
(2015) 04 CAL CK 0041
In the Calcutta High Court
Case No : F.M.A. No. 742 of 1987

West Bengal Board of Secondary Education and Others	APPELLANT
Vs	
Bhagawandas Haralalka and Others	RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : AIR 2015 Cal 176 : (2015) 4 CHN 183

Hon'ble Judges : Ashim Kumar Banerjee, J;Shivakant Prasad, J

Bench : Division Bench

Advocate : H.K. Barua and Biswajit Das, for the Appellant; Biswaroop Bhattacharya, Gaurav Khaitan, Ashmita Chakraborty and Pritha Basu, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashim Kumar Banerjee, J.

BACKDROP:

1. In 1930 late Ramrick Das Haralalka established a hospital in his name. He also established educational institution, erected temple, bathing place (ghat) in various parts of South Calcutta. In 1936 he set up educational institution for Hindi Speaking Linguistic Minority community in the city. As per the direction of University of Calcutta, Ramrick established Hindi High School at 4, Padda Pukur Road. Time to time, various schools were established by him and his successor both before and after independence of our country. Those institutions are recognized as Adarsh Hindi High School. We are told, there are about fourteen institutions however, the present appeal would relate to only one or two institutions as the others would not have any controversy, at least not brought before us. In 1950 the founders, donors and guardians of the students of Adarsh Hindi School passed a resolution to form a Trust to administer the affairs of the school. The assets and properties belonging to the school vested in the said

Trust. The Trust thereafter established schools of the like nature at Tollygunge, Kidderpore and Behala. By letter dated December 29, 1977 the West Bengal Board of Secondary Education appointed administrator over the Bhowanipore School and by a subsequent letter dated May 19, 1975 they also appointed administrator over the girls" section of the Bhowanipore School. In 1979, the Board approved the special constitution for Kidderpore branch. By a separate letter dated November 13, 1978 the Board also approved the special constitution for Bhowanipore branch. The similar approval was given in respect of Tollygunge branch vide letter dated November 20, 1978.

2. In 1981, the appellant filed a writ petition for setting aside the appointment of administrator. The Learned Single Judge directed the administrator to hold election as per the special constitution. The series of litigations pertaining to the administration of the school inter-alia challenging the appointment of administrator and action done by him, would result in various directions from this Court that we would be referring to as and when relevant. In 1984, the trustees filed litigation inter-alia demanding special treatment under Article 30 of the Constitution that ultimately culminated in an order of the Apex Court appointing ad hoc committee for three schools vide order dated July 21, 2000. The trustees further applied before the Apex Court for extending the identical benefit to the remaining ten schools. Vide order dated October 28, 2003 the Hon"ble Apex Court remitted the matter back to this Court for fresh consideration in the light of a decision of the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 . Accordingly, the Division Bench considered the matter and held, the appointment of administrator was in violation of the direction of the Apex Court. The Division Bench formed ad hoc committee to be constituted for each school. Accordingly, the appeal came up on remand to this Court that we heard on the above mentioned dates.

3. Mr. Himadri Barua learned Counsel appearing for the appellant, Board would rely upon the decision in the case of T.M.A. Pai Foundation (supra), he would rely upon paragraph 161 that would empower the State to consider as to whether a particular institution would be recognized under Article 30 as an institution run by the Linguistic Minority. The Apex Court framed eleven questions for consideration. We would only be concerned with question 1 that is quoted below:

"Q. 1. What is the meaning and content of the expression "minorities" Article 30 of the Constitution of India?

A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered Statewise."

4. Relying on the said observation of the Apex Court Mr. Barua would also inform us, the State, vide notification dated September 30, 2011, established the Commission under the West Bengal Minorities Commission Act 1996 to consider inter-alia, the case of Linguistic Minority that would include Hindi as a language. He would thus, pray for sending the issue to the Minority Commission to decide whether the concerned schools would be entitled to the benefit of Article 30 of the Constitution as a Linguistic Minority in the State. He would also refer to the decision in the case of Dayanand Anglo Vedic (DAV) College Trust and Management Society Vs. State of Maharashtra and Another, (2013) 3 ABR 570 : (2013) 9 AD 223 : (2013) 6 AD 103 : AIR 2013 SC 1420 : (2013) 8 JT 102 : (2013) 4 SCALE 624 : (2013) 4 SCC 14 : (2013) 2 SCT 627 : (2013) AIRSCW 1925 : (2013) 3 Supreme 161 . He would refer to paragraph 34 that is quoted below:

"After giving our anxious consideration to the matter and in the light of the law settled by this Court, we have no hesitation in holding that in order to claim minority/linguistic status for an institution in any State, the authorities must be satisfied firstly that the institution has been established by the persons who are minority in such State; and, secondly, the right of administration of the said minority linguistic institution is also vested in those persons who are minority in such State. The right conferred by Article 30 of the Constitution cannot be interpreted as if irrespective of the persons who established the institution in the State for the benefit of persons who are minority, any person, be it non-minority in other place, can administer and run such institution."

5. The Apex Court, in the paragraph quoted (supra), held, in order to claim minority/linguistic status for an institution in any State, the authority must be satisfied firstly, that the institution has been established by the persons belonging to the minority community in the State and the right of administration was vested in those persons belonging to the Linguistic Minority community. He would contend, the Commission was the right forum to consider as to whether the three schools would be having such benefit under Article 30.

6. Mr. Tapan Kumar Mukherjee learned Senior Counsel appearing for the State, while supporting the appellant, would rely upon the notification dated September 30, 2011 and would contend, Commission was the right forum to deal with the issue.

7. Mr. S.N. Mukherjee learned Senior Counsel appearing for Trust and/or the writ petitioner would rely upon the decision in the case of N. Ammad Vs. The Manager, Emjay High School and Others, (1998) 7 AD 91 : AIR 1999 SC 50 : (1998) 6 JT 221 : (1998) LabIC 3560 : (1998) 5 SCALE 167 : (1998) 6 SCC 674 : (1998) 1 SCR 453 Supp : (1998) AIRSCW 3372 : (1998) 7 Supreme 241 . He would particularly rely upon the paragraph 12 and 13 of the said decision where the Apex Court observed, when the Government declared a school as a minority school, such declaration was only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration.

Citing the said decision Mr. Mukherjee would contend, the fact that they would belong to the Linguistic Minority would itself attract benefit under Article 30 that would not depend upon a declaration from the State. The declaration was only an open acceptance to facilitate receipt of benefit.

8. Also appearing for the writ petitioner, Mr. Biswaroop Bhattacharya learned Counsel, resuming the argument on the next date of hearing would refer to the earlier grant appearing at page-27 followed by the approval at page-30 of the paper book. He would contend, the Board already approved the status that was unfairly withdrawn. Hence, this Court should consider whether the Board was right in withdrawing the same, once such order was cancelled and/or set aside by this Court the recognition would automatically revive that would not require any further consideration by the Commission. He would pray for dismissal of the appeal. According to him, the learned Single Judge already decided the issue and held in their favour that the Apex Court remanded to this Court for being decided in accordance with the observation in T.M.A. Pai Foundation (supra) hence, this Court should refer the issue to the Commission.

OUR VIEW:

9. We have considered the rival contentions. We have perused the Apex Court decision cited at the bar. While we agree with Mr. Mukherjee, Article 30 status was automatic once someone would come within its hold, the determination would however, depend upon an execution to be done as per the guidelines in the case of T.M.A. Pai Foundation (supra). The Apex Court observed, Linguistic Minority would be covered by Article 30 and for the purpose of determination the State would be the appropriate authority. In this case, as claimed by the respondents, Board earlier granted recognition that, in our view, even if held to be valid and subsisting, the State would be within its right to reconsider the issue in the light of the observation of T.M.A. Pai Foundation (supra). The appeal preferred by the Board may not have much relevance today in the changed situation. The Board, as of date, would have neither any power to grant such status or continue with the same in terms of the direction of the learned Single Judge. Even if we dismiss the appeal, the respondents would not get the desired relief that they could only get from the State and State alone. State, in their wisdom, established a Commission for the said purpose, now it is for the Commission to consider such issue. We thus permit the respondents to approach the Commission to get their desired relief and the Commission, in case approached, would dispassionately consider such issue without being influenced by any of the earlier decisions of the Court in the litigations referred to hereinbefore or otherwise.

10. The appeal is disposed of accordingly without any order as to costs.

Shivakant Prasad, J.

I agree.

LATER:--

11. The parties would submit that the existing arrangement to run through the ad hoc Committee should continue until a decision is arrived at by the Commission. We permit the parties to do so. However, the State may replace the present administrator through some other officials who is posted near to the schools.