

(2015) 11 AHC CK 0071

In the Allahabad High Court

Case No : Civil Misc. Condonation Application No. 121575 of 2015 in Special Appeal Defective No. 552 of 2015

National Commission for Minority Edu. Institutions
4644(Ms)13

APPELLANT

Vs

Abhinawa Sewa Sansthan Mahavidyalaya and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

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

National Commission for Minority Educational Institutions Act, 2004 — Section 10, 11, 11(f), 12A, 12B

Citation : (2015) 11 ADJ 605 : (2016) 114 ALR 662

Hon'ble Judges : D.Y. Chandrachud, C.J. and Narayan Shukla, J.

Bench : Division Bench

Advocate : Yashovardhan Swarup, Fuzail Ahmad Ayyubi and Mukteshwar Mishra, for the Appellant; Akshat Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. The National Commission for Minority Educational Institutions¹ is in the present special appeal seeking to question the correctness of a judgment dated 29 July 2015 of the learned Single Judge which construes the provisions of the National Commission for Minority Educational Institutions Act, 2004². The learned Single Judge has held that the Commission does not have original jurisdiction in regard to a determination or declaration of the status of any institution as a minority educational institution. Though the Commission has been entrusted with the power under Section 11(f) of the Act to decide all questions relating to the status of an institution as a minority educational institution and declare its status as such, the learned Single Judge has held that the Commission has only an appellate power under Sections 12A and 12B of the Act and that the power which is vested in it under Section 11(f) must be treated as a power exercisable with reference to the appellate jurisdiction. In other words, it has been held that the Commission would have no original jurisdiction

while exercising its powers under Section 11(f) of the Act. This interpretation which has been placed on the provisions of the Act by the learned Single Judge has been called into question in the present special appeal by the Commission.

2. Section 2(g) of the Act defines the expression "Minority Educational Institution" to mean a college or an educational institution established and administered by a minority or minorities. The expression "minority" for the purposes of the Act is defined by Section 2(f) to mean a community notified as such by the Central Government. Section 3 empowers the Central Government to establish the Commission to exercise powers conferred on, and to perform the functions assigned to it, under the Act. Chapter III of the Act deals with the rights of a minority educational institution. Section 10 of the Act provides as follows:

"10. Right to establish a Minority Educational Institution. - Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall,--

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,--

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.--For the purpose of this section,--

(a) "applicant" means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) "no objection certificate" means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution."

3. The functions and powers of the Commission have been provided in Chapter IV of the Act. Section 11 is to the following effect:

"11. Functions of Commission:--Notwithstanding anything contained in any other law for the time being in force, the Commission shall--

(a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) enquire, suo motu, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission."

4. Under the provisions of Section 10, a person who desires to establish a minority educational institution is permitted to apply to the "competent authority" for the grant of no objection certificate for the purpose. The expression "competent authority" is defined in Section 2(ca) of the Act to mean the authority appointed by the appropriate Government to grant a no objection certificate for the establishment of any "educational institution of their choice by the minorities". Section 12A contemplates that against the refusal of the competent authority to grant a no objection certificate under sub-section (2) of Section 10, a person aggrieved may file an appeal to the Commission. Section 12A is in the following terms:

"12A. Appeal against orders of the Competent authority:--(1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court."

5. Apart from this appellate power of the Commission under Section 12A, Section 12B provides that where an authority has been established by the Central Government or any State Government for the grant of minority status to an educational institution and that authority has rejected the application for the grant of such status, a person aggrieved may file an appeal against such an order of the authority to the Commission. Section 12B provides as follows:

"12B. Power of Commission to decide on the minority status of an educational institution. - (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be

prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard decide on the minority status of the educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties.

Explanation.--For the purposes of this section and section 12C, "authority" means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution."

6. The Commission has also been vested with a power to cancel the grant of minority status to a minority educational institution in certain specified eventualities. Section 12C of the Act reads as follows:

"12C. Power to cancel. - The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely:-

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year."

7. These provisions indicate that in Section 10 of the Act, Parliament has made a provision by which a person who is desirous to establish a minority educational institution can apply to the competent authority for the grant of a no objection certificate. The competent authority has to be appointed by the appropriate Government under Section 2(ca) of the Act. The appropriate Government is the Central Government for educational institutions recognized for conducting programmes of studies under an Act of Parliament while in relation to institutions recognized for conducting programmes of studies under State legislation, it is the State Government within whose jurisdiction the institution is situated which is the appropriate Government under Section 2(aa). The Commission is vested with the power under Section 11(f) of the Act to decide all questions relating to the status of an institution as a minority educational institution and has been empowered to declare its status as such. The power under Section 11(f) is distinct from the appellate jurisdiction of the Commission under Sections 12A and 12B. The power under Section 11(f) to decide all questions relating to the status

of any institution as a minority educational institution and to declare its status as such is evidently not conditioned or confined to the appellate jurisdiction. Sections 12A and 12B provide for the appellate jurisdiction of the Commission in two specified eventualities. The first under Section 12A is where the competent authority which has been appointed by the appropriate Government to grant a no objection certificate for the establishment of an educational institution has declined to grant its no objection. Against the order of refusal to grant a no objection certificate, an appeal is provided under Section 12A. Section 12B operates in those situations where an authority which has been established by the Central or State Governments, as the case may be, for the grant of minority status to an educational institution, rejects the application for the grant of such status. In that event, an appeal lies against the rejection of the application. In other words, Section 12A operates where the competent authority has refused to grant its no objection to establish a minority educational institution whereas Section 12B operates where the authority which has been established by the Central or the State Governments, as the case may be, has rejected an application for the grant of minority status to an educational institution. There is nothing in the provisions of the Act to indicate that the functions which have been conferred on the Commission under Section 11(f) of the Act were intended by Parliament to be confined to the discharge of the appellate jurisdiction under Section 12A or Section 12B of the Act.

8. In our view, the line of reasoning which has been adopted by the learned Single Judge suffers from a clear error. The learned Single Judge has proceeded on the basis that the functions of the Commission under Section 11(f) operate notwithstanding anything contained in any other law for the time being in force but no overriding effect has been given to Section 11 over the other provisions of the Act. Undoubtedly, Section 11 contains a non-obstante provision which overrides anything to the contrary contained in any other law for the time being in force. This does not make Section 11(f) or the functions of the Commission thereunder subservient to Section 12A or Section 12B. Section 11, it must be noted, equally does not contain a provision to the effect that it is subordinate to the other provisions of the Act. All the provisions of the Act have to be construed harmoniously. Hence, the correct way of interpreting the provisions is that the power of the Commission under Section 11(f) is not confined to the discharge of its appellate jurisdiction under Section 12A or Section 12B of the Act. Section 11(f) is an independent function.

9. The learned Single Judge was, however, justified in coming to the conclusion that the power to grant a no objection certificate under Section 10 for establishing a minority educational institution is conferred upon the competent authority as defined in Section 2(ca). Ex facie, the power under Section 10 is vested in the competent authority. However, this would not lead to the inference that the independent power which is conferred upon the Commission under Section 11(f) to decide all questions relating to the status of an institution as a minority educational institution and to declare its status is not an original power

which is vested in the Commission. Section 10 and Section 11(f) in that sense operate in different fields. Section 10 is the power to grant a no objection to establish a minority educational institution which has been vested in the competent authority. Section 11(f) relates to the determination of all questions relating to the status of an institution as a minority educational institution including the declaration of that status.

10. In these circumstances, we are of the view that the finding which has been arrived at by the learned Single Judge is contrary to the plain meaning of the provisions contained in the National Commission for Minority Educational Institutions Act, 2004.

11. In taking this view, we also draw sustenance from the principle emerging from the judgment of the Supreme Court in *Governing Body of PAEM College vs. State of Jharkhand*³. The appellants before the Supreme Court had sought to challenge an order passed by the Government of Jharkhand holding that a particular college was not a minority institution entitled to the protection of Article 30(1) of the Constitution. The High Court observed that the question that had to be decided by the Government was as to whether the institution was established by the minority community. The High Court observed that no adequate or conclusive material had been produced on the basis of which it could be held that the college had been established exclusively by a minority community. Adverting to the provisions of the National Commission for Minority Educational Institutions Act, 2004 more particularly those contained in Section 11(f) and Section 12B, the Supreme Court observed as follows:

"From the above provisions, it is clear that the Commission has the power to decide all questions relating to the status of any institution as minority educational institution and declare its status as such. Moreover under Section 12B, where an authority established by the Central Government or any State Government has rejected the application for grant of minority status to any educational institution, the aggrieved person may appeal against such order of the authority to the Commission. The provisions contained in Section 11(f) of 2004 Act and Section 12B of the Amendment Act are, thus, wholesome provisions for deciding all questions relating to the status of any institution as minority educational institution and for declaration of such status."

The Supreme Court in its operative direction observed that if proceedings were initiated by the college before the Commission for declaration of its status as a minority educational institution, the Commission shall proceed to determine that question in accordance with law after furnishing a due opportunity to all the affected parties. This decision of the Supreme Court in fact indicates that the power to make a determination under Section 11(f) does vest in the Commission.

12. At this stage, it would also be necessary for the Court to note that the learned Single Judge had adverted to a judgment of a Division Bench of this Court in *Committee of Management Inter College Dharaon District Chandauli vs.*

State of U.P.4. That was a case where the State Government had sought to confer a minority status on a school and had constituted a Committee on the basis of which it assumed the power and authority to confer such status on the institution. The Division Bench in an appeal arising from a judgment of the learned Single Judge observed as follows:

"This appeal is taken up and summarily disposed of.

We are in respectful agreement with the reasoning given and the order passed by Hon"ble Mr. Justice V.C. Misra on the 13th of July, 2006.

While hearing the appeal we could not cross our first mental hurdle, which was the question whether the appeal should be given any serious thought at all or not.

The State Government has, by the impugned order dated the 9th of June, 2004 sought to confer a minority status on the school in question.

The society controlling the school was registered in 1947. It was always run as an open institution. Hindus became even a majority during the middle of the last century. Some interested parties hopelessly misconstrued the Constitution and prayed to the State Government for grant of minority status. It is not for any State Government to grant any minority status to any institution; not even the Parliament or State Legislature can do it. A minority institution has to grow by itself. Only a competent Court of law can declare such status.

The order of the State Government shows a complete misunderstanding of Article 30 of the Constitution. It appears to have constituted a Committee and on the basis of the report of the Committee, it took upon itself the power and authority to grant minority status with ""immediate effect" !

The matter is so hopelessly illegal that it is very difficult to explain how hopeless it is. The appeal is dismissed."

13. Evidently therefore, the provisions of Article 30 were being misused or abused for claiming minority status by persons who did not belong to a religious minority. We may only clarify that this judgment of the Division Bench does not specifically deal with the provisions of the Act. Moreover, any view expressed therein would necessarily have to give way to the subsequent decision of the Supreme Court in the Governing Body (supra).

14. For these reasons, we allow the special appeal which has been filed by the Commission for the purpose of clarifying the true scope and ambit of its power. We disapprove of the statement of law which has been contained in the judgment of the learned Single Judge. The special appeal shall be governed by the interpretation which has been placed in this judgment on the statement and ambit of the power which has been conferred.

15. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

16. This application seeks condonation of delay of 2 months 26 days in filing the special appeal.

17. Since the delay has satisfactorily been explained in the affidavit filed in support of the delay condonation application, the delay in filing the appeal is condoned.

18. The application is, accordingly, disposed of. There shall be no order as to costs.

1Commission

2Act

33 Civil Appeal No.3070 of 2004 decided on 6 December 2012

44 Special Appeal No.903 of 2006, decided on 24 August 2006