
(1975) 07 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1532 of 1974

Panna Lal Bharatiya and Others

APPELLANT

Vs

The Magadh University and Others

RESPONDENT

Date of Decision : 09-07-1975

Acts Referred:

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

Citation : AIR 1976 Patna 82

Hon'ble Judges : Birendra Prasad Sinha, J;B.D. Singh, J

Bench : Division Bench

Advocate : Prabha Shankar Mishra, Ganesh Pd. Singh, Ramesh Chandra, Nawal Kishore Agrawal, Shashank Kumar Singh and Krishna Mohan, for the Appellant; Tara Kant Jha, S.C.I., P.N. Jha, Jr. Counsel to S.C.I, Ramananda Sinha, H.T.N. Sahay and Bhupendra Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India by Panna Lal Bharatiya, his son Govind Prasad Bharatiya and one Kashi Prasac Harlalka. The petitioners claim to belong to the community of Marwaris, popularly known as Rajasthanis in Bihar, and have been living in Patna City since long. A prayer has been made to quash the orders contained in Annexures 10 and 11 and to restrain the respondents from interfering with the petitioners' right of administration of the Rameshwardas Pannalal Manila Mahavidyalaya, Patna City (hereinafter referred to as the College). Annexure 10 is an office order contained in Memo No. 3631-37 dated the 25th July, 1974, from the Deputy Registrar of the Magadh University, whereby an ad hoc committee consisting of the Sub-divisional Officer, Patna City (convenor). Shri Rajendra Prasad Sinha. Principal College of Commerce, Patna, Shri Girdhari Lal Bharatiya (donors' representative) and the Professor-in-Charge was constituted in pursuance of an agreement reached by the Government with the federation of teachers of the University of Bihar. Annexure 11 is another office order contained in Memo No. 1118/74-3911-15 dated the 15th August. 1974, under the

signature of the Registrar of the Magadh University (respondent No. 2) appointing a committee consisting of the District Magistrate. Patna, the Sub-divisional Officer. Patna City, and the principal of the college to constitute the Governing Body of the College.

2. The facts leading to this application may be summarised thus: The petitioners state that they have a distinct language known as Rajasthani and have a distinct script known as Mahajani with a separate and distinct culture. Accordingly, they claim that the Rajasthanis in Bihar constitute a minority community on the basis of language as their population in the State is less than ten per cent. of the total population of the State. The citizens of Patna City suffered for long for want of a good educational institution for higher studies and in that behalf several attempts are said to have been made to establish colleges for boys and girls of the residents of Patna City. A college known as Shri Guru Govind Singh College came to exist sometime in the year 1961. An attempt was made to provide coeducation in the said college but experience revealed that parents were not willing to send their female wards to a college which provided co-education. According to the petitioners, on 24-3-1970, the residents of Patna City belonging to Rajasthani origin held a Priti Sammelan at the residence of Panna Lal Bharatiya (petitioner No. 1) which was presided over by Shri Kashi Prasad Tekariwal, The question of education of the female folks of the community was taken up by the Sammelan for consideration. A proposal was mooted out that a college for girls' education should be established on being sponsored by the people belonging to Rajasthani Community. Petitioner No. 1 was requested to take the initiative and he announced to donate his land and house situated in Mohalla Chowk Shikarpur for the purposes of the college. It was further decided to hold another meeting on the 12th April, 1970, to draw up a programme for the establishment and administration of a college. On the 12th of April, 1970, it is stated, the residents of Patna City belonging to Rajasthani Community met under the Presidentship of petitioner No. 1, who was authorised to take steps for raising funds and to spend the same for the establishment of the college. A committee consisting of three persons, Panna Lal Bharatiya (petitioner No. 1). Kashi Prasad Harlalka (petitioner No. 31 and one Biharilal Murarka was constituted for collection of funds and Bansidhar Kanodia was entrusted with the responsibility of entering into correspondence and negotiations with the University and Government for establishment and recognition of the college. It was resolved to start the college in the year 1970 itself. On the 16th June, 1970, yet another meeting of the community took place and petitioner No. 1 placed before it a list of twenty-three, donors who had each contributed a sum of Rs. 1011/- and informed that a sum of Rs. 23,243/- had already been collected. Petitioner No. 2 and his brother Girdhari Lal Bharatiya announced a donation of Rs. 25,000/-. A number of other persons present at the meeting also announced their donation. On the 23rd June, 1970, the sponsors of the college, who met under the presidentship of petitioner No. 3, decided to hold the inaugural function on the 26th June, 1970, in which the inaugural address was to be

delivered by Shri Nitishwar Prasad Singh, the then State Education Minister. It was also decided that Shri Baleshwar Ram, the then Minister for Local Self-Government, would preside and the vote of thanks would be delivered by Shri Ramautar Shashtri, M.P. As scheduled, the inaugural function of the college was held on the 26th June, 1970. The first Governing Body of the college was constituted by the founders on the 12th July, 1970, for the session 1970-71 consisting of the following persons:

1. Shri Panna Lal Bharatiya -- President.
2. Dr. Shishupal Ram -- Vice-President.
3. Shri Ramaballabhji Jalan -- Secretary.
4. Shri Gupteshwar Prasad Singh --
Member.
5. Shri Babban Lal Yadav -- "
- 6 Shri Ram Babu Yadav Member
7. Shri Natwarlalji Kabra --
8. Shri Bansidharji Kanodia -- "
9. The Principal -- "

3. In the meanwhile, the University appointed Shri C.P. Sharma and Shri Y. Masih as Inspectors in respect of the said College, who inspected the college on the 2nd June, 1970, and submitted a report dated the 4th June, 1970, which is contained in Annexure "7". The Inspectors recommended that the proposed college should be accorded temporary affiliation in Pre-University Arts and B. A. Part I with effect from the session 1970-71 subject to the prior fulfilment of certain conditions enumerated in the said report. A temporary affiliation was granted to the college for two sessions (1970-71 and 1971-72) for the subjects specified in Annexure 8. This was renewed for the sessions 1973-74 and 1974-75. After the affiliation of the college a regular Governing Body is said to have been constituted in accordance with the statute of the Magadh University in which Girdhari Lal Bharatiya and his brother (petitioner No. 2) are said to have been nominated by the University as donor-members of the Governing Body, in the category of donors of Rs. 25,000/-, Shrimati Saraswati Devi, M.L.C., was nominated as legislature-member, Dr. S.B. Singh as a University representative, the Sub-divisional Officer (Civil), Patna City, as Government representative, and petitioner No. 1 in the category of donor-member of Rs. 1,000/-. Girdhari Lal Bharatiya was appointed as convenor of the Governing Body. Later, Dr. Shishupal Ram was nominated as a member of the Governing Body as an educationist. It is stated that the petitioners took keen interest in the establishment of the College and thereafter in its administration and in the matter of that they never hesitated in conforming to the requirements of the statutes of the Magadh University and

the Magadh University Act in so far as they applied to the affiliated colleges. They claim that they had a fair representation on the Governing Body of the college and they adopted for the administration of the college rules applicable to the affiliated colleges without ever surrendering their rights of administration. Their right to administer the college was, however, infringed, for the first time, when the office order dated the 25th July, 1974 (contained in Annex. 10), was issued appointing an ad hoc committee for the administration of the college removing Girdhari Lal Bharatiya from the office of the convenor of the college and appointing the Sub-divisional Officer, Patna City, as the convenor. By Ordinance No. 167 of 1974, published in the Bihar Gazette (Extraordinary) dated the 1st August, 1974, an amendment to the Bihar State Universities Act and Magadh University Act, 1961, was made, introducing Section 46A empowering the Syndicate of the University to transfer the teachers from the affiliated college to another affiliated college of the University and also empowering the Syndicate of the University u/s 46-AA to constitute, suspend or dissolve the Governing Body of the affiliated colleges and to appoint a Governing Body consisting of three persons. It further provided that from the date of the constitution of the three-man Governing Body, the previous Governing Body or ad hoc committee constituted in accordance with the provisions of the statutes for such, colleges would be dissolved. Under the purported exercise of the powers under the aforesaid Ordinance, the office order dated the 5th August, 1974, contained in Annexure "11", referred to above, was issued appointing a committee consisting of the District Magistrate, Patna, the Sub-divisional Officer, Patna City, and the Principal of the college to constitute the Governing Body of the college and, as stated above, these two annexures (Annexures 10 and 11) have been challenged by the petitioners, mainly, on the ground that they have taken away the petitioners' right of administration of the college and deprived the minorities based on language of their right of administration of the educational institution established by them.

4. A counter-affidavit has been filed on behalf of respondent No. 1 (the Magadh University through its Vice-Chancellor) and respondent No. 2 (the Registrar of the Magadh University) on the 18th December, 1974. While denying or challenging many of the statements made in the application in respect of the establishment of the college, it has been further asserted that the Marwaris or the Rajasthanis are not a minority community based on language. A copy of the application for affiliation has been filed along with the counter-affidavit as Annexure A. It has been asserted that at no point of time there had been any indication that the petitioners or any member of the locality ever treated this institution as established by the so-called minority community based on language. The application for affiliation was sufficiently indicative of the fact that there was no question of this institution being a minority institution.

5. On the 25th March, 1975, a rejoinder to the counter-affidavit was filed on behalf of the petitioners. In this rejoinder, the petitioners have asserted that Rajasthani is a language recognised by the Sahitya Academy created under the

resolution of the Government of India. The Academy in its annual report of 1973 at page 4, recorded:

"Besides the 15 languages enumerated in the Constitution of India the Sahitya Academy has recognised English, Maithili, Dogri, Manipuri and Rajasthani as languages in which its programme may be implemented."

There it is also stated that the Marwaris have a different script called Mahajani which is used by them in their correspondence and account books. To support their contention they have referred to a series of lectures delivered by Dr. Suniti Kumar Chatterjee as early as in 1947 under the auspices of Vishwa Vidya Peeth on the Rajasthani language. The said lectures have been printed in a book form and a copy of the said book has been filed before us by learned Counsel appearing on behalf of the petitioners.

6. Later, the State of Bihar was also added as a party respondent to the case and although no counter-affidavit has been filed on its behalf, we had the advantage of hearing the illuminating argument of the learned Advocate-General on the questions involved in this case.

7. On the basis of the averments made in the application which have been summarised above, Mr. Prabha Shankar Misra, learned Counsel appearing on behalf of the petitioners has submitted that the Rajasthani spoken by the Marwaris who are in minority in the State of Bihar is a language and as such the petitioners are a linguistic minority in this State. He has further submitted that the college has been established by this linguistic minority and as such their right of administration of the college is protected by Articles 29 and 30 of the Constitution of India, Consequently, the orders contained in Annexures 10 and 11 are illegal and ultra vires. In support of his contention, Mr. Mishra has relied on *The State of Bombay Vs. Bombay Education Society and Others*, ; *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, ; *D.A.V. College, Vs. State of Punjab and Others*, and *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, .

8. Assuming at the moment that Rajasthani is a language and the petitioners are a linguistic minority in the State of Bihar, the real question to be decided in this case is as to whether this college was "established" by the linguistic minority. There is no complaint by the petitioners of any infringement of their right to establish an institution. They complain of infringement of their right to administer the college. The scope of Article 30(1) of the Constitution of India came up for consideration in *S. Azeez Basha and Another Vs. Union of India (UOI)*, . Wanchoo, C.J., delivering the judgment of the Court observed as follows:

"The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other,

it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it."

9. What does the word "established" in Article 30(1) mean ? In Shorter Oxford English Dictionary (Third Edition) the word "establish" has been given a number of meanings, i.e., to render stable or firm; to ratify; to confirm, settle; to restore permanently: to fix, settle, institute or ordain permanently; to set up on a secure basis; to found; to set up or bring about permanently. In Webster's Third New International Dictionary, the word "establish" has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into existence, create, make start, originate. In Bouvier's Law Dictionary (Third Edition). Volume I, the word "establish" has been given the following meanings namely, to settle firmly, to fix un-alter-ably as to establish justice; to make or form; as to establish a uniform rule of naturalization: to found, to create, to regulate: to found, recognise, confirm or admit; to create, to ratify, or confirm. While considering this. Wanchoo, C.J., in the case of Azeez Basha (supra) observed as follows:

"We are of opinion that for the purpose of Article 30(1) the word means to bring into existence", and so the right given by Article 30(1) to the minority is to bring into existence an educational institution and if they do so, to administer it."

As stated above, in this context, it is of great importance to find out as to how this college was brought about into existence.

10. For this purpose. I shall first refer to some of the averments in the writ application itself on which this claim has been founded. In paragraph six of the writ application, it has been stated that the "citizens" of Patna City suffered for lone for want of a good educational institution and in that behalf several attempts were made to establish colleges for boys and girls of the "residents" of Patna City. This refers to "citizens" in general and not a section, i.e., the Marwaris. The genesis is "citizens" including the Marwaris or Rajasthanis. According to paragraph eight of the writ application, the idea was of sponsoring a college for girls education generally although it is stated that the question of education of the female folks of the community was taken up for consideration. The meeting which was called for on the 12th of April. 1970, was to draw up a programme for the purpose of administration of the college and, according to Annexure "1", the constitution of the college as well as its name was to be decided on that date. On the 12th April. 1970, petitioner No. 1 was authorised by the meeting "to take steps for raising the funds and to spend the same for the establishment of the College. The petitioners are not categorical as to whether the raising of the fund was to be confined and kept within the Marwaris or the Rajasthanis or it was to be raised by a general invitation to the public. According to Annexure "2", in the meeting of the 12th April, 1970, it was decided to name the institution after the name of the father of petitioner No. 1. This shows that

the institution was named after an individual and not after a particular section or community. The intention was not manifest that it was being established for or after a community. According to Annexure "2", the committee seems to have been formed for collection of funds but, here again, it does not say that funds were to be collected from the Marwaris alone. The inaugural function was held on the 26th June, 1970, and it appears that the three personalities who were invited to inaugurate, to preside or to give vote of thanks were all non-Marwaris. Then comes the first Governing Body of the college said to have been constituted by the founders for the year 1970-71. Annexure "5" would show that at least three out of the eight members of the Governing Body (excluding the Principal) were non-Rajasthanis. This, as the petitioners say, was with a view to give representation to the people belonging to the other communities. It is significant, inasmuch as the concept of exclusiveness in the matter of administration is absent from the constitution of the first Governing Body itself. When the establishment and administration of the college was to be done by and for the minority community, the question of giving representation in the Governing Body to the people belonging to the other communities could hardly arise.

In this background the application for affiliation and the report by the Inspectors contained in Annexure "7" are very important. There is no mention anywhere that the college was exclusively meant to be administered by the Rajasthani community. It only gives the impression that some enlightened persons sponsored the institution because the citizens of Patna City were having difficulty in the matter of education of their female wards. The report of the Inspectors (Annexure "7") mentions -- "The sponsors of the college are serious and they belong to one family and they have the resources of running the Mahila College, This kind of college is very necessary and is bound to grow into a big institution". Certain conditions were imposed for the affiliation of the college and subject to those conditions temporary affiliation was granted which was renewed from time to time. After the affiliation, a regular Governing Body seems to have been constituted in accordance with the statutes of the Magadh University and such Governing Body continued to administer the college between 1970 and 1974. In paragraph 24 of the writ application, the petitioners state that as founders of the college they took keen interest in its establishment and thereafter in its administration and in the matter of that they conformed to the requirements of the statutes of the Magadh University and the Magadh University Act in so far as they applied to the affiliated colleges. They further state -- "The petitioners and other persons of their community had a fair representation on the Governing Body of the college. The petitioners adopted for the administration of the college rules applicable to the affiliated colleges without, however, ever surrendering their right of administration".

This is, if I may say so blowing hot and cold. What they were concerned with was only a "fair representation" on the Governing Body, but for all intents and purposes the college came to be governed by a Governing Body as envisaged for any affiliated college and in accordance with the Magadh University statutes. If

the college had been established by the minority community as the petitioners now claim the intention should have been expressed in their application for affiliation itself. The University is right in saying that at no point of time this intention was expressed or a claim made that the college was being established by a minority community. Having not done so and having accepted the rules and statutes of the Magadh University governing the constitution of the Governing Body, the petitioners cannot now be allowed to turn round and say that the college was established by a minority community.

11. There is still another aspect of the matter which needs consideration. It appears that there were thirtyone persons including the petitioners who had made donations for founding the college. Out of them only three have come to file the present writ application and they do not even say that they have done so in any representative capacity. As has been stated earlier, petitioners Nos. 1 and 2 are father and son respectively and petitioner No. 3 is another donor. The interest of petitioners Nos. 1 and 2 is apparent inasmuch as the college seems to have been named after petitioner No. 1 and his father. As is apparent from Annexure 7, the sponsors belong to one family and appear to be resourceful. They were, if at all interested in founding the college after the name of petitioner No. 1 and his father but, surely not as an institution of the minority community. In any view of the matter, it is difficult to know what was the intention of the whole body of thirtyone persons who made liberal donations for the establishment of the college. At least we are not aware of the view of the rest twenty-eight persons who have not made any complaint anywhere nor how they joined hands with the petitioners in filing the present application.

12. From the history of the college since its very inception, which I have set out above, it is clear that on the materials furnished it has not been established that it was an institution founded exclusively, or with that intention, by a minority community based on language, viz., Rajasthani. It is also clear that throughout and at all material times the petitioners have not asserted that it was a minority institution. That being so. I am of the opinion that the Rameshwardas Pannalal Mahila Mahavidyalaya, Patna City, was neither established nor administered by the Rajasthani community and, therefore, there could be no question of any infringement of Article 36(1) of the Constitution. Reference may be made to a Bench decision of our own High Court in *Arya Pratinidhi Sabha and Others Vs. The State of Bihar and Others*, wherein it was observed (paragraph 10):--

"In the instant case, it appears that whatever may have been the position in 1957, in respect of the School which may have been established by the Arya Samaj, the Managers of the school gradually decided to allow the school to receive the benefit and patronage of the notified area committee and later on by permitting the school to be converted into a Government Subsidised School They decided not to manage and administer the school as a minority school and this surely is a discretion which they were competent to exercise and is not at all in conflict with the guarantee and protection given by the provisions of Articles 29

and 30 of the Constitution. It is, therefore clear that on the facts of this case, the school which was established in the year 1961 and later on converted into a Government Subsidised School, cannot be said to have been established by the Samaj and that being so naturally the protection under Article 30 of the Constitution is not available to the Arya Samaj.'"

In the instant case from the very beginning the managers of the college decided to allow it to be governed by the statutes of the Magadh University and by a Governing Body composed of a cross-section of the people of Patna City. They decided not to manage and administer the college as a minority institution and on that basis obtained the benefits accruing under the Magadh University Act and its statutes. The instant case being worse on facts than the case cited above, naturally, the protection under Article 30 of the Constitution cannot be available to the petitioners. So far as Annexure 10 is concerned, an ad hoc committee constituted under it was automatically dissolved and it became non est. As regards Annexure 11, the petitioners cannot invoke Article 30(1) of the Constitution of India for declaring it invalid or ultra vires for the reasons stated above. Mr. Mishra has cited Arya Pratinidhi Sabha and Others Vs. The State of Bihar and Others, : Dipendra Nath Sarkar Vs. State of Bihar and Others, and In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, to reinforce his argument. But none of the cases cited above come to his aid. All of them proceed on the basis that the institutions in question were "established" by minority community. The present case stands on a different footing.

13. On the next point as to whether Rajasthani is a language and whether the Marwaris residing in the State of Bihar are linguistic minority. Mr. Prabha Shankar Mishra has cited before us a number of decisions but in view of my findings above, it is not necessary to decide this question in the present application which must fail on the first question itself, decided above.

14. In the result, this application fails and it hereby dismissed. There will be no order as to costs.

B.D. Singh, J.

I agree.