

(1982) 02 KAR CK 0029
In the Karnataka High Court
Case No : WP 13390, 13391 & 1528/80

Mount Carmel College and Another

APPELLANT

Vs

Sudha Rao

RESPONDENT

Date of Decision : 12-02-1982

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1982) 2 KarLJ 479

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. Questions of fact and law arising for determination in these petitions are common and therefore they are disposed of by the following order.

2. These three petitions under Art. 226 of the Constitution are preferred by the Mount Cannel College and the Mount Cannel Education Society of Bangalore. The first petitioner College is run by the 2nd petitioner Society, a society registered under the Kar. Societies Registration Act, 1960. They will be referred to as the College and the society as the case may be in the course of this order for convenience.

3. The College is an educational institution, established and administered by the Carmelite Sisters of St. Teresa. The Society is found by the Sisters of the aforementioned Order. The signatories to the Memorandum of Association are the Mother General of the Order, the Mother superior at Bangalore and some of the other sisters of the Order. The primary object of the Society is to promote the diffusion for education for women, especially University Education in Arts and Science, and pursuant thereto, to take over, administer, manage and conduct or close down and reopen the existing Colleges within the State of Karnataka conducted by the congregations of St. Teresa. It is asserted that the Society is that of a religious minority and the members themselves belong to the Christian community. It is also asserted that the Colleges is meant primarily for Catholics and other Christian students, though others of all castes and creeds are also admitted.

4. The College and the Society are aggrieved by the interlocutory orders passed by the 2nd respondent-Educational Appellate Tribunal, Bangalore, (hereinafter referred to as "the Tribunal") dated 22-7-1980 and 7-8-1980 in MA EAT Nos. 28, 29 and 31 of 1980 on its file staying the alleged orders of termination issued by the College in respect of the 1st respondent in each of the petitions (appellants before the Tribunal).

5. The facts leading to the appeals before the Tribunal and thereafter to the filing of these petitions may be briefly stated and they are as follows.

6. Miss Sudha Rao, 1st respondent in W.P. No. 13390/1980 was appointed Lecturer in Psychology by letter dt 14-8-1978 till the end of March, 1979. By another letter, presumably issued in 1979, her services were continued till March 31st, 1980. On the expiry of the said period she was paid salaries for April and May 1980 during the summer holidays. when she reported for duty on 16-6-1980 she was informed that she was no longer in the service of the College. There was no written communication terminating her services though she was paid salaries for period beyond 31-3-1980. Alleging victimisation and illegal termination she preferred Appeal No. Misc. (EAT) No. 28/1980 before the Tribunal under S. 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1974, (hereinafter referred to as "the Act") challenging the termination. She also filed IA No. I praying the Tribunal for stay of termination as per letter of the Colleged. 21 6-1980.

7. Similarly Mrs. Geetha Rao Gupta, 1st respondent in W.P. No. 13391/1980 was appointed by the College as per letter dt. 26-7-1979, Lecturer in Psychology on a temporary basis till end of March 1980. She was also paid salary for the summer months of April and May, 1980. She was also informed on 16-6-1980, that she was no longer in the service of the College. On her questioning the conduct of the College by a letter, she was also issued a reply by the College on 21-6-1980 stating that her appointment was purely temporary and for a specified period only. She filed MA (EAT) No. 29 of 1980 before the Tribunal for identical relief with a prayer for stay of termination as per letter of 21-6-1980 issued by the College.

8. Miss Chitra Rao, 1st respondent in W.P. No. 15248/1980 was appointed Lecturer in English by letter dt. 14-8-1978, till end of March 1979. Her appointment was extended til March 1980 by letter dt. 28-5-1979. In May, 1980 she was informed by the College that her services stood terminated She filed MA (EAT) No. 31 of 1980 before the Tribunal praying for identical reliefs as the other two Lecturers.

9. The Tribunal heard the College which was respondent before it in all the three appeals, on IA No. I in each of the appeals. The College resisted the appeals as well as the interim relief prayed for on the sole ground that the Tribunal had no jurisdiction to entertain the appeals much less grant interim reliefs. The College claimed protection of Art. 30 (1) of the Constitution and contended before the

Tribunal, that neither Ss. 6, 8 and 10 of the Act, nor the Bangalore University Regulations regarding the terms and conditions of employment of teaching staff in Private Colleges affiliated to that University had application to the case, in terms of law laid down by this Court and the Supreme Court of India in cases wherein the provisions of the Act or similar provisions in the laws of other States in India had come up for consideration. The Tribunal granted the interim relief prayed for holding that contentions advanced for the College merited consideration only when the appeals were finally disposed of and not at the stage of granting interim relief, being satisfied that the appellants before it had made out a prima facie case for stay of the operation of the letters issued by the College in May and June of 1980 informing the Lecturers that their services had stood terminated on the expiry of the 31st day of March, 1980.

10. Petitioners in these petitions have prayed for the following three reliefs:

(i) to declare that Ordinance 42 and 46 of the Bangalore University Ordinances as invalid and in the alternative to declare that the said Ordinances have no application to Educational Institutions founded and administered by Religious and/or Linguistic Minorities like the petitioners;

(ii) to declare that Ss. 8 and 10 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, as not applicable to minority institutions such as the petitioners; and (iii) to quash the proceedings before the Educational Appellate Tribunal, Bangalore, in MA(EAT) Nos. 28, 29 and 31 pending before it and forbid the Tribunal from enforcing the interlocutory orders impugned in the writ petitions.

11. In so far as the first prayer for striking down the two University Ordinances is concerned, Mr. J.A. Sequeira, learned counsel for the petitioners, fairly conceded that the petitioners are not at the moment either aggrieved or affected as there was no interference by the University of Bangalore (3rd respondent in the petitions). In the absence of application of the impugned Ordinances to the College in the cases of the lecturers involved in these cases, it is unnecessary to examine their validity in these petitions and the counsel appearing for the 3rd respondent University was accordingly informed and no arguments were therefore addressed in that behalf.

12. The second prayer of the petitioners is already concluded by a decision of the Division Bench of this Court in the case *Anjuman-Hami-E-Muslimeen v. Bhatkal*, ILR 1981 (1) Kar. 304 and my task is made that much easier.

13. Sri S. Vasanthakumar, learned counsel appearing for the contesting respondents, namely, the Lecturers strenuously attempted to distinguish the ruling of the Division Bench in the Bhatkals case, ILR 1981 (1) Kar. 304, on the basis of the difference in the language of the relevant sections of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 1975 and the language of Ss. 6, 8 and 10 of the Act impugned in these petitions. No such distinction is really possible. The learned Judges, who constituted the Division

Bench of this Court have carefully analysed the decision of the Supreme Court in All Saints High School's case, AIR 1980 SC 1042, as well as the earlier decisions of the Supreme Court in regard to the nature of fundamental right conferred on the minorities by Art. 30(1) of the Constitution, held, "By the same token Ss. 8 and 10 of the "Act" which create a wide appellate jurisdiction in an outside body are not limited merely to the examination whether the Rules of natural justice have been violated in the course of the domestic enquiry culminating in the imposition of the penalty or to the limited question whether the order was mala fide. Jurisdiction of the appellate body is not like the limited jurisdiction that the Civil Court exercises in examining the validity of the findings of a domestic inquiry. S. 10 (4), more or less, creates a jurisdiction co-extensive with that of a Court of first appeal under the CPC. The Appellate Tribunal can take such fresh evidence as it considers necessary and in cases where there is dismissal or removal, if the Appellate Tribunal is satisfied that such dismissal or removal, was not justified, it may set aside the order and direct reinstatement on such terms and conditions as it may think fit. Even if the findings of misconduct recorded at the domestic inquiry are unexceptionable, the Tribunal can interfere even in regard to the nature and quantum of the penalty. Even in cases of penalties other than "dismissal" or "removal", the appellate Tribunal can interfere with the quantum of punishment and award a lesser punishment. Even if two views are reasonably possible, the Appellate Tribunal can substitute its own views for that of the management. This jurisdiction is not a limited jurisdiction which can be said to be correlative of the rights of the employees under S. 6 (1). Provisions in the "Act" touching the scope of the appellate jurisdiction cannot be read down in relation to minority institutions, as suggested by Sri T.S. Ramachandra, as being limited to the nature of jurisdiction a Civil Court exercises in examining the validity on the finding of a domestic inquiry. "It is the creation of the power" it is said "and not its exercise that is subject to objection and the objection would not be removed even though the powers conferred were never exercised at all" [See *Ottawa v. Ottawa Corporation* (AIR 1919 PC 96)]."

14. In the result, the Division Bench ruled that Ss. 8 and 10 of the Act contravened Art. 30 (1) of the Constitution and therefore not enforceable against minority educational institutions.

15. But, Sri Vasanthakumar has urged some novel grounds which require to be noticed. He has argued that the College and the Society cannot seek the protection of Art. 30(1) of the Constitution, unless they can satisfy the Court that their Educational Institution is recognised as a minority institution by the State or some authority empowered to so recognise.

16. In the reply affidavit filed on behalf of the College, attention of the Court is drawn to some correspondence between the College and the Government of Karnataka and it is useful to extract the operative portion of the order dt. 1-10-1977 (Annexure-U) to the reply affidavit.

"Order No. DPAR 28 SBC 76 dt. Bangalore, 1st October, 1977.

Read Govt. Order No. GAD 17 SRR 74 dt. 29-7-1974.

Preamble: In the above Government Order instructions were issued that institutions receiving grants from Government should employ the same percentage of persons belonging to Scheduled Castes, Scheduled Tribes and other Backward classes as are required to be appointed to posts in the State Civil Services. In the light of the decision of the Supreme Court in the case of the St. Xaviers College v. State of Gujarat (AIR 1974 SC 1389) it is necessary to revise this order.

Order:-Government are accordingly, pleased to direct that the instructions issued in Govt. Order No. GAD 17 SRR 74 dt. 29-7-1974 shall not apply to educational institutions, established and administered by minorities, whether based on religion or language.

By order and in the name of the Government of Karnataka.

(N.P. Joshi)

Dy. Secy. to Govt., Dept. of Personnel
and Admn. Reform (Service Rules)

17. Similar is the tenor of the letter of the Commissioner for Education in Karnataka addressed to the Director of Collegiate Education, Bangalore, regarding promotion of Lecturers as Readers in St. Joseph's Arts and Science College, Bangalore, (Annexure-V to the reply affidavit). The Government Order and the letter referred to above were the result of protest lodged by the Bishop of Bangalore on behalf of the Catholic Educational Institutions including the petitioner College. This, Mr. Sequeira, learned counsel for the petitioners has contended was sufficient recognition of the religious minority character of the petitioners.

18. Even otherwise, nothing in the language of Arts. 29 and 30 of, the Constitution is indicative that such recognition is necessary. Religious or linguistic minority character is a question of fact which has to be ascertained in each case. That was the view I took in the case of Socio Literati Advancement Society v. State of Karnataka, (1979) 2 Kar. L.J. 224. That view is supported by several decisions of the Supreme Court. Notably in Kerala Educational Bill case, AIR 1958 SC 956 and in the case of D.A.V. College, Bhatinda v. State of Punjab, AIR 1971 SC 1737, the Supreme Court came to the conclusion that the question whether the petitioner who moved the Court for enforcement of his or its fundamental rights under Art. 29 or Art. 30 of the Constitution should be decided by the Court having regard to the numerical strength of the religious or linguistic groups in relation to the total population of the State concerned. Thus Arya Samausts became a religious minority or a linguistic minority in the State of Punjab in the latter mentioned case decided by the Supreme Court.

19. Sri Vasantakumar, learned counsel for the respondents does not dispute that Christians in Karnataka State are a religious minority, and that the College and Society in question is founded by Christians. Therefore, in addition to the fact that the State has recognised the College as a minority institution as evidenced by the material relied upon by the College, the argument that there must be some form of formal recognition of a minority institution is not well founded.

20. Sri Vasantakumar further argued that the College was not solely managed by Christians as two of the members were non-Christians on the College Committee. In the reply affidavit, it is asserted for the College and the Society that the College Committee is not the governing body of the Society which has only the sisters of the congregation of St. Teresa. The assertion is supported by the registered memorandum of the Society. Even otherwise I do not think the participation of some non-Christians in that management of the College or the Society can take away the minority character as long as the educational institution is founded and managed by those belonging to the minority religion, unless on facts it can be demonstrated such an institution has totally ceased to subserve the purpose for which it was founded or such institution has ceased to be managed by a religious or linguistic minority.

21. Learned counsel for the lecturers has next contended that the orders of termination questioned before the Tribunal were mala fide in as much as the petitioners were suspected by the College Principal of having leaked out some information concerning a student of the College being locked up on 4-11-1979 as published in a weekly newspaper of Bangalore City. It is therefore his argument that these were cases of victimisation and not termination simpliciter. The College has denied the allegations of mala fide both before the Tribunal and this Court. Except the bare allegations in the statement of objections in this Court and in the memoranda of appeals before the Tribunal, no other material is available on record for this Court to investigate this question. A person who alleges mala fides has a heavy burden to discharge. Petitioners have not discharged that burden. It is too much for this Court to believe that the Principal of the College would wait for nearly 6 months to terminate the services of the petitioners if she held them responsible for the so called newspaper publication. In any event the proposition of the learned counsel that when an action is alleged to be mala fide, rights under Art. 30 (1) of the Constitution cannot be enforced is a bit far fetched and is liable to be rejected.

22. Lastly, Sri Vasantakumar has made a feeble attempt to persuade me to refer these petitions to a Division Bench so that the ruling of the Division Bench in Bhatkal School's case, ILR 1981 (1) Kar. 304, may be reconsidered. His argument has been that the Division Bench of this Court overlooked the observations of the learned Chief Justice in the All Saints High School's case, AIR 1980 SC 1042, (occurring in para 3 of the judgment as reported in the All India Reporter AIR 1980 SC 1042). Those observations are as follows:

".....For maintaining educational standards of an institution, it is necessary to

ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character". (Emphasis supplied by Counsel).

The argument has been that the above observations clearly permit the enactment of provisions contained in Ss. 8 and 10 of the Act and enforcement of those provisions even against minority institutions. But the argument overlooks two things. The conclusion of the learned Chief Justice that corresponding provisions of the Andhra Act were not enforceable against minority institutions is overlooked. Next, having regard to the conclusion, the observations must be understood to mean that such regulatory measures are permissible only to the extent that an outside agency shall not interfere with the decisions of the management of the minority institution in the matter of discipline of its staff. That is how the Division Bench of this Court analysed the situation with reference to Ss. 6, 8 and 10 of the Act. I, therefore reject the contention of the learned counsel.

23. Before parting with this case, I am compelled to observe that whatever may be the constitutional guarantees and the law declared by Courts, the survival and fame of an educational institution will depend more on the relationship of the management and the staff, founded on love and trust and not legal and constitutional rights. In the instant case the Society and the College are managed by a Christian Order of nuns which has distinguished itself in the service of humanity. What a Tribunal or a Court of law cannot enforce by its legal authority or the lack of it, a truly Christian behaviour of love, affection and charity should secure justice to the staff.

24. In the result for the reasons given above, rule in these petitions are made absolute. It is unnecessary to make once again a declaration that Ss. 8 and 10 of the Act are not available for enforcement against religious and linguistic minority educational institutions as the same has been done in the Bhatkal School's case, ILR 1981 (1) Kar. 304. However writs of prohibition as prayed for against the Tribunal to entertain and proceed with the appeals of the first respondent in each of the petitions will issue and the impugned orders of the Tribunal are set aside as being without jurisdiction.

25. There will be no order as to costs.