
(1966) 03 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1178 of 1965

The Muslim Anjuman-e-Taleem

APPELLANT

Vs

The Bihar University and Others

RESPONDENT

Date of Decision : 11-03-1966

Acts Referred:

Bihar University Law (Amendment) Act, 1965 — Section 1
Constitution of India, 1950 — Article 30(1)

Citation : AIR 1967 Patna 148

Hon'ble Judges : R.L. Narasimham, C.J;G.N. Prasad, J

Bench : Division Bench

Advocate : Basudeva Prasad, K.N. Keshava, A.H. Motiurrahman and M.M. Gajadhar, for the Appellant; A.G., Addl. Govt. Pleader, S.N. Dutta, Ramanand Sinha, Krishna Prakash Sinha, Radha Raman and Ravinandan Sahay, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—Most of the legal questions involved in this application are the same as those raised in C. W. J. C. No. 62 of 1966 in which judgment has been delivered today holding that the amendments made by Bihar Act XVI of 1965 and the framing of new statutes in pursuance of the said amendment are valid.

2. But in this application a new point has been raised regarding contravention of the fundamental right guaranteed by Article 30(1) of the Constitution. It was urged that the petitioners being members of the Muslim minority community were entitled to the fundamental right guaranteed by Article 30(1) of the Constitution because admittedly the institute in question was started with the object of "imparting" modern education to Muslim students in A manner that will conserve their distinct language, culture and religion". Necessary papers dealing with the memorandum of association of Muslim Anjuman-e-Taleem, Darbhanga, which is in charge of the educational institution in question have been filed alone with a copy of the proceedings of the meeting of the Organising Committee of

the said educational institution held on 29-4-1962. These allegations have not been controverted by the other side. I must, therefore, hold that the educational institution in question, namely, Millat College, Laheriasarai, was established by Muslims of the place and that they are entitled to administer the same.

Bihar Act XVI of 1965 confers full power on the University authorities to lay down the constitution of the governing bodies of educational institutions admitted as colleges and to suspend or dissolve the governing bodies and to appoint ad hoc committees also. Such a power is wholly repugnant to the power of the local Muslims to manage this institution as provided in the said memorandum of association. There is thus a clear conflict between the Act and Article 30(1) of the Constitution. The true scope of Article 30(1) of the Constitution has been explained in a recent judgment of the Supreme Court in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, I may quote paragraph 15 :--

"The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but "leasing illusion", a promise, of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test--the test of reasonableness and the test that it is regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it".

Their Lordships have made it clear that the right conferred by Article 30(1) is a real right and that in the guise of regulatory measures the character of the institution as a minority institution should not be taken away. If the governing body as required by the statutes is imposed on this educational institution, its character as an institution for imparting modern education to Muslim students will disappear. Under the statutes, most of the members of the governing body need not necessarily be Muslims and the governing body will be like that of any other educational institution in the State of Bihar. The effect will be total destruction of the character of the institution as an institution administered by a minority.

3. But it is not necessary to say that Bihar Act XVI of 1965 and the statutes

made thereunder are void. It is sufficient to say that the amending Act and the statutes made thereunder do not apply to the institution in question in view of Article 30(1) of the Constitution. Every law made by the Legislature is subject to the fundamental rights guaranteed in the Constitution and should be so construed its not affecting those rights. This petition is, therefore, allowed to a limited extent and a writ shall issue to members of the opposite party restraining them from interfering with the management of the said institution under the provisions of Bihar Act XVI of 1965 and the statutes made thereunder. This order, however, will not affect the validity of those provisions in the parent Act and in the statutes which are of a purely regulatory nature and which, as pointed out by their Lordships in the aforesaid Supreme Court case are unaffected by Article 30(1). Those regulations if any made "in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like" will be valid. There will be no order for costs as there was practically no contest by the other side.

G.N. Prasad, J.

4. I agree.