

(1994) 11 PAT CK 0009

In the Patna High Court

Case No : Civil. Writ Jurisdiction Case No. 85 of 1994 (R)

Managing Committee of Telco Urdu Middle School and Another APPELLANT
Vs

State of Bihar and Others RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Citation : (1994) 11 PAT CK 0009

Final Decision : Allowed

Judgement

R.N. Sahay, J.—The Managing Committee of TELCO Urdu Middle School has filed this application for quashing the order of the third Respondent dated 24.12.1993 (Annexure-6A) whereby the order of dismissal of 4th Respondent as headmaster of the School passed by the Managing Committee has been stayed. The impugned stay order was passed after the 4th Respondent failed to obtain interim injunction in the Title Suit filed by him before the Munsif, Jamshedpur.

2. The first petitioner is the Managing Committee of Telco Urdu Middle School which is a religious minority Institution and has been declared as such by the Education Department on 19.2.1978. In 1976, Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 was enacted by the State Legislature. Rules have been framed thereunder and executive instructions have also been issued. In the Act, so far as minority elementary schools are concerned, there is no provision of any Governmental control over the Management of the School.

3. u/s 8 of the Act, a general power is given to the State Government to issue direction/orders deemed necessary for removal of difficulties in implementation of the provisions of the Act. Provision of this Act is very different for the Bihar Non-Government Secondary School (Taking Over of Management and Control) Act wherein u/s 18 power of control is vested in the State Government. There is, however, no analogous provision with regard to the elementary school in 1976 Act.

4. It is contended on behalf of the petitioner that the impugned order is ultravires to the Act and Article 30 of the Constitution of India. The third Respondent, District Education Superintendent, in his counter-affidavit disputes the stand of the petitioner that B.S.E. has no jurisdiction to interfere with the administration of the school in disciplinary matters. It is contended in Paragraph 5 of the counter-affidavit that the petitioner's school is an aided school within the meaning of Bihar Primary and Middle Education Rules, 1961. Rules 45 and 64 empower the respondent to control the Managing Committee of any school in relation to any disciplinary action against school staff. It is pointed out that vide Notification No. 2501 dated 31.12.1992 the Government has issued instruction regarding appointment and disciplinary action against staff of the schools run by Minority Institution. According to this instruction, if any employee is dismissed without prior approval of the Department Institution itself may be derecognised on this score. Vide Notification dated 7th December, 1990, the Director, Primary Education has empowered all District Superintendent of Education to supervise all minority and aided schools as was being done by such officers. Since in the present case prior approval was not obtained, the action of the petitioner was illegal and hence dismissal order was has been stayed.

5. Similar is the stand of the dismissed headmaster, the 4th Respondent. Mr. Ganesh Pd. Singh Sr. Counsel appearing for the petitioner has challenged the claim of the third respondent, in its counter-affidavit. He submitted that Rules relied upon on behalf of the third respondent are no longer In force since the Act under which Rules were framed has been repealed long back.

6. It is not disputed that petitioner-Institution is a minority instead of pretexted by Article 30 of the Constitution of India. The question for consideration is whether there is any provision in the 1976 Act or any other Act which empowers the authority of the State Government to interfere .with the Management of the Institution.

7. What are the rights of a minority Institution under Article 30 of the Constitution of India has been considered by the Supreme Court in several decisions. In Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, the Supreme Court held that regulatory measures which are designed towards ?achievement of the goal of making the minority educational Institution an effective instrument in imparting education, cannot be considered to impinge upon the rights guaranteed by Article 30 of the Constitution. The question that arose was whether a particular measure is, in the ultimate analysis, designed to achieve such goal without, of course, modifying any right of the Management in a subsequent measure. The Supreme Court further held that Section (2) of the Delhi School Education Act which required prior approval of the Director for dismissal, removal, reduction in rank or termination of service of an employee of the recognised private school, offends Article 30(1).

8. In The Ahmedabad St. Xavier"s College Society and Another Vs. State of

Gujarat and Another, , the Supreme Court considered the question whether certain provision of Gujrat University Act violated the right of the petitioner guaranteed under Articles 29 and 30 of the Constitution of India. One of the Sections under challenge was Section 51A of the Gujrat University Act. The Supreme Court struck down Section 51A for the reasons in Paragraph 43 of the judgment.

9. In Rev. Father W. Proost and Others Vs. The State of Bihar and Others, , powers u/s 48 of the Bihar State University Act, 1960 was under challenge. Sub-section (6) of Section 48-A laid down that subject to the approval of the University, appointments, dismissal, removal termination of service or reduction in rank of teachers of an affiliated college shall be made by the Governing body of the College on the recommendation of the Commission. Hidayatullah, CJ. held that the language an Article 30(1) is wide and must receive full meaning. Any attempt to whittle down the protection cannot be allowed.

In this case, during the pendency of the matter before the Supreme Court, an Ordinance was promulgated in the Act inserting Section 488 after Section 48-A. Section 488 provides that the Governing body of an affiliated college established a minority based on religion or language shall be entitled to appointments, dismissal, removal and termination of service or any other disciplinary measures subject only to the approval of the Commission and the Syndicate of the University. It was held that Section 488 is not applicable to a minority Institution.

10. In Lily Kurian Vs. Sr. Lewina and Others, , provision of Kerala University Act, 1977 was challenged under which a teacher against whom a disciplinary action had been taken had a right of appeal against the order to the Vice-Chancellor. The Supreme Court held following the decision in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, held that the power of appeal conferred on the Vice Chancellor under Article 33(4) was not only a grave encroachment in the Institution's right to enforce and ensure discipline enforceable but it is also uncanalised and unguided in the sense that no restrictions would be placed on the exercise of power. Such a blanket power was to directly interfering with the disciplinary control of the Managing body of a Minority Educational Institution over teachers and hence the Ordinance was held to be violative of Article 30(1) of the Constitution.

11. The present case is on much better footing. Here no regulation has been brought to my notice empowering any authority of the Education Department to interfere with the disciplinary action taken against the teacher of the petitioner-Institution. The rules referred to in the counter-affidavit are out-dated and have ceased to be effective. Even if such a rule is in force, the same would be violative of Article 14 of the Constitution.

12. For the reasons stated above, this application is allowed and the order as contained in Annexure 6/A is set aside. There will be no order as to costs.