

The Right Rev. Bishop S. K. Patro and Others

Vs

The State of Bihar and Others

Civil Appeal No. 2346 of 1968

(J. C. Shah, V. Ramaswami, G. K. Mitter JJ)

02.04.1969

JUDGMENT

SHAH, J. -

1. A primary school started in 1854 at Bhagalpur was later converted into a Higher Secondary School.

2. The Legislature of the state of Bihar enacted the Bihar High Schools (Control and Regulation of Administration Act 13 of 1960 which by Section 8 invested the State Government with power to frame rules. Section 8(1) provides :

"The State Government may, after previous publication and subject to the provisions of Article 29, 30 and 337 of the Constitution of India, make rules not inconsistent with this Act for carrying out the purposes of this Act"

In 1964 rules were framed under the Act by the State Government of Bihar. Rules 41 provides :

"These rules shall not apply to the schools established and administered by the minorities whether based on religion or language".

By order dated September 4, 1963, the President of the Board of Secondary Education approved the election of Bishop Parmar as President and Rev. Ghest as Secretary of the Church Missionary Society Higher Secondary School. This order was set aside by the Secretary to the Government, Education Department, by order dated May 22, 1967. On June 21, 1967, the Regional Deputy Director of Education, Bhagalpur, addressed a letter to the Secretary, Church Missionary Society, School, Bhagalpur, inviting his attention to the order dated May 22, 1967, the requested him to take steps to constitute a Managing Committee of the School "in accordance with that order".

3. A petition was then filed in the High Court of Patna by four petitioners (who are appellants in Appeal No. 2346 of 1968) for a writ quashing the order, dated May 22, 1967, and for an order restraining the respondents - the State of Bihar, the Secretary to the Government of Bihar, Department of Education and the educational authority of the State - from interfering with the right of the petitioners to control, administer and manage the affairs of the School. The High Court of Patna dismissed the petition. The High Court held that the primary School at Bhagalpur was established by the Church Missionary Society of London; that the School had developed into the present Church Missionary Societies Higher Secondary School; and that the School was administered in recent times by the Church Missionary Society of the Bhagalpur Diocese; and that

the School not being an educational institution established by a minority, protection was not afforded thereto by Article 30 of the Constitution. Against the order dismissing the petition, Civil Appeal No. 2946 of 1968 has been in this Court.

4. Two other petitions are filed in this Court claiming relief on the footing that by the order, dated May 22, 1967, of the Government of Bihar had the fundamental right of the Christian minority to maintain an educational institution of its choice and guaranteed by Article 30(1) is infringed. Writ petition No. 430 of 1968 is filed by the Principal, Church Missionary Society Higher Secondary School, Bhagalpur, the Secretary Bihar Christian Council, Gaya, the Secretary, Santhalia Christian Council, Bhagalpur, and the Secretary, National Christian Council of India, Nagpur, Writ Petition No. 431 of 1968 has been filed by Rev. M.P. Hembrom, Parish Priest, Church Missionary Society, Bhagalpur, two of whose children are being educated at the School. These petitions are heard with Civil Appeal No. 2346 of 1968.

5. The High Court found on a consideration of the evidence that the Church Missionary Society Higher Secondary School is a "denominational institution", that "scripture classes are held in the School and lessons on the life and teaching of Lord Jesus Christ are taught" and examinations are held in the subject for all students, that every morning, before the classes begin the prayers from the prescribed Church Books are offered by the students and the members of the staff, and each meeting of the Managing Committee of the School begins and closes with prayers from the Book of Common Prayer". Correctness of the finding recorded by the High Court is not challenged before us. The finding recorded by the High Court that the School originally started in the year 1854 as a primary school had since developed into the present Church Missionary Society Higher Secondary School is also not challenged before us.

6. The only question which falls to be determined is whether the petitioners in the two writ petitions and the appellants in appeal No. 2346 of 1968 are entitled to claim the protection of Article 30 of the Constitution on the ground that the Church Missionary Society Higher Secondary School at Bhagalpur is an educational institution of their choice established by a minority.

7. Article 30 of the Constitution by clause (1) provides :

"All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice".

The guarantee of protection under Article 30 is not restricted to educational institutions established after the Constitution : institutions which and been established before the Constitution and continued to be administered by minorities either based on religion or language qualify for the protection of the right of minorities declared by Article 30 of the Constitution. In re., The Kerala Education Bill ((1959) SCR 995), 1957, Das, C.J., observed at p. 1051 :

"There is no reason why the benefit of Article 30(1) should be limited only to educational institutions established after the commencement of the Constitution. The language employed in Article 30(1) is wide enough to cover both pre-constitution and post-constitution institutions. It must not be overlooked that Article 30(1) gives the minorities two rights, namely, (a) to establish and (b) to administer, educational institutions of their choice. The second right clearly covers pre-constitution schools just as Article 26 covers the right to maintain pre-constitution religious institutions".

8. It was the case of the State and the parties intervening in the writ petition before the High Court that the School was established by the Church Missionary Society, London which they claimed was a Corporation with an alien domicile and "such a society was not a minority based on religion or language" within the meaning of Article 30 of the Constitution. On behalf of the appellants in the appeal and the petitioners in the two writ petitions filed in this Court it is claimed that the School was started in 1854 by the local Christian residents of Bhagalpur. They concede that the Church Missionary Society of London did extend financial aid in the establishment of the School, but they contend that on that account the School did not cease to be an educational institution established by a religious minority in India.

9. There is on the record important evidence about establishment in 1854 of the Lower Primary School at Bhagalpur. It is unfortunate that sufficient attention was not directed to that part of the evidence in the High Court. The "Record Book" of the Church Missionary Association at Bhagalpur which in Annexure 'D' to Writ Petition No. 430 of 1968 furnishes evidence of vital importance having a bearing on the establishment of the School. It contains copies of letters written from Bhagalpur and minutes of meetings held and the resolutions passed by the Local Council of Bhagalpur. On June 1, 1848, Rev. Vaux informed the Calcutta Corresponding Committee of the Church Missionary Society by a letter that if the Calcutta Society were to establish a School at Champanagar, "local assistance shall not be wanting to the extent of 1000 or 1200 rupees a year, besides providing a school house and residence for the master", and that "At first, for breaking up the fallow ground and setting the school a going the presence of a Missionary of tact and experience may be necessary". On June 26, 1848, Rev. Vaux by another letter informed the Calcutta Corresponding Committee that a special service was held in the Church on June 22, 1848 and thereafter on Friday, June 23, 1848, a meeting was held and contributions were incited from persons present including Indian residents, that monthly subscriptions of Rs. 202/- for the "salary of masters" and other expenses were promised, and that an amount of Rs. 1,647/- was donated for building the school and residence for the master; that the general impression made was so favourable to the cause that he felt justified in assuring the Calcutta Committee that the local Committee were in a position to guarantee certain requisites for making a commencement were in a position to guarantee certain requisites for making a commencement such as payment of the salary of the School Master and Mistress and the building of a house for their accommodation which may afterwards be enlarged so as to form a suitable residence for a Mission.

10. By letter dated July 10, 1848, the Secretary, Calcutta Corresponding Committee, informed Rev. Vaux that they were looking out for a prominent person to commence missionary operations by opening a School "which is indeed a common way of beginning a Mission". In a letter, dated December 22, 1848, written from Bhagalpur it was stated :

"The Society will provide for the Missionary's salary and trust that local funds will provide a residence for him of a suitable kind. All other Mission requirements, such as school teachers, etc., should be left to be provided on the spot".

11. Then there are minutes of the resolution passed at a meeting held on October 24, 1849, by the Parent Committee and another resolution, dated October 25, 1851, of the Local Committee, to raise funds, and to determine upon disbursements with the advice of the Missionary to promote the objects of the Mission. In the minutes of the meeting, dated October 25, 1851, it is recorded that a statement of account of receipts and disbursements upto September 30, 1851, including expenses of a boys' school and salary of masters, 'hire of school rooms and furniture' and expenses of a girls' school "including cost of working materials upto date" was submitted.

12. In a letter from the Treasurer of the Committee dated May 10, 1852, it was stated :

"One of the conditions on which the Church Missionary Society consented to send a Missionary to this station was that he should be provided by local friends with a suitable residence. As this appeared to be a *sine qua non*, subscriptions were raised for the purpose of building a Mission house; X X X To this end I propose, that, as soon as the balance in hand amounts to Rs. 11,000/- that sum be transferred by me as your Treasure to the Calcutta Corresponding "Committee of the C.M.S., to be held by them in trust as the "Bhagalpur Mission Fund". The interest of this sum will be more than sufficient to pay the rent of the present Mission premises, viz., Rs. 45/- per month; and accordingly as soon as the transfer is effected responsibility. The whole of our remaining local funds and future collections can then be devoted to the support of schools, orphanage and we shall be better able to regulate our expenditure by our means, and increase our efforts in proportion to our wants".

13. At a meeting of the Local Committee, held on March 22, 1853, it was resolved that the Committee expresses their satisfaction at the progress made by Mr. Droese in building the Bungalow and that the Treasure be authorised to pay to Mr. Droese out of the Reserve Fund the further sum of Rs. 3,500/- required to complete the building.

14. At a meeting of the Local Committee held on August 23, 1856, it was recorded that on an area of 21 bighas of land for which a perpetual lease was obtained on November 26, 1853, the Association had built a Bungalow and offices for the Missionary, houses for native Christians and an orphanage. At a meeting held on October 17, 1856, it was resolved that the Committee desired sincerely to thank Mr. Brown for "kind, active and liberal interest he had taken in the Mission from the first and particularly for making over to the Society mission property which his own exertions had in great measure secured".

15. It appears from this correspondence and the resolution and the discussion at the meetings that a permanent home for the Boys' School was set up in 1854 on property acquired by local Christians and in buildings erected from funds collected by them. The institution along with the land on which it was built and the balance of money from the local fund were handed over to the Church Missionary Society in 1856. It is also true that substantial assistance was obtained from the Church Missionary Society, London. But on that account it cannot be said that the School was not established by the local Christians with their own efforts and was not an educational institution established by a minority.

16. The Church Missionary Society Higher Secondary School is an educational institution administered by a minority : that was so found by the High Court and is not now in controversy. The High Court held that the primary school started in the year 1854 was started by the Church Missionary Society, London, and such a Society cannot be said to be a citizen of India and that in any event the persons who constituted the Society were aliens and on that account it cannot be said that the Church Missionary Society Higher Secondary School is an educational institution established by a minority. It is unnecessary to dilate upon these matters at length, for, in our judgment, the conclusion that the school was established not by the local Christians of Bhagalpur, but by the Church Missionary Society, London is not justified on the evidence. The extracts from the Record Book clearly show that the local residents of Bhagalpur had taken a leading role in establishing and maintaining the school. Assistance was undoubtedly obtained from other bodies including the Church Missionary Society, London. But the School was set up by the Christian

Missionaries and the local residents of Bhagalpur with the aid of funds part of which were contributed by them.

17. It is unnecessary to enter upon an enquiry whether all the persons who took part in establishing the School in 1854 were "Indian citizens". Prior to the enactment of the Constitution there was no settled concept of Indian citizenship, and it cannot be said that Christian Missionaries who had settled in India and the local Christian residents of Bhagalpur did not form a minority community. It is true that the minority competent to claim the protection of Article 30(1) and on that account the privilege of establishing and maintaining educational institutions of its choice must be a minority of persons residing in India. It does not confer upon foreigners not resident in India the right to set up educational institutions of their choice. Persons setting up educational institutions must be resident in India and they must form a well-defined religious or linguistic minority. It is not however predicated that protection of the right guaranteed under Article 30 may be availed only in respect of an institution established before the Constitution by persons born and resident in British India.

18. It is necessary to bear in mind the difference in the phraseology used in Articles 29 and 30 of the Constitution. By Article 29(1) any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same, and clause (2) guarantees that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion race, caste, language or any of them. The protection of the rights under Article 29 may be claimed only by Indian citizens. Article 30 guarantees the right of minorities to establish and administer educational institutions; the article decided ones not expressly refer to citizenship as a qualification for the members of the minorities. In *Rev. Father W. Proost and Others v. The State of Bihar and Others* (W.P.No of 1963 decided on september 13,1968), this Court observed :

"In our opinion the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language, script or culture. X X X The two articles create two separate rights, although it is possible that they may meet in a given case."

The court then observed, after referring to the judgment in *Rev. Sidhajibhai Sabhai and Others v. State of Bombay and Another* ((1963) 3 SCR 837), that :

" the language of Article 30(1) is wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words. Here the protection clearly flows from the words and there is nothing on the basis of which aid can be sought from Article 29(1)."

The fact that funds were obtained from the United Kingdom for assisting in setting up and developing the School or that the management of the institution was carried on by some persons who may not have been born in India is not ground for denying the protection of Article 30(1).

19. We are also unable to agree with the High Court that before any protection can be claimed under Article 30(1) in respect of the Church Missionary Society Higher Secondary School it was required to be proved that all persons or majority of them who established the institution were "Indian

citizens" in the year 1854. There being no Indian citizenship in the year 1854 independently of the citizenship of the British Empire, to incorporate in the interpretation of Article 30 in respect of an institution established by a minority the condition that it must in addition be proved to have been established by persons who would, if the institution had been set up after the Constitution, have claimed Indian citizenship, is to whittle down the protection of Article 30 in a manner not warranted by the provisions of the Constitution.

20. The order passed by the Educational Authorities requiring the Secretary of the Church Missionary Society Higher Secondary School to take step to constitute a Managing Committee in accordance with the order, dated May 22, 1967, is declared invalid.

21. The appeal is allowed and the rule in the two writ petitions is made absolute. There will be no order as to costs in the two writ petitions. Since it appears that all the requisite materials were not placed prominently before the High Court in the writ petition out of which Appeal No. 2346 of 1968 has arisen, we direct that in the appeal the parties shall bear their own costs throughout.

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