

Katra Educational Society

Vs

State of Uttar Pradesh & Ors.

Civil Appeal No. 6 of 1965

(CJI P. B. Gajendragadkar, J. C. Shah, S. M. Sikri, V. Ramaswami-I, R. Satyanaryan Raju JJ)

17.01.1966

JUDGMENT

SHAH, J. -

The appellant - a society registered under the Societies Registration Act 21 of 1860 conducts an educational institution styled "Dwarka Prasad Girls Intermediate College" at Allahabad. Management of the affairs of the Society is entrusted by the memorandum of association to an Executive Committee consisting of six office-bearers, seven members elected at the general meeting of the Society, and two nominees of the settlers of certain buildings, in which the college is conducted, and it is provided by the memorandum that no one who is not a member of the Society can become or remain an office-bearer of member of the Executive Committee.

Under the Intermediate Education Act (U.P. Act 2 of 1921) provision was made for establishing a Board with power to prescribe courses of instruction for the Intermediate classes and the Higher Sections of English Schools, to grant diplomas or certificates to conduct examinations at the end of the High School and Intermediate courses, to recognize institutions for purposes of its examinations, and to do all such other acts and things as may be requisite in order to further the objects of the Board. This Act was amended by the U.P. Act 35 of 1958. By s. 7 of the amending Act which came into force on January 23, 1959, ss. 16A to 161 were incorporated into U.P. Act 2 of 1921. By s. 8 the State Government was authorised to promulgate Regulations in respect of matters covered by ss. 16A to 161.

By letter dated September 12, 1960 the Regional Inspector of Girls Schools, IIIrd Region, Allahabad called upon the Society to submit and get approved a Scheme of Administration of the institution managed by it. The Society thereupon presented a petition under Art. 226 of the Constitution in the High Court of Judicature at Allahabad for the issue of a writ quashing the orders passed by the Regional Inspector of Girls Schools and requiring the State U.P., the Director of Education, the Regional Inspector of Girls Schools and the Board of High School and Intermediate Education, who were respectively respondents Nos. 1 to 4, not to enforce to provisions of ss. 16A to 161 as originally enacted or as modified by the Removal of Difficulties Orders issued under s. 9 of the amending Act. It was submitted by the Society that ss. 16A to 161 were not within the competence of the State Legislature, and also because they infringed the fundamental rights of the Society guaranteed by Arts. 14, 19(1)(c), 19(1)(f) and 31 of the Constitution. It was urged that by the Act unreasonable restrictions were imposed on the management of educational institutions and the Act conferred unguided and untrammelled powers upon executive authorities, no distinction having been made between "well-managed and badly-managed" institutions. The High Court rejected the contentions raised by the Society. With special leave, the Society has appealed to this

Court.

The effect of ss. 16A to 16I which were added to the U.P. Act 2 of 1921 by the amending Act 35 of 1958 is briefly this. For every institution there shall be a Scheme of Administration which shall amongst other matters provide for the constitution of a Committee of Management vested with authority to manage and conduct the affairs of the institution, and which shall describe the powers, duties and functions of the Headmaster or the Principal and of the Committee of Management in relation to the institution and that the Headmaster or the Principal of the institution and two teachers thereof selected by rotation according to seniority shall be ex-officio members of the Committee with a right to vote : (s. 16A). In the case of an institution recognized at the date of commencement of the Intermediate Education (Amendment) Act, 1958, a draft of the Scheme of Administration shall be prepared and submitted to the Director for his approval : (s. 16B); and if the Scheme of Administration is not submitted within the time allowed, the Director shall take action in accordance with cl. (a) or (b) of sub-s. (3) of s. 16 D : (s. 16C). The Director is authorised to inspect recognized institutions and to remove defects or deficiencies found on inspection or otherwise and if the management fails to comply with any directions the Director may, after considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition or recommend to the State Government to proceed against the institution in the manner provided by sub-s. (4) of s. 16. If on receipt of a recommendation, the State Government is satisfied that the affairs of the institution are being mismanaged, or the management of the institution has wilfully or persistently failed in the performance of its duties, or the institution is being conducted otherwise than in accordance with the Scheme of Administration, or the draft of the Scheme of Administration has not been submitted within the time allowed, the State Government may by order provide for exercising control over such institution by an Authorized Controller for such period as may be specified by the Government, and on the making of such order the institution and its management shall, so long as the order continues, in force, be conducted and carried on in accordance with the provisions of the order, and every person having any function of management of such institution shall comply with such directions. Where the management or any person having any function of management does not comply with or refuses to carry out any direction given by the Authorized Controller, that Officer may, with the previous approval of the State Government and for such period as the State Government may fix, take over the management of the institution including management of the land, buildings, funds and other assets belonging to or vested in the institution, to the exclusion of the management or any such person and wherever the Authorized Controller so takes over the management he shall have in relation to the management of the institution all such powers and authority as the management would have if the institution were not taken over under sub-ss. (4) or (5) : (s. 16D). Qualifications for appointment as Principals, Headmasters and teachers of different subjects shall be prescribed by regulation and there shall be constituted in every recognized institution a Selection Committee for selecting candidates for appointment as teachers in the institution : (s. 16E). Qualifications which the Principal of Headmaster or teacher shall possess, and the procedure for appointment of selected candidates to the office of Principals or Headmaster or teacher are also to be prescribed : (s. 16F). Every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the management and such employee insofar as it is inconsistent with the provisions of the Act or with the Regulations shall be void : the Regulations shall inter alia provide for the period of probation, the conditions of confirmation and the procedure and conditions for promotion and punishment, scales of pay and payment of salaries, transfer of service from one recognized institution to another, grant of leave and Provident Fund and other benefits and maintenance of record of work and service etc. The Committee of Management

may not remove or dismiss from service or reduce in rank or reduce the emoluments of any Principal, Headmaster or teacher except with the prior approval in writing of the Inspector : (s. 16G). By s. 16H the provisions of ss. 16A, 16B, 16C, sub-ss. (2) to (7) of s. 16D and ss. 16E, 16F and 16G are not to apply to recognized institutions maintained by the State Government or the Central Government and in the case of recognized institutions maintained by a local body, the State Government may declare that all or any of those provisions shall not apply or shall apply subject to such alterations, modifications or additions as it may make. The Director may by notification in the Official Gazette delegate all or any of the powers which he exercises under the Act except certain powers : s. 16I.

Some of these provisions have been amended from time to time by orders issued under s. 9 of the amending Act. For reasons which we will presently set out, we do not propose in this appeal to enter upon the question whether the amendments were validly made. We have referred to the act as it was originally enacted.

Counsel for the Society contends that the amending Act insofar as it incorporates ss. 16A to 16I in the U.P. Act 2 of 1921 is beyond the legislative competence of the State Legislature, because in substance it seeks to supersede the provisions of the Societies Registration Act, 1860 - a field of legislation which is exclusively within the competence of the Parliament - and in any event because the Act insofar as it affects the powers of trustees of charitable institutions cannot be enacted without conforming to the requirements of Art. 254.

Management of the affairs of the Society was entrusted by its memorandum of association to the Executive Committee, but the Society is required by s. 16A to submit a Scheme of Administration providing for the constitution of a Committee of Management invested with authority to manage and conduct the affairs of the Society, and of this Committee of management the Headmaster or the Principal and two teachers selected by rotation are ex officio members. The Director has the power to inspect the School and to interfere with the management calling upon them to remove any defect or deficiency found on inspection, and the State Government is empowered to appoint an Authorized Controller to exercise with respect to the institution and its management such functions or control as may be specified in the order of the State Government. In the matter of appointment and removal of the Principal or the Headmaster, and teachers the authority of the Executive Committee of the Society is restricted. Management of the affairs since the enactment of the amending Act has therefore to be carried on not in accordance with the memorandum of association of the Society, but in accordance with and subject to the provisions of ss. 16A to 16I as added by the amending Act.

Power of the State Legislature to legislate under the head "education including Universities" in Entry 11 of List II of the 7th Schedule would prima facie include the power to impose restrictions on the management of educational institutions in matters relating to education. The pith and substance of the impugned legislation being in regard to the field of education within the competence of the State Legislature, authority to legislate in respect of the maintenance of control over educational institutions imparting higher secondary education and for that purpose to make provisions for proper administration of the educational institutions was not denied. But it was said that the impugned Act is inoperative to the extent to which it seeks to impose controls upon the management of an educational institution registered under the Societies Registration Act and managed through trustees, and thereby directly trenches upon legislative power conferred by Entry 44 of List I and Entries 10 & 18 of List III. This argument has no substance. This Court has in *Board of Trustees v. State of Delhi* (A.I.R. 1962 S.C. 458.) held that legislation which deprives the

Board of Management of a Society registered under the Societies Registration Act of the power of management and creates a new Board does not fall within Entry 44 of List I, but falls under Entry 32 of List II, for by registration under the Societies Registration Act the Society does not acquire a corporate status. It cannot also be said that the pith and substance of the Act relates to charities or charitable institutions, or to trusts or trustees. If the true nature and character of the Act falls within the express legislative power conferred by Entry 11 of List II, merely because it incidentally trenches upon or affects a charitable institution, or the powers of trustees of the institution, it will not on that account be beyond the legislative authority of the State. The impact of the Act upon the rights of the trustees or the management of a charitable institution is purely incidental, the true object of the legislation being to provide for control over educational institutions. The amending Act was therefore within the competence of the State Legislature and the fact that it incidentally affected the powers of the trustees or the management in respect of educational institutions which may be regarded as charitable, could not distract from the validity of the exercise of that power.

The plea that certain specific provisions were invalid as infringing Arts. 19, 31 and 14 may now be considered. Section 16F (4) was challenged as conferring an uncontrolled power upon the Regional Deputy Director of Education. By that provision, when a recommendation for appointment of a teacher or a Principal or Headmaster made by the management has been rejected and another selection made is again disapproved after representation of the management is considered, the Regional Deputy Director of Education in case of a teacher, and the Director in case of Principal or Headmaster, may appoint any qualified person out of the list of candidates applying for the vacancies and such appointment is made final. It is clear that the selection of teachers and principals or headmasters is in the first instance left to the Committee of Management. But the exercise of the power is subject to approval of the Education Authorities. The Educational Authorities may reject the selection after considering the representative of the management. The Selection Committee would then have power to make another recommendation. If that second recommendation also be not accepted after considering the representation made by the management, power is conferred upon the Educational Authorities to make appointments of qualified persons out of the list of candidates applying for the vacancies. But the person to be so appointed must possess the prescribed qualifications, and his name must be included in the list of candidates applying for the vacancy. The provision is enacted in the interest of the students of the institution. Where the Educational Authorities do not accept the suitability of a person selected by the management on two successive occasions in respect of the same vacancy, the Educational Authorities have been given the power to fill up the vacancy. It is implicit in the provision that the power has to be exercised by the Educational Authority in the interest of the institution and for serving the cause of education, and it cannot be said that the power conferred is uncontrolled.

It was then urged that the provisions of s. 16B(3) read with s. 16(d)(3)(a) & (b) are unreasonable provisions. By s. 16 D power is given to the Director to inspect recognized institutions and to direct removal of defects. If the management fails to comply with the directions made by the Director, that Officer may after considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition or recommend to the State Government to proceed against the institution under sub-s. (4) and the powers which the State Government may exercise after being satisfied that the affairs of the institution are being mismanaged or that the management has wilfully or persistently failed in the performance of its duties, include the power to appoint an Authorised Controller to manage the affairs of the institution for such period as may be specified by the Government. The provision is disciplinary and enacted for securing the best interests of the students. The State in a democratic set-up is vitally interested in securing a healthy system of imparting education for its coming generation of citizens, and if the

management is recalcitrant and declines to afford facilities for enforcement of the provisions enacted in the interests of the students, a provision authorising the State Government to enter upon the management through its Authorized Controller cannot be regarded as unreasonable.

Section 16B(3) authorises the State Government to take action under s. 16D(3) in the event of the Scheme of Administration not being submitted. The basis of an effective exercise of the controls envisaged by the amending provisions is the Scheme of Administration for educational institutions. If with a view to prevent enforcement of the provisions of the Act the management seeks to nullify the control envisaged by the provisions of the Act by the State Government, a provision whereby compliance with the requirements of the statute may be secured cannot also be regarded as unreasonable.

It was then urged that property of the Society is taken away under s. 16D(4) if the Scheme of Administration is not submitted within the time allowed, and the Authorized Controller is appointed by the Government pursuant to a recommendation made under sub-s. (3) of s. 16D. But on a plain reading of the terms of s. 16D (4) it is clear that the powers contemplated to be entrusted to the Authorized Controller are merely of management. Management of the institution in respect of which an Authorized Controller has been appointed has to be conducted and carried on in accordance with the directions given by the Authorized Controller. The property continues to remain the property of the institution : only the right of management of the recalcitrant managers is taken away temporarily to secure compliance with the provisions of the Act. Temporary deprivation of management to secure compliance with the provisions of the Education Act does not amount to deprivation of property of the educational institution which may attract the protection guaranteed by Art. 19 or Art. 31 of the Constitution.

It was then urged that unlawful discrimination is made between educational institutions maintained by private citizens and institutions maintained by the State Government or the Central Government or local bodies. On that part of the case it may be noticed that the petition filed by the Society is singularly defective : it is baldly averred in the petition that the provisions of s. 16H are ultra vires of the U.P. Legislature as they are discriminatory and infringe the guarantee of the fundamental freedom under Art. 14 of the Constitution. Section 16H exempts all recognized educational institutions maintained by the State Government and the Central Government from the operation of certain specified provisions of the Act and in the case of recognized institutions maintained by a local body the State Government may declare that all or any of those provisions shall not apply or shall apply subject to such alterations, modifications or additions as it may make. Prima facie, there is a justifiable classification between the privately managed educational institutions and those maintained by the State Government, the Central Government and local bodies. To claim the protection of Art. 14 it must be shown that persons differently treated are similarly situated and discrimination is made with an uneven hand. In the petition, no particulars are furnished as to why the classification made is not based on a rational basis having relation to the objects sought to be achieved thereby. In the affidavit which has been filed on behalf of the State by the Deputy Director of Education it is stated that since the termination of the Second World War there was a marked increase in the number of private schools imparting higher secondary education and there were many complaints against the management of those schools, and discontentment among the teachers was rife. A Committee appointed by the State Government to enquire into the conditions of the private institutions was of the view that the managing committees of the private schools as then constituted were unsatisfactory as many of them were ridden by factions and they had failed to give a sense of security to teachers, that it was necessary that teachers should have a right of representation on such managing committees, and that the Government should have power to

supersede any managing committee for persistent and serious dereliction of duty. Another Committee appointed by the Government of U.P. to examine the progress of the scheme of reorganisation of secondary education recommended that in the interest of better management of non-Government institutions the head of the institution and representatives of the teachers of the institution should be included in the managing committee of each aided institution to support and safeguard the legitimate interests of the teachers. The Government had also received representations from time to time from associations interested in education that the service conditions of teachers should be ameliorated and high handedness on the part of the management of the recognized institutions should be checked. From the statistics collected by the Director it appeared that a situation had arisen which required effective measures to be adopted for reasonably restricting the activities of the managing bodies of the recognized institutions in the interest of the students and the teachers with a view to harmonise the relationship between the teachers and the management so as to bring about an atmosphere conducive to efficient imparting of education. A table was incorporated in paragraph-16 of the affidavit showing the number of recognized educational institutions imparting higher secondary education. From an analysis of that table it is apparent that between the years 1956-57 and 1959-60 the number of State Government institutions was less than 9% of the total number of the institutions, and the number of Central Government institutions was less than 0.5% and that of local bodies' institutions approximately 2.5%. The institutions run by the State Government, Central Government and local bodies were governed by definite rules laying down the conditions of service of teachers and the institutions were run through official agencies under conditions which were entirely different from the conditions prevailing in the privately managed institutions. Another table showed that there was year after year great disparity between the percentages of successful candidates trained in the Government and local body institutions, and non-Government institutions. The materials placed on the record by the State, viewed in the light of complete absence of any details furnished by the Society, are sufficient to indicate that the plea of unlawful discrimination has no basis.

It was then urged that the State had accorded to the Society and others similarly situated, as against the Anglo-Indian Schools which are privately managed institutions, a discriminatory treatment to the detriment of the former. But there is no specific allegation in the petition in this behalf. From the table submitted in paragraph-18 of the affidavit of the Director of Education it appears that the number of students appearing from the Anglo-Indian Schools is very small, that no adverse reports were received against the management of such institutions, and that there is a separate Code of Regulations for the Anglo-Indian Schools in the State of U.P. laying down the necessary conditions with regard to all the important aspects of their educational activities and such institutions are not governed by the U.P. Educational Code of 1958 which applied to other recognized institutions. A plea of unlawful discrimination cannot be adjudged unless the petition contains a full averment of the grounds on which equality is claimed, and the denial of equality is pleaded as not based on a rational relation to the object sought to be achieved by the statute which makes a classification. We therefore do not propose to deal with this question in this appeal.

There only remains to be considered the challenge to the validity of s. 9 of the amending Act. By that section the State Government has been authorized for the purpose of removing any difficulties in relation to the enforcement of the Act to direct that the Act shall take effect subject to such adaptations, whether by way of modification, addition or omission as it may deem necessary or expedient and may make such other temporary provision for the purpose of removing any such difficulty as it may deem to be necessary or expedient. The High Court was of the view that the legislative policy has been laid down in the amending Act and by s. 9 power has been conferred on the State Government for the purpose of removing any difficulties in relation to the enforcement of

the Act, and since this may be done only within a period of twelve months from the date of the commencement of the Act and the adaptations whether by way of modification, addition or omission may only be made for the purpose of removing any difficulties in relation to the enforcement of the Act, no legislative power was conferred thereby on the State Government, and on that account the provisions are not invalid. The High Court also observed that the period in respect of which various orders were passed had expired and it was therefore immaterial for the purpose of the petition to consider whether s. 9 of the impugned Act is invalid. In our opinion, on the averments made in the petition and the materials brought before this Court, it is unnecessary to enter upon the question as to the validity of s. 9 and the orders issued thereunder. No specific Removal of Difficulties Order affecting the rights of the society has been brought to our notice. But we may state that nothing in this judgment may be understood as according approval to the views expressed by the High Court on the validity of s. 9 or the orders issued thereunder. We leave that question open to be canvassed when a suitable occasion arises.

The appeal fails and is dismissed with costs

Appeal dismissed.

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