

(1987) 09 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 769 of 1984

The Islamia Karimia Society, Indore

APPELLANT

Vs

Devi Ahilya Vishwavidyalaya, Indore

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Indore University Act, 1963 — Section 36

Citation : AIR 1988 MP 200 : (1989) ILR (MP) 445 : (1988) MPLJ 151

Hon'ble Judges : N.D. Ojha, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : Fakhruddin, S.L. Saxena, A.A.G, for the Appellant; A.K. Chitale, for the Respondent

Final Decision : Partly Allowed

Judgement

N.D. Ojha, C.J.

The petitioner Islamia Karimia Society, Indore, claims to be a linguistic and religious minority within the meaning of Article 30(1) of the Constitution of India. It is a body registered under the Non Trading Corporation Act and is established and administers the Islamia Karimia Degree College in Indore. An application was made on behalf of the college for its affiliation with the Vikram University, Ujjain, which, on the formation of University of Indore, was sent by the Registrar, Vikram University, Ujjain, to the Vice-Chancellor, Indore University, as is apparent from a copy of the letter dt. 16th June 1964 attached as Annexure R-1 to the Registrar's affidavit filed in the present petition. Copy of letter dt. 30th June 1964 from the Registrar of the University of Indore to the Principal of the College attached as Annexure R-2 indicates that provisional affiliation was granted to the college with effect from 1st July 1964 in the subjects mentioned in the application for affiliation subject to the conditions mentioned in the letter dt. 30th June 1964. Posts of lecturers in some subjects fell vacant and a letter dt. 3rd -October 1983 was sent by the college to the Vice-Chancellor, Devi Ahilya

Vishwa-vidyalaya, Indore, which was the new nomenclature given to the University of Indore with the prayer that in order to enable to fill the vacant posts of lecturers "advertisement had already been issued and to facilitate the selection of lecturers, experts in the subjects concerned may be appointed expeditiously. A copy of this letter has been attached as Annexure A-3 to the writ petition. The request in the aforesaid letter was reiterated by a subsequent letter dt. 19th October 1983. It appears that in pursuance to these letters the Vice-Chancellor nominated not only experts to be members of the Selection Committee but also a Chairman of the said committee and informed the college about the nomination by a letter dt. 24th Oct. 1983. On the receipt of the said letter the college wrote a letter dt. 16th Nov. 1983 to the Secretary, Madhya Pradesh Uchcha Shiksha Anudan Ayog, a copy whereof has been attached as Annexure-A-5 to the writ petition taking objection to the nomination of Chairman of the Committee on the ground that the college being a minority institution, the nomination even of the Chairman of the committee was in contravention of Article 30(1) of the Constitution. It was requested in the said letter that permission may be granted to proceed with selection of lecturers with the Governing Body as the Chairman according to the College Code. A reminder was also subsequently issued to the same effect by the principal of the college to the Secretary, M.P. Uchcha Shiksha Anudan Ayog, vide letter dt. 4th Oct. 1984 a copy whereof has been attached as Annexure A-7 to the writ petition. It further appears that a letter dt. 9th Aug. 1985, a copy whereof has been attached as Annexure A-8 to the writ petition, was sent by the Secretary, M.P. Uchcha Shiksha Anudan Ayog, to the principal of the college emphasising the necessity of removing the irregularity in the matter of appointment of the principal of the college also.

Thereafter a notice dt. 23rd November 1983 was sent by the college through a counsel to the Registrar, Devi Ahilya Vishwavidyalaya, a copy whereof has been filed as Annexure-B to the writ petition. Its perusal indicates that the college took exception to the appointment of the Selection Committee for appointment of lecturers as contemplated by paragraph 17(1) of Statute No. 28 of the Statutes of the Devi Ahilya Vishwavidyalaya, Indore. A demand was made in this notice requiring the University to amend the Statute No. 28 so as to safeguard the rights of the college which was a minority institution within the meaning of Article 30(1) of the Constitution. The case of the petitioner is that since the demand made in the aforesaid notice was not met by the University, necessity of filing the present writ-petition arose. The writ petition was subsequently amended inter alia incorporating certain provisions of Statute No. 28 in paragraph 3 thereof. The prayer contained in the writ petition is that the provisions of Statute No. 28 referred to in paragraph 3 of the writ petition to the extent that they are in conflict with the rights of a minority institution safeguarded by Article 30(1) of the Constitution, may be held to be void and of no effect. In the alternative, it has been prayed that it may be declared that the impugned provisions do not apply to the college run by the petitioner society, the

same being a minority educational institution. From a perusal of the writ petition it is apparent that even though after amendment of the writ petition various provisions of Statute No. 23 have been mentioned in paragraph 3 thereof and a prayer as aforesaid has been made in regard to those provisions, the real grievance of the petitioner seems to be the action of the University in nominating not only experts as members of the Selection Committee but also its Chairman. Nothing has been brought to our notice in the writ petition by learned counsel for the petitioner which may indicate that the respondent University has interfered with the management of the college by the petitioner in any manner other than appointing a Chairman also of the Selection Committee and requiring it to remove certain irregularities in the matter of appointment of the Principal. In this view of the matter, we are of the opinion that the decision of this writ petition should be confined to the correctness or otherwise of the stand taken by the respondent University in nominating even the Chairman of the Selection Committee.

In *Chander Sekhar Singh Bhoi Vs. State of Orissa*, it was held in paragraph 9 of the report that the High Court in a writ petition under Article 226 of the Constitution should not embark upon an academic question. In the absence of any allegation or material indicating that the University has interfered with the management of the college by the petitioner in any other sphere except in the matter of constitution of the Selection Committee to appoint lecturers by nominating even the Chairman of the committee, obviously the consideration of the question as to whether any of the other provisions of Statute No. 28 of the Statutes of the University are in violation of Article 30(1) of the Constitution would be only academic.

Coming to the question of constitution of the Selection Committee, it may be pointed out that the topic which is dealt with by Statute No. 28 is "College Code." "College" is defined in paragraph 1(a) of Statute No. 28 to mean an educational institution admitted to the privileges of the University. The term "teachers" according to its definition contained in paragraph 1(d) means members of the teaching staff of a college and includes the Principal. That the college run by the petitioner is an educational institution admitted to the privileges of the University and that it is a non-governmental educational institution for higher education and further that it is receiving substantial grant from the M.P. Uchcha Shiksha Anudan Ayog are facts which are not disputed. Paragraph 17(1) of Statute No. 28 in so far as it relates to the constitution of Selection Committee in the case of teaching posts and in the case of Principal reads as hereunder :

"17(1) For every non-government Educational Institution for higher Education there shall be a selection Committee consisting of : --

(i)

In the case of teaching post : ?

(a)

Kulapati or his nominee

Chairman

(b)

One nominee of the management from amongst its members who are not teachers

Member

(c)

One expert in the subject concerned nominated by the Kulapati

Member

(d)

One expert in the subject concerned nominated by the M. P. Uchcha Shiksha Anudan Ayog

Member

(e)

Principal of the Institution

Member-Secretary

(ii)

In the case of Principal :?

(a)

Kulapati or his nominee

Chairman

(b)

One nominee of the Management

Member

(c)

Co-ordinatory/ Dean/ Director of College Development Council

Member

(d)

One nominee of the M. P. Uchcha Shiksha Anudan Ayog

Member"

The real dispute, as seen above, seems to be about sub-clauses (a) in Clauses (i) and (ii) of paragraph 17(1) which contemplate Kulapati or his nominee to be the Chairman of the committee both in the case of teaching posts and of Principal. In support of his challenge to the constitution of the Selection Committee as aforesaid, reliance has been placed by learned counsel for the petitioner on the decision of the Supreme Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . It was pointed out that Section 33A(1) (b) of the Gujarat University Act which provided that for recruitment of the Principal and members of the teaching staff of a college there would be a Selection Committee of the college which shall include in the case of recruitment of the Principal a representative of the Vice-Chancellor nominated by the Vice-Chancellor and in the case of recruitment of member of the teaching staff of the college a representative of the university nominated by the Vice-Chancellor and the Head of the Department, if any, concerned with the subject to be taught by such member, was held to be ultra vires and consequently the constitution of the Selection Committee as provided by Para 17 of Statute 28 should be declared to be not binding on the petitioner. In our opinion, in view of the principle of law laid down in the case of *St. Xavier's College* (supra) paragraph 17 of Statute No. 28 in so far as it provides that the Selection Committee both in the case of teaching posts and in the case of Principal shall consist of the Kulapati or his nominee as Chairman does obviously infringe the right of the petitioner guaranteed by Article 30(1) of the Constitution and deserves to be declared as not binding on the petitioner so that the petitioner will be entitled to have a Chairman of the Selection Committee of its own choice, Kulapati or his nominee as Chairman is mentioned at sub-clause(a) of Paragraph 17(1)(i) Which deals with the Selection Committee in the case of teaching posts. In so far as sub-clause (b) is concerned, the same being with regard to a nominee of the management itself, cannot be said to be in any way in violation of the rights of the petitioner to manage the college. Likewise sub-clause(e) which contemplates the Principal of the institution to be the Member Secretary also in our opinion does not violate any right of the petitioner in the matter of management inasmuch as the Principal of the institution is not only an important functionary of the college expected to know of the requirements of the college in the matter of having competent lecturers but is also an employee of the petitioner itself and not an outsider. In our opinion, sub-clauses (c) and (d) also which contemplate that the Selection Committee is to consist of one expert in the subject concerned nominated by the Kulapati and the other as expert in the subject concerned nominated by the M.P. Uchcha Shiksha Anudan Ayog can in no manner be said to infringe the right of the petitioner to manage the college. These two persons are not representatives either of the Kulapati or of the M.P. Uchcha Shiksha Anudan Ayog but are experts in the subject concerned. Indeed the petitioner itself does not appear to have ever any objection in so far as the nomination of experts as members of the Selection Committee under sub-clauses (c) and (d) are concerned. As seen above, application was made by the petitioner itself for experts being nominated as members of the Selection Committee so as to

facilitate selection of the lecturers and had only experts been nominated as requested by the petitioner, it would obviously have been satisfied. The cause of dissatisfaction as seen above was the nomination by the Vice-Chancellor even of the Chairman of the Selection Committee. In so far as this nomination is concerned, we have already found it to be in contravention of the provisions contained in Article 30(1) of the Constitution. As regards nomination of experts, we may point out that since the college is affiliated with the University, no objection can be taken to the anxiety of the University of maintaining educational standards and academic excellence. Likewise, since substantial grant is given to the college by the M.P. Uchcha Shiksha Anudan Ayog, no serious objection can be taken to the anxiety of this Ayog also of maintaining educational standards and academic excellence. In this connection observations of various learned Judges who decided case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, would be relevant. In paragraph 18 of the report, Ray C. J. observed that affiliation mainly pertains to the academic and educational character of the institution. Therefore measures which will, inter alia, regulate the courses of study, the qualifications and appointment of teachers which constitute 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 Article 30. In paragraph 30 of the report it was again observed that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks - and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. In paragraph 51 of the report, Jaganmohan Reddy, J. observed that the right of a linguistic or religious minority to administer educational institutions of their choice, though couched in absolute terms has been held by this Court to be subject to regulatory measures which the State might impose for furthering the excellence of the standards of education. In para 90 of the report it was observed by Khanna J. that the right of the State to regulate educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions or under the guise of exclusive right of management to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others. In paragraph 177 of the report it was likewise observed by Mathew J. that recognition or affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations, it was further pointed out that in every case when the reasonableness of a regulation comes up for consideration before the

Coim, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. In paragraph 212 Beg, J. (as his Lordship then was) indeed went to the extent of holding that the mere presence of the representatives of the Vice-Chancellor, the teachers, the members of the non-teaching staff, and the students of the college would not impinge upon the right to administer and that such a "sprinkling" is more likely to help to make that administration more effective and acceptable to everyone affected by it. A minority institution can still have its majority on the governing body. In paragraph 233 his Lordship further observed that even if Article 30(1) of the Constitution is held to confer absolute and unfettered rights of management upon minority institutions, subject only to absolutely minimal and negative controls in the interests of health and law and order, it could not be meant to exclude a greater degree of regulation and control when a minority institution enters the wider sphere of general secular and non-denominational education, largely employs teachers who are not members of the particular minority concerned and when it derives large parts of its income from the fees paid by those who are not members of the particular minority in question. Such greater degree of control could be justified by the need to secure the interests of those who are affected by the management of the minority institution and the education it imparts but who are not members of the minority in management. In other words, the degree of reasonably permissible control must vary from situation to situation. Dwivedi, J., was of the view that the right conferred on the minority institution by Article 30(1) of the Constitution was not absolute. Arts. 29(2), 15(4) and 28(3) place certain express limitations on the rights under Article 30(1) and that there were also certain implied limitations on that right and the rights should be read subject to those implied limitations.

In *S.E. Bose Library Association v. State of M.P.* 1979 Lab IC 485 : (AIR 1979 NOC 136) the provisions of Section 6 of the Ashaslikiya Shikshan Sanstha (Andhyapakon Tadia Anya Karmacharion ke Vetano ka Sandaya) Adhiniyam, 1978, were challenged as being in violation of the right conferred on a minority institution under Article 30(1) of the Constitution. The said Section 6 stands quoted at page 500 of the report, Even though sub-clauses (in) and (iv) of clause (a) and clauses (b) and (c) of Section 6 were found to be violative of Article 30(1) of the Constitution, sub-clauses (i) and (ii) of CL (a) were not found to be violative of the said Article. Sub-clauses (i) and (ii) of Section 6(a) aforesaid read as hereunder :

(i) no post of a teacher or other employee shall be created except in such scale of pay as the State Government may, from time to time, determine and no teacher or other employee shall be recruited without following the procedure prescribed in this behalf;

(ii) the teachers or employees shall have such qualifications and experience as

may be prescribed; and"

While upholding the validity of these clauses it was pointed out that by sub-clause (i) the State Government is empowered to fix the scale of pay of teachers and other employees and to lay down the mode or procedure of their recruitment, whereas sub-clause(ii) enabled the laying down of experience and qualifications of the teachers or employees of the institution. It was held that there could be no dispute that so long as there was no unreasonable interference with the rights of administration or management of a minority institution, there can be no objection to laying down qualifications and experience for appointment of teachers and employees inasmuch as these institutions also have to satisfy the general requirements in this behalf to be followed by all institutions. In this connection it was pointed out that it is only such a measure which destroys any right of management by taking it away or otherwise say by conferring a right of veto on the outside agency which cannot be treated as permissible regulatory measure.

In Kerala Education Bill, 1957 AIR 1958 SC 956 Section B. Das, C.J., observed :

"The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided."

In State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., it was observed that to certain extent the State may also regulate the conditions of employment of teachers and that the right of the State to regulate the educational standards and allied matters cannot be denied inasmuch as the minority institutions cannot be allowed to fall below the standard of excellence expected of educational institutions or under the guise of exclusive right of management to decline to follow the general pattern. In Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, it was held 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. Sections 8(3), 8(4) and 8(5) of Delhi School Education Act (18 of 1973) which made provision for prior approval of Director before passing an order of suspension of school staff and allied matters were held not to encroach upon any right of minorities to administer their educational institutions.

In Y. Theclamma. v. Union of India : AIR 1987 SC 1210 it was held that while the right of the minorities, religious or linguistic, of establish and administer

educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining excellence thereof can validly be prescribed. In our opinion, the provisions contained in paragraph 17(1) of Statute No. 28 in regard to the constitution of the Selection Committee in the case of teaching posts except insofar as it provides in sub-clause (a) that the Kulapati or his nominee shall be Chairman of such Committee are aimed at ensuring educational standards and maintaining excellence thereof and cannot be held to be in violation of Article 30(1) of the Constitution. We are further of opinion that the same is the position with regard to Clause (ii) also of the said paragraph 17(1) which deals with the constitution of Selection Committee in the case of Principal. Except sub-clause (a) which provides for the Kulapate or his nominee being the Chairman, the other sub-clauses do not seem to be offending Article 30(1) of the Constitution inasmuch as they too apparently have been enacted for ensuring educational standards and maintaining excellence thereof.

Exception was taken by learned counsel for the petitioner even to paragraph 16(2) of Statute No. 28 which provides that no appointment to the post of Principal shall be made except with the prior approval of the Executive Council. So far as this submission is concerned, suffice it to point out that on the facts stated in the writ petition which have been brought to our notice, it does not appear that any such situation has so far arisen where a Principal may have been appointed after following the procedure in this behalf and difficulty was felt on account of approval of the Executive Council being withheld. Consequently, we do not find it necessary to go into the question about the validity of this provision in the present writ petition.

Before parting with the case, we may point out that learned counsel for the petitioner has placed reliance on certain other decisions where provisions which interfered directly with the management of a minority institution came up for consideration but since in the instant case, as seen above, no material has been brought to our notice on the basis of which it could be said that the respondent University has been interfering with any right of management of the petitioner other than that indicated above, it is not, in our opinion, necessary to refer to these decisions.

In the result, this writ petition succeeds and is allowed in part to this extent that it is declared that sub-clause (a) of paragraph 17(1)(i) as also sub-clause (a) of paragraph 17(1)(ii) of Statute No. 28 which prescribe that Kulapati or his nominee shall be the Chairman of the Selection Committee in the case of teaching posts and in the case of Principal shall not apply to the petitioner and it would be open to the petitioner to have the Chairman of the Selection Committee both for selecting teachers and the Principal of its choice. The writ petition in other respects is, however, dismissed. In the circumstances, of the case, the parties shall bear their own costs. Security amount, if any, be refunded to the petitioner.