

**(1987) 02 KAR CK 0005**

**In the Karnataka High Court**

**Case No : Writ Petition No. 15753 of 1986**

Quraish Educational Society and Another

APPELLANT

Vs

State of Karnataka

RESPONDENT

**Date of Decision : 03-02-1987**

**Acts Referred:**

Constitution of India, 1950 — Article 19, 30, 31A

Karnataka Societies Registration (Amendment) Act, 1964 — Section 27 A

**Citation : AIR 1987 Kar 122**

**Hon'ble Judges : M.P. Chandrakantaraj URS, J**

**Bench : Single Bench**

**Advocate : J.A. Sequeira, for the Appellant; N. Devadas, High Court Govt. Pleader, for the Respondent**

## Judgement

1. This matter is disposed of at the stage of preliminary hearing after notice to respondent and after hearing the Counsel for parties.

2. The matter arises thus: The Ist petitioner is a Society registered under the Karnataka Societies Registration Act. 1960, thereafter referred to as the Act) having its office at Basavakalyan in Bidar District. Among other things, its main objects are to establish and administer educational institutions of its choice for which purpose it is incorporated and registered under the Act. It was promoted in 1972 by 9 Muslims. Petitioner No. 2, in this writ petition, is its President. The petitioners have asserted that the Muslims are a minority in the State of Karnataka, both on the basis of the language spoken and the religion professed by them. They have furnished a copy of the Memorandum of Association and rules and regulations of the 1st petitioner-Society. They have asserted that the membership is open only to Muslims. Since 1972, it has established the Taj Urdu and Kannada Higher Primary School at Basavakalyan. "The school caters primarily to the needs of the Muslims. Of the 2000 students on its rolls, about 1700 are Muslims and the remainder come from the Schedule Castes and Tribes. In 1983 the petitioner-Society established the Al Ameet Taj Quraish Polytechnic

in the same place at Basavakalyan in which the Muslim student: are about 50 per cent or a little more. Therefore, having regard to the objects of the Society, the Ist petitioner and the " fact of it having established the two institutions mentioned essentially for the benefit of the Muslim students, the petitioners claim the protection of Art. 30 of the Constitution of India.

3. The petitioners have alleged that there have been lapses on the part of the education department in respect of the higher primary school at Basavakalyan in connection with which the petitioners were compelled to approach this Court in W. P. No. 19523/1984 and W. P. No. 13286/1985 directed against the respondent-State. In the said petitions, the petitioners had prayed that the Commissioner of Public Instruction should grant approval for the bifurcation of students 1, 11 and IV and other ancillary relief"s. In the second writ petition i.e., W, P. No. 13286/1985, the petitioner-Society prayed for a writ directing the State to refrain from derecognition of the aforesaid school. In both these writ petitions, the petitioner"s Society was granted ad interim stay. On the respondent State"s failure to abide by the interim order in the first of the writ petition, mentioned at the. The Society was constrained to file contempt proceedings in this Court. The writ petitions and the contempt proceedings are said to be pending in this Court.

4. It is alleged, respondent-State thus pricked by the steps taken by the petitioner to protect its rights, purporting to act under the powers conferred on him by Sec. 250) of the Act to hold an enquiry the Registrar of Societies. Bidar. Caused the Tahsildar of Basavakalvan to hold an enquiry. The petitioners contend that that exercise of power by the registrar was not in conformity with Sec. 250) of the Act. Nevertheless, the enquiry was proceeded with, without the participation of the members of the Society a report submitted on the basis of which the respondent-State was recommended to exercise its power Linder Sec. 27A of the Act.

Such recommendation, the State acted passed the impugned order a! Annexure D to the petition dated19-6-1986 by which the Assistant Commissioner of lBasavakalyan came to be appointed the Administrator of the Ist petitioner-Society. The said order was gazetted on 20th June, 1986. By a letter dated 17-7-1986 the Administrator informed the Principal, the Head Master and others that he had taken charge and that the persons addressed should act only on his instructions as is evident from Annexure-E, the letter of the Administrator. It was addressed to the Head Masters of the various educational institutions run by the Ist petitioner- Society. Aggrieved by that order of the Government and the action of the Administrator, the petitioners have approached this Court under Art. 226 of the Constitution inter alia contending:

(1) That the impugned order at Annexure D is bad and the same is motivated with a view to punish the Society for having asserted its "rights in the earlier writ petitions;

(2) That Sec. 27A of the Act is ultra vires of the provisions of the Constitution

inasmuch as the Act has not received the assent of the President though Sec. 27A of the Act read as a whole empowers the State Government to take over the management of the properties of the Society through the Administrator contrary to the mandate of the first proviso to Art. 31A of the Constitution,

(3) That the State Government covertly or overtly cannot assume management of an educational institution established by a minority, religious or linguistic in violation of the fundamental rights guaranteed under sub Art. (1) Of Art. 30 of the Constitution.

5. While the petition was pending, the period specified in the impugned order at Annexure-D came to an end and the respondent-State Government in purported exercise of its power under sub-sec. (5) of Sec. 27A of the Act has passed another order extending the period during which the Administrator is to be in charge of the affairs of the Society for a further period of six months as evidenced by Annexure-F to the petition. By an amendment sought and granted by this Court that order also "IS challenged on the same grounds as the order at Annexure-D.

6. It is useful at this stage to mention that in addition to the grounds specifically urged in the petition which have been summarised above, Mr. J. A. Sequeira, learned Counsel, submitted one other argument in the course of the hearing of this petition that the second order suffered from the vice of want of jurisdiction by the Government as there was no proper report before it in accordance with the mandatory requirement of subject. (5 ) of Sec. 27A of the Act.

7. The State has filed its statement of objections and made available the records pertaining to this case available at the Secretariat at Bangalore. Almost at the conclusion of the hearing, the learned Counsel for the State requested further time to product lie records of the Administrator, if any That has been refused by the Court on the ground that they had ample time and opportunity to get those records and not having utilised that opportunity, the State is not entitled lo further opportunity.

8. Before referring to the cases cited by t1he learned Counsel on either side in support of their respective contentions, it is useful to state One stand taken by the State in their written statement of objections and that is as follows: In para 2 of the statement of objections the respondent-State has set out the scheme of the sections in the Act and has expressed its views that a Society is registered with an object to serve the society and the public and as such. The authorities under the Act have to enforce the provisions of the Act. Why this has to be stated is not made clear to the Court. But the act is one of the regulatory measures, which may only impose such reasonable restrictions on the right of people to associate themselves freely, guaranteed under Art. 19 of the Constitution and no more. In para-3 of the statement of objections it is stated that the petitioner-Society which claims rights under Art. 30 of the Constitution has to function within the framework of the Act and Art. 30 cannot be pressed

into service to justify the mismanagement of the Society's affairs I first petitioner's affairs). It is asserted that the right under Art. 30 of the Constitution C cannot be asserted by minorities who have violated the provisions of the Act.

9. It is somewhat strange that such a plea taken. The Court is bound to examine the Content of the constitutional rights of the petitioners with or without the provisions of the Act. In the event of the constitutional rights guaranteed under Art. 30 of the Constitution conflicting with the rights and duties of the Society under the Act. It is needless to state that constitutional rights must prevail and must be enforced by this Court and not the rights claimed by the State for itself under the Act.

10. In para-4 of the statement of objections reference is made to the enquiry report to demonstrate that the Society. Has not functioned in accordance with the provisions of the Act from the years 1979-80 in as much as the society has not held its annual general meeting nor filed a report to the Registrar in regard to the list of members of governing body "from time to time nor submitted the annual statement of accounts as required by specific provisions of the Act.

11. All that is required to be noticed in respect of these assertions in para 4 of the statement of objections is that there is no whisper of mismanagement of the educational institutions run by the first petitioner-society. Therefore, it is but proper if this Court keeps in mind the distinction between the mismanagement of the Society with reference to its statutory obligations in not filing the required returns and the mismanagement of the educational institutions.

12. In para 5 of the statement of objections while admitting some of the allegations to be correct, it is stated that the allegation that pricked by the writ petitions filed by the petitioners, the impugned order has come to be passed is denied. It is also denied in para 6 of the statement of objections that the enquiry held by the Tahsildar is not in conformity with the provisions of the Act. It is further asserted that the State Government has power under Sec. 27A of the Act to appoint the Administrator to a public minority institution. Therefore, it is contended in para 7 of the statement of objections that the appointment of an Administrator, an outside agency qua a minority institution wholly displaced the administration by a minority community of the educational institutions is not sustainable.

13. In my opinion, the statement of objections falls short of the expectations of this Court in a matter which is not only serious but also relates to a sensitive area both pertaining to the rights of the minorities, linguistic and religious as well as the education of the students in the institutions managed by the first petitioner-Society. It is therefore difficult to look for any assistance in the statement of objections to resolve the questions, which really fall for consideration.

14. I have already in the course of the order earlier summarised the contentions advanced by the petitioner at the bar as well as in the pleadings. The first of

them relates to what may be termed veiled allegations of mala fide in passing the impugned orders appointing and then extending the duration of the period of administration by the Administrator of the Society's affairs. Apart from the bald denial in para 5 of the statement of objections, it is not denied by the State that the petitioners have instituted other petitions in this Court to rectify what they have alleged to be the wrongs done by the State in respect of their Immovable property, and also in regard to the grant of recognition and permission to expand its educational Institutions. But this Court is now well served, will. Not investigate the allegations of malafide whether made expressly or impliedly unless any specific person is named to be behind such malafide action. The Government is in animate in certain respect or in a certain sense. To whom the malafide action has to be traced must be made clear by those who have accused the Government of any malafide action. Such person then May offer proper defence. In the absence of such allegations implicating any person in the Government, it will not be proper for this Court to attribute mala fide intentions to the Government in passing the impugned order. More so, if relief is to be granted on the other two grounds urged, that Sec. 27A of the Act is ultra vires the Constitution is supported by the assertion not only that it directly interferes with the rights of linguistic or religious minorities to establish and administer their educational institutions of their choice but also that in giving effect to the power conferred on the State Government, the State Government indirectly assumes not only the management and affairs of the Society, in the sense of compelling it to fall in line in the matter of filing of returns but also in respect of its control and management of any property belonging to the Society, without such a provision being reserved for the President's assent, such assent obtained in violation of the first proviso to Art. 31A of the Constitution.

15. In other words, the pointed argument is that Sec. 27A of the Act is ultra vires of Art. 31A(1)(b) of the Constitution inasmuch as in the guise of taking over. The administration and its affairs, the Government, in fact, takes over the management of properties for a limited period either in public interest or in orderly secures the proper management of the property as envisaged in clause (b) of sub-Art. (1) Of Art. 31A of the Constitution.

16. That taking over the affairs of the Society involves assuming management of the affairs of the Society which includes running of the school, being in charge of the school and its properties and its monies etc., is not disputed by the learned High Court Government Pleader. On the other hand, it has been asserted by him that having regard to the provisions contained in Sec. 27A(1)(c) of the Act. Sec. 27A(1)(c), which is as follows:

"27A (1)(c) "where on a report by the Registrar or otherwise on enquiry. The State Government considers it necessary in public interest so to do, the State Government may by order published in the Official Gazette: appoint an Administrator for such society for such period, not exceeding 6x months, as may be specified in the order, to manage the affairs of the society:"

The expression to manage the affairs of the society" includes the right to control the properties and function to achieve the objects for which the Society is established.

17. Similarly, it is not in dispute that the Act was never reserved for the assent of the President and his assent obtained. Even the amendments made to the Act have received the assent of the Governor of the State and not of the President of India.

18. Mr. Sequeira, learned Counsel for the petitioner, further asserts that as evidenced by Karnataka Acts and Ordinances 1976 by which Sec. 27A of the Act was introduced in the Act, received only the assent of the Governor and not that of the President. Therefore, his contention is that Sec. 27A of the Act, which provides for the management of the affairs of the Society in clause (c) of sub-sec. (1) of Sec. 27A clearly infringes the mandate contained in the first proviso to Art. 31A(1) of the Constitution.

19. In support of that proposition reliance has been placed by the learned Counsel on, the decision of the Supreme Court (sic) in the case of V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, Kovilvattam Road, Ernakulam, Cochin and Others Vs. State of Kerala and Others, In Para 18 of the said decision as reported in the All India Reporter, it has been observed that the High Court rightly pointed out that that section provided for compulsory requisition of the properties within Arts. 31A(1) and 31(2) to be effective, the section required the assent of the President in clause (3) and it was not obtained and therefore the saving in Art. 31A(1)(b) was not available. What fell for consideration in Mother Provincial's case supra was the validity of the provisions of the Kerala Universities Act and its interference with the rights of the minorities guaranteed under Art. 10 of the Constitution. Therefore, the reliance placed on the ruling of the Supreme Court extracted above with equal force applies to the Act particularly to Sec. 27A of the Act. In guise of taking control and management of the affairs of the Society, the Administrator is empowered to manage the properties of the society and that provision in the law clearly violates the first proviso to Art. 31A(1)(b) of the Constitution which is as follows:

31A. Saving of laws providing for acquisition of estates, etc. - (1) Notwithstanding anything contained in Article 13, no law providing for -

(a) xx xx xx

(b) The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or"

(c) To (e) xx xx xx

Shall be deemed to be void on the ground that it is inconsistent with, or. Takes away or abridges any of the rights conferred by Arts. 14 and 19.

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent .....

It is thus clear that Sec. 27A of the Act is not saved.

20. The next contention is no more than an extended limb of the same argument but with reference to the rights guaranteed under Art. 30(1) Of the Constitution. Indeed, Art. 29 and more so Art. 30 of the Constitution have fallen for consideration before the several High Courts in the country and the Supreme Court time and again. In fact, there does not seem to be an end to consider and reconsider the distinction reiterated time and again, propositions of law in regard to the content of Art. 30) Of the Constitution, which in my view, are more or less crystallised by several decisions of the Constitution Benches of the Supreme Court, there appears to be a tendency on the part of the State to keep on seeking, its re-examination. However, that may be, in the instant case, nowhere in the statement of objections, the Government has taken the stand that the first petitioner-Society is not a Society registered with the aims and objects of promoting education essentially for the benefit of the Muslim community and incidentally for others. The enclosed memorandum of articles of association to the petition makes that abundantly clear. In the case of Socio Literati Advancement Society, Bangalore Vs. State of Karnataka and Others, I have taken the view that since the affected society produces its memorandum before the Court, it discharges; the primary burden of establishing that it is a -minority institution entitled to the protection Art 30 of the Constitution and the burden thereafter shifts to the Government, which contends otherwise. Nowhere in the statement of objections has the State contended that the petitioner-Society is not established for promoting the education of persons belonging to Muslim community. It is one thing to assert that rights under Art. 30 of the Constitution are not available to a particular person and another thing to say that the petitioner in proceedings under Art. 226 of the Constitution is not entitled to the protection without any material to support that assertion. The burden placed on the State to contend otherwise has not been discharged even to the minimum extent. In that view of the matter, the reliance placed by the learned Government Pleader on the decision of the Supreme Court in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, is of no assistance to him. It is true in that case it has been held as follows :

"It is wrong to contend that neither the Government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well founded or ill-founded. The Government, the University and ultimately the Court have the undoubted right to pierce the minority veil and discover whether there is lurking behind it no minority at all .....

That is not the case here. Here the so-called enquiry by the Tahsildar and the report by the Registrar speak of non-filing of the annual general meeting and electing or naming the governing body of the Society each year. It is not said in the report that the Society is not one formed with the object of establishing and administering educational institutions for the betterment of the concerned minority religion or students belonging to that religion. Therefore, the very foundation for the Government to direct the appointment of an Administrator is not connected with the nature and character of the first petitioner-society but only with its failure to adhere to the provisions of the Act.

21. This becomes important particularly in the light of the reliance placed by Mr. Sequeira, learned Counsel appearing for the petitioners, on the decision of the Supreme Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . The Supreme Court has ruled as follows :

"The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised through a body of persons in whom the founders of the institution have faith and confidence and who have full autonomy in that sphere. The right to administer is subject to permissible regulatory measures. Permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the educational institutions and without displacing the management. If the administration has to be improved it should be done through the agency or instrument existing management not by displacing it."

22. I should not hesitate to state that the reliance placed on the decision is well founded. If the executive orders in purported exercise of power conferred by legislation, competent or incompetent. Has the effect of whittling down the fundamental rights guaranteed to minorities under Art. 30(1) of the Constitution, the guarantee and the fundamental nature of the rights so guaranteed both disappear. In the instant case" as is evidenced by Annexure-E the Administrator apparently as substituted himself in place of the management that existed. To my mind, non-filing of returns nor the failure to hold general body meetings over the years does not have the effect of ipso facto eliminating the governing body which at one point of time was duly elected unless sub-sec. (3) of Sec. 27A of the Act comes into play. It is that sub-section which provides for the displacement of the governing body in the period, the Administrator, assumes charge of the administration of the affairs of the Society. Therefore, what Sec. 27A of the Act in so far as it affects a linguistic or religious minority institution which establishes and administers an educational institution of its choice, it directly encroaches upon the right to administer. No doubt, in more than one case the Supreme Court made it clear, the right to administer and manage does not include the right to mal-administer and mismanage.

23. But as I have already pointed out earlier, there is no allegation that the educational institutions were in any way mismanaged at any point of time. To repeat, the only complaint against the first petitioner Society is that it has not for a long time held annual general meeting and filed its returns informing who the governing body each year is together with its annual accounts. There is no charge in regard" to the management of the educational institutions by the Society. Therefore, having regard to the effect of subject. (3) Of Sec. 27A of the Act, it is clear that the appointment of an administrator has the effect of displacing the management for the specified, period during which the Administrator appointed under that impugned section continues to be the Administrator.

24. In that view of the matter also the order at Annexure-D is liable to be struck down as an order made without jurisdiction and in contravention of the rights guaranteed," under sub-Art. (1) Of Art. 30 of the Constitution of India.

25. What remains to be considered is the amended prayer, which is no more than merely extending the period of Annexure-D-from 19-12-1986 for a further period of six months? Whatever applies to the order at Annexure D applies to the order at Annexure-E as well.

26. But as I have already noticed, Mr. Sequeira, has been permitted to urge additional ground of attack and that is extension of the period for the Administrator to set-right the matters cannot be extended at the sweet will and pleasure of the Government until and unless the conditions set out of in sub-sec. (5) of Sec. 27A of the Act are satisfied. Sub-sec. (5) of Sec. 27A of the Act reads as follows:

"27A. Appointment of Administrator. Notwithstanding anything in this Act, -

(1) (a) to (c) xx xx xx xx

(2) to (4) xx xx xx

"(5) If the Administrator is not for reasons beyond his control, able to convene the general body meeting or in spite of such meeting being convened, the general body fails to elect the governing body, the Administrator shall forthwith send a report to the State Government, who may pass such orders as are considered necessary, either extending the period of appointment of the Administrator for a further period or if satisfied that public interest so requires, for the dissolution of the society;"

(5A) - (6) xx xx xx

27. It is evident from the express language used that the Administrator should send a report to the Government indicating therein" that for reasons beyond his control, he could not convene a general body meeting of the members of the Society of which he was appointed Administrator and even on such meeting being convened the general body failed to elect the governing body. The learned,

Government Pleader has made available the records of the Government in this behalf. The only evidence in the record is that as the Administrator was otherwise busy with his duties, he could not". Convene the general body meeting and therefore. The Government should extend his period of administration by another six months. This request has come from. The Administrator on or about 8th December 1986, first in the form of a telegram followed up by a letter. Neither the telegram nor the letter is to be, found in the file. What is found is a letter (copy) addressed by the Administrator and the Assistant Commissioner to the Deputy Commissioner and cited to the Government. There is no reference to the "reasons beyond his control, which prevented him from holding the general body meeting. There is no reference to the stop initiated to convene the meeting. If that condition is not satisfied, neither the pleasure of the Administrator nor the sweet will of the Government can clothe Annexure-F with reality, which it does not otherwise possess. If the very jurisdiction to extend the time is not in the Government and such extension is without the authority of law Annexure-F is also liable to be quashed.

28. The learned Government Pleader feebly attempted to support the request of the Administration for extension of time on the ground that the real reason for his not holding the general meeting was Zilla and Mandal Panchayat elections during the period covered by Annexure-D as ascertained on telephone. Whatever may be the truth or otherwise of the submission the fact is the records made available to the Court do not contain a noting section at all. Had it contained a noting section, and then this Court could have verified whether such a telephone enquiry had indeed been made. When there is no noting section to the entire records of the Secretariat at Bangalore, it is difficult to countenance that submission. When there is no way by which the Court can make a cross reference to the material available in the records, the entire records must be treated as not reliable or in the alternative the Court must conclude that the Government has not produced all that was required to be produced in Court in certiorari proceedings. When documents are not produced, adverse inference must be drawn against the Government. I do not think more than this : Should be said about the submission made on half of the State.

29. Now the question is what should be the consequential order by this Court. The teamed Government Pleader has drawn my attention to the prayer of the petitioner, which is to the effect that this Court May declare Sec. 27A of the Act as not applicable to the minority institutions. Therefore, he contends "that this Court should do no more than that. Indeed it is attractive for the Government to make that submission. But once the Court has examined the provision of law impugned in regard to its constitutional vires and has come to the conclusion that it suffers from the same constitutional defects, it cannot but strike down the provision. Whether it ensures to the benefit of the minority institutions or all other institutions, it does not make any; difference in law. While more than one reason hits been given in regard to the unconstitutionality of Sec. 27A of the Act, one of them only relates to minority institutions. "That is, the argument founded

on the rights guaranteed by Art. 30 of the Constitution. Therefore, I have no hesitation to strike down Sec. 27A of the Act for the. Reasons I have given, as unconstitutional. In the result, Annexure D and F automatically are quashed as being without the authority of law. The State Government in the circumstances of the case must pay costs. Advocates fee Rs. 250/-. Rule will accordingly issue and be made absolute.

30. Order accordingly.

31. Order accordingly.