
(2006) 07 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 40433 and 47906 of 2004

Pratap Narain Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 30, 30(1)

Citation : (2006) 6 AWC 6155

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : Bhoopendra Nath Singh, V.K.S. Chaudhari and O.P. Tewari, for the Appellant; R.N. Singh, V.K. Singh, G.K. Singh, Sanjay Kumar Singh, Pradeep Kumar and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.C. Misra, J.—Heard Sri V.K.S. Chaudhari, learned Senior Advocate assisted by S/ Sri B.N. Singh and O.P. Tewari, learned Advocates, appearing for the petitioners learned Standing Counsel for State respondents No. 1 to 5 as well as Sri R.N. Singh, learned Senior Advocate assisted by Sri V.K. Singh, learned Counsel for the respondent No. 6.

2. Civil Misc. Writ Petition No. 47906 of 2004- Pratap Narain Singh and Ors. v. State of U.P. and Ors. has been filed by one Pratap Narain Singh, Principal, Dharoan Intermediate College Dharoan District Chandauli (hereinafter referred to as the Institution) and others and also representing other teachers and staffs of the institution, in question, for quashing the impugned order dated 9.6.2004 (Annexure No. 1 to the writ petition) issued by Sri S.A.A. Rizvi, Secretary, Government of Uttar Pradesh declaring the institution, in question, as a minority institution. Civil Misc. Writ Petition No. 404330 of 2004- Committee of Management Dharoan Intermediate College, Dharoan, District Chandauli and Anr. v. State of U.P. and Ors. has been filed by the Committee of Management of the institution through its Manager, Babban Singh challenging the aforesaid

impugned order dated 9.6.2004 (Annexure No. 1 to the writ petition).

3. The impugned order in both the writ petitions and the controversies involved therein being the same, they were connected with each other on the request of the learned Counsel for the parties and are being disposed off by this common judgment and order.

4. The facts of the case which clearly emerge from the pleadings of the parties in both the writ petitions, in brief, are that on 8.8.1947 "The English School Dharaon, village Dharaon District Varanasi" was registered under the Society Registration Act at serial number 57 of 1947/48 having a 13 members management committee, out of which ten members belonged to Muslim community and three members belonged to Hindu community (this fact is admitted by respondent No. 6 in its counter affidavit in paras No. 5, 20 & 22). Copy of the registration certificate has been filed by both the parties. Memorandum of Association, list of members of the managing committee and the rules and regulations governing the management of the institution duly signed by Sri K.S. Asfandiyar Khan as President on 29.10.1947, Superintendent, U.P. Police Headquarters, Allahabad, has been annexed as Annexure No. 4 to the supplementary rejoinder affidavit. The land over which institution exists was given by Gram Sabha Ranepur, Pargana Barwal, Tehsil Chandauli and no other person including that of the Muslim community had contributed any land for establishment of the said institution. These averments made in the writ petition have not been denied. The Memorandum of Association discloses the aims and objects and as to how the affairs of the institution would be managed. It was provided therein that the affairs of the institution would be managed by a committee called "Dharaon English School Committee" and the objects of the committee were to arrange for the education of children professing any religion, primarily living in the said village and villages around it and the institution was not established for welfare of any particular community. It was also provided in the said Memorandum of Association that the following persons would be entitled to be the members of the committee; (a) General members- every person (male or female) who accepts the aims and objects of the committee and pays at least 6/- a year, (b) Special members- every person who pays a lump sum of Rs. 200/- or more will remain a member of the general body for three years and continue to be a member for a further period of 3 years after payment of Rs. 100/- after the expiry of the first 3 years, (c) Patron of the committee and life member of the general body- any one who pays a lump sum of Rs. 5000/- or more. After partition of Hindustan (India) most of the Muslim members of the society and the managing committee migrated to Pakistan and the society became defunct, as is also admitted in para 22 of the counter affidavit filed by respondent No. 6.

5. It is alleged by the petitioners that in the year 1960 "the English School Village Dharaon" Tehsil Shakaldiha was again registered and in the said management committee there were representation of the members belonging to

both the communities, namely Muslims as well as Hindus. In the committee of management which was formed in the year 1960 for "English School Village Dharaon" members of the Hindu community were in majority and only one member belonged to the Muslim community. The Memorandum of Association and the byelaws of the Society have been annexed as Annexure No. 2 to the writ petition. However the respondent No. 6 has stated that the same was not duly registered. Since renewal of the registration of the society was not got done by the then Manager, again an application for registration of the society was moved and the society was again registered with certificate No. 1457/85-86 in the year 1986 (18.1.1986) and since then the registration of the committee of management is continuing. The institution continued to function under the control and administration of the then managing committee and in the year 1988 an election took place in which one Sri Jagat Narain Dube was elected as President and Sri Anmol Singh was elected as Manager of the institution in question.

6. In the year 1990 a dispute arose in the management committee in between Sri Anmol Singh and Sri Ram Jiyawan Yadav in consequence of which authorized controller was appointed by the Government. In the result thereof, three writ petitions were filed. Sri Ram Jiyawan Yadav filed writ petition No. 11714 of 1991 challenging the legality and validity of the election. Both the rivals agreed to a list of common persons, which contained the names of 40 member (referred to in the judgment and order dated 16th September, 1998 passed by this Court in writ petition No. 11714 of 1991), wherein the name of Suhail Ahmad-alleged Manager respondent No. 6 is found at serial number 7. Out of these 40 persons 5 persons belonged to Muslim community.

7. Sri Anmol Singh also filed a writ petition No. 18531 of 1990 challenging the appointment of the authorised controller by the Regional Deputy Director of Education. The concerned District Inspector of School vide order dated 8.5.1991 directed the operation of the Bank account of the institution, in question to be made jointly by authorised controller and the Account Officer (Annexure No. 4 to Counter affidavit). Sri Anmol Singh further challenged the said order by way of filing writ petition No. 14913 of 1991 before this Court and this Court vide order dated 16.5.1991 stayed operation of the aforesaid order passed by the District Inspector of School. On 21.2.1998 the Joint Director of Education directed for single operation in the institution, copy of which has been filed as Annexure No. 5 to the counter affidavit. Soon thereafter on 13.5.1998 the Joint Director of Education seized all the powers of the then District Inspector of School Sri P.N. Sharma placed under suspension (hereinafter referred to as the suspended D.I.O.S.) and his charge was handed over to the District Inspector of Schools, Varanasi with a direction to him to decide the dispute of the above management committee followed by further consequential order dated 20.5.1998. In spite of the above said order passed by the Joint Director of Education, Suhail Ahmad was granted approval on 29.5.1998 as Manager of the alleged managing committee by Sri P.N. Sharma, the suspended D.I.O.S. in which one Sri Shiv

Shanker Singh was shown as President and 12 persons as members of the managing committee (Annexure No. 5 to the writ petition) out of which 4 members were from Muslim community and 8 members were from Hindu community. In pursuance of the order of the Joint Director of Education the District Magistrate also vide its letter dated 5.6.1998 directed the concerned Accounts officer not to comply with any orders of Sri P.N. Sharma, suspended D.I.O.S. unless and until the same was verified by the Joint Director of Education, Varanasi (Annexure No. 6 to the writ petition). Sri Ram Jiyawan Yadav, Sri Anmol Singh and some other persons challenged the said alleged election of managing committee of which Sri Shiv Shanker Singh and Suhail Ahmad as President and Manager respectively, before this Court through writ petition No. 37682 of 1998 wherein by way of interim measure status quo with regard to dispute in question was directed to be maintained till further orders of this Court. The said writ petition is still pending.

8. The writ petition No. 11714 of 1991 as leading writ petition was finally disposed of by this Court alongwith other two writ petitions by the judgment and order dated 16.9.1998 with a direction to the Joint Director of Education to complete election of the management committee. Against the order dated 16.9.1998 passed by learned single Judge of this Court, a Special appeal No. 507 of 1998 was filed by Suhail Ahmad claiming himself to be the Manager of the Institution and a Division Bench of this Court vide its order dated 29.10.1998 granted an interim mandamus without prejudice to the rights and contention of the parties and stayed the operation of the impugned judgment and order dated 16.9.1998 until further orders. The said special appeal is still pending.

9. The list of 40 members of the General Body of the managing committee as disclosed in Annexure No. C.A.-2 at page 31 by Suhail Ahmad- respondent No. 6 reveals that it contains the names belonging to both the communities, namely, Muslim as well as Hindu.

10. During the pendency of the aforesaid special appeal and the writ petition the alleged committee of management is alleged to have passed resolution No. 5 dated 2.9.2000, copy of excerpts of the said resolution No. 5 has been filed as Annexure No. C.A-2, which reads as under:

izLrko u? 5

laLFkk ds izcU/kd Mk? lqgsy vgen us voxr dj;k fd eSusftax desVh vkQ baxfy"k Ldwy /kjkWo }kjk Lfkkfir ,oa lapkfy?kjkWo b.VjehfM,V dkyst /kjkWo ftyk pankSyh ds lapkyu esa cgqr dfBukbZ gks jgh gSA laLFkk ,oa Nk=ksa ds fgr esa fo|ky; dks vYila[;d laLFkk ?kksf"kr dj fn;k tk; rks dfBukbZ;ksa dk funku gks tk,xkA IE;d fopkjsijkUr loZIEefr ls fu.kZ; fy;k x;k fd laLFkk vkSj Nk=ksa ds fgr esa rRdky laLFkk dks vYila[;d laLFkk dj fn;k tk;A i=kpkj vkSj vU; dk;Zokgh ds fy, laLFkk ?kksf"kr djkus dk IEiw.kZ dkxtkr ft? fo? fujh{kd ,oa vYila[;d dk;kZy; dks izsf"kr djsaA dk;Zokgh i<+District Judge lqukbZ x;h vkSj loZIEefr ls iqf"V dh x;hA l/kU;okn dk;Zokgh lekIr gqbZA

11. In pursuance of the said resolution Suhail Ahmad moved an application on

18.11.2000 before the District Inspector of Schools for declaring the institution as minority institution annexed with prescribed proforma (Annexures No. 9 and 10 to the writ petition). The District Inspector of Schools forwarded the same with his recommendation to the Joint Director of Education and the latter vide its letter-dated 22.11.2000 (Annexure No. 11 to the writ petition) forwarded it to the Additional Director of Education, Education Board, U.P., Allahabad for declaring the institution as minority institution. In the counter affidavit in para 35 it has been categorically contended by respondent No. 6 that in the formation of the Committee of Management there has been no discrimination on the basis of religion and caste.

12. However, thereafter it was only vide alleged resolution No. 2 dated 22.12.2001 (Annexure No. C.A.-6 to the counter affidavit) that the said amendments in the Memorandum of Association in the aims and objects were sought for. The alleged resolution No. 2 dated 22.12.2001 reads as under:

izLrko la[;k & 2

Le`fri= esa mn~ns"; iathd`r djkus ij fopkj izcU/kd egksn;] esa mifLFkr IHkk ds IHkh InL;ksa ds le{k ;g izLrko j[kk fd Le`fri= esa mn~ns"; iathd`r dj; k tkuk furkUr vko";d gS ftlls laLFkk dk fodkl gks ldsA Le`fri= esa tks mn~ns"; iathd`r dj; k gS og fuEu gSA

1& {ks= ds eqfLye vYila[;d Nk=@Nk=kvksa ds fy;sa vPNh f"kk{kk dk bUrtke d;us ds fy;s Ldwy] dkyst dk enjls dk;e dj; k ,oa mldk izcU/ku o lapkyu dj; kA

2& b.VjehfM,V dkyst /kj; kWo dk izcU/k dj; k mls lqO;ofLFkr py; k ,oa mlds tfj;s {ks= esa g; oxZ ds Nk= Nk=kvksa ds fy;s veweu o eqfLye vYila[;d Nk=@Nk=kvksa ds fy;s [kkslwlu vPNh f"kk{kk nh{k; k dh O;oLFkk dj; kA

mifLFkr IHkk ds IHkh InL;ksa us Le`fri= esa mn~ns"; iathd`r djkus ij fopkj dj loZ leer ls izLrko dks ikfj; fd;kA

It is on the basis of the alleged resolution No. 2 dated 22.12.2001 the recommendation was forwarded by the Joint Director of Education as well as the Additional Director of Education to the State Government and on the basis of which the State Government vide its impugned order dated 9.6.2004 declared the institution as minority institution in terms of the Government Order dated 6.10.1994 amended by Government Order dated 22.2.1995. It is note worthy to mention here that the General body of the institution had not resolved to amend the then existing aims and objects of the society and the byelaws or Memorandum of Association before seeking declaration of the institution, in question, as minority institution.

13. Being aggrieved by the impugned order dated 9.6.2004 passed by the State Government the petitioners have filed the present writ petitions inter alia on the ground that the institution, in question, could not be declared as a minority institution as it was neither established by minority community nor was administered by it as both the requirements must be fulfilled as laid down under

Article 30(1) of the Constitution of India and also in terms of the Government order dated 22.2.1995 (referred to herein before) and so the impugned order was wrong, bad and illegal. Other grounds were also raised in support of the writ petitions.

14. The issues required to be decided in the present writ petitions on the basis of the pleadings of the parties is, Whether the institution was established by the minority for the benefits of the minority community and what was the purpose of establishing it and as to whether the institution was administered by the minority on its establishment? Whether the impugned order dated 9.6.2004 passed by the State Government of Uttar Pradesh declaring the institution, in question, as a minority institution is valid? For deciding the same it is to be determined as to who established it, what was the purpose i.e. the basic aims and objects of the institution at the time of its establishment and who was then administering it. For determination of the same the origin of the institution has to be seen first. Both the parties have brought on record quite a fair bit of material in relation with the above said controversy.

15. Learned Counsel for the respondent No. 6 has at the very outset raised a preliminary objection with regard to maintainability of the writ petitions on the ground that in the instant writ petitions disputed questions of fact arise which cannot be appropriately gone into in the writ jurisdiction and declaration of the status of minority institution can be decided only through a properly instituted regular suit providing full scale trial before the Civil Court which could only look into the evidence and decide the matter accordingly and since nature of the controversy as per the pleadings of the parties, raises complicated questions of law and facts and for deciding the same the writ jurisdiction is not the appropriate forum. It has also been submitted by the learned Counsel for the respondents that even if these controversies can be looked into in the present writ petitions then there should be complete pleadings supported by evidence and that too, if possible by uncontroverted evidence. Reference has been made to the decision rendered in the case of *Manager, St. Thomas U.P. School, Kerala and Another Vs. Commissioner and Secretary to General Education Department and Others*, and the decision in the case of *Bharat Singh and Others Vs. State of Haryana and Others*, . It has been further submitted that the petitioners can only succeed on their own case and not by relying upon the facts of the respondents. Reliance has been placed on the decision in the case of *Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Ponlose Athenasious and Ors.* AIR 1954 S.C. 526.

16. Learned Counsel for the petitioners has submitted that from the pleadings of the parties in both the writ petitions there are uncontroverted facts that clearly emerge and the controversy raised in the writ petitions can appropriately be looked into and decided in writ jurisdiction under Article 226 of the Constitution of India.

17. On consideration of the preliminary objection learned Counsel for the

respondent No. 6 regarding the maintainability of the writ petition in terms of the judgment referred to in the case of *Manager, St. Thomas (Supra)*, I find from perusal of the undisputed documents on record that there is no controversy or dispute regarding initial basic structure of the institution at the time when it was founded in the year 1947 as it was neither established nor administered by a particular minority community and even so in the year 1985-86 when the society of the institution was again registered and it was due to this very reason the alleged management committee through respondent No. 6 sought changes in the aims and objects in the Memorandum of Association by way of inclusion of alleged resolution No. 2 dated 22.12.2001 with the sole purpose and intention to bring the institution within the scope of minority institution and to enjoy the special rights available to minority under Article 30(1) of the Constitution. The instant case is neither a case where a single philanthropic individual with his own means founded the institution, nor the institution in question was founded by any particular minority community with their own means for the sole benefits of minority community nor it was so administered by it. The case of *Manager St. Thomas (Supra)* is distinguishable with the facts of the present case and is not applicable in the present circumstances. The uncontroverted facts in the pleadings clearly disclose that the institution at the time when it was brought into existence was neither established nor administered by the minority in terms of Article 30(1) of the Constitution of India and the settled law as laid down by the Hon. apex Court in various decisions including the case of *S. Azeez Basha and Another Vs. Union of India (UOI)*, subsequently affirmed and relied upon from time to time till date.

18. The right is given to all and every citizen to administer educational institution under Article 19(1)(g) of the Constitution and also to the extent to a citizen belonging to a minority class to establish and administer educational institution of their choice as guaranteed under Article 30 of the Constitution as a special and additional right to the minorities by way of protection. The right of all citizens to administer the educational institution under Article 19(1)(g) of the Constitution has also been recognized by the Hon"ble Supreme Court in *T.M. Pai's* case.

19. A citizen belonging to minority community can solely establish an institution for the benefits of public in general irrespective of benefits to his own community or any other community. No restrictions are imposed on the rights of the citizens belonging to minority community in establishing normal educational institution for the benefits of all and every one. The character of such institution so established will be quite different from the one established with the aims and objects for the purpose of exclusive benefits for the minority. If a member of the minority community establishes an institution, open to all sections of the society without reserving any right of administration in the persons founding the society then such institution is administered as a normal institution following the rules and regulations applicable to normal institution.

20. From perusal of the entire record in both the writ petitions irresistible

conclusion is arrived at that the institution was established for the benefits of all sections of the society without any reservations. The institution was administered as a normal institution following the rules and regulations applicable to such normal institution, such as the selection of teachers etc. made by the selection Board in accordance with statutory law. The institution after lapse of several decades cannot be claimed to be declared a minority institution, on the ground that it was established by a group of members in which majority of the members belonged to the minority community. The respondent No. 6 thus cannot claim any right to administer the institution as a minority institution, because the character of the institution, which came into existence, was not that of the minority one nor it was so administered by the minority. It is also settled law that the minority will have the right to administer educational institution of their choice provided they have established it, but not otherwise. The words "establish and administer" in the Article 30 of the Constitution of India must be read conjunctively. If the institution has not been established by a minority, it cannot claim the right to administer it under Article 30(1) of the Constitution.

21. From the pleadings it is apparent that respondent No. 6, while seeking declaration of the institution as minority institution, was fully aware that the institution was neither established or was being administered by the minority and that is why the necessary amendments in the Memorandum of Association, the scheme and the byelaws etc. was sought for and for this very purpose respondent No. 6 brought the alleged resolution No. 2 dated 22.12.2001 seeking incorporation of necessary changes in the aims and objections of the society. Sri P.N. Sharma, the suspended D.I.O.S. had wrongly and without any authority forwarded the recommendation for declaring the institution as minority institution and verification of the signatures of Suhail Ahmad-respondent No. 6 during the period when his all powers had been withdrawn and the District Magistrate had directed the Accounts Officer not to act upon such any instructions issued by the suspended D.I.O.S. Sri P.N. Sharma unless and until the same was approved by the Joint Director of Education.

22. Thus the aforementioned impugned order dated 9.6.2004 has been wrongly and illegally passed on the basis of recommendation dated 2.6.2004 constituted under the Chairmanship of the Principal Secretary, State Government. The respondents-State Government in the present case could not validly endow the character of minority to the institution. By the impugned order the institution has been robbed of its initial basic structure.

23. In view of the above said facts of the case and observations made herein above, and the settled law the impugned order dated 9.6.2004 (Annexure No. 1 to the writ petition) is hereby quashed. The institution shall be administered as a normal institution in accordance with law and statutory provisions generally applicable. Accordingly, both the writ petitions stand allowed. No order as to costs.