
(1969) 09 KL CK 0002
In the High Court Of Kerala
Case No : O.P. 2598 of 1967

V. Rev. Fr. Josephat

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 23-09-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 26, 30(1)
Kerala Education Act, 1958 — Section 36, 36(1), 7

Citation : (1970) KLJ 165

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : M.I. Joseph, for the Appellant;

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—The petitioner is the manager of two High Schools, for which he is not taking any aid from the Government. He prays for the issuance of a writ of certiorari to quash section 7 of the Kerala Education Act and also Rule 7 of Chapter V of the Kerala Education Rules framed under the Act, or, in the alternative, the issuance of a writ of mandamus restraining the respondents, the State of Kerala and District Educational Officer, from imposing the said Rule 7. He also prays that section 7 and Rule 7 are declared ultra vires of the Constitution of India. Though the prayer in the writ petition is directed against section 7 of the Education Act as well, no argument has been adduced on this question: the entire argument of the counsel of the petitioner has been directed against Rule 1. Therefore, I proceed to consider the validity of Rule 7 alone.

2. Three contentions have been raised by the counsel of the petitioner. The first is that Rule 7 offends Articles 26 and 30 (1) of the Constitution; the second contention is that it offends Article 14 of the Constitution; and the third contention is that the rule is beyond the rule-making power of the Government u/s 36 of the Act.

3. Rule 7, the impugned rule, provides for financial guarantee being furnished by an Educational Agency of a school other than an aided school at the time of recognition of the school. It states that the Educational Agency should deposit Rs. 3,000/- in Postal or Treasury Savings Bank and pledge the pass book to the concerned Educational Officer if the Agency manages one Secondary School; and if the Agency manages more than one Secondary School, it must deposit Rs. 5,000/- in Postal or Treasury Savings Bank and pledge the pass book to the Director of Public Instruction. We are not concerned with the other provisions fixing different amounts as guarantee in the case of different types of schools. There is also provision for depositing the guarantee amount in instalments. However, we may note Sub-rule (5) of the rule. The sub-rule provides that the fee income received by the school shall not be utilised for depositing any part of the financial guarantee, and that in the event of a school being closed down, the financial guarantee will be released only to the extent to which it is not made up of the fee income or grant-in-aid which may have been utilised previously for depositing any part of the financial guarantee.

4. The contention of the counsel is that this rule compelling the deposit of financial guarantee is a restriction on the petitioner's right to establish and administer educational institutions as contemplated by Article 30 (1) and Article 26 of the Constitution. The counsel points out that there are other provisions in the Rules imposing other conditions as well on the management before a school is allowed to be opened; the management has to satisfy the authorities that it owns the site where the institution is located, that the management has the financial backing or wherewithal to manage the institution, that the institution has a proper habitat and the furniture necessary, etc. In view of these provisions, the counsel contends, the additional burden of imposing financial guarantee under Rule 7 is interference with the petitioner's right guaranteed under Articles 26 and 30 (1) of the Constitution--in other words, this is really a restriction on his right guaranteed by the aforesaid Articles.

5. The counsel has drawn my attention to a few decisions claiming that they have bearing on this question. The decisions are: In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, , S. Azeez Basha and Another Vs. Union of India (UOI), and two decisions of this Court in Rt. Rev. Aldo Maria Patroni v. E.C. Kesavan (A.I.R. 1964 KLT 891) and V. Rev. Mother Provincial Congregation of Mother of Carmal v. State of Kerala (O.P. No. 1450 of 1969).

6. Before considering the arguments of the counsel, it has to be stated that the question for consideration in this writ petition is whether the demand for deposit of financial guarantee under Rule 7 is a restriction on the right of the petitioner or is only a regulation the Government is exercising over the management in the interest and welfare of the institutions. For this purpose, I do not think I need decide whether the institutions managed by the petitioner will come within the

scope of Articles 26 and 30 (1) of the Constitution. For the purpose of this case I shall proceed on the basis that they come within the scope of those Articles. Even then, if the provision is only a regulation and not a restriction, I do not think that the petitioner can succeed. The counsel of the petitioner has drawn my attention to some passages from the decisions cited by him and more particularly to the following passage in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, :

The right established by Art. 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Art. 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 a real right for the protection of the minorities in the matter of setting up 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 the power of administration is held justifiable because it is in the public or national interest thought not in its interest as an educational institution, the right guaranteed by Art. 30(1) will be but a "teasing 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 is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

7. The counsel lays emphasis on the last sentence of this extract and argues that the deposit of financial guarantee is not "regulative of the educational character" of the institutions and is not also "conducive to making the institutions an effective vehicle of education for the minority community or other persons who resort to it." As already pointed out, it cannot be disputed that the Government has the power to impose regulations on the management to ensure the proper working of the institutions as educational institutions. In the first Supreme Court decision cited hereinbefore, *S.R. Das C.J.* has observed in paragraph 31:

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. Learned Attorney-General concedes that reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition.

(Underlining is mine).

8. Something similar appears in paragraph 10 of *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, where Shah J. observes:

Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institutions, in matters educational.

9. The Full Bench decision of this Court in *Rt. Rev. Aldo Maria Patroni's case* (1964 KLT 791 F.B.) also states in paragraph 13 that the absolute character of the right will not preclude regulations in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like, as such regulations are not restrictions on the substance of the right guaranteed by the Constitution. I do not propose to add to such observations, because the position appears to be clear that regulations meant for the excellence or welfare of the institutions in matters educational--as educational institutions--cannot be said to be restrictions within the scope of the Articles of the Constitution mentioned above. Thus, I reiterate that the only question for me to consider is whether the imposition of a financial guarantee is only a regulation: if it is a regulation, I have further to consider whether that is a reasonable regulation.

10. Some of the other rules referred to by the counsel relate to the granting of permission for starting new schools. Rule 7 is for granting recognition to schools. There are rules which authorise the Government to refuse recognition, to withdraw recognition, etc. Rule 22, for instance, deals with withdrawal of recognition: and it provides, *inter alia*, that if an Educational Agency commits any breach of the provisions of the Act and the Rules and the Departmental Rules and Directions issued in conformity with the provisions of the Act and the Rules, recognition may be withdrawn: if the Educational Agency fails to maintain proper standard of efficiency and discipline, recognition may be withdrawn: again, if the audited statements of accounts are not produced, then also recognition may be withdrawn: for other similar enumerated reasons also recognition may be withdrawn. Then come Rules 24 to 26, which I feel, are relevant in this connection. Rule 24 (1) provides that no private school shall be closed down without giving the Director one year's notice, expiring with 31st May of any year, and the Director may, after considering all aspects of the question, grant permission. Rule 25 there provides that, in the event of closure or discontinuance or withdrawn of recognition, the manager shall hand over to the District Educational Officer for the area all records and accounts of the school and the Department shall take necessary steps for taking charge of the records and accounts. The crucial rule, Rule 26, relating to the release of the financial guarantee follows. It provides that, if any school is closed down, the financial guarantee in respect of that school shall not be released until all liabilities of the school are discharged and all records and accounts relating to the school are handed over to the Department. The purpose of the financial guarantee is thus

evident; it is to secure that the management discharges all liabilities of the school and also hands over all records and accounts relating to the school to the Department in the event of the school being closed down.

11. The counsel of the petitioner argues that, since the management in this case is not taking any grant from the Government, the Government could not have imposed such a condition on the management for giving recognition. Admittedly, the management is collecting fees from the students: and it is not disputed, nor can it be disputed, that the amounts so collected have to be spent for the purpose of the institutions. If in such a case, after the Department has sanctioned the closing down of the school and the school continues for one more year, there must be some security that during that year the management does not misappropriate the moneys collected as fees or mismanage the affairs of the school during that year or fail to hand over the records and accounts to the Department on its closure. This purpose is quite legitimate; and it is quite within the power of the Government to regulate the institution for its own welfare and for its own excellence as an educational institution in the interest of the students that resort to the institution and the teachers that work there. I also add that the amount of Rs. 3000/- for one institution and Rs. 5000/- for more than one institution is quite a reasonable amount. Therefore, this provision is only a regulation, and the regulation is only reasonable.

12. The next contention of the counsel is that this provision offends Article 14 of the Constitution. I may straightaway observe that, though this ground has also been taken in the writ petition, no argument has been advanced by the counsel on this aspect. The only ground I can find in the writ petition is that aided schools are treated differently from unaided schools like the petitioner's. The two types of schools are two distinct categories; and the classification into aided and unaided schools is only a reasonable classification. On aided schools are imposed other conditions, for instance, aided schools have to deposit their fee collections into the Government Treasury and the teachers therein are paid by the Government. In the case of un-aided schools, those conditions are not there: instead, the conditions contemplated by Rule 7 are imposed on them. This cannot be said to be discrimination coming within Article 14 of the Constitution.

13. The last argument of the counsel is that Rule 7 is beyond the rule-making power of the State u/s 36 of the Education Act. Section 36 (1) states that the Government may make rules for the purpose of carrying into effect the provisions of the Act, and sub-section (2) enumerates some of the topics on which rules may be framed. One of the topics is "the grant of recognition to private schools" and another is "regulating the rates of fees in recognised schools" including un-aided schools. It is clear that Rule 7 will come within the aforesaid heads, because, if a condition is attached that private schools will not be given recognition unless they deposit financial guarantee, it comes well within the scope of the power conferred under the heads mentioned above. The purpose of the Education Act as disclosed by its preamble is to provide for the better

organisation and development of educational institutions. The counsel then argues that the imposition of financial guarantee as contemplated by Rule 7 is really a legislative power and the legislature should not have delegated that power to the rulemaking authority, the State. I have not been told under what principle this power is a legislative power, nor has any authority been placed before me which holds that such power is legislative power which the legislature cannot delegate to a rule-making authority. In my opinion, there is no force in this line of argument; and I feel that Rule 7 is quite within the competence of the rule-making power conferred on the state by section 36 of the Act. In the result, the writ petition is dismissed, however, without costs.