

(1984) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 128 of 1983

The Karimnagar District Recognised Schools Managements
Association, Karimnagar

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1984) 12 AP CK 0002

Hon'ble Judges : Kadandaramayya, J

Bench : Single Bench

Advocate : K. Ranga Rao, for the Appellant; Govt. Pleader for Education, for the Respondent

Judgement

1. In this writ petition G.O.Ms.No.802 Education dated 1-8-78 enhancing the tuition fees to be collected by the Managements in all English medium unaided schools in the State is challenged as being discriminatory and offending Art. 14 of the Constitution. The petitioners are: (1) Karimnagar District Recognised Schools Managements""Association and (2) The Andhra Pradesh Private Recognised Education Institutions represented by their Secretaries respectively.

2. It is stated in the affidavit that there are about 100 private upper primary and high schools in Karimnagar District having English, Telugu and Urdu mediums of instruction and they are run by the private managements and are unaided. The Managements have been experiencing financial difficulties because of low schedule fees to be collected from the students at Rs.10, Rs.12.50 ps. And Rs.15/- per month for primary classes 1 to 5, upper primary classes 6 and 7 and secondary schools 8 to 10 respectively. However, under the impugned G.O. the Government enhanced the rates at Rs.10/- Rs.15/- and Rs.20/- for those classes respectively to all the English medium unaided schools in the State. Since this G.O. permitted the enhancement of fees only in respect of English medium schools the petitioners Association made number of representations to the

Government to make the said G.O. applicable to other schools also. It is submitted there are about fifty schools with Telugu and Urdu mediums instruction in the Karimnagar district and hundreds of schools in other districts and all these schools are entitled to be permitted to collect the fees as per the revised G.O. dated 1-8-78 and there is no valid basis for this discrimination in respect of non-English medium institution. It is also submitted however that the scales of pay of teachers employed in English medium and other medium schools are same. But this discrimination in respect of tuition fee to be collected from the students by the institutions other than the English medium is clearly discriminatory and offends Art. 14 of the Constitution.

3. Rule Nisi was issued on 20-1-83 and no counter was filed justifying the special treatment to the English medium schools. However it is urged that the G.O. was issued in the year 1978 and questioning the said G.O. at this distance of time is not permissible and the Government also in considering revising the scales of fees.

4. It is not in dispute that in the year 1970 the uniform scales of tuition fee were fixed for all the schools under private managements and which were unaided. While revising the tuition fees in the year 1978 for the first time they confined the benefit of the revised scales of tuition fees only to the English medium unaided schools in the State. There cannot be any doubt that this special treatment constitutes a discrimination. Once the petitioner established this unfavourable treatment which constitutes discrimination it is for the State Government to justify their action to show how the English medium schools are entitled to the special benefit of higher rates of tuition fees as the unequal treatment is writ large on the face of it.

5. Art. 14 of the Constitution embodied both the rule of equality and the rule of equal protection of laws. Equal protection means the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed. Once the teachers working both in the English medium and other medium schools are allowed to draw the same scales of pay there is no ostensible reason for denying the managements of Telugu and Urdu medium schools the right to collect the higher scales of fee. It is not the case of the State Government it would be difficult to secure teachers in English medium and comparatively they have to pay higher emoluments. Such plea cannot be raised for as already stated the scales of pay in both English medium and other medium schools so far teaching staff is concerned were fixed at the same rate. The cost of the buildings or the rent of the buildings or furniture and other equipment and the salaries of the staff and servants must be the same for both the institutions. Thus it is clear that unless they justify this classification of English medium schools and other medium schools the impugned G.O. clearly offends Art. 14 of the Constitution.

6. It is firmly established by the judgments of the Supreme Court that a permissible classification must satisfy two conditions viz., (1) it must be founded

on intelligible differential which distinguishes persons or things that are grouped together from others left out of the group. (2) the differentia must be rational in relation to the object sought to be achieved by the statute or the State action in question.

7. As ruled by the Supreme Court, the doctrine of equality before law is a necessary corollary to the high concept of the rule of law accepted by our Constitution. One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority. (vide *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, . The petitioners' institutions are unaided institutions under the private managements. When the impugned G.O. was issued, the State Government can impose certain restrictions before according recognition to the institutions either under Andhra Pradesh (Andhra Area) Elementary Education Act 7 of 1920 or the Andhra Pradesh Primary Education Act 11 of 1961. The G.O. does not purport to have been issued under any statutory provision and the private managements cannot ignore the G.O. as the Government have got authority to withdraw the recognition if any of the conditions imposed by the Government are violated. The impugned G.O. issued by the State even in its executive power is bound to comply with the constitutional mandate embodied under Art. 14 of the Constitution. As observed by the Supreme Court in *Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc.*, :

"In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court."

The fundamental rights are enforceable against the legislative as well as executive acts also. Vide *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . Adverting to the contention of the Government pleader that the G.O. issued in 1978 is being challenged now I must say such plea of laches or acquiescence is wholly unsustainable while enforcing the fundamental rights of a citizen. Further there is no doctrine of desuetude in this country in respect of a law more so the fundamental law, the constitutional provision. It is the sacred duty of the State to mould the Legislative or Executive action consistent with the fundamental rights. Even after the lapse of more than three decades, it is very unfortunate that the State should think of justifying their action when a clear and patent hostile discrimination is brought to their notice. Hence the impugned G.O. is patently unsupportable in law. Hence I hold the hostile discrimination embodied in the impugned G.O. permitting the English medium unaided schools in the State alone to collect the higher rates of tuition fees is clearly hit by Art. 14

of the Constitution and petitioners are entitled to the relief prayed for. Accordingly, the writ petition is allowed and there shall issue a writ of mandamus directing the State Government to issue appropriate orders making the G.O. applicable to Telugu and Urdu medium unaided schools also in the State. I make no order as to costs. Advocate's fee Rs. 150/-.

8. Petition allowed.