
(1968) 09 SC CK 0026

In the Supreme Court Of India

Case No : Writ Petition (Civil) 1 of 1968

Rev. Father W. Proost and Ors

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 13-09-1968

Acts Referred:

Bihar State Universities Act, 1976 — Article 48A, 48B
Constitution of India, 1950 — Article 29(1), 30, 30(1), 32

Citation : AIR 1969 SC 465 : (1968) KLT 878 : (1969) 2 SCR 73

Hon'ble Judges : M. Hidayatullah, C.J.; V. Ramaswami, J.; J. C. Shah, J.; G. K. Mitter, J.; A. N. Grover, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Hidayatullah, C.J.—The Principal and the Rector of St. Xavier's College, Ranchi and two parents of students have filed the present petition under Article 32 of the Constitution. The petition also purports to be filed on behalf of St. Xavier's College, Ranchi and the Association of St. Xavier. The petitioners challenge Section 48-A of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960 as amended by Second Amendment Act, 1961 as ultra vires Articles 29 and 30 of the Constitution.

2. St. Xavier's College was established by the Jesuits of Ranchi. It was affiliated to Patna University in 1944, The management of the college vests in a Governing Body consisting of 11 members. They are :

"(i) The Superior Regular of Ranchi Jesuit Mission--President ex-officio.

(ii-v) Four Counselors to the Superior Regular to be nominated by the Jesuit Mission authorities.

(vi) The Principal of the College--Vice-president and Secretary ex-officio.

(vii) One representative of the teaching staff of the college elected by the

members of the staff.

(viii) One representative of the Patna University.

(ix-xi) Three persons to represent Hindu, Muslim and Aboriginal interests."

3. The terms of service of Religious staff are determined by the Jesuit Mission Authorities, but those of the members of the Lay staff including their appointment are determined by the Governing Body. All appointments to the teaching staff, both Religious and Lay are reported to the Syndicate of the Patna University. The object of founding the college inter alia is 'to give Catholic youth a full course of moral and liberal education, by imparting a thorough religious instruction and by maintaining a Catholic atmosphere in the institution.' The college is, however, open to all non-catholic students. All non-catholic students receive a course of moral science.

4. The College was thus founded by a Christian minority and the petitioners claim they have a right to administer it, a constitutional right guaranteed to minorities by Article 30. The petitioners' complaint is that the Bihar Legislature passed an amending Act and introduced in the Bihar Universities Act Section 48-A to come into force from March 1, 1962, which deprives them of this protection and is, therefore, ultra vires. The provisions of this section are as follows:--

"48-A. Establishment of a University Service Commission for affiliated colleges not belonging to the State Government and its powers and functions:--

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the University Service Commission.

(2) The said Commission shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued.

(3) The commission shall consist of a Chairman and two other members to be appointed by the State Government who shall be whole time officers,

and shall hold office for a term of three years from the date of assumption of charge of office, on the expiration of which term they, or any of of them, may be reappointed for only one more term which shall not exceed three years.

(4) There shall be a Secretary to the Commission who shall also be a whole-time officer to be appointed by the State Government.

(5) Other terms and conditions of service of the Chairman, members and the Secretary shall be determined by the State Government.

(6) Subject to the approval of the University, appointments, dismissals, removals termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the college on the recommendation of the Commission.

(7) (i) In making recommendations for appointment to every post of teacher of any such affiliated college, the Commission shall have the assistance of two experts in the subject for which an appointment is to be made, of whom one shall whenever possible be a teacher of the University to be nominated by the Syndicate and the other shall be a person, other than a teacher of the University, to be nominated by the Academic Council.

(ii) The experts shall be associated with the Commission as assessors whose duty it shall be to give expert advice to the Commission but who shall have no right to vote.

(8) The Commission shall, wherever feasible, recommend to the governing body of a college for appointment to every post of teacher of the college names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefore.

(9) In making appointment to a post of teacher of a college, the governing body of the college shall, within three months from the date of the receipt of the recommendation under Sub-section (8), make its selection out of the names recommended by the Commission, and in no case shall the governing body appoint a person who is not recommended by the Commission.

(10) Notwithstanding anything contained in the preceding sub-sections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the College :

Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of which the appointment shall be deemed to have been terminated at the end of six months.

(11) (ii) The Commission shall be consulted by the governing body of a college in all disciplinary matters affecting a teacher of the college and no memorials or petitions relating to such matters shall be disposed of nor shall any action be taken against, or any punishment imposed on, a teacher of the college otherwise than in conformity with the finding of the Commission :

Provided that it shall not be necessary to consult the Commission where only an order of censure, or an order withholding increment, including stoppage at an efficiency bar, or an order of suspension pending investigation of charges is passed against a teacher of a college.

(12) It shall be the duty of the Commission to present annually to the University a report as to the work done by the Commission in relation to such colleges affiliated to the University and a copy of the report shall be placed before the Senate at its next meeting, and the University shall further prepare and submit to the State Government a memorandum explaining, as respects the cases, if

any, where the advice of the Commission was not accepted, the reasons for such non-acceptance and the State Government shall cause the same to be laid before the Legislature of the State".

5. This provision completely takes away the autonomy of the Governing Body of the College and virtually vests the control of the college in the University Service Commission. Long correspondence ensued into which it is not necessary to go because of what followed. The University began enforcing Article 178(2) of the New Statutes. That Article provides:

"178(1) All appointments of teachers in admitted colleges shall be made by the Governing Body of the college concerned on the recommendation of the University Service Commission, and shall be subject to the approval of the Syndicate. No such appointment shall be approved unless :

- (a) the post exists or the Vice-Chancellor is satisfied and its creation is necessary;
- (b) the claims of teachers, possessing the requisite qualifications and serving in a lower grade in the college, for promotion have been examined and rejected;
- (c) the vacancy was duly advertised, except where promotion was recommended;
- (d) the person appointed possesses the minimum qualifications prescribed for the post; and
- (e) the appointment was made by the Governing Body at its meeting.

(2) Within a fortnight of the appointment of any teacher or teachers made by the Governing Body of any admitted college on the recommendation of the University Service Commission, the Secretary of the College shall forward to the University, along with a copy of the advertisement for the post, the following information :

- (a) Names of the candidates recommended by the University Service Commission together with the name or names of the candidates appointed by the Governing Body;
- (b) Age;
- (c) Home address;
- (d) Previous appointment held by them, if any;
- (e) Whether they are qualified to teach through the medium of Hindi;
- (f) Nature of the appointment and the vacancy against which the appointment has been made;
- (g) If the order of preference indicated lay the University Service Commission has not been followed by the Governing Body, the reason for not following the order of preference shall be indicated. If no appointments were made against the recommendation received from the University Service Commission, the reason for not making the appointments shall also be indicated."

More correspondence followed. The University asked for an explanation under Article 179 of the Statutes, how the Governing Body had by-passed the University Service Commission and some teachers were appointed without prior consultation. Finally the University by a letter, September 26, 1967, communicated to the College that the Senate had decided on September 24, 1967 to withdraw the affiliation of the College under Article 171 of the Statutes for violating the said provisions of the Act and the Statutes with effect from the session of 1969-70. The Senate, however, was generous enough to put on record its appreciation of the good work done by the college in the field of education. The petition was then filed to impugn the offending Section 48-A.

6. While this petition was pending in this Court, the Governor of Bihar promulgated an Ordinance on July 16, 1968. It amended the Bihar State Universities Act, 1960 by inserting Section 48-B after Section 48-A. The new section read :

"48-B. College established and administered by a minority entitled to make appointments etc. with approval of the Commission and the Syndicate.

Notwithstanding anything contained in Sub-section (6), (7), (8), (9), (10) and (11) of Section 48-A, the Governing Body of an affiliated college established by a minority based on religion or language, which the minority has the right to administer, shall be entitled to make appointments, dismissals, removals, termination of service or reduction in rank of teachers or take other disciplinary measures subject only to the approval of the Commission and the Syndicate of the University".

Simultaneously the Magadh University Act, 1961 was also similarly amended.

7. The petitioners, therefore, claim the protection of Section 48-B and submit that as an affiliated college established by a minority based on religion or language, they are exempt from the operation of Section 48-A (6), (7), (8), (9), (10) and (11), They say that if this position is accepted, they will withdraw the petition which has become superfluous now. The learned Attorney General while conceding that the Jesuits answer the description of minority based on religion, argues that the protection is available only if the institution was founded to conserve 'language, script or culture' and since the college is open to all sections of the people and there is no programme of this kind, the protection of Article 30(1) is not available. In our opinion, this argument cannot be accepted. Before we give our reasons we may read Articles 29(1) and 30(1), which are involved :

"29. Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) "30. Right of minorities to establish and administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2)

8. The learned Attorney General seeks to read into the protection granted by Article 30(1) a corollary taken from Article 29(1). He concedes that the Jesuits community is a minority community based on religion and that, therefore, it has a right to establish and administer educational institutions of its choice. But he contends that as the protection to minorities in Article 29(1) is only a right to conserve a distinct language, script or culture of its own, the college does not qualify for the protection of Article 30(1) because it is not founded to conserve them. The question, therefore, is whether the college can only claim protection of Section 48-E of the Act read with Article 30(1) of the Constitution if it proves that the college is furthering the rights mentioned in Article 29(1).

9. In our opinion, the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language,, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.

10. The learned Attorney General refers to two cases of this Court which he thinks support his contention. What we find in them does not bear out this submission. On the other hand, they point the other way. In *In re the Kerala Education Bill, 1951*(1), *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, Articles 29 and 30 were considered in relation to an Education Bill referred by the President of India to the Supreme Court for its advisory opinion. The points that arose in the case were different but certain passages from the opinion were brought to our notice. The Court after pointing out that Articles 29 and 30 are grouped together under the heading "Cultural and Educational Rights" points out that the articles are intended to confer certain fundamental rights on certain sections of the community which constitute minority communities. Explaining Clause (1) of Article 29 this Court observed at p. 1047 :

"..... It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1)

which has hereinbefore been quoted in full.....".

11. The learned Attorney General argues that here the two articles were read together. But the other side relies on two other passages. The first is at page 1050. The argument on behalf of the State there appears to be that there are three conditions before the protection and privileges of Article 30(1) may be claimed :--

"(1) there must be a minority community, (2) one or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and (3) the educational institution must be established for the members of his or their own community."

12. This Court repelled the contention that the protection and privilege of Article 30(1) extended only to the educational institutions established after the Constitution. Dealing with Article 29(1) this Court observed :

"The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution."

13. While one side considers that the observation suggests that the two articles go together, the other side contends that mixing of the other communities with the minority community in the benefits of educational institution shows that the real test is not that there must be an institution purely of one community. The learned Attorney General places great importance on the word 'sprinkling' and says that the minority must found the institution for itself and not for others and the aim or object must be to conserve distinct language, script or culture. In our opinion both sides are attempting to read far too much into these observations. They are not intended to be read in every context. On the other hand, in *Rev. Sidhajbhai Sabhai and Others Vs. State of Bombay and Another*, there is the following passage :--

"..... The fundamental freedom is to establish and to administer educational institutions : it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof."

14. The emphasis here was rightly placed not upon the needs of the community exclusively but upon the educational needs of the citizens or sections thereof. In other words, the suggestion that Article 30(1) is limited to the needs of a single community or that only its own culture, language or script need to be provided

for is not the right approach. Here too if we may say so, the point decided was different but the observation does make Article 30(1) much wider than the learned Attorney General would have us hold.

15. In our judgment the language of Article 30(1) is wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed.' We need not enlarge the protection but we may not reduce a protection naturally flowing from the words. Here the protection clearly flows from the words and there is nothing on the basis of which aid can be sought from Article 29(1).

16. We are, therefore, quite clear that St. Xavier's College was founded by a Catholic Minority Community based on religion and that this educational institution has the protection of Article 30(1) of the Constitution. For the same reason it is exempted u/s 48-B of the Act. The petition will therefore be allowed with this declaration but in the circumstances of the case we make no order about costs.