
(1994) 07 MP CK 0031
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1090/94

Sweety Khandelwal and Others

APPELLANT

Vs

Divisional Secretary, Board of Secondary Education, Indore
and Others

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 30(1)

Citation : AIR 1995 MP 64 : (1994) 39 MPLJ 838 : (1994) MPLJ 838

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : R.S. Garg, Amit Agrawal, Parag Hada, S. Shukla, L. Bhatnagar, Sunil Jain, C.S. Ujjainiya, for the Appellant; A.M. Mathur, Shrivastava, G.M. Chafekar, S.S. Samvatsar, G.A.; Surjeetsingh, for the Respondent

Judgement

A.R. Tiwari

Twenty students of St. Raphael's Girls Higher Secondary School, Indore with insignia of "loving service". Irked by indomitable insistence of respondent No. 4 to implement own policy of evaluation in disregard of reiterated instructions of Joint Director, Public Instructions, Indore (Annexure P/14) arc before me in this petition under Article 226/227 of the Constitution of India for issuance of writ of mandamus to secure enforcement of Annexure P/14 and revision/declaration of results of 1993-94 examination on that basis.

Facts first. First fourteen, students were the candidates in examination of 9th Class and next six students appeared in examination of 11 th Class held by respondent No.4. The school though non-aided and religious minority institution, is affiliated with Board of Secondary Education, Bhopal. The respondent No. 2 issued circular dated 1-5-87 (Annexure P/I) to demand preparation of result on the basis of marks obtained in (Annual Examination. The circulars (Annexures P/ 2 and P/ 3) fixed 33% marks as the level to pass IX and XI examinations which are local. It is claimed that these students have passed examination on the basis

of these circulars but are shown either as detained or eligible for Supplementary Examination on the basis of own policy requiring as aggregate percentage of 35 in all subjects except English and 40 in English to be obtained in four examinations in a year, i.e., 1st Unit Test (August), Half Yearly Examination (December) 2nd Unit Test (February) and Annual Examination (March/April) (Annexure P/5). The result is shown in Annexure P/4 and P/4-1 to P/4-20, Representations Annexures P/6, P/7, P/11, P/12 and P/13 proved vainful, Annexures P/8 and P/10 contains the items in newspapers. Additional facts are placed through IA No. 3282/94 Annexures P/15 to P/19 are comparative marks-lists. Annexure P/14 is violated and sought to be enforced.

Respondents Nos. 2 and 3 (Joint Director and State) have filed reply supporting the contention of petitioners and are critical of the attitude of respondent No. 4. The respondent No. 4 has filed reply in opposition. The policy is sought to be justified on concern for "sound education". Declaration signed by father/guardian of the petitioners to abide by rules/regulations, are placed on record as Annexure R/4(1). Annexure R/4(2) is filed to show that examinations are local and respondent No. 2 will supply only examination papers. Instructions are endorsed in R/4(3) and R/4(4). The letter dated 1-5-87 is replied by respondent No. 4 on 13-5-94 (Annexure R/4(5)). Letter of 19-5-84 is replied vide Annexure R/4(6). Annexure R/4(7) is the guideline. Additional affidavit is filed to say that respondent No. 4 through three assemblies had informed students about the policy being implemented to bring excellence.

Two students vide 1A No. 3280/94 and four students vide IA No. 3347/94 have applied for intervention to support respondent No. 4.

I have heard counsel for petitioners counsel for respondent No. 4 GA for respondents Nos. 1 to 3 and counsel for intervenors.

The counsel for the petitioners urged that right to education is recognised as fundamental right and the object behind affiliation is to keep private institutions under control and compulsion to follow the instructions and directives of respondents Nos. 1 to 3. Disparity, at will, cannot be permitted in the name of procurement of better standard. Mention in hand-book for 1993-94 is inconsequential when with similar mention in the past the system sought to be introduced in 1994, remained under "eclipse" from 1987 to 1993. The respondents Nos. 1 to 3 are under legal obligation to compel respondent No. 4 to "abide" by directive of Annexure P/14. The policy is arbitrary and discriminatory. He placed reliance on *Miss. Mohini Jain Vs. State of Karnataka and others*, and 1993 AIR SCW 863 : *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . According to him, so-called "declaration" in hand-book are inconsequential because these existed even in the past; Joint Director, an authorised person by respondents Nos. 1 and 3, rightly issued directive (Annexure P/14) uniformity was not liable to be ignored, writ was the proper remedy when respondent No. 4 attempted to infringe fundamental right to education and that "like, everywhere, is to be treated alike".

The GA for respondents Nos. 1 to 3 supported the contention of the petitioners and produced "prospectus" of respondent No. 1 to show plan of education. He urged that direction as contained in Annexure P/14 is consistent with prospectus and flows from the right reserved in Annexure R/I. According to him P/14 did not affect Article 30(1) of the Constitution of India and was not liable to be reached. This is the requirement as a result of "affiliation". In view of prospectus, separate return from respondent No. 1 was not necessary.

The counsel for respondent No. 4 contended that IX and XI examination are local and are left to respondent No.4 for proper . regulation and evaluation. According to him, respondent No. 4 is bound to obey "rules and regulations" of respondent No. I framed with approval of respondent No. 3 and not orders like Annexure P/14. He further contended that the order tended to infringe Article 30(1). The "policy is aimed at "improvement" of standard of education. He has drawn attention to R/I, R/4(I), R/4(2), R/4(3), R/4(4), R/4(7) and placed reliance on Miss. Mohini Jain Vs. State of Karnataka and others, ; St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., ; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, ; Lily Kurian Vs. Sr. Lewina and Others, and St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., Religious minority institutions are allowed autonomy, Annexure P/14 is unauthorised interference and illegal imposition.

The counsel for intervenors supported respondent No. 4 and stated that the petition itself conceded the existence of policy and system of promotion. The challenge is on conflict with Annexure P/14 which is not based on any rule or regulation. The object is to ensure better standard. The petition adversely affected interests of intervenors.

Respondent No. 4 took shelter under the umbrella of Section 28(4) of M. P. Madhyamik Siksha Adhiniyam, 1965 contending that rule/regulations framed with approval of State alone could bind respondent No. 4. Declaration in hand-book, extracted below, exhibited the infecundity of the petition:--

"I the undersigned have read the rules and regulations in the school calendar and I agree to abide by them and co-operate with you in the interests of my daughter/ward."

Right at the threshold, it needs to be stated that the school is unaided and as such is not covered under Article 12 of the Constitution of India as held in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It may also be noticed that right to education is concomitant to fundamental right as held in Miss. Mohini Jain Vs. State of Karnataka and others, . It also merits to be mentioned that Apex Court in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, took the undernoted view:

"Article 30 in our opinion, does not clothe a minority educational institution with the power to adopt its own method of selection. It is not part of the minority

character of the institution. The said requirement is but a piece of regulation which the State/ affiliating University can prescribe in the interest of fairness and maintenance of standards."

As to the affiliation, it has been held in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., that grant of recognition or affiliation is not a matter of course nor is it a formality. In Nawadah Vidhi Maha Vidhyalaya, Nawadah and Others Vs. State of Bihar and Others , it is held that (at p. 9):-

"Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation."

The stage is now set to notice two salient features, contained in R/1 as placed on record by respondents No. 1 to 3. One examination result. Two_ system of internal valuation, will be finalised. This is of 1987. The respondent No. 4 put the policy under "eclipse" from 1987to 1993. No light is thrown as to bow the institutional policy was again revived in 1994 without finalisation and clearance from respondents Nos. 1 to 3. Question galore, as chronicled below, stares in the face -

How can a private institution under control by requisite recognition and affiliation be permitted to have its own way, in the name of autonomy and standard, in violation of uniformity in pattern? How can the system be left to whims and be seen disinvigorated and divellicated beyond repair? How can it be permissible to flee away from Annexure P/14 dubbing it as illegal? Law is not in tenebrosity. If there is no rule or regulation, then executive instructions becomes operative. While arguing about standard, does the respondent No. 4 want this court to believe that respondents Nos. 1 to 3 or other institutions similarly situate, have no or less concern for "standards?

Article 30(1) of the Constitution of India mandates that -

"All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

Luculently, the right conferred on minorities is to establish and administer the institutions of their choice. The key to the Article lies in the words "of their choice"". The expression "choice" is referable to minorities. The dictionary meaning of word "choice" is act or power of choosing the thing chosen, selection alternative. In Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, . It is held that -

"The right guaranteed to religious and linguistic minorities by Article 30(1) is two fold to establish and to administer educational institutions" of their choice. The key to article lies in the words "of their own choice". These words indicate that the extent of the right is to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the educational institutions themselves, that is, with reference to the goal of making

the institutions effective vehicles of education for the minority community or other persons who resort to them. It follows that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranteed by Article 30(1) of the Constitution. The question in each case is whether the particular measure is, in the ultimate analysis designed to achieve such goal, without of course nullifying any part"of the right of management in substantial measure."

The result in the ultimate analysis is that institution headed by respondent No. 4 does not become fetter free in all respects. In TMA Pal Foundation's case (supra) it is clearly ruled that affiliating authority can regulate matter in the interest, of fairness and maintenance of standards. In such regulations or directives, it is futile to search a case of interference in "minority character" Annexure 14 does no violence to Article 30(1). On the other hand, non-compliance of Annexure 14 does violate Article 14 of the Constitution of India. Annexure P/14 is evidently a measure designed to achieve the goal of making the institutions effective vehicle of education. It does not impinge upon the special right. It is simply regulatory in nature. Parity itself is a step towards excellence, on common pattern.

Eiza-Cook in a song for the Ragged School, exhorted -

"Better build school rooms for "the boy" Than the Cells and gibbets for "the man"

The noble founder of the school did the great job by building school rooms for the girls and fittingly fixed the motto of "loving service". This type of service is better rendered by compliance of the norms required on affiliation and it then really becomes "living service" to the society. It is wisely said that man is free, yet not very free.

The parties in opposition failed to satisfy me :--

(a) As to why the policy now in mind, was not introduced between 1987 and 1993?

(b) As to what is the effect of circular of 1987-R/I?

(c)As to how abandonment of policy as above was not the direct result of R/1?

(d)As to why examination papers from respondent No. 1 were accepted, despite examinations being local and as to how this did not mean test on same questions and how different yard stick was permissible without approval of respondents Nos, 1 to 3?

(e) As to how students subjected to higher standards could be made to suffer departure when again in X and XII examination they would be tested on the "same" standard"?

(f) As to how directions on hand-books or alleged "assemblies" could sanction such a course or operate as estoppel?

(g) As to how Annexure P/14 infringed Article 30(1)?

(h) As to what is the purpose of "affiliation" if private institutions can have their own "discretion" and flout the principle of parity?

(i) As to how plus two percent and aggregate criteria, unavailable in other institutions, is legal and logical when other institutions did not opt that position?

Terence, in Pharaia II 4 elegantly voiced "Cuot homines, tot sententiae" (so many men so many minds). Hence many minds may have different ideas, yet remedy, if apt lies not on unilateral insistence but in persuasion of respondents Nos. 1 to 3, or else you cannot achieve rhythm in singing classical song on a light thus. Executive instructions are required to be followed uniformly. In Vinod Sagar Sood Vs. State of Madhya Pradesh and Others, it is held as under (at p. 183):--

"No doubt when once certain principles are adopted as criteria for selection of candidates for admission from amongst the various applicants it is necessary that they should be applied uniformly and without differentiation."

The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, was the decision of a nine-Judge Constitution Bench where Hon. Ray C. J. with agreement of Hon. Palekar, J. stated in his opinion after referring to the State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., as follows -

"Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study the qualifications and appointment of teachers the conditions of employment of teachers the health and hygiene of students facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Art. 30."

Luculently affiliation pertains to "academic and educational" character of the institution. Measures, regulatory in nature, which regulate courses of study or incidental aspects of evaluation of study or promotions are matters germane to affiliation of minority institution. The regulatory measures for affiliation are for Uniformity efficiency and excellence and cannot be denounced as violators of any fundamental right of the minority institution. The right under Article 30 cannot be exercised in vacuo. "Uniformity" has to be ensured unless relaxation is sought and given on good ground. As per Rule-33 of Chapter 3 of Education Code, respondent No. 4 is bound to comply with orders like Annexure P/14 writ of mandamus is a wide remedy available to incinerate injustice Andhi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others,

The maintenance of standards depends also on points other than those

projected. Moral education seems to be the need of the hour "character building" and "awareness of culture" are essential to prepare students "to strive towards excellence in all spheres of individual and collective activity", as being fundamental duty prescribed under Article 51(J) of the Constitution of India. Examinations and evaluations can be made more purposeful by those "who matter". But a private institution cannot be permitted to delink itself from the requirement prescribed in interest of fairness. Departure leads to unfairness and is violative of Articles 14 and 21 of the Constitution of India. The vice of arbitrariness is visible.

In the ultimate analysis, I hold that the step of respondent No. 4 is arbitrary and unsustainable and that respondent No. 4 is bound to act according to Annexure P/14. This seems to be just and reasonable. Lord Wright once elegantly observed that -

"The truth is that the Court decided the question in accordance with what seems to be just or reasonable in its eyes. The Judge finds in himself the criterion of what is reasonable."

In the result, this petition succeeds and is allowed with the directions as under:

(a) The respondents Nos. 1 to 3 shall compel the respondent No. 4 to implement directives as contained in Annexure P/14 and to revise and declare results of all students of IX and XI accordingly.

(b) Respondent No. 4 shall act accordingly.

(c) After revision of results on the basis of Annexure P/14 (i.e. 33% at Annual Examination only) results of supplementary examinations of those found eligible and entitled to take supplementary examinations and who have appeared already shall be declared immediately. The supplementary examinations as regards, other students shall be treated as cancelled being unnecessary.

(d) All students will be given the benefit of the period spent during pendency of this petition for the purpose of admission and attendance.

Even while allowing this petition, respondent No. 4 is granted freedom to approach respondents Nos. 1 to 3 to obtain approval of the scheme of school and, on receipt to obtain proper consent of students/ father/guardians before admission for next academic year.

It is also clarified that the benefit of this order shall be available to all concerning students uniformly.

There shall be no orders as to costs.

Let writs be issued in the aforesaid terms. Writs shall run and be complied within 10 days even if respondent No. 4 opted to snap tie of "affiliation" hereafter.