
(2008) 08 DEL CK 0228
In the Delhi High Court
Case No : WP (C) 5226 of 2008

St. Stephen's College

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1), 30, 30(1)

Citation : (2008) 152 DLT 228 : (2008) 106 DRJ 401 : (2009) 2 ILR Delhi 472

Hon'ble Judges : A.P. Shah, C.J.; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Romy Chacko, Arpit Gupta, Sunil T. Mathews and Rajat Joseph, for the Appellant; Maninder Acharya, Vikas Sethi for R-1 and Amitesh Kumar, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Ajit Prakash Shah, C.J.—Rule.

2. Learned Counsel for the respondent Nos. 1&2 waive service of notice. By consent, the petition is taken up for final hearing.

3. The short question that falls for our consideration is whether the management of a minority college is free to choose and appoint any qualified person as Principal of the college or whether such management is hedged by any Ordinance of the University in doing so ? This controversy has arisen because the University of Delhi is insisting that the petitioner College shall follow the procedure of the Selection Committee for filling up the post of Principal as referred to in Clause 7 of Ordinance XVIII of the Delhi University.

4. The petitioner St.Stephen's College is an aided minority educational institution established and administered by the religious minority of Christians. The College was established in the year 1881 and has maintained its Christian character till date. The management of the College is looked after by the Supreme Council and the Governing Body. The Principal of St.Stephen's College is appointed by the

Supreme Council and he shall be a Christian belonging to the Church of North India. According to the petitioner it has followed the College constitution till date for filling up the post of Principal subject to the qualification prescribed by the University and this was never objected to by the University as the University Ordinance dealing with the procedure for filling up the post of Principal does not apply to the minority educational institution. However, now the University is insisting the petitioner to follow the University Ordinance for filling up the post of Principal. The petitioner has, therefore, approached this Court seeking a declaration that Clause 7(2) of Ordinance XVIII of Delhi University does not apply to a minority educational institution.

5. Some more facts need to be stated in order to understand the dispute. In January 2007 the post of Principal of St.Stephen's College fell vacant consequent to the appointment of Dr.Anil Wilson as Vice Chancellor of Himachal University. Hence to fill up this vacancy the Supreme Council advertised the post of Principal on 23rd March, 2007. Seven applications were received and the applicants were interviewed on 9th May, 2007 but none was found suitable for being appointed as Principal. Hence Rev.Fr. Valson Thampu, former Head of Department of English, St.Stephen's College, was invited to serve as Officer on Special Duty (OSD) to the College as permitted by Clause 3 (c) of the Ordinance XVIII of the University. The appointment of Rev.Fr. Valson Thampu as OSD was challenged before the National Commission for Minority Educational Institutions. The Commission vide its order dated 5th February, 2007 declared that the appointment of Rev.Fr. Valson Thampu is illegal and inoperative. The Commission also recommended to the College to take urgent corrective measures for selection and appointment of a regular Principal for the College in accordance with law. The order passed by the National Commission for Minority Educational Institutions was challenged by the petitioner before this Court and notice was issued to the respondents in the matter. However, Fr.Valson Thampu resigned from the post of OSD and the same was accepted by the Supreme Council on 15th March, 2008. The petitioner again initiated the process to fill up the post of Principal in accordance with the College constitution and an advertisement in the newspapers inviting applications for the post of Principal was also issued. The advertisement provides that the candidate should fulfil the necessary qualifications prescribed under the University Ordinance, referred to above. The University however directed the petitioner vide communication dated 20th March, 2008 to follow in letter and spirit the UGC norms for appointment of Principals of colleges both with regard to the minimum qualifications prescribed and selection committee and selection process. The first respondent also directed the petitioner not to insist upon any minimum age criteria as prescribed in the advertisement since the same is not provided in the University Ordinance. Vide a further communication dated 27th March, 2008 the Delhi University again insisted the petitioner to follow the composition of the Selection Committee for the post of Principal as referred to in Clause 7 of the Ordinance XVIII.

6. Ordinance XXIV of Delhi University deals with qualifications for the post of

Principal. The advertisement given by the petitioner clearly stipulates that only those candidate who fulfil the qualifications prescribed in Ordinance XXIV would be eligible to apply for the post of Principal. The dispute is with regard to the applicability of Clause 7(2) of Ordinance XVIII. Clause 7(2) of Ordinance XVIII requires the Governing Body of the College to forward to the University the list of the applicants for the post of Principal as well as others whom the Governing Body proposes to consider for the post of Principal in a form prescribed by the University. The aforesaid list submitted by the Governing Body is scrutinized by the Preliminary Selection Committee. Thereafter the recommendation of the Preliminary Selection Committee has to be forwarded to the University and upon receiving the recommendation, the University can either send its panel of names mentioned in the order of preference whom the University is prepared to recognize as Principal to the Governing Body or refrain from sending any such list if according to the University none of the applicants is found suitable for the post. If the University does not send its panel of names for the post of Principal, the College has no other option other than to re-advertise the post.

7. The University is given the power of veto at different stages of selection. Clause 7(2) of the Ordinance contemplates two committees for the purpose of appointing the Principal of a college affiliated to Delhi University i.e. (i) the Preliminary Selection Committee and (ii) the Final Selection Committee for appointing Principal of the College. The Preliminary Selection Committee consists of (i) the Vice-Chancellor; (ii) Pro-Vice Chancellor; (iii) a nominee of the Visitor; (iv) Chairman of the Governing Body of the College and (v) two members of the Executive Council nominated by it. Thus, in the constitution of the Preliminary Selection Committee, the management has only one representative and the University has five nominees. Apart from this, any recommendation made by the Preliminary Selection Committee is not binding on the University. If for any reason the recommendation made by the Preliminary Selection Committee is not acceptable to the University, it is open to the University either to forward a list of persons mentioned in the order of preference whom the University would be prepared to recognize as Principal or refrain from sending a list if the University feels that none of the applicants is suitable for the post of Principal. The Final Selection Committee has practically no role other than to select one of the candidates chosen by the University. The contention of the petitioner is that as per Clause 7(2), the whole process of selection is taken over by the University and the Governing body has no say except to forward the list of applicants to the University and thereafter appoint the person selected by the University.

8. Mr.Romy Chacko, learned Counsel appearing for the petitioner, contends that the right to appoint the Principal is the most important facet of the minorities' right to administer under Article 30(1) of the Constitution. He submits that receipt of aid by a minority institution does not, in any way, fetter or abridge this constitutional right to administer educational institutions and therefore, Clause 7(2) of Ordinance XVIII requiring the minority college to follow the Selection Committee procedure is violative of Article 30(1) of the Constitution. He further

submits that the State or University cannot regulate the method or procedure for appointment of Principal and the limited power vested with them is to prescribe qualifications for the post of Principal. He submits that the question whether aided minority educational institutions continue to enjoy the right for appointing the Principal of a college after the judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, is finally settled in The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, wherein after referring to TMA Pai Foundation case it has been held that receipt of State aid does not annihilate the right guaranteed to the minorities under Article 30(1).

9. On the other hand Ms.Maninder Acharya, learned Counsel appearing for the Delhi University, contends that the minorities do not have any unfettered right under Article 30(1) to administer and manage their educational institutions; that the University can regulate certain facets of administration of private educational institutions run by minorities, in particular by prescribing minimum qualification, experience and other conditions relating to merit for being appointed as Principal and therefore Clause 7 of Ordinance XVIII of the University providing for the manner for filling up the post of Principal is binding on minority institutions receiving aid from the State. She submits that the condition imposed by Clause 7(2) can hardly be construed as interference with the right of the institution to administer its affairs. Since the institution is affiliated with the University it is required to comply with the requirements as any other similar institution, and, there was no discrimination in the application of this Clause of the Ordinance and further the object was to ensure transparency and objectivity in the selection process and this cannot be termed as interference in the affairs of the institution. Learned Counsel has placed heavy reliance on the decision of the Supreme Court in TMA Pai Foundation (supra).

10. Mr.Amitesh Kumar, learned Counsel appearing for the University Grants Commission has more or less supported the submissions of the learned Counsel for the University.

11. The question which we have to consider is whether the management of a minority college is also bound by Clause 7 of Ordinance XVIII of the Delhi University and hence the college is required to follow the procedure prescribed therein for filling up the post of Principal. A Constitution Bench of seven Judges of the Supreme Court In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, examined constitutional validity of the Bill, in a reference by the President of India. One of the propositions laid down by the Constitution Bench in the said decision is that the right guaranteed under Article 30(1) is a right that is absolute in law and any law or executive direction which infringes the substance of that right is void to the extent of infringement. But the absolute character of the right will not preclude making of regulations in the true interest of efficiency or instruction, discipline, health, sanitation, morality, public order and the like, as such regulations are not restrictions on the substance of the right guaranteed by the Constitution.

12. The aforesaid proposition was approved by another Constitution Bench of the Supreme Court in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, and also a nine Judge Bench of the Supreme Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, .

13. The importance of the key role which a Principal or a Head Master plays in college or in school has been pithily stated by a two Judge Bench decision in *N. Ammad Vs. The Manager, Emjay High School and Others*, in the following words: (AIR p-680 para 18)

Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its headmaster and he is the focal point on which outsiders look at the school. A bad headmaster can spoil the entire institution, an efficient and honest headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

The Court cited with approval the following observations of Chief Justice M.S.Menon in a Full Bench decision of the Kerala High Court in *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*, "The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon - except to the extent of prescribing the requisite qualifications and experience - cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right "a teasing illusion, a promise of unreality"".

14. The nine Judge Bench in *Ahmedabad St.Xavier's College Society's* case (supra) also highlighted the importance of the role of the Principal of a college. In that decision, in paragraph 182, Justice K.K.Mathew observed thus: (SCC pp 815-16 para 182)

It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.

15. Krishna Iyer, J dissenting from the majority view in *The Gandhi Faiz-E-Am*

College, Shahjahanpur Vs. University of Agra and Another, has nevertheless emphasised the importance of the post of Principal in the following words: (SCC p 293 para 21)

21. An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions. The principal is an invaluable insider - the Management's own choice - not an outsider answerable to the Vice Chancellor. He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence.

16. In *State of Kerala v. Very Rev. Mother Provincial* (1970) 2 SC 417 the Supreme Court upheld the decision of the Kerala High court declaring Sub-sections (1),(2),(3) of Section 53 of the Kerala University Act, 1969 relating to appointment of Principal as ultra vires Article 30(1) in respect of minority institutions. The Court affirmed the following findings of the High Court (reported in 1969 Ker It 749):

The principal of a college is, as Section 2(12) recognizes, the head of the college, and the post of the principal is of pivotal importance in the life of a college; around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching; and the right to choose the principal is perhaps the most important facet of the right to administer a college. The imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed by article 30(1) of the Constitution, and, for the reasons we have already given, by Article 19(1)(f) as well. To hold otherwise would be to make the rights "a teasing illusion, a promise of unreality". Provision may, of course, be made to ensure that only proper persons are appointed to the post of principal; the qualifications necessary may be prescribed and the mode of selection for the purpose of securing the best men may be laid down. But to go beyond that and place any further fetter on the choice would be an unreasonable interference with the right of management. Therefore, so far as the post of principal is concerned, we think it should be left to the management to secure the services of the best person available. This, it seems to us, is of paramount importance and the prospects of advancement of the staff must yield to it. The management must have as wide a field of choice as possible; yet Sub-section (2) of Section 53 restricts the choice to the teachers of the colleges or of all the colleges, as the case may be, and enables the appointment of an outsider only if there is no suitable person in such college or colleges. That might well have the result of condemning the post to a level of dull mediocrity. A provision by which an outsider is to be appointed, or a junior member of the staff preferred to a senior member, only if he is of superior merit,

the assessment of which must largely be left to the management, is understandable; but a provision which compels the management to appoint only a teacher of the college (or colleges) unless it pronounces all the teachers unsuitable, is clearly in derogation of the powers of the management, and not calculated to further the interest of the institution. But we might say that there can be no objection to the appointment of the principal as of any other member of the staff being subject to the approval of some authority of the University so long as disapproval can be only on the ground that the person appointed has not the requisite qualifications. Also that if disapproval is not to be only on some such stated ground, but is left entirely to the will and pleasure of the appointing authority, that would be to deprive the educational agency of its power of appointment and would be bad for offending Article 19(1)(f) and article 30(1)

17. In N.Ammad's case (supra) the Court categorically held that if management of the school is not given very wide freedom to choose the personnel for holding such a key post, subject of course to the restrictions regarding qualifications to be prescribed by the State, the right to administer the school would get much diminished. The Court also rejected the submission that the management should have advertised for the post inviting applications from qualified persons. The Court distinguished the decision in Miss Shainda Hasan Vs. State of Uttar Pradesh and others, by observing that no legal proposition has been laid down in that case that the selection process must be through advertisement. It is for the management of the minority educational institution to choose the modalities for selecting qualified persons for appointment.

18. In Board of Secondary Education and Teachers Training Vs. Jt. Director of Public Instructions, Sagar and Others, the Court made it clear that the right of minority institutions cannot be taken away by any rules or regulations or any enactment made by the State except prescribing qualifications and eligibility for the appointment. Paragraph 3 of the said judgment, which is material, is quoted below: (SCC p 556)

3. The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which take away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in State of Kerala v. Very Rev.Mother Provincial and Ahmedabad St.Xavier's College Society v. State of Gujarat make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are therefore, of the opinion that the High Court was not right in holding otherwise. The State has

undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant. We need not go into any other question in this appeal.

19. In the recent decision in Secretary Malankara Syrian Catholic College (supra) Section 57 (3) of the Kerala University Act, 1974 fell for consideration of the Supreme Court. Section 57(3) provides that post of Principal, when filled up by promotion to be made on the basis of seniority-cum-fitness. The High Court relying on the decision in TMA Pai Foundation held that receipt of aid by a minority institution removes protection under Article 30(1), by taking away its right to claim immunity from interference and therefore all regulations made by the State, governing the manner of making appointments and removal, as also the conditions of service of Principals and Lecturers, will be binding on such aided institution. The High Court held that aid carries the "price" of surrender of a part of its freedom and independence in matters of administration. As a consequence, it held that Section 57(3) of the Act providing that appointments of Principal should be on the basis of seniority-cum-fitness, is valid and binding on minority institutions. The Court formulated the following two questions for consideration:

(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State?

(ii) Whether the right to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice. If so, Section 57(3) of the Act would violate Article 30(1) of the Constitution of India?

20. As regards question No. 1 the Court after a critical analysis of various decisions, ranging from State of Kerala v. Very Rev.Mother Provincial to TMA Pai Foundation, held that all laws made by the State to regulate administration of educational institutions and grant of aid, will apply to minority educational institutions also and if any such regulation interfere with the overall administrative control of the management over the staff or abridges/dilutes in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minorities institutions.

21. Insofar as the question relating to right of aided minority institutions in the matter of appointment of Principal or Headmaster, the Court after extensively quoting from the decisions in N.Ammad, Board of Secondary Education and Teachers Training and State of Kerala v. Very Rev.Mother Provincial held as follows: (SCC p 404)

27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by

TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

22. In the light of the decided cases it is clear that the right of minority educational institutions to appoint the head of the institution cannot be taken away by any rule or regulation or by any enactment made by the State even if the institution is receiving 100% aid. A law which interferes with the minority's choice of Principal would be violative of Article 30(1). In the Secretary, Malankara Syrian Catholic College (supra) the Court also clarified that paragraphs 72 and 73 of TMA Pai Foundation were not rendered in the context of aided minority institutions and the same was considered in paragraph-80 to 155 of the said judgment. The Court also recognized the importance of the post of Principal. Minority institutions are thus entitled to appoint a person who, according to it, is the most suited for the head of the institution. Clause 7(2) of the Ordinance which virtually takes away the right of a college to choose its Principal cannot bind a minority administered institution.

23. At this stage it must be noticed that the petitioner does not challenge Clause 24 of Ordinance XVIII which prescribes the minimum qualification for the post of Principal. The learned Counsel for the petitioner in fact stated that the petitioner would ensure that the person selected, possesses the minimum qualification prescribed thereunder.

24. Ms.Maninder Acharya has referred to the decision of the Division Bench of this Court in Jesus & Mary College v. University of Delhi and Anr. WP(C)5652/2006 decided on 30th November, 2006 to which one of us (Dr.S.Muralidhar, J) is a party. This judgment deals with Clause 7(4A) of Ordinance XVIII of the Delhi University relating to appointment of teachers.

Apart from the fact that this decision deals with the appointment of teachers and not Principal, it is clearly noted in paragraph 25 of the said judgment that it is settled law that a minority institution cannot be regulated by the State to the extent that it completely takes away the right to appoint a key person like Principal or generally to administer the institution.

25. Mr. Amitesh Kumar the learned Counsel for the UGC sought to contend that the norms prescribed by the UGC would nevertheless apply to the petitioner. Such a question does not arise for consideration in this petition, and in any event any such norm would be subject to the provisions of the Constitution and the law concerning their scope as explained by the Supreme Court in the decisions hereinbefore noticed.

26. In the result, the petition succeeds. It is declared that Clause 7(2) of Ordinance XVIII of the Delhi University does not apply to the petitioner, which is a minority institution. The petitioner is directed to proceed with the selection process for filling up the post of Principal which is vacant since January, 2007 and fill up the post of Principal within eight weeks from today.