
(1995) 09 AHC CK 0078

In the Allahabad High Court

Case No : Second Appeal No. 411 of 1994 and Spl. Appeal No. 617 of 1984

Ranvir Singh; Krishan Swarup

APPELLANT

Vs

D.I.O.S., Deoria and Others ; D.I.O.S., Moradabad and Others

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(1)(a), 19(1)(g), 19(g)
Uttar Pradesh Intermediate Education Act, 1921 — Section 7, 7A, 7B
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 1, 18

Citation : (1995) 09 AHC CK 0078

Hon'ble Judges : A.L.Rao, CJ and R.R.K.Trivedi, J

Final Decision : Dismissed

Judgement

R. R. K. Trivedi, J.—Both these appeals have been preferred against the judgment dated 25/2/1994, by which the learned single Judge decided a group of writ petitions, challenging the legality, validity and vires of U. P. Act No. 24 of 1992. In one of the writ petitions, vires of U. P. Act No. 5 of 1982 was also challenged. Special Appeal No. 411 of 1994 arises out of writ petition No. 42466 of 1993 whereas Special Appeal No. 617 of 1994 is from writ petition No. 44470 of 1993. Though both the aforesaid Special Appeals were heard separately but as they arise from the same judgment and the questions of law and facts are also common, both may be conveniently disposed of together and are accordingly decided by this common judgment.

2. There is no dispute about the facts. Appointments of petitioners/appellants were admittedly made by the committee of management in contravention of Section 18 of U. P. Secondary Education Service Commission Act, 1982 (U. P. Act No. 5 of 1982) (hereinafter referred to as the Act) as amended and substituted by U. P. Secondary Education Services Commission Selection Boards (Second Amendment) Act, 1992 (U. P. Act No. 24 of 1992). Before the learned single Judge the petitioners challenged the validity of Section 18 of the Act on the following grounds :

- (i) that Section 18 is violative of Article 19(I)(c) of the Constitution of India which provides that all citizens shall have right to form associations and unions ;
- (ii) provisions of the Act are violative of the petitioner's right guaranteed under Article 300A of the Constitution :
- (iii) the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution ;
- (iv) the Act has been passed in colourable exercise of power as under the amended provisions of the Act the society which established the institution has been rendered defunct and has no say in the matter of running the institution, under the guise of regulating the affairs, all powers of the management have been taken away ;
- (v) Assent of the President of India has not been obtained, hence U. P. Act No. 24 of 1992 is void to the extent it is repugnant to the provisions of U. P. Intermediate Education Act, 1921 (U. P. Act No. 2 of 1921) ;
- (vi) Section 18(9) as substituted by Act No. 24 of 1992 is vague and uncertain as it does not specify as to of which district the Inspector of Schools shall be the chairman of the committee.

Learned single Judge has very elaborately discussed and dealt with all the aforesaid challenges made on behalf of the petitioners and, in our opinion, has answered them correctly. We do not find any error or illegality in the view taken by the learned single Judge in denying the relief sought by the petitioners on the basis of the arguments advanced before him. The learned single Judge before dealing with the contentions raised before him has traced the legislative history which was necessary for appreciating and deciding the contentions raised before him. The legislative background mentioned by the learned single Judge in the judgment is so elaborate and sufficient that it is not necessary for us to repeat the same. In the circumstances, we propose to straightway enter into the contentions advanced before us by the learned counsel for the parties.

3. We have heard Shri Vinod Misra, learned counsel for the appellant in special Appeal No. 617 of 1994 and Shri G. C. Bhattacharya, learned counsel for the appellant in Special Appeal No. 411 of 1994 and Shri Rakesh Dwivedi, learned Additional Advocate General for the respondent State.

4. Before dealing with the contentions, it may be very relevant to mention here that the appellant in Special Appeal No. 411 of 1994 filed an application with the prayer to stay operation of the order and judgment passed by the learned single Judge. This application has been supported by an affidavit which discloses that in writ petition No. 38200 of 1992 *Rajarshi Purushottam Das Tandon Higher Secondary School v. State of U. P.*, in W. P. No. 38198 of 1992 *Tyag Murty Atmaram Govind Kher Intermediate College v. State of U. P.* pending in this Court, certain orders were passed by the Division Bench and petitioners in the aforesaid writ petitions were granted time to file amendment application seeking

amendments in the writ petitions for challenging the legality and validity of U. P. Act No. 24 of 1992. The copy of the amendment application in writ petition No. 38198 of 1992 has been filed as Annexure 5 to the aforesaid affidavit. Copy of the order dated 12/1992 passed in writ petition No. 38200 of 1992 and copy of the order dated 26/4/1993 passed in writ petition No. 38200 of 1992 and writ petition No. 38198 of 1992 have been filed as Annexures T and "2" respectively to the affidavit. Copies of the counter affidavits and rejoinder affidavits exchanged between the parties have also been filed. On the basis of the aforesaid material it has been prayed that the appellants may be permitted to argue grounds Nos. 2, 3 and 4 raised in the memo of appeal. The appellant in Special Appeal No. 411 of 1994 himself has not filed any amendment application to his writ petition. The facts mentioned and the grounds raised were not placed before the learned single Judge and this was sufficient to reject the contentions advanced here. Legally, on the basis of the amendment application moved in another writ petition and counter and rejoinder affidavits exchanged between the parties in that writ petition, the parties cannot be allowed to raise a new ground and argue the same at the appellate stage. However, without entering into these technicalities, we thought it proper to decide the contentions raised before us on merits though not without expressing our anguish and serious concern that the appellant had not thought it necessary to move a proper amendment application in the writ petition from which the present appeal has arisen and then raised serious argument challenging the validity of an Act contrary to the procedure provided in the rules. The procedure adopted in the present appeal cannot be approved in any way.

5. Learned counsel for the appellant in Special Appeal No. 617 of 1994 submitted that theory of merger will apply and any amendment made in existing law shall also get the same status as it becomes part and parcel of the Act. Though learned counsel for the appellant gave up this argument at a later stage, we are taking it into consideration, as the submissions of the learned counsel for the appellant in Special Appeal No. 411 of 1994 on the question of assent required under law for U. P. Act No. 24 of 1992, are also identical. In this connection it has been submitted that any amendment to the principal Act became part and parcel of the same and does not keep any separate identity. The submission is that the amendments made in U. P. Intermediate Education Act, 1921, by U. P. Act No. 35 of 1958 and various other amendments subsequent thereto should also be treated as existing law as it is not disputed that the principal Act, namely U. P. Intermediate Education Act, 1921, is existing law. We have considered the submission and, in our opinion, it cannot be accepted. Existing law has defined in Article 366(10) of the Constitution which is being reproduced below.:

"existing law" means any law, ordinance, order, byelaw, rule or regulation made before the Commencement of this Constitution by any Legislature, authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation,"

From a bare perusal of the aforesaid definition of the existing law, it is clear that the law should have been passed or made before the commencement of this Constitution. Admittedly U. P. Act No. 35 of 1958 was passed, bringing drastic amendment in U. P. Intermediate Education Act, 1921, after the commencement of the Constitution. This legislative activity by the State Legislature in enacting U. P. Act No. 35 of 1958? was independent and under the present Constitution, whereas U. P. Intermediate Education Act, 1921, was passed under the Government of India Act, 1919. The aforesaid two acts of the Legislature were separate and independent and they continued to have separate existence and cannot be treated as single legislative activity. It is true that the provisions introduced by the Amending Act became part of the principal Act for purpose of implementation of the provisions and for carrying out the purpose and object of the Act, but on the basis of such analogy or the principles of law, it cannot be said that the legislative function of the State Legislature exercise under the Constitution of India bringing about the amendment in the existing law shall be treated at par with the existing law. The submissions made are misconceived and cannot be accepted. On this question the learned Single Judge, in our opinion,, correctly held that for passing U.P. Act No. 24 of 1992, assent of the President of India was not at all required under Article 254 (2) of the Constitution as the provisions contained therein are not repugnant either to any existing law or any law made by the Parliament. The question raised also stands concluded by judgment of Hon''ble Supreme Court in Synthetics and Chemicals v. State of U. P., reported in AIR 1990 SC 1990 and Kalyani Stores v. State of Orissa, reported in AIR 1966 SC 1686.

6. Another contention raised on behalf of the learned counsel for the appellants was based on Article 14 of the Constitution of India. It was submitted that provisions contained in Section 18 of the impugned Act are unreasonable and arbitrary. Basis for the submission was that the committee provided for selecting teachers for ad hoc appointment consisted of officials who are bureaucrats and have nothing to do with the subject of education. Thus, the right of selection of teachers has been illegally taken away from the committee of management which was in a better position to select teachers for imparting education to the students of the institution. However, we are not impressed by this submission made by the learned counsel for the appellant. For that matter, the members of the committee of management are generally act connected with education. The committee provided under Section 18 "(9) of the impugned Act No. 24 of 1992 consists of the District Inspector of Schools who shall be Chairman of the Committee, Basic Shiksha Adhikari and the District Inspectors of Girls Schools and in her absence the Principal of the Government Girls Intermediate College. A bare look of the composition of the committee shows that the members or the committee are not the persons who have no connection with the subject of education. For the post of District inspector of Schools, normally the senior most principal of Government colleges is promoted and appointed. The office of the Basic Shiksha Adhikari is also filled up mostly by appointing senior teachers

serving in the Government Colleges. Thus, the members of the committees provided for selecting adhoc teachers at district level cannot be termed to be a committee consisting of executive officers or bureaucrats having no link with the subject of education. In our opinion. Section 18 as introduced by U. P. Amendment Act No. 24 of 1992 does not offend Article 14 of the Constitution of India in any manner. The provision^ contained are neither arbitrary nor unreasonable.

7. The next challenge against the impugned Act put forth by Shri G. C. Bhattacharya is based on Article 19(i)(a) and 19 (I)(g) of the Constitution of India. It has been submitted that the committee of management by making hard efforts and after investing huge property, established the institution. Object behind establishing such an institution is generally to spread the culture. The majority community has also a fundamental right to advance or propagate their culture. The education and culture are inseparable. By establishing and running educational institutions, besides imparting education, the culture of the community is also taught to and learnt by the students of the institution. Thus the committee of management of the institution be recognized to have freedom of cultural speech which is part of and included in the right to freedom of speech and expression protected under Article 19(1)(a) of the Constitution. Learned counsel for the appellant has relied on the judgment of Hon"ble Supreme Court in case of Tata Press Ltd. v. Maha Nagar Telephone Nigam Ltd., J. T. 1995 (5) SC 647. Learned counsel has submitted that on the part of the committee of management, establishment of institution for imparting education is an occupation and not trade or business. The committee of management is fully entitled and has a fundamental right to run such institution and this right cannot be destroyed in the name of regulating the institution. The right is protected by Article 19 (1) (g) of the Constitution. It has been submitted that the appointment of teachers by the committee of management of its choice is necessary for exercise of the right to freedom of cultural speech and expression guaranteed under Article 19 (I)(a) and as it amounts to carrying on any occupation, the right can also be protected under Article 19 (1) (g) of the Constitution. In support of the submission, learned counsel for the appellants has relied on the case of Unnikrrihnan J. P. v. State of A. P., AIR 1993 SC 2178 : JT 1993 (1) SC 474.

8. We have considered the submission of the learned counsel for the appellant. However, in our opinion, the contention raised cannot be accepted for more than one reason. Firstly, the petitionersappellants herein are Assistant teachers and by the impugned Act No. 24 of 1992 (heir right has not been affected. They cannot be permitted to question the validity of the impugned Act on behalf of the Committee of Management. Further, the right to freedom of speech and expression contemplated under Article 19^iJ(a) oi the Constitution is the right with regard to propagation of ideas, social, political or economic or for furtherance of literature or human thought, in the present case it cannot be denied that for establishing and running of institutions recognition of the Board of High Schools and Intermediate Education established by the State is

necessary. This recognition is granted subject to certain conditions. The Board prescribes the syllabus for the students of flight School and Intermediate and also conducts the Examination. The educational institutions prepare students for such Examination on the basis of the syllabus prescribed. Even the books are prescribed by the Board. In these circumstances, it is difficult to accept that the Committee of Management or the teachers serving in such institutions enter into any kind of activity which may be accepted as propagation of their ideas, social, political or economic or for furtherance of their literature or other thoughts. No doubt, in imparting education, speech is involved but this speech is only for teaching the prescribed course to the students. The Committee of Management and the teachers have no freedom to impart education according to their own wishes. In these circumstances, the submission of the learned counsel for the appellants cannot be accepted. The facts and circumstances in which the Hon''ble Supreme Court accepted and recognised the commercial speech were altogether different, Toe case does not help the appellants in any manner. Hon''ble Supreme Court in case of Unnikrishnan J. P. v. State of Andhra Pradesh while considering the identical question has observed as under :

"It is not mere an establishment of educational institution that is urged by the petitioners, but to run the educational institution dependent on recognition by the State. There is absolutely no fundamental right to recognition in any citizen. The right to establish and run the educational institution with State's recognition arises only on the State permitting, pursuant to a policy decision or on the fulfilment of the conditions of the State. Therefore where it is dependent on the permission under the Statute or the exercise of an executive power, it cannot qualify to be a fundamental right. Then again, the State policy may dictate a different course."

9. If the submission as raised by the learned counsel for the appellants is tested with the aforesaid analogy, it cannot be said that the Committee or Management has any fundamental right which is protected under Article 19(1)(a) or 19(1)(g) of the Constitution as the recognition by the State or the Board is necessary for running an educational institution within the State of Uttar Pradesh. Section 7, 7A and 7B of the U. P. Intermediate Education Act, 1921 are very material in this connection which are being reproduced below :

"?. Power of the Board. Subject to the provisions of this Act, the Board shall have the following powers, namely ; (1) To prescribe course of instructions, text books, other books and instructional material, if any, for the High School and Intermediate classes in such branches of education as it thinks fit;

(1A) To publish or manufacture, whether to the exclusion, complete or partial of others or otherwise, all or any such text books, other books or Instructional material;

(2)

(3) To conduct examination at the end of the High School and Intermediate

courses ;

(4) To recognize instructions for the purposes of its examinations ;

(5) To admit candidates to its examination ;

(6).....

(7).....

(8)

(9) To call for reports from the Director on the condition of recognized institutions or of institutions applying for recognition ;

(10)

(11)

(12)

7A. Recognition of an institution in any new subject or for a higher class. Notwithstanding anything contained in clause (4) of Section 7

(a) The Board may, with the prior approval of the State Government, recognise an institution in any new subject or group of subjects or for a higher class ;

(b) the Inspector may permit an institution to open a new section in an existing class.

7B Prohibition of unauthorised conferment of diplomas and certificates.No person shall confer, grant or issue or hold himself out entitled to confer, grant or issue any diploma or certificate or document stating or implying the that holder, grantee or recipient has pursued a course of study in any institution or has passed the High School or Intermediate Examination or any examination described in manner reasonably calculated to cause it to believed to be the High School or Intermediate Examination."

10. From the aforesaid provisions it is clear that the Committee of Management or the teachers serving in the institution cannot have any right to freedom of speech or expression or right to carry any occupation visavis such institution with regard to which they may claim protection under Articles 19(1) (a) or 19(1)(g) of the Constitution.

11. The last submission on behalf of the learned counsel for the appellants challenging the legality of U. P. Act No. 24 of 1992 was that this Act was never passed by the U. P. State Legislature. In this connection various circumstances have been narrated by the learned counsel for the appellants and on the basis of the same it has been suggested that the Court should infer that the Act has not been actually passed. The basis for this submission was that on 6121992 structure known as Ram Janma Bhoomi Babri Masjid was demolished. Before this date, the atmosphere in the entire State was surcharged ; there was great

turmoil; pressure was being built up and no legislative business could be conducted on account of the disturbances inside the Legislative Assembly and Legislative Council of Uttar Pradesh State. It has been submitted that :

(i) U. P. Ordinance No. 21 of 1992, namely, U. P. Secondary Education Service Commission and Selection Boards (Amendment) Ordinance, 1992, which was promulgated by the Governor of State of U. P. on 14/7/1992 was not laid before either of the Houses, though it is alleged that the Bill for enacting U. P. Act No. 24 of 1992 was introduced to replace the aforesaid Ordinance.

(ii) Though it is alleged that the Bill was passed by the Legislative Assembly on 25/11/1992 and by the Legislative Council on 26/11/1992 and it was assented to by the Governor on 29/11/1992 and was also published on the same day in the Official Gazette, the learned Standing Counsel on 11/11/1993 expressed his ignorance before the Court and had no knowledge about passing of the impugned Act.

(iii) on 12/11/1993 record was brought before the Court and it was perused by the Bench but the Division Bench was not convinced and consequently permission to move amendment application was granted to the petitioner of that writ petition. All the aforesaid circumstances indicate that the impugned Act was not actually passed.

12. Learned counsel for the appellant has submitted that Article 212 of the Constitution will not apply in the present case as allegations are not regarding any irregularity in proceedings but the challenge amounts to illegality or fraud played on the Constitution, Learned Counsel for the appellant has relied on certain authorities in support of the aforesaid submission and in the alternative, even the validity of Article 212 of the Constitution itself has been questioned on the ground that it is void as it affects the basic structure of the Constitution and prohibits judicial review of the proceedings of the Legislature of a State, It is submitted that procedure adopted by the Legislature is the soul of legislative business and if the judicial review of such proceedings is prohibited, that will amount to affecting the basic structure of the Constitution, Number of authorities have been cited by the learned counsel in support of this submission. It has also been submitted that State has claimed a privilege and is not prepared to produce the necessary documents before this Court. It has been submitted that no such privilege can be claimed as the proceedings of the House are published in the form of documents and are also now telecast through Television.

13. Shri Rakesh Divadi, learned Additional Advocate General produced the record before us showing the proceedings taken before the two Houses for passing U. P. Act No. 24 of 1992. It has been submitted that Bill of the aforesaid Act was introduced by Parliamentary Affairs Minister in the Legislative Assembly on 29/10/1992. It was passed by the Legislative Assembly on 25/11/1992. On 26/11/1992, it was passed by the Legislative Council. Then, on 27/11/1992 it was forwarded to the Governor for giving Assent. The Assent was given on 29/11/1992

and on the same day it was published in the Official Gazette. It has also been submitted by the learned counsel for the respondents that on that date, six Bills were passed including the Bill with regard to the impugned Act. Learned Additional Advocate General has taken us through the proceedings which have been published as a Journal. He also placed reliance on certain authorities in support of his submissions.

14. We have given our best and very serious consideration to the arguments advanced by the learned counsel for the parties and we have also perused the Journal with regard to the proceedings and legislative business conducted by the Legislative Assembly and Legislative Council of the relevant dates. From a perusal of the proceedings of 29101992, it is clear that U. P. Secondary Education Service Commission and Selection Board (Amendment) Ordinance, 1992 was placed before the House by the Parliamentary Affairs Minister, Same day the Parliamentary Affairs Minister sought permission of the House and introduced U. P. Secondary Education Service Commission and Selection Board (Second Amendment) Act, 1992. The proceedings of 25111992 and 26114992 have also been produced before us which show that the aforesaid Act was passed by both the Houses. However, from a perusal of the proceedings, it appears that there was disturbance during the proceedings. Learned counsel for the appellants tried to persuade us that disturbance was to such an extent that the Act could not have been passed. However, in our opinion, on the basis of disturbance, protests and slogans during the proceedings of the House it is difficult to accept the contention advanced that the Act was not passed. From a perusal of the proceedings it is clear that the Act had been duly passed by both the Houses and was assented to by the Governor, From the material which has been produced before us on behalf of the appellants and the respondents, it is not possible to accept the contention raised on behalf of the appellants. It may also be mentioned at this stage that other arguments raised by the learned counsel for the parties with regard to Article 212 of the Constitution or the privilege etc claimed, are not necessary to be examined as we have considered in detail the documents produced, and the learned Additional Advocate General during arguments did not claim any privilege and all the record, which was placed before the Court, was also shown to the learned counsel for the appellants.

15. For the reasons stated above, in our opinion, the order passed by the learned single Judge is perfectly justified and does not suffer from any illegality which may call for interference by this Court. Both the appeals are accordingly dismissed. There will be no order as to costs.