

(1987) 10 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4498 of 1987

Maulana Abdul Kalam Azad Primary Teachers Education
College and Physical Training College and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-1987

Acts Referred:

Constitution of India, 1950 — Article 29, 30

Citation : (1988) PLJR 159

Hon'ble Judges : S.B. Sinha, J;N.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Singh and S.B. Sinha, JJ.—This application has been filed on behalf of the petitioners for a writ of mandamus directing the School Examination Board to supply examination forms to the students of Maulana Abdul Kalam Azad Primary Teachers Education College and Physical Training College, Lalbag, Darbhanga and to allow them to appear at the Primary Teachers Training Examination for the Sessions 1085-87.

2. There is no dispute that in view of the provision of the Bihar Non-Government Physical Training Colleges and Non-Government Teachers Training Colleges and Non Government Primary Teachers Education College (Control and Regulation) Act, 1981 (Act 21 of 1982), no college or institution can be established for imparting physical training or education of teachers' training without prior permission of the State Government. According to the petitioners, as the institution in question is a minority institution, the restrictions provided by the Act aforesaid are not applicable to the College in question,

3. In view of the series of judgments of the Supreme Court and this Court, it is almost established that in view of Articles 29 and 30 of the Constitution, minorities whether based on religion or language have right to establish and administer educational institutions of their choice and that right cannot be

interfered with by any enactment. But, at the same time, it has been pointed out in those judgments that persons claiming to have established an institution as a minority institution have to establish that fact that the institution in question was established by a section of people who can be held to be minority within the meaning of Articles 29 and 30 of the Constitution. The Court should not treat an institution as a minority institution merely on the basis of the statements made in the writ application. That question is to be decided by the University, the Board or the State Government on the basis of the materials produced on behalf of the persons claiming such institution to be a minority institution. If necessary Court can also examine on the basis of the materials produced before it, as to whether the institution in question has been established by persons who can be held to be a minority within the meaning of Articles 29 and 30 of the Constitution so that persons may not be allowed to carry on commercial venture in the name of a minority institution. In this connection reference can be made to the judgment of the Supreme Court in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, where it was observed :

We do not have any doubt that the claim of the petitioner to start a minority educational institution was no more than the merest pretence. Except the words, "As the Christian Minorities Educational Institutions" occurring in one of the objects of the society, as mentioned in the memorandum of association, there is nothing whatsoever to justify the claim of the society that the institutions proposed to be started by it were "minority educational institutions". Every letter written by the society whether to the Central Government, the State Government or the University contained false and misleading statements. As we had already mentioned the petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the Government for the starting of the medical college and without any affiliation being granted by the University. The society did this despite the strong protest voiced by the University and the several warnings issued by the University. The society acted in defiance of the University and the Government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the Regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as Principal. No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as

business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and skul duggery. By no stretch of imagination, can we confer on it the status and dignity of a minority institution.

It was further pointed out :

The Government, the University and ultimately the court have the undoubted right to pierce the minority veil with due apologies to the Corporate Lawyers and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Art. 30 (1) is not to allow bogies to be raised by pretenders but to give the minorities a sense of security and a feeling of confidence not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms.

In respect of an argument being raised on behalf of the students who had been admitted in such institution that their career was at stake if they are not allowed to appear at the examination. It was observed :

We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.

4. Similar view was expressed by the Supreme Court in the case of N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, . That decision was in respect of establishment of Teachers Training Institute under private management. In respect of the prayer to allow the students to appear from such institutions it was observed as follows :

If by a fiat of the Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Art. 32 of the Constitution or Art. 226 should be frittered away for such a purpose. The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, leathers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched.

5. This Court has also examined that very question in two Full Bench judgments. In the case of Managing Committee of M. M. H. P. T. E. B.E. College v. State, 1987 PLJR 153 it was held that Minority Teachers Training College has no fundamental right to be recognised and a direction was given to the State to consider the question of recognition of the institution in question. In the case of A. P. Singh v. L. N.M, University 1987 BLJR 590 it was pointed out by the majority judgment of the Full Bench that no direction can be given to allow the students of the proposed Training College which admittedly was neither recognised nor affiliated to appear at the training examination because that will be contrary to the statutory provisions of the University. In the case of Z. A. Islamia College v. State of Bihar 1937 PLJR 453, a Bench of this Court rejected a prayer to allow students of the alleged minority institution to appear at the examination. However, a direction was given to examine the character of the institution and the question of granting affiliation within a period specified.

6. In view of the aforesaid binding decisions, it is not possible for this Court to issue a direction to the Bihar School Examination Board to allow the students of the College aforesaid to appear at the Primary Teachers Training Examination. The writ application is, accordingly, dismissed. However, we direct the State Government to examine the questions (i) whether the College aforesaid is a minority institution having been established by a section of society who can be held to be minority ? (ii) If it is held to be a minority institution then whether it is fit to get recognition from the State Government, as required by the provisions of the aforesaid Act ? It is expected that any such decision is taken preferably within six months from the date of production of this order.