

(2001) 10 MP CK 0037
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4296/89

Urdu Boys Higher Secondary School and Another APPELLANT
Vs
Education Officer for Urdu Boys Higher Secondary School,
Khandwa and Others RESPONDENT

Date of Decision : 29-10-2001

Acts Referred:

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

Citation : (2002) 1 MPHT 289 : (2002) 1 MPJR 49 : (2002) 1 MPLJ 296

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : K.N. Fakhruddin, for the Appellant; P.K. Tiwari, for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Mishra, J.

The petitioners, school and society challenge the order passed by the Education Officer, Khandwa endorsed at the bottom of order of termination dated 31-12-1982 of Ku. Sabiha Saifi, who was working temporary as Lecturer. Termination order was passed by the Manager, Urdu Boys Higher Secondary School, Khandwa pursuant to the meeting of the Executive Body/Managing Body held on 30-12-1982, in which it was decided to terminate the service. The order Annexure P-16 was issued by the Manager. The petitioner submits that the order endorsed by the District Education Officer is invalid, which runs as under:--

"The termination order is invalid hence the Lecturer is instructed to continue to attend the school and report to me daily before leaving the school."

Education Officer & Principal Govt. Multi-purpose Higher Secondary School, Khandwa.

The petitioner submits that the order was passed without hearing and the petitioner being minority institution, no interference could be made by the

Education Officer under the provisions of M.P. Ashashkiya Shiksha Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ke Sandhay) Adhiniyam, 1978 and rules framed thereunder.

It is further submitted that before the Joint Director, an appeal has been preferred against the order of termination by the respondent No. 5 on 11-1-1983, which has not been decided.

The first question which arises for consideration is whether provision of obtaining approval of competent authority violates the right of minority to administer educational institution. Article 30 of the Constitution of India confers rights for a minority community to establish and administer educational institutions of their choice and what is the reach and ambit of rights encompassed in Article 30. Article 30 gives right to establish an institution and right to administer it, but, right to administer cannot be said to be unfettered right. It is not an absolute right, therefore, regulation could always be made to ensure orderly, efficient and sound administration and to prevent mal-administration, to ensure efficiency and discipline of the institution and for several other objectives, which would be for the benefit of the institution and which would not offend the right engrafted under Article 30. There can be regulation made for achieving competence of teachers or maintenance of discipline. An appeal can also be provided against an order of termination. But, the authorities hearing such an appeal have to exercise the powers in a canalised and reasonable manner. Regulatory power is not one way traffic, it requires no arbitrary exercise of power by repository based on guidelines. It provides protection to right of livelihood essential for right to life and prevents hire & fire, pick & choose exploitation of teachers by management. The nature of right of the minority institution to administer it is considered by the Apex Court in C/M. St. John Inter College Vs. Girdhari Singh and Others, , wherein the Apex Court laid down as under:--

"5. Article 30 of the Constitution confers right on a minority community to establish and administer educational institutions of their choice. The rights emanated from Article 30 are the right to establish an institution and right to administer it. The right to administer engrafted under Article 30 would not however confer a right to mal-administer, as was held by this Court in the case of Bihar State Madarasa Education Board, Patna Vs. Madarasa Hanfia Arabic College Jamalia and Others, . Even though, Article 30 does not lay down any limitation upon the right of a minority to administer its educational institutions, but that right can not be said to be absolute, as was held by this Court in the case of The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, , and further the rights must be subject to reasonable regulations, as was held by this Court in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, , consistent with the national interest. Regulations, therefore could always be made to maintain educational character and standard of institution and for that purpose to lay down qualifications or conditions of service, to ensure orderly, efficient and sound

administration and to prevent mal-administration, to ensure efficiency and discipline of the institution and for several other objectivities, which would be for the benefit of the institution and which would not offend the right engrafted under Article 30. It would always be permissible to frame regulations so long as the regulations did not restrict the right of administration of the minority community but facilitate and ensure better and more effective exercise of that right for the benefit of the institution. But such a regulatory provision will cease to be regulation where power conferred upon the appropriate authority is uncanalised or unreasonable. Regulations also cannot go to the extent of annihilating the right guaranteed by Article 30(1). The Regulation made for achieving competence of teachers or maintenance of discipline in the conditions of service or providing for an appeal against the order of termination and the like would not be held to be violative of the right to administer enshrined under Article 30 of the Constitution but nonetheless if the said provisions confer an authority on a body which is canalised or unreasonable or there is no guiding principle, then the same cannot be upheld. In this view of the matter, the State could impose regulations even upon a minority institution, which would be in consonance with Article 30(1) and such regulation must be reasonable and must be regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority community. When any regulatory measure is assailed, it would be obligatory for the Court to find out as to whether the provision in fact secures a reasonable balance between ensuring a standard of excellence of the institution and of preserving the right of the minority to administer the institution as a minority institution, as was held by this Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , but such regulatory provision if found to have offended the provisions of Article 14, then the same has to be struck down, as was indicated in the case of *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, .

Let us now notice some of the decisions of this Court. In *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , this Court had observed the constitutional right to administer an educational institution by the minority of their choice does not necessarily militate against the claim of the State to insist that it may prescribe reasonable regulations to ensure the excellence of the institutions. In *Rev. Sidhajbhai Sabhai and Others Vs. State of Bombay and Another*, a Constitution Bench observed that Regulations made in the true interests of efficiency of instructions, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed and such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in the matters educational. In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, , it had been stated that the right of management in respect of a minority institution cannot be taken away and vested with somebody else, as that would be encroachment upon the guaranteed right but that right is not an absolute one

and it is open to the State to regulate the syllabus of the examination and discipline for the efficiency of the institution and the right of the State to regulate the education or educational standards and allied matters cannot be denied. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , this Court had observed : "Regulations which would serve the interest of the students, regulations which would serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are unnecessary for preserving harmony among affiliated institutions." In *Lily Kurian Vs. Sr. Lewina and Others*, , the Court had observed : "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means "management of affairs" of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for mal-administration, regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the article comes into play and the interference cannot be justified by pleading the interest of the general public; the interests justifying interference can only be the interest of the minority concerned." In *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, , the Court was examining the validity of Section 12 of Delhi School Education Act, Sections 8 (1), 8 (3), 8 (4) and 8 (5) were held not to have encroached upon any right of the minority to administer their educational institutions. But Section 8 (2) which stipulated that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor his services will be terminated except with the prior approval of the Director was held to have interfered with the right of the minority, and therefore, the said provision was held to be inapplicable to the minority institutions. The aforesaid dictum, no doubt, was in respect of an unaided minority institution. The conspectus of the aforesaid decision would indicate that there would be no bar for the Government to have regulatory measures for ensuring a standard of excellence of the institutions and such a measure would not in any way affect the right of the minority to administer its institutions engrafted in Article 30 of the Constitution."

The next question is whether the order passed by the District Education Officer was legal & proper. It is apparent that no appeal was filed before the Education Officer and without issuance of notice to the Institution/Management, the termination order was held to be invalid. Thus, the order was patently illegal and was passed in undue haste and is violative of principle of natural justice. Hence, the order is liable to be set aside. The order was passed in improper manner also. It was not separately passed, but, the order was written at the bottom of the termination order. It appears that the Education Officer did not apply mind at all before passing the impugned order contained at the bottom of the termination order. The order also does not contain any reason whatsoever to adjudge the

order of termination to be invalid.

For all the aforesaid reasons the order passed by the District Education Officer at the bottom of order Annexure P-16 is liable to be quashed.

An appeal is said to be pending before the Competent Authority. The Competent Authority is directed to consider the appeal filed by the respondent No. 5 in accordance with law within a period of 3 months from the date of production of this order before it, after hearing the parties concerned.

This writ petition is partly allowed. The order of the District Education Officer is set aside. The Competent Authority is directed to hear and decide the appeal filed by the respondent No. 5 within a period of 3 months from the date of production of this order before it, after hearing the parties. Costs on parties.

Writ Petition partly allowed.