
(1996) 03 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No. 17880 of 1993

Sri Krishna Devaraya Educational Trust, Bangalore and
Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-03-1996

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1997) 2 KarLJ 75

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. The petitioners in this petition under Article 226 of the Constitution, have made several prayers under clauses (A), (B), (C) and (D) and an additional prayer under clause (C). On 20-2-1996, as contained in the order sheet of that date, it has been stated by learned Counsel for the petitioner, Sri M.R. Naik, that the relief claimed under clauses (A), (B) and (C) are not pressed in view of the interim order granted by the Supreme Court and the principles laid down by their Lordships of the Supreme Court in Shah H. Musalia and T.M.A. Pai's case. Learned Counsel for the petitioner submitted that he only wants to press the relief that has been claimed by way of an amendment to clause (C). The relief as amended under clause (C) reads as under:

"to declare that the order No. AD. 104/TA. MIVI/93(1)-9, dated 14-9-1993 (copy produced and marked Annexure-F) is illegal and void and be further pleased to issue a writ of declaration, declaring that 1st petitioner-Trust is a linguistic minority entitled to establish and administer educational institution of its choice and entitled to the protection guaranteed under Article 30 of the Constitution of India and further be pleased to make an interim order staying the order dated 14-9-1993 made in No. ED. 101/TA. MIVI/93(1-9), Bangalore".

It may be mentioned that no interim relief had been granted staying the operation or the impugned order. The writ petition is now confined to this relief only and so far as his claim for other reliefs are concerned, they have not been

pressed and is rejected.

2. The facts of the case in brief are that subsequent to the orders of their Lordships of the Supreme Court in *Shah H. Musalia and Others v State of Kerala*, 1993(4) SCC 112, the State Government issued a notice to the petitioner calling upon the petitioner to place documents and material on the basis of which the petitioner claims itself as a minority educational institution. *Shah H. Musalia's* case, *supra*. The petitioner-Institution filed an application/representation dated 4-9-1993, Annexure-L, in reply to the letter Annexure-E, dated 24-8-1993 and also filed the necessary documents including the supplemental Trust Deed dated 30-1-1986 and Deed of modification. The Committee, which has been constituted by the Government to decide whether the petitioner enjoys the status of a minority community based on language, decided against the petitioner and held that the objections of the petitioner-Institution shows that it is not a minority institution. The Government of Karnataka, by its order dated 14-9-1993, Annexure-F rejected the petitioner's claim. It will be necessary to quote certain material portion of the order which will indicate the mind of the authority who decided the issue and reads thus:

"This Trust is registered under the Societies Registration Act, in the year 1985 and has started Sir M. Visveshwaraiah Institute of Technology in the year 1986 and the Dental College in 1992-93. The Trust has submitted a claim to be recognised as a Telugu Linguistic Minority Institution. The objects of the Trust as laid out in the Trust Deed do not indicate that the Trust has been set-up for the benefit of the Telugu linguistic minority....

It was stated by the representatives of the Society at the time of hearing that they had been keen on taking students allotted through the Common Entrance Test in their institutions upto 1992-93. It was also indicated that out of a total intake of 450 in the Engineering College, about 45% are Telugu speaking of whom about 20% may be domiciled in Karnataka. They have not made any claim for being recognised as a Telugu linguistic minority prior to the Unnikrishnan judgment.

In the light of the above, it is inferred that the Trust has not been established for the benefit of the Telugu linguistic minority community, as clearly seen from the absence of any such intention mentioned in the objects in the Trust Deed. The material produced does not substantiate the claim that these professional institutions run by the Society are run for the benefit of the Telugu linguistic minority in Karnataka. Hence, the Government is of the opinion that there is no material to substantiate their claim to be recognised either as a minority institution or a minority educational institution".

The objects of the Society indicate that the institution was established to assist the students of all communities to pursue their studies and in respect of institutions, technical and professional and institutions imparting technical knowledge, it was provided that all the students from the country and abroad

may be entitled to get benefit without discrimination on the basis of caste or creed. On this basis, it has been held that the institution cannot be said to be a minority community. This order has been challenged by the petitioner. No counter-affidavit has been filed to the main writ petition.

3. Learned Counsel for the petitioner, Sri Naik has submitted before me that the case requires a remand and fresh consideration as the authorities have not applied their mind to the documents filed and they have not taken them into consideration particularly with regard to the object of Society indicated in the objections filed before the committee; that in the supplementary Deed of Trust dated 30-1-1986 and an amendment to that Deed i.e., Deed of modification dated 16-6-1990, Annexure-M one of the objects has been stated to be to open the institution for imparting education, technical and professional to the persons coming from linguistic minority of Telugu speaking people and apart from that, it is mentioned that it will also be open to the Trust to admit in the educational institutions to be established by the petitioner-Trust, the students of every linguistic group either from within or outside India without causing any prejudice to the main object. He submitted that the authorities ignored this Deed from consideration and as such, finding recorded by the authorities that the petitioner's institution is not a minority institution, suffers from error of law apparent as it is based on non-consideration of material document. Learned Counsel further submitted that the authorities were wrong in assuming that the petitioner had not been making any claim of being recognised as a minority institution; as per Annexure-G to the writ petition, the petitioner-Institution has been claiming itself as a minority institution right from the year 1987. Learned Counsel lastly submitted that there is nothing under Article 30 to indicate or to impress upon the minority communities that they cannot open their institution to the benefit of non-minority or other communities; instead, it is always open for them to establish an education institutions of their choice not only for the benefit of the minority people but also for the benefit of others not belonging to a particular minority community and he made reference to certain decisions of the Supreme Court in this regard.

4. The contentions made by the learned Counsel for the petitioner had been hotly contested by the learned Government Counsel Sri N.B. Vishwanath. He submitted that in the original Trust Deed, the object of the institution is to assist students belonging to all communities and to establish institutions to impart education, technical or professional, as well as to impart training to all students without any intention of giving any special benefit to the members of the community of Telugu language. The purpose appears to be, to establish institutions for the benefit of students in general, and when the institution has been started as per the original Deed of Trust for the benefit of students in general, then, the institution cannot claim to be a minority institution. He submitted that the order impugned does not suffer from any error of law; the petitioner should have awaited the decision of the Supreme Court on the question as to what are the criteria to determine the minority community and minority institution and further

submitted that the petition may be dismissed.

5. I have applied my mind to the contentions of learned Counsel for the parties. Article 30 of the Constitution, no doubt, confers a fundamental right on the minorities whether based on religion or language, to establish and administer educational institution of their choice. Article 30, clause (1) is material for us. It reads as under:

"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".

The language of article further reveals that the right has been conferred on the minorities or group of people who are stated to be minorities based on religion or language - if they desire to establish and administer educational institution. The institution with what object is covered by expression "of their choice". The object may be for imparting religious instructions in education, or for secular or temporal education. It may be for the benefit of the students coming from the minority community alone or other community as well. The right as has been laid down is absolute, but not unfettered in the sense that, right is absolute only within the frame work of the Constitution. The object cannot be contrary to the basic features of the Constitution nor it can be contrary to the provisions of the Constitution such as Articles 14 and 15. That, it may result in discrimination either on the ground of religion or otherwise. The right to create minority institution does not carry with it right to mal-administration nor does it confers a right to perpetuate something which runs counter to the basic constitutional philosophy and the theme, and they cannot create discrimination between the two even on the ground of financial or economic basis or capacity. There may be reasonable classification, but on the basis of right to establish minority educational institutions, they cannot provide with any course of administration which may deprive the person of weaker classes or economically weaker section, the right of education. Regulatory provisions are to be made to regulate administration keeping in view the object of Constitution and the basic objects of education in the context of constitutional objectives goals and the provisions of constitutional law. This is the result of something which may be said to be implied therein. For illustration, it may be said, no educational institution can be permitted to perpetuate disintegration of the nation nor can it perpetuate against sovereignty or integrity of the nation. So, subject to the principles of the Constitution and within the four walls of the Constitution, it may be said that the right to establish educational institution and to administer it, is the absolute right of the minority community. Here, in my opinion, the opposite parties were wrong in taking the view that because the minorities who claim to establish an institution, have kept it open for the students of all communities to be benefited along with the members or students coming from Telugu speaking minority community, it is not a minority institution. This view is based on wrong yardstick. When I so observed, I find support from the observations made in the case of St.

Stephen's College v University of Delhi, AIR 1992 SC 1630. Their Lordships of the Supreme Court, at paragraph 29 observed thus:

"The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution. Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30(1) of the Constitution, and on that account, the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well-defined religious or linguistic minority. It does not envisage the rights of foreign missionary or institution, however laudable their objects might be".

Here, these observations clearly indicate what has to be looked into, i.e., whether the institution has been established by the members of the minority community or not. If it is established that the institution has been established by the members of the minority community, then, it may claim further right of administration of the institution. Apart from that, in paragraph 80 of the above judgment, their Lordships of the Supreme Court further observed thus:

"It may be noted that the institutional preference to minority candidates based on religion is apparently an institutional discrimination on the forbidden ground of religion. It operates to stigmatise or single out candidates from non-minority communities on the ground only of religion. If an educational institution says "yes" to one candidate but says "no" to another candidate on ground of religion, it amounts to discrimination on ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination".

That in paragraphs 81 and 82 of the above decision in St. Stephen's case, supra, their Lordship observed thus:

"Equally it would be difficult to accept the second submission that the minorities are entitled to establish and administer educational institution for their exclusive benefit. The choice of the institution provided in Article 30(1) does not mean that the minorities could establish educational institution for the benefit of their own community people. InDeed, they cannot. It was pointed out in Re: Kerala Education Bill that the minorities cannot establish educational institution only for the benefit of their community. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words, it is legally impermissible to construe the article as conferring the right on the minorities to establish educational institution for their own benefit. Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have relatively a homogenous Society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or

colleges; segregated faculties or Universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a "melting pot" in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions".

6. In an earlier case of *Rev. Father W. Proost and Others v State of Bihar and Others*, AIR 1969 SC 465, the Hon"ble Hidayatullah, C.J., as he then was, speaking on behalf of the Court, laid down the law in context of Article 30(1) of the Constitution as under:

"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.

Hon"ble Hidayatullah, C.J., further referred to and quoted with approval the following observation from the judgment of Supreme Court in an earlier case, namely, *Rev. Sidhrajibhai Sabbai and Others v State of Gujarat and Others*, AIR 1963 SC 540. The quoted observations read as under:

".... 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.

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".

7. Firstly, on the yardsticks laid down by their Lordships of the Supreme Court, I am of the opinion that when the Government Authorities considered this question, from the point of view that education institution established by the petitioner to cater education to the citizens of India and students of all communities and therefore, they are not a minority institution, the Government Authorities have committed error of law apparent on record in deciding the question, if petitioner's institution has been minority institution as they applied

wrong yardstick. What they had to see is whether the institution has been established by the members or members belonging to a minority community based on religion or language. Here, in my opinion, the authorities have proceeded on the wrong criterion in determining whether it is a minority institution or not. Secondly, it appears, the authorities have not applied their mind and have not taken into consideration supplementary Deed of Trust dated 30-1-1986 and Deed of modification dated 16-6-1990. As Clause 5(b) in the Deed was not considered, the finding recorded, in my opinion, suffers from error of law apparent on the record because, it is well-settled that finding of fact is recorded after having ignored the material evidence or material on record, the finding can be said to be vitiated by error of law apparent on record.

8. Thus considered, in my opinion, the order of the Government contained in Annexure-F, dated 14-9-1993 suffers from jurisdictional error as well as an error of law apparent on record for the reason that, firstly, it is based on a principle running contrary to the basic principles of law as laid down by their Lordships of the Supreme Court. Law declared by the Supreme Court unless modified by the Supreme Court or otherwise, operates and authorities are expected to act in accordance with it. Here, the authorities have applied a wrong criterion just contrary to the basic principles of law enunciated and laid down by the Supreme Court in the above mentioned cases. Secondly, the jurisdictional error as pointed out above is the ignoring of the material on record.

9. In my opinion, the writ petition deserves to be allowed and order needs to be set aside. It appears just and proper that the authorities be directed to decide the question whether the petitioner's institution is a minority institution in the light of the principles enunciated above. No doubt, that decision will be subject to the final decision that may be taken by their Lordships of the Supreme Court in the case of T.M.A. Pai, which has been referred to seven Judges Constitution Bench of the Supreme Court and under the orders referred to above, the State Governments have been directed pending decision of that case, to determine the question of minority community.

10. Writ petition is allowed. Let a writ of mandamus be issued to the opposite parties to decide afresh whether the petitioner's belonged to the minority institution for the purpose of Article 30 and that, decision shall be subject to the Supreme Court decision of seven Judges Constitution Bench referred to above. It is clarified that, in the course of taking decision, the petitioners shall be allowed an opportunity of hearing and if necessary, they may be allowed to file written arguments also. It is expected that the authorities will proceed expeditiously and decide the matter within a period of 8 weeks from the date of production of the copy of the order of this Court. Cost of the petition made easy, i.e., parties to bear their own costs.

11. Sri N.B. Vishwanath, learned Government Advocate, may file memo of appearance.