
(1978) 03 MAD CK 0046
In the Madras High Court

N.S. Balasubramaniam

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 09-03-1978

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1979) 1 MLJ 233

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The facts leading to the writ petition are as follows:

The petitioner who holds a B.Com. (Hons) Degree of the Madras University and M.A. Degree of the Banaras University in Economics as well as M.Com Degree of the Aligarh University and had obtained a Fellowship of the Institute of Commerce, London, was appointed as Professor of Commerce, Agurchand Manmull Jain College (second respondent herein). He has been working there since 1966. During the academic year 1977-78 there was sporadic agitation by the students which required the closure of the college for about a fortnight. This according to the petitioner, was done without consulting the College Council. Certain allegations were made against the Principal and the Association of Teachers of the second respondent college passed a resolution on 28th October, 1977 requesting the management to probe into those allegations. The management issued memos to all the members of the Association of Teachers to state whether they were signatories to the resolution dated 28th October, 1977 and if that were so, why disciplinary action should not be taken against those signatories. This led to some bitterness between the management and the Association of Teachers which continued for some time. By memos dated 8th November, 1977 and 30th November, 1977 which were issued to the petitioner it was stated that he had been accepting teaching assignments in the S.I.E.T. Women's College and Davar's College of Commerce without the written permission of the Management, that proper arrangements for the subject

"business organisation" had not been made for the students of the First Year B.Com., (Evening) Session and that he was taking part in inciting action by the students against the Management during the working hours in the campus. The petitioner replied to those charges on 5th December, 1977 and on 19th December, 1977, another memo emanated from the management charging the petitioner with serious misconduct and dereliction of duty. By his letter dated 23rd December, 1977, the petitioner requested for copies of the documents in order to enable him to submit a detailed explanation. It is at this stage, the petitioner has come to this Court with this writ petition for a declaration to declare that the clause in Section 11 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 reading as "not being a minority institution" and Section 24(3) of the said Act being provisions of exemption rendering Section 11 to 14, 18(2) and 19 to 22 of the said Act inapplicable to minority colleges are ultra vires of Article 14 of the Constitution of India.

2. The grounds stated in the affidavit may briefly be set out as follows:

The provisions of law regulating the establishing and administering of educational institutions which violate the rights of minorities would be liable to be declared void as being inconsistent with Article 30 of the Constitution. However, if such a law affords protection to minorities which are not essential to or required by Article 30 of the Constitution, such provisions would discriminate against the right to equality guaranteed by Article 14 of the Constitution. Section 11 to 14 of the Act are made inapplicable to minority colleges. Section 11 read with Rule 8 of the Rules made under the Act would entitle the Principal of the College and two senior-most Professors to be on the College Committee along with the nominees of the Educational Agency. Such a right is not available to the petitioner. To associate the members of the teaching staff with the task of defining the standards of conduct to be observed by teachers and other persons employed in the private College would be in the interests of better administration of the institution and for improving the standards of education imparted in the college. Therefore, under Article 30 of the Constitution of India, no minority institution can demand that a member of the teaching staff should perforce find a place on the committee of management. If any such preference is given to a minority institution it will be violative of Article 14 of the Constitution.

3. Section 24(3) of the Act which exempts a minority College from being governed by the provisions of Section 18(2) of the Act also contravenes Article 14 of the Constitution. Section 18(2) is a provision which lays down the standard of conduct to be observed by teaching and non-teaching staff of private colleges on the one side and the other institutions on the other so far as the standard of conduct to be observed by them. Article 30 would not in any manner be violated by definition of the standard of conduct to be observed by teaching and non-teaching staff of the minority colleges. Even if it is to be done by the College Committee contemplated to be established u/s 11, it is only the Principal and the two senior-most Professors have to be on the Committee.

4. Then again the exemption of the minority colleges from being governed by the provisions of Section 19(1) and (2) of the Act would violate Article 14 of the Constitution of India. The competent authority contemplated under the said Act is the University or an authority, officer or person empowered by the Government by notification to be the competent authority. The said provisions do not in any manner displace, the administration of the institution, and at best, it merely provides for a regulatory measure for the proper and efficient administration of the institution in matters relating to disciplinary action. Such regulation could be made for ensuring proper conditions of service and to secure a fair procedure in the matter of disciplinary action.

5. Exemption from being governed by Section 19(3) of the Act is also equally violative of Article 14 of the Constitution. That relates again to suspension by way of disciplinary action. To exempt Section 19(3)(a) from being applied to teaching and non-teaching staff of minority institutions would result in the arbitrary use of the power of suspension even where the charge levelled against the teaching and non-teaching staff would not amount to gross misconduct otherwise. Equally, the right of appeal to the Tribunals u/s 20, 21 and 22 of the Act is denied to the petitioner by the grant of exemption on the ground that the second respondent is a minority institution.

6. Mr. K.K. Venugopal, learned Counsel for the petitioner, draws my attention to Section 11 and also Rule 8 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and then says that while the Act was in the form of a Bill, the words "not being a minority institution" were not found but those words came to be introduced only when it became an Act. Rule 8(3) which speaks about the constitution of committee requires under Rule 8(3)(b) and (c) Principal of the College and two senior-most Professors. The petitioner being a member of the Teachers' Association could claim to have his representation on the committee which committee alone would have the authority to take the disciplinary action. The disciplinary action taken by the Management, therefore, would be violative of Article 14 of the Constitution of India.

7. Under Article 30 of the Constitution, no doubt, the minority institution has the right to establish and administer educational institutions of its choice. But that does not mean that there cannot be a committee to carry on the general administration or any such other purpose mentioned in Section 14. To provide for such a committee does not infringe Article 30 of the Constitution. It has been so laid down in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, . Then again in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , it has been held that such measures are only in the nature of regulations and they do not in any way affect the fundamental right of the minority institution. These cases would fully support the argument of the petitioner. Where therefore a minority institution is exempted from the operation of Section 11 to 14 and Section 18(2) and 19 to 22 by Section 24(3) of the Act it will be clearly discriminatory.

8. It is further argued by the learned Counsel that inasmuch as the point raised here involves the determination of the constitutional validity of certain provisions of the Act either by the application of Article 228-A(3) or 228(4) of the Constitution, such determination relating to the constitutional question, leave alone the invalidity thereof, must be adjudged only by five Judges, since there is a vital distinction between the said Article and Article 226(3) of the Constitution which states about entertaining of the petition.

9. In order to appreciate whether there is any violation of Article 14 of the Constitution which arises in this case at all, let me look at the relevant sections because the determination of this question has a bearing on my jurisdiction to hear this matter and hold against the petitioner. Section 11 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as the Act) occurs under Chapter III which deals with the college committee and its constitution and functions, and states that every private college, not being a minority college, shall have a college committee which shall include the Principal of the private college and two senior Professors employed in the private college (*Italics supplied*). Section 12 of the Act speaks of the Secretary of the College committee. Section 13 says about the meetings of the college committee while Section 14 deals with the functions of the college committee and responsibility of the educational agency under the Act. Then again, Section 18(2) reads:

(2) The college committee may define the standards of conduct to be observed by teachers and other persons employed in the private college, such standards not being inconsistent with the provisions of this Act and the rules made thereunder.

Sections 19 to 22 deal with the disciplinary action that could be taken against a teacher or other person employed in any private college, the appeal arising therefrom and the second appeal etc Section 24(3) states thus:

(3) The provisions of Sub-section (2) of Section 18 and of Sections 19 to 22 (both inclusive) of this Chapter or any rule providing for all or any of the matters specified therein or any order made in relation to any such matter shall not apply to a minority college.

(*Italics supplied.*)

What requires to be noted carefully is that all minority institutions are treated alike. It is adumbrated under Article 14 of the Constitution that all equals must be treated alike. In the instant case, there is no denial that all the minority colleges are not treated alike. What the petitioner does is, pitting the minority institution as against non-minority institution seeks to make out a case of inequality. Such a thing is wholly impermissible under Article 14 of the Constitution. Certainly, that is not the concept of Article 14 at all. That being the position, the constitutional validity does not arise.

10. The decision in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University*

of Agra and Another, , is a case wherein the college claimed the fundamental right under Article 30 of the Constitution. Their Lordships of the Supreme Court held that the University statute requiring that the Managing Committee of minority educational institution (College) shall include the principal of the College and the senior most member of the teaching staff being regulatory in character does not offend Article 30 of the Constitution. The situation here is entirely different. This is not a case of a college claiming the protection under Article 30. Here again, what requires to be noted is Article 30 is equally a fundamental right conferred upon the institution. The petitioner has no fundamental right to be represented on the College Committee since the constitution of the committee arises only by a statute. Therefore, if at all he has a right of representation, it is only a statutory right. The legislature in its wisdom and having regard to the statutory provisions of Article 30 of the Constitution has made these provisions inapplicable to the minority institutions. For aught we know by the constitution of a college committee, the administration may go to a body in the selection of whom the founders may have no say and the entire administration might be displaced as laid down in the decision reported in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., .

11. The reliance placed on The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, , is again not justified. In that case at page 1427 it was laid down thus:

Although disciplinary control over the teachers of a minority educational institution would be with the governing council, regulations, in my opinion, can be made, for ensuring proper conditions of service of the teachers and for securing a procedure in the matter of disciplinary action against the teachers.

In the instant case, we are not concerned with any of the regulations relating to the conditions of service of the teachers and the procedures to be followed in the matter of disciplinary action against the teachers. Therefore, I conclude that there is no scope for invoking Article 14 of the Constitution at all.

12. In this background let me analyse the provisions of Article 228-A of the Constitution which is very much relied upon by the learned Counsel to advance the argument that I will have no jurisdiction to deal with this matter since it raises a question as to the constitutional validity of the provisions of the Act. Article 228-A(2) says:

Subject to the provisions of Article 131-A, the High Court may determine all questions relating to the constitutional validity of any State law.

Article 228-A(3) says:

The minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law shall be five.

Proviso is omitted as unnecessary.

Again Clause (4) says:

A State law shall not be declared to be constitutionally invalid by the High Court unless

(a) where the High Court consists of five Judges or more, not less than two-thirds of the Judges sitting for the purpose of determining the validity of such law, held it to be constitutionally invalid; and

* * * * *

Rest of the clauses are omitted as not relevant. If, as I held above, there is no scope for application of Article 14 of the Constitution at all, a fortiori it would follow that neither Article 228-A(3) nor Article 228-A(4) would ever be attracted. Therefore, I am of the view that I have every jurisdiction to decide this case.

13. In the result, the writ petition is hereby dismissed.