nominated by the Government. This order was sought to be enforced against the aforesaid training institution run by the petitioners on the basis that it was a grant aided institution. The petitioners moved the Supreme Court for a writ directing the then State of Bombay not to compel the petitioners and the said training college to reserve 80 per cent of the seats as directed by the aforesaid Government order. It was held (see paragraph 10) that Article 30(1) of the Constitution provides that all minorities have the right to establish and administer educational institutions of their choice, and Art. 30(2) enjoins the State, in granting aid to educational institutions not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. It was held that, unlike Article 19, the fundamental freedom under clause (1) of Article 30, is absolute in terms, as we have set out earlier. The Court went on to hold that all minorities, linguistic or religious have under Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Art. 30(1) would to that extent be void. In the course of his judgment, Shah, J. who delivered the judgment of the Court, observed as follows:

"....This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions; it is a right to establish and administer what are in truth educational institutions - institutions which cater to the educational needs of the citizens, or sections thereof. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed".

It was held (see para 15 of the report) that any regulation imposed on such an institution must satisfy a dual test. To quote from the judgment:

"Such regulation must satisfy a dual test - the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

It was held that serious inroads were made by the aforesaid order of the Government upon the rights conferred under Article 30(1) on the petitioners and the said training college in that case and the Government was directed not to enforce the said regulation in so far as it related to reservation of certain seats against the aforesaid training college.

6. The observations of Shah, J. at para 9 of the said report clearly show that it was held that the right of private training college to admit students of their own choice was severely restricted by the Rules and Orders issued by the then Government of Bombay and enforcement of the restrictions was sought to be secured by holding out a threat to withdraw recognition and to refuse to pay grants. On a plain analysis of this judgment, it would show that in order that a restriction imposed on the right of a minority institution to manage an educational institution run by it may be regarded as valid, it is not only necessary that the regulation should be reasonable, but it must also be one which is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons resorting to it. In other words, the regulation, in order to be sustained as valid as against a minority educational institution must not only be reasonable, but also one which is intended to promote the quality of education imparted by the institution and conducive to better management of the institution from the educational point of view. In our view, this decision practically clearly covers the questions arising before us. A regulation which prescribes a certain percentage of reservation of seats for backward classes or Scheduled Tribes might be in public interest. It may be in the interest of bringing up the educational level and standard of the backward classes or Scheduled Tribes concerned. But it is not possible to regard such a regulation as conducive to the improvement of the quality of the education imparted or to the excellence of that institution as an educational institution. In our view, in view of this decision, the appeal must clearly fail.

7. Mr. Kankaria, learned Counsel for the appellant sought to rely on the decision of a Bench comprising of 9 learned Judges of the Supreme Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, Far from supporting his contention, in our view, the majority decision in this case clearly runs counter to the arguments advanced by Mr. Kankaria. The argument of Mr. Kankaria was that the right given to a minority community under Article 30(1) of the Constitution must be held to be limited or controlled by the provisions of clause (4) of Article 15 and by the provisions of Article 29 of the Constitution. Clause (4) of Article 15 permits the State to make special provision for the advancement of any socially and educationally backward

classes of citizens or for the Scheduled Castes and the Scheduled Tribes. It was contended by Mr. Kankaria that the effect of clause (4) of Article 15 on the right conferred by clause (1) of Article 30 has not been considered by the Supreme Court in the aforesaid cases and hence the aforesaid decisions of the Supreme Court do not preclude a contention that a restriction can be reasonably imposed on minority institutions which restriction could be justified under clause (4) of Article 15. The same argument was also advanced by Mr. Shankaranarayanan on behalf of the respondents Nos. 2 and 3. These arguments amount to a submission that the decision of the Supreme Court in *Sidhrajibhai's* case AIR 1963 SC 540 (supra) is not good law. In our view the decision of the Supreme Court is clearly binding on us and it is not open for us to entertain an argument that a binding decision of the Supreme Court is not a good law, because, certain arguments which might have been advanced before the Supreme Court in that case were not advanced or considered in that case. We may mention that Mr. Kankaria sought to rely upon certain observations in the dissenting judgment of Dwivedi, J. in the aforesaid decision in the *St. Xaviers College v. State of Gujarat* (supra). These observations in the dissenting judgment clearly run counter to the reasoning in the majority judgment in the very case and, in our view cannot be relied upon at all. Mr. Kankaria also cited other judgments. We do not, however, propose to discuss any of these decisions because, they do not lay down anything which is inconsistent with the decision of the Supreme Court in the case of *Sidhrajibhai v. State of Gujarat* (supra), and we have totally failed to appreciate the relevance of these decisions as far as the controversy before us is concerned.

8. The last argument which was advanced by Mr. Kankaria was that in this case the right of the petitioner under clause (2) of Article 29 has been violated by respondent No. 1. In our view, this contention has to be stated to be rejected. Clause (2) of Article 29 states that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. In this case, it is absurd to suggest that the petitioner has been denied admission on the ground that he belongs to a Scheduled Tribe. He has been denied admission because, the percentage of marks secured by him fell short of the percentage of marks secured by the student last admitted by the respondent No. 1 from the academic stream. In fact, it was the petitioner who claimed the right to be admitted, because he belonged to a Scheduled Tribe and such a right is nowhere contemplated under clause (2) of Article 29.

9. Appeal dismissed. No order as to costs.

10. Mr. Shaikh applied for leave to appeal to the Supreme Court. Mr. Shankaranarayanan supports this application. Mr. Korde opposes. In our view, since our decision merely follows a unanimous decision of a Bench of Supreme Court comprising of six learned Judges, there is no reason why such leave should be granted. Application for leave rejected.

11. Appeal dismissed.