

(2010) 06 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 4054, 4055, 4056, 4057, 4059, 4369 and 6388 of 2006

St. John"s Educational Development Society and Others

APPELLANT

Vs

Government of Andhra Pradesh by its Principal Secretary and Others

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 5
Constitution of India, 1950 — Article 143, 29, 30, 39

Citation : (2010) 5 ALD 499 : (2010) 5 ALT 347

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; GP for Social Welfare and Standing Counsel for State Council for Higher Education, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—There is unending debate, as to the scope of Articles 29 and 39 of Constitution of India (for short "Constitution"), almost from the inception of the Constitution. Not only individual cases were filed and pursued before the Constitutional Courts by the affected parties, but also references under Article 143 of the Constitution were made by the President of India to the Supreme Court, seeking its opinion on various aspects, of the rights guaranteed under those two provisions. One such reference was answered by the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, The judgment of the Supreme Court in that case covered various aspects, including the rights of the linguistic and religious minority educational institutions.

2. Based on the principles laid in that judgment, the Government of A.P., issued orders in G.O.Ms. No. 1, Minorities Welfare (M & R) Department, dated 16.01.2004 (for short "G.O."), in which guidelines for conferring minority status on educational institutions, were laid down. The petitioners in this batch of writ

petitions are private colleges of education, imparting B.Ed. course. They submitted applications to the State Government, for conferring minority status on their respective institutions. After examining the applications, Government issued order, conferring minority status, on the petitioners, at different points of time.

3. After sometime, the functioning of the institutions was examined, particularly, with reference to the parameters laid down in the G.O. It was found that only a small fraction of students hailing from the respective minority communities were admitted and substantial number of students admitted to the institutions were, from the other communities. This was found to be contrary to Clauses 5 and 6 of the guidelines contained in the G.O. On this basis, show cause notices were issued, directing the petitioners to explain as to why the minority status conferred upon them, be not withdrawn. The petitioners submitted their explanations. Not being satisfied with the same, the respondent i.e. the Government of A.P., issued orders, withdrawing the minority status that was accorded to the petitioners.

4. In this batch of writ petitions, certain Clauses of G.O.Ms. No. 1, dated 16.01.2004, and the orders, through which the minority status conferred on the petitioners was withdrawn, are challenged.

5. The petitioners contend that Clauses 5 and 6 of the G.O. are violative of the fundamental rights guaranteed under Articles 29 and 30 of the Constitution, apart from being contrary to Section 5 of the A.P. Educational Institutions (Prohibition of Capitation Fee) Act, 1983 (for short "the Act"). They contend that, once the institution is conferred with minority status, it should not make any difference, as to whether the students admitted to it are from one community or the other. It is also pleaded that the right of minority educational institution to admit students from other communities is recognized in law and simply because the percentage of non-minority students is a bit higher, it cannot result in withdrawal of the minority status.

6. On behalf of the Government of A.P., a common counter-affidavit is filed. An objection is raised as to the very maintainability of the writ petitions. It is stated that the petitioners, who got the benefit under the G.O., cannot turn around and challenge some of its clauses. The factual background that led to issuance of the G.O., and its purport, is furnished in detail. It is alleged that certain minority institutions in the State have been resorting to various malpractices, and even encouraging instant conversion of students at the time of admissions, defeating the claims of genuine minority students. According to the Government, the G.O., was issued strictly in accordance with the principles laid down by the Hon'ble Supreme Court in T.M.A. Pai Foundation's case (1 supra) and it does not warrant any interference.

7. The A.P. State Council for Higher Education has also filed a counter-affidavit almost on the same lines.

8. Sri S. Niranjan Reddy, learned Counsel for the petitioners, submits that Articles 29 and 30 of the Constitution enable the persons belonging to a religious or linguistic minority, to establish institutions of their choice and any restriction placed upon such institutions is violative of the fundamental rights guaranteed under the Constitution. He submits that Section 5 of the Act totally exempts the minority institutions from any control by the State authorities and that certain Clauses in the impugned G.O., as well as the consequential orders are contrary to the said provisions. According to the learned Counsel, the scope of rights conferred upon the petitioners is too wide and that mere non-availability of adequate number of students hailing from minority community must not entail in cancellation of the minority status. He submits that the judgment of the Hon'ble Supreme Court in T.M.A. Pai Foundation's case (1 supra) has explained in P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537, was not properly understood by the respondents.

9. Learned Government Pleader for Social Welfare and learned Standing Counsel for the State Council for Higher Education, on the other hand, submit that the petitioners secured the benefit under the G.O. by undertaking to abide by the conditions contained therein, and they cannot challenge that very G.O. when their status is withdrawn on finding that the conditions are violated. They submit that though it is permissible for a minority institution to impart secular education also, it can retain its character, only when it serves the predominant majority of that community. It is also urged that the institution can very well function by admitting non-minority students also, without claiming the privileges of a minority institution.

10. One of the vexed questions, in relation to Articles 29 and 30 of the Constitution, is, as to whether a minority institution can impart education in secular, in contradistinction from religious or linguistic courses, and admit the candidates, who do not belong to the concerned religious or linguistic minority into such courses. Way back in the year 1958, the Hon'ble Supreme Court dealt with this question while answering a reference made to it by the President of India under Article 143 of the Constitution, in re The Kerala Education Bill, 1957 AIR 1958 SC 956. Speaking for the Bench, the Chief Justice Sri S.R. Das, held that though, admission into such courses must be predominantly with the candidates belonging to the concerned minority group, a "sprinkling of non-minority students" can also be admitted. The same was reiterated by the Supreme Court in subsequent decisions, including the one in T.M.A. Pai Foundation's case (1 supra).

11. Over the period, the experience has shown that the "sprinkling of non-minority", which was held permissible by the Supreme Court, came to be restated as "sprinkling of minority". Reasons apart, the situation emerged that Minority educational institutions have only a miniscule percentage of minority students on their rolls and majority are from non-minority community.

12. In the recent past, the liberalized policies of the Government has percolated

into the field of education, in particular higher education, and professional courses. Large number of institutions came to be established in private sector for imparting professions courses. Minority institutions did not lag behind. The indiscriminate charging of fee in huge sums and defiance of regulatory norms stipulated by the statutory agencies resulted in voluminous litigation. As an attempt to find answers to the questions, which arose in that context, reference was made to the Hon'ble Supreme Court and the same was taken as in T.M.A. Pai Foundation's Case (1 supra). One of the questions referred to the Supreme Court was as to the extent of rights that can be exercised by the minority institutions. It was observed that the managements of the minority institutions cannot resort to the device of admitting students from an adjoining state, where they are majority under the facade of protection given under Article 30(i) of the Constitution. In P.A. Inamdar's case (2 supra), the Honble Supreme Court held that the observation made in T.M.A. Pai Foundation's Case (1 supra), would apply to religious minorities also. Reference was made to its observation in Kerala Educational Bill, which is to the effect that what is permissible is only a sprinkling of outsiders.

13. The practice adopted by the minority institutions to fill the seats in their institutions is narrated by the respondents in their counter-affidavit. It is pointed out that when restrictions were placed to the effect that the majority of the seats should be filled by the candidates of the concerned minority community, several irregularities were resorted to in the form of instant conversions etc. It is apt to extract the relevant portion in the counter-affidavit.

In this connection it requires mention that earlier admissions in all Minority Educational Institutions were allowed based on Baptism Certificates (Conversions). Under the guise of Baptism, all non-minority candidates got admission into Minority Educational Institutions as minority students. In almost all Minority Educational Institutions, 95 to 99% of admissions were made only based on Baptism Certificates. In almost all cases, non-minority students who appeared entrance test as non-minority candidates were Baptised themselves just before the interviews that were conducted by the Minority Educational Institutions and got admission based on the conversion certificates. Thus, admissions into all courses in all Minority Educational Institutions were very common till recent past, basing on the spot/instantaneous conversions (Baptism Certificates). A non-minority student, who Baptised himself/herself as Christian, just before admissions in Minority Educational Institutions, and if he/she seeks admission as minority student under the guise of Baptism, certainly it amounts to infringement to the legitimate right of a true minority student who is seeking an could not succeed in getting admission in Minority Educational Institutions due to spot conversions of non-minority students. Thus, the fundamental right of education of a true minority student is being infringed due to spot/instantaneous conversions of non-minority candidates for admissions in minority educational institutions.

14. The judgment of the Supreme Court in T.M.A. Pai Foundation's case (1 supra), came as a breather, for the Government, to regulate the minority institutions, and accordingly, the G.O. was issued. Apart from prescribing the procedure for conferment of minority status, the G.O. has prescribed the guidelines, subject to which the status can be conferred and retained. Clauses 5 and 6 are relevant and they read as under:

The educational institutions established and managed by the minorities shall serve the educational needs of their community to which they claim to belong by filing up not less than 70% of seats being filled up by the Managements as per the rules governing admission into various colleges with the candidates belonging to the respective minority community.

15. This, totally accords with the law laid down by the Hon'ble Supreme Court. The petitioners did not feel any grievance about these Clauses and have applied for conferment of status in terms of the G.O. After examining the applications, orders were issued in favour of the petitioners.

16. The petitioners enjoyed the minority rights in the matter of admitting candidates in the institutions, by themselves while in all other institutions, admissions were through process of counselling by the convener year after year. The petitioners have chosen to fill the seats according to their will. Even occasional interference to ensure proper implementation of the scheme of admissions became intolerable to them and a spate of litigation ensued.

17. After the admission process for the academic year 2004-05 was complete, the respondents verified the pattern of admissions in the petitioners' institutions, with reference to the guidelines contained in the G.O. It emerged that only a minuscule percentage of students hailing from the concerned minority were admitted and rest of the students were from majority community. For that year, percentage of students of minority community varied between 7 and 15 and rest of the candidates were from majority community. Therefore, show cause notices were issued to the petitioners. The explanation offered by the petitioners was that adequate number of minority students are not available. This was not found satisfactory and the orders were issued withdrawing the minority status.

18. A serious objection was raised by the respondents for the challenge to the G.O. made by the petitioner. It is pleaded that they were very much aware of the scope of the Clauses contained in that G.O., when they submitted applications for grant of minority status, under that very G.O. and in case, any condition contained in the G.O. was not acceptable to them, or if they felt that the condition is violative of their rights, the petitioners ought to have protested or challenged those conditions, before submitting applications. Further contention is that they have acquiesced in those conditions, when they applied for and received the orders conferring minority status.

19. It is possible to argue that a fundamental right can be contracted out and a citizen can accept what is beneficial to him and reserve the right, to challenge an

objectionable Clause as and when occasion arises. Viewed in this context, as law abiding citizens, the petitioners ought to have assailed Clauses 5 and 6 of the G.O., when they wanted to admit candidates in derogation thereof. However, they did not choose to do so. They felt that they can ignore those Clauses and proceed to admit the candidates in derogation thereof. Such an approach cannot be countenanced. A citizen, who wants to enjoy the special privilege and immunity conferred on the basis of a law, must strictly abide by it in its entirety. He cannot be choosy and violate the latter, which is not beneficial to him. Assuming that the petitioners can challenge the clauses, referred to above, only when the minority status is withdrawn, it needs to be seen as to whether there is anything objectionable in them.

20. A perusal of the judgments rendered by the Supreme Court and various High Courts, explaining the purport of the rights guaranteed under Articles 29 and 30 of the Constitution indicates that the provisions are intended to enable the respective minorities i.e. linguistic or religious to preserve their culture, language, tenets, preachings etc. Strictly interpreted, the right enables the minority communities to establish institutions for promoting their culture, beliefs, tenets or the language, as the case may be etc. As a facet of this right, it was recognized that institutions imparting secular education may also be established for the purpose of making such education available to the persons belonging to those respective minorities, linguistic or religious. A genuine doubt arises as to whether it is permissible for a religious or linguistic minority, to establish institution, for imparting education, which is not religious or linguistic, pure and simple, but is the same as the one imparted in other institutions and admit non-minority students in to it. Finding that it is possible that the students of that community in such large number may not be available, the Supreme Court in Kerala Education Bill held that a presence of "sprinkling" of others may not be a factor to deny the character to the institution. It is in this context that the Supreme Court in T.M.A. Pai Foundation's case (1 supra) and in P.A. Inamdar's case (2 supra), held that the minority institutions cannot admit candidates belong to non-minority communities in large numbers and still avail the benefit of immunity of being regulated. The two Clauses contained in the G.O., though nothing more than reflect the ratio laid by the Supreme Court.

21. Broadly, it can be deduced that where the education imparted by a minority institution is special for that community, the ratio between the minority and non-minority students admitted into such courses, becomes irrelevant. Where however such institutions impart general and secular education, the students must be predominantly from the concerned minority.

22. Even otherwise, there is no reason why an institution, which fills virtually more than lths of the permitted strength with non-minority candidates can insist on the immunity from being regulated. The matter needs to be examined from two angles. The first is that the course has nothing to do with the religious or linguistic preachings, tenets or principles. Secondly, the persons or a vast

majority of them, who receive the education in such course, are not the persons belonging to the respective minority community. When on these two counts, the answer is in negative, the very, *raison de atra* for conferment of minority status ceases to exist.

23. It must be set to the credit of the concerned officials of the Government that they have analyzed every facet of law in the correct perspective, followed the correct procedure of law and have properly applied the principles to the facts, which are borne out by the record.

24. The argument advanced on the basis of Section 5 of the Act is equally untenable. The Act deals with the regime of capitation fee and has exempted the minority institutions from that. Section 5 of the Act cannot be treated as the exclusive source of power for the respondents or of the rights of the petitioners, much less, the repository of the rights conferred under Articles 29 and 30 of the Constitution. When the impugned action is purely in terms of the judgments rendered by the Supreme Court, no exception can be taken to the impugned orders.

25. It is not as if that the institutions established by the petitioners cannot be run, in view of the impugned orders. The institutions would remain in tact. The only difference is that the petitioners would cease to have the privilege to jump the queue or to by-pass the regulations, which the other institutions are required to follow, under law. Even according to the petitioners, adequate students of their respective minority community are not available. It can be either that the interests of students are already taken care of by other institutions, or that there is no further necessity to establish or continue institutions for their exclusive benefit. Either way, the petitioners cannot insist on their being recognized as minority institutions, despite non-availability of the candidates. If their plea is to be accepted, a minority institution imparting an otherwise secular education can continue even with a single candidate from that community or in a given case, wholly with candidates hailing from other communities. The makers of the Constitution may not have contemplated such a situation even, in their dreams.

26. Hence, the writ petitions are dismissed. There shall be no order as to costs.