

(2015) 10 AHC CK 0132
In the Allahabad High Court
Case No : Special Appeal No. 1077 of 2013

Suraj Bhan

APPELLANT

Vs

Madan Kumar Bansal and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 — Section 2(1)(d) (I)
Constitution of India, 1950 — Article 14, 19, 19(1)(g), 29(2), 30
Criminal Procedure Code, 1973 (CrPC) — Section 195
Evidence Act, 1872 — Section 123, 124
National Commission for Minority Educational Institutions Act, 2004 — Section 2(g)
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2015) 11 ADJ 98 : (2015) 11 ADJ 393 : (2015) 6 AWC 6312 : (2015) 4 UPLBEC 2979

Hon'ble Judges : Vimlesh Kumar Shukla and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : J.P. Singh, for the Appellant; B.D. Pandey and B.N. Rai, for the Respondent

Final Decision : Dismissed

Judgement

Vimlesh Kumar Shukla, J.—Suraj Bhan, describing himself as Manager of the Committee of Management of Ram Ratan Intermediate College, Billari, district Moradabad, is assailing the validity of the order dated 4.7.2013 passed by the learned Single Judge of this Court in Writ Petition No. 34881 of 2011 (Dr. Madan Kumar Bansal v. Union of India & Others) setting aside the notification dated 4.5.2009 issued by the Secretary National Commission for Minority Educational Institution, New Delhi, as well as the letter dated 5.5.2009 issued by the State Government and the consequential order dated 16.3.2011 issued by the District Inspector of Schools, Moradabad by allowing the special appeal and dismissing the aforementioned writ petition.

2. Brief background of the case, as is reflected in the present case is that in the

district of Moradabad there has been a society known as Billari Education Association and the said society in question has established the institution known as Ram Ratan Intermediate College, Billari, district Moradabad and in reference to the said institution it is reflected that an application was moved before the National Commission for Minority Educational Institution, New Delhi for getting a certificate to the effect that institution in question is a minority institution and based on the said application being moved the Secretary, National Commission for Minority Educational Institution, New Delhi on 4.5.2009 declared the institution to be a minority institution and based on the said notification consequential directives have been issued by the State Government and the District Inspector of Schools following the same in its turn proceeded to make a mention that institution in question is a minority institution and such an action impelled Dr. Madan Kumar Bansal to be before this Court by preferring the Writ Petition No. 34881 of 2011. In the said writ petition in question after pleadings inter-se parties have been exchanged, writ petition in question has been taken up for final hearing and disposal and learned Single Judge has proceeded to allow the writ petition and thus giving an opportunity to appellant to be before this Court by means of present Intra Court Appeal.

3. Sri Ashok Khare, Senior Advocate, assisted by Sri J.P. Singh, Advocate, submitted that in the present case learned Single Judge has transgressed and overstepped his jurisdiction at the point of time when he has proceeded to allow the writ petition and to substantiate this fact it has been sought to be contended that in spite of the fact that parliamentary act namely Act No. 2 of 2005 was not even under challenge as amended by Act No. 18 of 2006, the same has been in effect altered, in view of this, the appeal in question deserves to be allowed and especially in the peculiar backdrop of the case that Dr. Madan Kumar Bansal has no concern with the society and the institution.

4. The request, that has been made on behalf of the appellant, has been resisted by the learned Standing Counsel as well as Sri Indraraj Singh, Advocate, alongwith Sri Prabhakar Awasthi, Advocate, by submitting that at no point of time the institution in question has been established by the members of the minority community and on totally wrong facts the institution in question has been declared as minority institution and this Court has rightly allowed the writ petition and petitioner Dr. Madan Kumar Bansal has full locus to assail the validity of the action, so taken.

5. Before proceeding to consider the respective arguments, that have been so advanced, the issue of locus is being taken up first. The petitioner in the body of writ petition made a categorical mention of fact that petitioner is a life member of the general body. In the counter affidavit, that has been so filed, a mention has been made that membership of petitioner has been dispensed with and he has no concern. The resolution, that has been relied upon, also accepts this fact that petitioner is life member of general body and he has been removed, as he and his group has been indulging in anti institutional activities. Petitioner in his

turn has come up with the specific case that entire proceedings have been manufactured only for the purposes of case. Once such are the allegations, coming forward, coupled with the fact that the petitioner in the rejoinder affidavit, that has been so filed, has come up with the specific case that his grandfather made a contribution of Rs. 11,000/- in the year 1948 and the most surprising feature of the writ petition is that in the memorandum, that has been so prepared, therein the name of petitioner's grandfather has been mentioned. Once such is the factual situation that petitioner has been a member of the general body and now it is being contended that he has been thrown out of membership and same is being disputed by him and his grandfather and others have contributed alongwith the public of Billari for the establishment of the institution in question, then certainly petitioner has a locus to question the validity of the decision that has been so taken declaring the institution in question to be a minority institution.

6. Once the issue of locus has been answered by us, the next issue is as to whether it is not necessary that to be declared a minority institution it should be both established and administered even if it is being administered, the institution can be declared to be a minority institution. In order to appreciate the arguments Article 30 of the Constitution of India is being looked into at the very outset and same is quoted below;

"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.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

7. A bare perusal of the said provision would go to show that minorities have been conferred with the right to establish and administer educational institutions of their choices. Article 30 has been subject matter of interpretation before the Apex Court from time to time and the Apex Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), has clearly ruled that for an institution to be covered within the meaning of Article 30 of the Constitution of India, it must be proved that (i) institution was brought into existence (established) by a minority community and (ii) institution has all along been run and managed by the minority community, which had established the same. Relevant portion of the Judgement reads as follows:

"19..... The Article in our opinion clearly shows that the

minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an education institution provided it has been established by it..... "

8. Both the pre-requisite terms and conditions has to be fulfilled simultaneously and even if one of the condition is found to be wanting then the institution in question on the parameters of Article 30 cannot be treated/accepted as minority institution. Article 30 has been explained in detail by the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . Relevant portion of the Judgement reads as follows:

"81. As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a state subject previously. The jurisdiction of the Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14 . It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different states for the purposes of Article 30 a "linguistic minority" will have to be determined in relation to the state in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put at par in Article 30 ."

9. In the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, , T.M.A. Pai Foundation case has been discussed and the issues raised have further been clarified. Relevant paragraphs are quoted as follows;

"91. The right to establish an educational institution, for charity or for profit, being an occupation, is protected by Article 19(1)(g) . Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19(1)(g) yet the founding fathers of the Constitution felt the need of enacting Article 30 . The reasons are too obvious to require elaboration. Article 30(1) is intended to instil confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection for minorities. But for Article 30 , an educational institution, even though based on religion or language, could have been controlled or regulated by law enacted under clause (6) of Article 19 , and

so, Article 30 was enacted as a guarantee to the minorities that so far as the religious or linguistic minorities are concerned, educational institutions of their choice will enjoy protection from such legislation. However, such institutions cannot be discriminated against by the State solely on account of their being minority institutions. The minorities being numerically less than non-minorities, may not be able to protect their religion or language and such cultural values and their educational institutions will be protected under Article 30, at the stage of law-making. However, merely because Article 30(1) has been enacted, minority educational institutions do not become immune from the operation of regulatory measures because the right to administer does not include the right to maladminister. To what extent the State regulation can go, is the issue. The real purpose sought to be achieved by Article 30 is to give minorities some additional protection. Once aided, the autonomy conferred by the protection of Article 30(1) on the minority educational institution is diluted as provisions of Article 29(2) will be attracted. Certain conditions in the nature of regulations can legitimately accompany the State aid.

95. The term "minority" is not defined in the Constitution. Chief Justice Kripal, speaking for the majority in *Pai Foundation* took a clue from the provisions of the States Reorganisation Act and held that in view of India having been divided into different linguistic States, carved out on the basis of the language of the majority of persons of that region, it is the State, and not the whole of India, that shall have to be taken as the unit for determining a linguistic minority vis-à-vis Article 30. Inasmuch as Article 30(1) places on par religions and languages, he held that the minority status, whether by reference to language or by reference to religion, shall have to be determined by treating the State as a unit. The principle would remain the same whether it is a Central legislation or a State legislation dealing with a linguistic or religious minority. Khare, J. (as His Lordship then was), Quadri, J. and Variava and Bhan, JJ. in their separate concurring opinions agreed with Kripal, C.J. According to Khare, J., take the population of any State as a unit, find out its demography and calculate if the persons speaking a particular language or following a particular religion are less than 50% of the population, then give them the status of linguistic or religious minority. The population of the entire country is irrelevant for the purpose of determining such status. Quadri, J. opined that the word "minority" literally means "a non-dominant" group. Ruma Pal, J. defined the word "minority" to mean "numerically less". However, she refused to take the State as a unit for the purpose of determining minority status as, in her opinion, the question of minority status must be determined with reference to the country as a whole. She assigned reasons for the purpose. Needless to say, her opinion is a lone voice. Thus, with the dictum of *Pai Foundation* it cannot be doubted that a minority, whether linguistic or religious, is determinable only by reference to the demography of a State and not by taking into consideration the population of the country as a whole.

96. Such definition of minority resolves one issue but gives rise to many a

questions when it comes to defining "minority educational institution". Whether a minority educational institution, though established by a minority, can cater to the needs of that minority only? Can there be an enquiry to identify the person or persons who have really established the institution? Can a minority institution provide cross-border or inter-State educational facilities and yet retain the character of minority educational institution?"

10. All the judgments quoted above have been dealt with and followed in the case of Dayanand Anglo Vedic (DAV) College Trust and Management Society Vs. State of Maharashtra and Another, , by taking the view that rights conferred by Article 30 of Constitution to minorities are in two parts, the first part is the right to establish the institution of the minorities choice and the second part relates to the right to administration of such institution. The word "establishment" herein means bringing into being of an institution and it must be by member of minority community. "Administration" means management of the affairs of the institution. Relevant paragraphs of the aforementioned judgment are quoted below;

"28. We have no doubt that the view taken by the High Court is justified. The rights conferred by Article 30 of the Constitution to the minority are in two parts. The first part is the right to establish the institution of minority's choice and the second part relates to the right to administration of such institution. The word establishment herein means bringing into being of an institution and it must be by minority community. The administration means management of the affairs of the institution. Reference may be made to be the decision of this Court in the case of State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., .

29. Similarly, in the case of S.P. Mittal Vs. Union of India (UOI) and Others, , this Court held that in order to claim the benefit of Article 30 , the community must firstly show and prove that it is a religious or linguistic minority; and secondly, that the institution has been established by such linguistic minority.

32. In view of the opinion expressed by this Court in a catena of decisions, there cannot be any controversy that minorities in India have a right to establish and administer educational institutions of their choice and the State Government or the Universities cannot interfere with the day-to-day management of such institutions by the members of minority community. At the same time, this Court pointed out that though Article 30 itself does not lay down any limitation upon the right of a minority to administer its educational institution but this right is not absolute. This is subject to reasonable regulations for the benefit of the institution. The State Government and Universities can issue directions from time to time for the maintenance of the standard and excellence of such institution which is necessary in the national interest.

34. After giving our anxious consideration in the matter and in the light of the law settled by this Court, we have no hesitation in holding that in order to claim minority/linguistic status for an institution in any State, the authorities must be satisfied firstly that the institution has been established by the persons who are

minority in such State; and, secondly, the right of administration of the said minority linguistic institution is also vested in those persons who are minority in such State. The right conferred by Article 30 of the Constitution cannot be interpreted as if irrespective of the persons who established the institution in the State for the benefit of persons who are minority, any person, be it non-minority in other place, can administer and run such institution."

11. Once constitutional provisions are clear then in this background the provisions of Sections 2(da), 2(g), 10, 11 and 12 of the Act No. 2 of 2005 are being looked into and same are as follows;

"2. Definitions.- In this Act, unless the context otherwise requires,-

.....

"(da) "educational rights to minorities" means the rights of minorities to establish and administer educational institutions of their choice;

(g) Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;

10. Right to establish a Minority Educational Institution.-(1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall, -

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under Sub-section (1) for the grant of no objection certificate, -

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

it shall be deemed that the Competent authority has granted a no objection certificate to the applicant

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case

may be, laid down by or under any law for the time being in force.

Explanation.- For the purposes of this section, -

(a) "applicant" means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) "no objection certificate" means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. Right of a Minority Educational Institution to seek affiliation.- (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University:

Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application

11. Functions of Commission.- Notwithstanding anything contained in any other law for the time being in force, the Commission shall-

(a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) enquire, suo motu, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective,

implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

12. Powers of Commission.- (1) If any dispute arises between a minority educational institution and a 2[***] University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872,(1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

[(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 , and for the purposes of section 196 , of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).]."

12. Article 30 defines right of minorities to establish and administer educational institution. The National Commission of Minority Educational Institutions Act 2004 has been introduced by the Parliament after taking the assent of President of India for constituting a National Commission for Minority Educational Institutions and to provided for matters connected therewith or incidental thereto. Section 2(da) defines "educational rights of minorities" means the right of minorities to establish and administer educational institutions of their choice". Section 2(g) defines "Minority Educational Institution means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities". Section 10 gives opportunity to person who desires to establish a minority educational system to apply to competent authority for grant of no objection certificate for the said purpose. Section 11 deals with functions of Commission. Section 12 deals with the powers of Commission. Under sub-section (2) of Section 12 Commission for discharging its function has all the powers of Civil Court trying a suit and as per sub-section

(3) of Section 12 every proceeding has to be deemed to be judicial proceeding.

13. Under Section 2(g) of the National Commission for Minority Educational Institutions Act 2004 minority educational institution has been defined as a college or institution, other than the University, established or maintained by a person or group of persons from amongst the minorities. The use of word "Or" under the said section on its face value creates two separate classes i.e. one pertaining to establishment and one pertaining to maintenance from amongst the minorities. The constitutional parameter for an institution to be accepted as minority institution is that the institution in question should be established by the members of the minority community and should be administered by the minorities. Section 2(da) that defines "educational rights of minorities" under the Act also talks of the rights of minorities to establish and administer educational institution of their choice. One of the functions of Commission under clause (b) of Section 11 is to enquire suo moto or on petition presented to it by any minority educational institution into complaints regarding deprivation/violation of rights of minorities to establish and administer institution of their choice. In case, the said provisions are to be accepted in the manner, as has been suggested on behalf of appellant, then the net effect of the same would be that even if the institution has not been established by the members of minority community, even then if it is being managed by members of minority community, it should be accepted as minority. "Or" is being suggested as disjunctive and thus arena of minority institution being enlarged. The word "Or" is normally disjunctive and "And" is normally conjunctive but at times they are read vice versa to give effect to the manifest intention of legislature. "Minorities Educational Institution" as defined cannot be read in isolation, "Educational Rights of Minorities" clearly provides for rights of minorities to establish and administer educational institution of their choice. Establishment and Administration has to be read together and, accordingly, for fulfilling the legislative intent and for bringing the said provision in tune with the provisions of Constitution of India Article 30(1) , "Or" will have to be read as "And". Apex Court in the case of The State of Bombay Vs. R.M.D. Chamarbaugwala, , in Section 2(1)(d)(I) of the Bombay Lotteries and Prize Compensation Control and Tax Act 1948 (as amended by Act No. 30 of 1952) read "Or" as "And" to give effect to the clear intention of legislature, as expressed in the Act, read as whole. Accordingly, if the educational institution has not been established by minorities, it cannot claim right to administer it. Establishment of institution by minorities is concomitant to administration of institution by minorities.

14. Once such is the factual situation that for an institution to be accepted as minority institution there are two pre-requisite conditions i.e. the institution in question should be established by minority community and institution in question is run and managed by the minority community and in the present case learned Single Judge has taken pains and we have also verified from the record in question and before us no issue has been raised on the such factual aspect of the matter that at the point of time when institution in question was set-up

contribution has been made by the people from all walk of life and in this regard the proceedings clearly speaks for itself that public of Billari came forward to establish such an institution and for getting recognized the same by U.P. Education Board. Single Judge has proceeded to record a finding that at least one thing stands proved beyond doubt that the institution in question was not established by any minority community/Jains and the institution in question was established and was being run and managed by the public of Bilari, members whereof belonging to the various communities upto to date of passing of the resolutions. Once such finding of fact has been returned by the learned Single Judge on the basis of evidence available on record and said finding of fact is duly corroborated by the records, in view of this, once the pre-requisite terms and conditions of an institution being declared to be minority institution was not at all fulfilled, then the Commission in question was totally unjustifiable in proceeding to accept the institution in question as minority institution and that too by means of an unreasoned and cryptic order. The learned Single Judge has clearly proceeded to make a mention that prerequisite terms and conditions for an institution to be accepted as minority institution was not at all fulfilled by the appellant's institution, then there is no infirmity in the order passed by the learned Single Judge and same is hereby affirmed by us.

15. Special appeal is dismissed, accordingly. Interim order passed by this Court stands vacated.