

(1985) 10 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1457 of 1980.

Manohar Prasad

APPELLANT

Vs

Board of Secondary Education, Binar, Patna and others

RESPONDENT

Date of Decision : 08-10-1985

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 227, 30, 30(1)

Citation : (1985) PLJR 363

Hon'ble Judges : S. S. Sandhawalia, C.J;B. P. Sloha, J

Bench : Division Bench

Advocate : Bhupendra Nath Saxena and Anil Kumar Mathur, for the Appellant; Sadanand Jha, Anil Kumar Tiwary, H. C. Mishra, C. K. Sinha, (G. P. I.) and S. C. Prasad, (J. C. to G. P. I), for the Respondent

Final Decision : Dismissed

Judgement

Blren ra Prasad Singh, J.

Whether the Go-verning Body of a secondary school run by minority community is an authority, within the meaning of Article 12 of the Constitution of India and whether a writ petition can be main-tained against it are the primary questions which have been raised for consideration in the present case. The challenge has come as a preliminar; objection raised on behalf of the respondent Managing Committee of Shri Guru Govind Singh High School, Patna City. Identical questions have come for consideration by the Supreme Court in numerous cases against infraction of Article 14 of the Constitution and it has been held that protection is available only against the State and in the case of society only if the society can be sho-wn to be a State. According to Article 12 of the Constitution the "State" is the Government of ?ndia or the Government of a State and "all local or other authorities within the terri-tory of India or under the control of the Government of India". Plainly speaking a Gover-ning Body of a school cannot be equated with Government of ?ndia or the Government of any State nor it can be classified as a local authority. If at all it can be said to be "other authority" to fall

within the definition of State. It is well established now that where a Corporation or a like body is an instrumentality or agency of the Government it can be held to be an "authority" within the meaning of Article 12 and shall be subject to the basic obligations to obey the fundamental rights as the Government. The question came for a pointed consideration in the case of *R. D. Shetty v. The International Airport Authority of India* (A. I. R. 1979 Supreme Court 1622) as to when such a body can be regarded as an "authority" within the meaning of Article 12. The relevant test gathered from the decision of *International Airport Authority* (supra) were summarised thus in the case of *Ajay Hasia v. Khalid Mujib Sebravardi and others* (A. I. R. 1981 Supreme Court 487) by Bhagwati J, as he then was.

(1) One thing is clear that if the entire share capital of the Corporation is held by Government it would go a long way towards indication that the Corporation, is an instrumentality or agency of Government."

"(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation, it would afford some indication of the Corporation being impregnated with governmental character."

""(3) It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected."

"(4) Existence" deep and pervasive State Control may afford an indication that the Corporation is a state agency or instrumentality."

"(5) If the functions of the corporation of public importance are closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

"(6) Specifically, if a department of Government, is transferred to a corporation it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government."

It was, however, observed in *Ajay Hasia's* case that these tests were not conclusive or clinching but were merely indicative indicia which have to be used with care and caution. It has stated that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression ""other authority" and a wide enlargement of the meaning must be tempered by a wise limitation. In *Ajay Hasia's* case it was further observed that the test was whether the body was an instrumentality or agency of the Government and not as to how it was created. The enquiry, therefore, has to be made not as to how the juristic person is born but why it has been brought into existence. "Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is

equally applicable to a company or society and in a given case it would have to be decided, on a consideration of relevant factors whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of Article 12.

2. In the light of the above observation we have to examine whether the Governing Body of a minority run secondary school, as in the present case, is an authority within the meaning of Article 12.

3. The petitioner Manohar Prasad was appointed as an assistant teacher of Shri Guru Govind Singh High School in August, 1960 and claimed to have been confirmed by the Managing Committee of the school on 12.11.1961. Shri Guru Govind Singh High School is a minority institution of the Sikh community and is governed by the Prabandhak Committee, Takht Shri Harimandirji, Patna Sahib. The school was recognised by the Board of Secondary Education, Bihar, Patna in the year 1965-66. The petitioner was suspended on 15.1.1976 from his service with effect from 16.8.1976 by the Secretary of the school (vide Annexure-1). Some enquiry seems to have been made and ultimately it was found that retention of the petitioner in the service of the school was no longer desirable and the Managing Committee of the school unanimously resolved to discharge him from the service of the School with effect from 4.1.1977 (vide Annexure-2). The petitioner has challenged these two orders contained in Annexures-1 and 2 passed by the Managing Committee of the school as being arbitrary, unjust, mala fide and against the principles of natural justice.

4. Dr. Sadanand Jha learned counsel appearing on behalf of respondents 8, 11, 12 and 20 namely, the Managing Committee of the school and its office bearers took the above - preliminary objection when the case was taken up for hearing. He submitted that the Managing Committee of Shri Guru Govind Singh

Higher Secondary School is not an instrumentality or agency of the Government and as such is not amenable to the writ jurisdiction of this Court.

5 Shri Guru Govind Singh Higher Secondary School is a minority institution established in the year 1961 by the Sikh community and is managed and maintained by the Prabandhak Committee of Takht Shri Harimandirji, Patna Sahib. Under Article 30 of the Constitution all minorities, whether based on religion or language has a right to establish and administer educational institutions of their choice. On 20th of July, 1965, a declaration under the provisions of the Bihar High School (Control and Regulation of Administration) Act, 1960 was made by the Bihar Secondary Education Board to the effect that Shri Guru Govind Singh Higher Secondary School is a school run by the minority (vide Annexure-A/12). The 1960 Act was repealed by the Bihar Secondary Education Board Ordinance on 20.5.1974. The said Ordinance was validated by successive promulgation and the same became an Act on 31.12.1976. On the date of petitioner's suspension the above Ordinance was in force and on the date of his discharge from service the Bihar Secondary-Education Board Act,

1976(hereinafter referred to as the Education Board Act, 1976) had come into force. Learned counsel appearing on behalf of the respondents submitted that the provisions of the Education Board Act, 1976 or the Ordinance do not apply to an institution established and maintained by the minority community based on religion and language. In this connection he referred to section 69 of the Act which provides that the provisions of this Act shall not apply to any secondary educational institution established and maintained by a minority community based on religion or language even though such institutions receive partial or full aid from the Government. Proviso to sub-section (1) of section 69 provides that if the Managing Committee of such minority schools themselves make request to be run according to the provisions of Education Board Act, 1976 then the provisions may be made applicable to such schools. But, once the provisions have been made applicable to the minority institutions on the request of their Managing Committee, the Managing Committee shall have no right to take back the institution from the purview of the Act or to make any amendment. It is not the case of the petitioner that there was any such request made by the Managing Committee of this school and that on their request the provisions of the Act were made applicable to this school. The position, therefore, is that Shri Guru Govind Singh Higher Secondary School which is a school run by the Sikh minority community is not governed by the provisions of either of 1960 or 1976 Act. The Board had, however, the power u/s 16 of the 1976 Act to prescribe the standard of education in the Secondary Schools run by the minority community and, accordingly, to grant, suspend or revoke the recognition of such schools. There is nothing, however, to indicate that the Board could interfere with the internal administration of a minority run school.

6. The petitioner in his supplementary affidavit by way of reply to the counter affidavit of the respondents has stated that the school is admittedly a recognised institution under the Bihar Secondary Education Board and the relevant provisions of Bihar Act 25 of 1976 applicable to the recognised institutions are equally applicable to it. But this ascertainment is contrary to section 69 of the 1976 Act. It has been further stated in an additional supplementary affidavit filed on behalf of the petitioners that since its recognition the Managing Committee of the school has been following the Bihar Education Code and the various orders and circulars issued from time to time by the State applicable to the minority schools and that the service conditions of the teachers of this school is being governed by the Bihar Education Code and various circulars issued by the educational authorities of the State. It has also been stated that the teachers of this minority school like the other minority schools recognised by the State have, the status of the State employees and have been given the benefit of pension and provident fund etc. Nothing, however, was brought to our notice in support of this statement. There is nothing on the record to show that this school fulfils any of the tests culled out from the International Airport Authorities case referred to above for being regarded as an "authority" within the meaning of Article 12 of the Constitution.

7. It is obvious that the Governing Body of a minority school is not a creation by or under any statute nor it is governed by any statutory provision for the proper maintenance and administration of the institution. According to the petitioner the Managing Committee of this school is registered under the Societies Registration Act and the school is recognised by the Bihar Secondary Education Board and Act but that itself cannot make the Managing Committee a statutory body. Reference can be made in this connection to the case of Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others (A.I.R. 1980 Supreme Court 888). In the case of Arya Vidya Sabha, Kashi vs. Krishu Kumar Srivastava and others (A.I.R. 1976 Supreme Court 1073) it was specifically held that the Court could not order reinstatement of a servant who had been dismissed by the college authority and institutions affiliated to the University inasmuch as the college was not a creation of any statute but was only a body which had been created under the operation of a statute. Reliance was placed on a decision of the Supreme Court in Manmohan Singh Jaitla vs. Commissioner Union Territory, Chandigarh (AIR. 1985 Supreme Court 364) in support of the contention that a writ petition was maintainable where termination of the service of a teacher of a minority school was under challenge. But that was a different case. In that case the challenge was to the approval of termination of service of a teacher by a statutory provision under section 3 of the Punjab Aided Schools (Security of Service) Act. It was held that the authorities acting under section 3 of the Act were quasi-judicial authorities and, therefore, will be comprehended in the expression "Tribunal" as used in Article 227 of the Constitution which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to it. It was further held that the aided schools realising grant upto 95 per cent of its expenditures and teachers receive protection under the Act and, therefore, it was an "authority" within the meaning of Article 12 of the Constitution amenable to writ jurisdiction. The present case is absolutely distinguishable on facts. There is no averment that the school receives any aid or grant so as to meet its almost entire expenditures.

8. Article 30 (1) of the Constitution enshrines the fundamental rights of minority community to manage and administer its educational institutions. The State or any other statutory authority has no right to interfere with the internal administration and management of a minority institution. The State, however, can take regulatory measures to promote the efficiency and excellence of educational standard and issue guide lines for the purpose of ensuring the security of the service of the teachers or other employees of the institution. But under the garb of adopting regulatory measures it cannot destroy the administrative autonomy of the institution and interfere with the management of the institution so as to render the right of administration elusive. In the case of The All Saints High School etc- vs, Government of Andhra Pradesh and others (A.I.R.1980 Supreme Court 1042) it was held that introduction of an outside authority either directly or through its nominees in the Managing Committee of

the minority institutions to conduct the affairs of the institutions would be completely destructive of Article 30 (1) and would reduce the management to a helpless entity having no real say in the matter destroy the very personality and individuality of the institutions. It is true that the Government can frame rules and regulations governing the condition of service of teachers in such minority institutions in order to secure their tenure of service and see that the said rules are not violated. But in such cases the purpose may not be to interfere with the administration or autonomy of the institution but merely to improve the excellence and efficiency of the institution. It is with this view that the provisions of 1960 or 1976 Act were not made applicable to the minority run schools except that certain provisions were made to grant them affiliation and prescribe certain guide lines for imparting better education. In such a situation the Managing Committee of a minority run school, which is not a creation of any statute, cannot even be called an "instrumentality" or agency of the State so as to bring it within the meaning of any "authority" under Article 12 of the Constitution. The conclusion, therefore, is that a writ cannot be issued against the Managing Committee of a minority run school to quash an order passed by it. The application is thus "not maintainable and the preliminary objection taken on behalf of the respondents is upheld. In the result, this application fails and is dismissed but without costs.