
(1975) 12 AHC CK 0021
In the Allahabad High Court
Case No : Second Appeal No. 1078 of 1972

St. Joseph's Higher Secondary School, Meerut Cantt. and Others APPELLANT

Vs

Ravi Shankar Sharma and Others RESPONDENT

Date of Decision : 05-12-1975

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Citation : AIR 1976 All 390

Hon'ble Judges : K.B. Asthana, C.J.; Satish Chandra, J

Bench : Division Bench

Advocate : Amar Nath Srivastava, for the Appellant; Vishnu Sahai and B. Dayal, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—A learned single Judge of this Court has referred the following question of law for the opinion of this Court :--

"Whether an educational institution established by a religious or a linguistic minority is bound by the provisions of Section 16-G (3) (a) of the U. P. Intermediate Education Act ?"

2. Clauses (a) and (b) of Section 16-G (3) of the aforesaid Act provides:--

(a) No Principal, Head Master or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations.

(b) The Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management.

3. Clause (c) of this provision provides for an appeal against the order of the Inspector to the Regional Appellate Committee. The Appellate Committee could, after such enquiry as it considers necessary, confirm the order or set aside or modify it.

4. The question referred to us relates to the fundamental right conferred by Article 30(1) of the Constitution upon religious and linguistic minorities. This Article confers a right to the minorities to establish and administer educational institutions of their choice.

5. A similar question came up for consideration before the Supreme Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, In that case, the constitutional vires of several provisions of Gujarat University Act, 1949 were considered. Section 51-A of the aforesaid Act provided:--

"51-A. (1) No member of the teaching, other academic and non-teaching staff of an affiliated college and recognised or approved institution shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and until:--

(a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him, and

(b) the penalty to be inflicted on him is approved by the Vice-chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf.

(2) No termination of service of such member not amounting to his dismissal or removal falling under Sub-section (1) shall be valid unless-

(a) he has been given a reasonable opportunity of showing cause against the proposed termination, and

(b) such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf:

Provided that nothing in this subsection shall apply to any person who is appointed for a temporary period only."

6. The attack in that case was upon Clause (b) of Section 51-A as well as Clause (b) of Sub-section (2) of Section 51-A. Both these clauses provided that penalty or termination is to be approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf. Ray, C. J. and Palekar, J., held:--

"The third set of provisions impeached by the petitioners consists of Sections 51-A and 52-A. Section 51-A states that no member of the teaching, other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the

charges and given a reasonable opportunity of being heard and until (a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him. and (b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf. Objection is taken by the petitioners to the approval of penalty by the Vice-Chancellor or any other officer of the University authorised by him. First, it is said that a blanket power is given to the Vice-Chancellor without any guidance. Second, it is said that the words "any other officer of the University authorised by him", also confer power on the Vice-Chancellor to authorise any one and no guidelines are to be found there. In short, unlimited and undefined power is conferred on the Vice-Chancellor. The approval by the Vice-Chancellor may be intended to be a check on the administration. The provision contained in Section 51-A, Clause (b) of the Act cannot be said to be a permissive regulatory measure inasmuch as it confers arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions. Section 51-A of the Act, cannot, therefore, apply to minority institutions."

7. The provision for approval of Vice-Chancellor was held to be bad because it acted as a check on the administration. Further, it was held to confer arbitrary power on the Vice-Chancellor because there was no guidelines on the basis of which the Vice-Chancellor could withhold his approval.

8. Jagmohan Reddy, J., for himself and for Alagiriswami, J., completely agreed with the opinion of Ray, C. J., vide paragraph 50.

9. Khanna, J., held:--

"Although disciplinary control over the teachers of minority educational institution would be with the governing counsel, regulations in my opinion, can be made for ensuring proper conditions of service of the teachers and for securing fair procedure in the matter of disciplinary action against the teachers. Such provisions which are calculated to safeguard the interest of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate a potential cause of frustration amongst the teachers. Regulations made for this purpose should be considered to be in the interest of minority educational institutions and as such they would not violate Article 30(1). Clause (a) of Sub-sections (1) and (2) of Section 51-A of the impugned Act which make provision for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff of an educational institution would consequently be held to be valid. Clause (b) of those sub-sections which gives a power to the Vice-Chancellor and officer of the University authorised by him to veto the action of the managing body of an educational institution in awarding punishment to a member of the staff in my opinion, interferes with the disciplinary control of the managing body over its teachers. It is significant that the power of approval conferred by Clause (b) in each of the two sub-sections of Section 51-A on the Vice-Chancellor or

other officer authorised by him is a blanket power. No guidelines are laid down for the exercise of that power and it is not provided that the approval is to be withheld only in case the dismissal, removal, reduction in rank or termination of service is mala fide or by way of victimisation or other similar cause. The conferment of such blanket power on the Vice-Chancellor or other officer authorised by him for vetoing the disciplinary action of the managing body of an educational institution makes a serious inroad on the right of the managing body to administer an educational institution. Clause (b) of each of the two sub-sections of Section 51-A should, therefore, be held to be violative of Article 30(1) so far as minority educational institutions are concerned."

10. His Lordship specifically held that the impugned Clause (b) interferes with the disciplinary control of the managing body over its teachers. The provision does not restrict its operation to cases of mala fide or victimisation etc. In other words, the power of the Vice-Chancellor was complete. He could refuse his approval on facts, that is to say, on reaching a conclusion that the action of the institution was on facts improper or invalid. The conferment of such a blanket power on the Vice-Chancellor or an officer of the University authorised by him, interfering with the disciplinary control of the managing body over its teachers makes a serious inroad on the right of the managing body to administer an education institution.

11. Mathew, J., speaking for himself and Chandrachud, J., held:--

"It was argued for the petitioners that Clause (1) (b) of Section 51-A has the effect of vesting in the Vice-Chancellor a general power of veto on the right of the management to dismiss a teacher. The exact scope of the power of the Vice-Chancellor or of the Officer of the University authorised by him in this subsection is not clear. If the purpose of the approval is to see that the provisions of Sub-section 51-A(1)(b) are complied with, there can possibly be no objection in lodging the power of approval even in a nominee of the Vice-Chancellor. But an uncanalised power without any guideline to withhold approval would be a direct abridgment of the right of the management to dismiss or remove a teacher or inflict any other penalty after conducting an enquiry."

12. He was of the opinion that such a provision constitutes a direct abridgment of the right of the management to dismiss or remove a teacher or inflict any other penalty, after conducting an enquiry.

13. Thus, seven out of nine Judges who constituted the Bench, held the provisions relating to the approval of the Vice-Chancellor were violative of Article 30(1) of the Constitution. The other two Judges, namely, Hon"ble Beg, J. and Dwivedi, J., were of a contrary view. As already seen, clause (a) of Section 16-G (3) debars the management of an educational institution from discharging or removing or dismissing from service or reducing in rank or serving any notice of termination to a teacher except with the prior approval in writing of the Inspector.

14. The power conferred on the Inspector is a check on the administration. It is

uncanalised and unguided in the sense that no facts have been mentioned on the basis of which alone the Inspector may exercise his power. In the absence of any guideline, it cannot be held that the power of approval conferred on the Inspector was solely a check on mal-administration of the institution. As discussed by the Supreme Court in St. Xavier's College case, such a blanket power directly interferes with the disciplinary control of the managing body over its teachers. The decision in the case of St. Xavier's College is directly applicable to the present case and accordingly it may be held that the impugned provision is violative of Article 30(1) of the Constitution.

15. Learned counsel for the respondent invited our attention to a decision of the Supreme Court in The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another, . In the case, the Supreme Court followed the decision in St. Xavier's College case. The provisions which were impugned in that case were of entirely different nature.

16. In the result, our answer to the question referred to is that Section 16-G (3) (a) of the U. P. Intermediate Education Act is violative of Article 30(1) of the Constitution and accordingly is not applicable to an educational institution established by a religious or linguistic minority. The papers be returned to the learned single Judge with this opinion and answer.