
(2001) 11 MP CK 0073
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1090 of 2001

Mirza Farid Beg

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-11-2001

Acts Referred:

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

Citation : (2002) 2 MPJR 303 : (2002) 2 MPLJ 510

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : V. Rusia, for the Appellant; A. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner was working as a Peon in Urdu Middle School Mundwara, Tahsil Khandwa, District East Nimar, Khandwa. His services were terminated by order dated 8-5-1996. The school was receiving cent percent grant-in-aid at the relevant time. Against the order of his termination, petitioner preferred an appeal before the Appellate Authority Joint Director, Public Instructions, Hoshangabad which was dismissed by him as per order dated 16-4-1999 (Annexure P/5). At the behest of institution, several writ petitions came to be filed before this Court challenging the power of the Appellate Authority to hear the appeal on the basis that it being a minority institution, there cannot be any fetter imposed on it while administering the education and the fetter of appeal imposed under the rules is violative of Article 30 of Constitution of India.

The right of minority institution to manage is not a right to mal-administer. It can be regulated in proper way. Regulatory bodies can be provided power to see that right to administer is not abused. However, the power to supervise is not also arbitrary; it does not enable to unduly interfere in administration making it impossible to run the institution. Reasonableness non-arbitrariness is co-

extensive.

This question was considered whether right to file an appeal given to a dismissed employee can be termed as fetter on right of minority institution to administer it under Article 30 of the Constitution of India in the writ petition filed by the Management in Mehdi Bai Foujdar Education Society Vs. State of M.P. and Others, . This Court held that:-

"By no stretch of imagination, it can be held that the proviso is an integral part of clause (iii). Unhesitatingly I hold that clause (iii) of section 6(a) and the proviso appended to clause (iii) talk of different rights of the parties. Clause (iii) gives right to the management/employer to take disciplinary action against a teacher or other employee while the proviso gives right to such teacher or employee to prefer an appeal. Clause (iii) and the proviso talk of different situations, they stand on different pedestal. They consider different situations, they talk of different exigencies. The provision cannot be held to be inapplicable to a minority institution nor can it be held that it affects the rights of a minority institution guaranteed under Article 30(1) of the Constitution of India.

The appeal filed by the employees/teachers is in accordance with law. The Appellate Authority certainly has jurisdiction to hear and decide the matter and if the law provides that in case of non-observance of the directions of the Appellate Authority it would have powers to proceed against such institution, then the said powers are also valid otherwise in spite of a finding, the Appellate Authority would be a tiger without nails and teeth. It would not be possible for the Appellate Authority to execute and enforce its orders. When orders are passed by the Appellate Authority, they are to be observed and in case of non-observance the authority must have powers to execute and enforce its orders."

The nature of right of the minority institution to administer the education is considered by the Apex Court in C/M. St. John Inter College Vs. Girdhari Singh and Others, , wherein the Apex Court laid down as under":

"5. Article 30 of the Constitution confers right on a minority community to establish and administer educational institutions of their choice. The rights emanated from Article 30 are the right to establish an institution and right to administer it. The right to administer engrafted under Article 30 would not however confer a right to mal-administer, as was held by this Court in the case of Bihar State Madarasa Education Board, Patna Vs. Madarasa Hanfia Arabic College Jamalia and Others, . Even though, Article 30 does not lay down any limitation upon the right of a minority to administer its educational institutions, but that right cannot be said to be absolute, as was held by this Court in the case of The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, and further the rights must be subject to reasonable Regulations, as was held by this Court in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, , consistent with the national interest. Regulations, therefore could always be made to maintain educational

character and standard of institution and for that purpose to lay down qualifications or conditions of service, to ensure orderly, efficient and sound administration and to prevent mal-administration, to ensure efficiency and discipline of the institution and for several other objectivities, which would be for the benefit of the institution and which would not offend the right engrafted under Article 30. It would always be permissible to frame regulations so long as the regulations did not restrict the right of administration of the minority community but facilitate and ensure better and more effective exercise of that right for the benefit of the institution. But such a regulatory provision will cease to be Regulation where power conferred upon the appropriate authority is uncanalised or unreasonable. Regulations also cannot go to the extent of annihilating the right guaranteed by Article 30(1). The Regulation made for achieving competence of teachers or maintenance of discipline in the conditions of service or providing for an appeal against the order of termination and the like would not be held to be violative of the right to administer enshrined under Article 30 of the Constitution but nonetheless if the said provisions confer an authority on a body which is canalised or unreasonable or there is no guiding principle, then the same cannot be upheld. In this view of the matter, the State could impose regulations even upon a minority institution, which would be in consonance with Article 30(1) and such regulation must be reasonable and must be regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority community. When any regulatory measure is assailed, it would be obligatory for the Court to find out as to whether the provision in fact secures a reasonable balance between ensuring a standard of excellence of the institution and of preserving the right of the minority to administer the institution as a minority institution, as was held by this Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , but such regulatory provision if found to have offended the provisions of Article 14, then the same has to be struck down, as was indicated in the case of *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, .

Let us now notice some of the decisions of this Court. In *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , this Court had observed the constitutional right to administer an educational institution by the minority of their choice does not necessarily militate against, the claim of the State to insist that it may prescribe reasonable Regulations to ensure the excellence of the institutions. In *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, , a Constitution Bench observed that Regulations made in the true interests of efficiency of instructions, discipline, health sanitation, morality, public order and the like may undoubtedly be imposed and such Regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in the matters educational. In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, , it had been stated that the right of management in respect of a

minority institution cannot be taken away and vested with somebody else, as that would be encroachment upon the guaranteed right but that right is not an absolute one and it is open to the State to regulate the syllabus of the examination and discipline for the efficiency of the institution and the right of the State to regulate the education or educational standards and allied matters cannot be denied. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , this Court had observed: "Regulations which would serve the interest of the students, Regulations which would serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are unnecessary for preserving harmony among affiliated institutions." In *Lily Kurian Vs. Sr. Lewina and Others*, , the Court had observed: "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means "management of affairs" of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for mal-administration, regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the Article comes into play and the interference cannot be justified by pleading the interest of the general public; the interests justifying interference can only be the interest of the minority concerned." In *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, , the Court was examining the validity of section 12 of Delhi School Education Act, Sections 8(1), 8(3), 8(4) and 8(5) were held not to have encroached upon any right of the minority to administer their educational institutions. But Section 8(2) which stipulated that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor his services will be terminated except with the prior approval of the Director was held to have interfered with the right of the minority, and therefore, the said provision was held to be inapplicable to the minority institutions. The aforesaid dictum, no doubt, was in respect of an unaided minority institution. The conspectus of the aforesaid decision would indicate that there would be no bar for the Government to have regulatory measures for ensuring a standard of excellence of the institutions and such a measure would not in any way affect the right of the minority to administer its institutions engrafted in Article 30 of the Constitution."

In the instant case, after the matter was remanded to the Appellate Authority, the Appellate Authority dismissed the appeal filed by the various employees by similar order. The matter again travelled to this Court in writ petition No. 4559/99 which was decided as per order dated 5-1-2001. This Court directed the Appellate Authority to hear the matter and decide it.

It is clear under rule 10 of M. P. Ashaskiya Shikshan Sanstha (Adhyapak Tatha Anya Karmchari) Appeal Rules, 1978 (for short "the Rules of 1978") that Appellate Authority should keep in view the matters enumerated therein. Rule 10

of this Rules of 1978 states that whether prior approval of the Competent Authority was obtained before order appealed against was passed which means that termination of an employee can only take place with due approval of the Competent Authority. It is also to be considered whether the chargesheet contains specific charges, etc. was issued. Whether the appellant was given opportunity to file written statement, whether opportunity to cross-examine the witnesses was afforded and Appellate Authority is required to consider various other safeguards enumerated in various clauses of Rule 10 of the Rules of 1978 were observed or not. While passing the impugned order, the Appellate Authority did not advert to the questions which it is required, to consider, apply its mind and then to pass a reasoned order in that regard. Order Annexure P/5 dated 16-4-1999 is, thus, liable to be set aside and is quashed.

The order P/5 is quashed. The Appellate Authority is directed to hear the appeal and decide it in accordance with law after hearing the parties concerned.

Parties are directed to keep themselves present, on December 1st, 2001. Cost on parties.