Rt. Rev. Msgr. Mark Netto

Vs

State of Kerala and Others

Civil Appeal No. 927 of 1976

(R. S. Sarkaria, N. L. Untwalia, O. Chinnappa Reddy JJ)

11.09.1978

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave from the judgment of the Kerala High Court dismissing the appellant's writ application for quashing the order dated June 5, 1973 of the Regional Deputy Director of Public Instruction, Trivandrum and the order dated May 2, 1974 of the District Education Officer issued pursuant to the order aforesaid of the Regional Deputy Director. The constitutional question involved in this appeal is about the vires of Rule 12(iii) of Chapter VI of the Kerala Education Rules, 1959, hereinafter called the Rules. The question is whether the said rule is violative of Article 30(1) of the Constitution.

2. In the year 1947 Dr. A. G. Pereira, a retired Medical Officer, opened a High School at Kaniyapuram mainly for the benefit of the students of the Christian community. The sanction of the then Government of Travancore for opening the school was accorded to him by letter dated February 21, 1947, Ext. P-1. Subsequently the school was transferred to the Trivandrum Roman Catholic Diocese. For the last more than 25 years the school was administered by this Diocese. The appellant is the corporate Manager of the Schools belonging to the Roman Catholic Diocese of Trivandrum. It is not in dispute that as matter of fact only boy students were admitted in the school till the end of academic year 1971-72. In the year following the management built a separate building in the school compound to provide accommodation for girl students. The Manager applied to the Regional Deputy Director for permission to admit girl students in the school, although according to his case, it was strictly not necessary to do so in law. By letter dated June 5, 1973 Ext. P-2 the Regional Deputy Director refused to give sanction for admission of the girl students. The main ground of refusal of the sanction contained in the said letter is that St. Vincents High School, Kaniyapuram, the school in question, was not opened as a mixed school, that is to say, for imparting education both to boys and girls and that "the school had been running purely as a boys school for the last more than 25 years. There is also facility for the education of the girls of the locality in the near girls school situated within a radius of one mile". As mentioned in the letter, the Manager of Muslim High School, Kaniyapuram, which was a girls school said to be situated within a radius of one mile from the school in question seems to have objected to the grant of permission for admission of girl students in the St. Vincents High School. The girls school was established by the Muslims and was also a minority institution within the meaning of Article 30 of the Constitution. The appellant filed a revision before the State Government from the order of the Regional Deputy Director and pending revision many girl students were admitted in the school. The District Education Officer wrote the letter dated May 2, 1974, Ext. P-4 to the authorities of the St. Vincents High School that since the admission of girl pupils had been prohibited by the Regional Deputy

Director no girl should be admitted in the school. The appellant, thereupon, challenged the orders of the educational authorities by filing a writ petition in the High Court.

3. In the judgment under appeal the High Court has said that although girls school has been defined in Rule 6 of Chapter II of the Rules, a boys school is not defined either in the Kerala Education Act, 1958, hereinafter to be referred to as the Act, or in the Rules, since only boys were admitted in the school for a long time the self-imposed restriction by the management made it a boys school. The authorities of the school could be prevented from admitting the girls in the school under Rule 12(iii) of Chapter VI of the Rules, even though a separate building has been constructed for them in the same compound. In the opinion of the High Court, to quote its language :

The basis of the rule seems to be that it will be better for the girls to get instruction in girls' schools as far as possible; and if there is a girls' school why the parents of the minority community should insist on admission of the girls in boys' school is un-understandable. By the time the child reaches the secondary school stage it would have grown up a little. At that age to keep them under proper guidance and discipline the rule is made that they should as far as possible be given education in girls' schools only. This is only in the nature of a regulation for discipline and morality. It does not interfere with the power of administration of an educational institution by a minority community.

4. There is no dispute that the school was an existing school within the meaning of Section 2(3) of the Act. Thus within the permissible limits without violating the protection given to a minority institution under Article 30 of the Constitution, the Act and the Rules came to govern this school also. As already stated, there is no definition of boys' school either in the Act or the Rules. But in Rule 6 of Chapter II it has been provided - "Schools where admission to some or all of the Standards is restricted to girls shall be known as Girls' Schools". Rule 12 in Chapter VI reads as follows :

Admission of Boys into Girls' Schools - (i) All Primary Schools (Lower and Upper) shall be deemed to be mixed Schools and admission thereto shall be open to boys and girls alike. But under special circumstances the Director may exempt particular institutions from this rule so that admission thereto might be restricted to boys or girls and in the absence of such special circumstances the Director may withdraw such exemption.

> (ii) Admission to Secondary Schools which are specifically recognised as Girls Schools shall be restricted to girls only, but the Director may issue a general permission to boys below the age of twelve to be admitted to classes not higher than Standard VII in particular Girls' Schools provided there are no Boys Schools in the locality. But such boys on completing the age of twelve shall not be allowed to continue in such schools beyond the school year in which they complete the age of twelve.
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> (iii) Girls may be admitted into Secondary Schools for boys in areas and in towns where there are no Girls' Schools and in such cases adequate arrangements should be made for the necessary convenience. The admissions will be subject to general permission of the Director in particular Boys' Schools which will be specified by him.

The language of clause (i) indicates that all Primary Schools admission shall be open to boys and girls alike and such Schools shall be deemed to be mixed Schools. But it is open to the Director to

exempt a particular institution from this Rule meaning thereby that if the school authorities so want, they may run the school for the admission of the boys or the girls only. Similarly clause (ii) of Rule 12 suggest that admission to Secondary Schools which are specifically recognised as girls schools shall be restricted to girls only, but with the permission of the Director boys below the age of twelve may be admitted. The purport of impugned clause (iii), however, is to enable the Director to permit the admission of girls into Secondary Schools for boys in areas and towns where there are no girls schools. In other words if there are other girls schools permission may be refused for admission of the girls in a school which has been run for imparting education to boys only.

5. The ambit and content of Article 30 of the Constitution has been the subject-matter of consideration and pronouncement by this Court in several decisions starting from In Re The Kerala Education Bill, 1957 (1959 SCR 995 : AIR 1958 SC 956 : 1959 SCJ 321) and ending with 9 Judges' Bench decision of this Court in The Ahmedabad St. Xaviers College Society v. State of Gujarat ((1975) 1 SCR 173 : (1974) 1 SCC 717). In State of Kerala v. Very Rev. Mother Provincial ((1971) 1 SCR 734 : (1970) 2 SCC 417), Hidayatullah, C.J., speaking for the Court has said at page 740 : (SCC p. 421, para 10)

There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subject which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others. These propositions have been firmly established in The State of Bombay v. Bombay Education Society ((1955) 1 SCR 568 : AIR 1954 SC 561); The State of Madras v. S. C. Dorairajan (1951 SCR 525 : AIR 1951 SC 226); In re the Kerala Education Bill, 1957 (1959 SCR 995 : AIR 1958 SC 956); Sidharajbhai v. State of Gujarat ((1963) 3 SCR 837 : AIR 1963 SC 540); Katra Education Society v. State of U. P. ((1966) 3 SCR 328 : AIR 1966 SC 1307); Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar (1963 Supp 1 SCR 112 : AIR 1963 SC 704) and Rev. Father W. Proost v. State of Bihar ((1969) 2 SCR 73 : AIR 1969 SC 465). In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more.

In the case of St. Xaviers College, Ahmedabad (supra) the majority decision, although by separate judgments, has converged to the view that the right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions, similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration of the school in the matter of maintaining discipline, health, morality and so on and so forth. Even the two learned Judges differing from the majority on some of the aspects of the matter under consideration before this Court in St. Xaviers College case did not depart from this fundamental principle. The difference was mainly in the application of the principle in relation to some of the provisions of the impugned Statute. As summed up by Das, C.J., in the Kerala Education Bill case (supra), the right to administer an

educational institution of their choice by a minority cannot mean a right to mal-administer. Of course in the application of the salient principles mentioned above opinions have differed from case to case and may differ.

6. Let us examine the constitutionality of Rule 12(iii) contained in Chapter VI of the Rules and the validity of the impugned orders contained in Exts. P-2 and P-4. The dominant object of the said Rule does not seem to be for the sake of discipline or morality. Any apprehension of deterioration in the moral standards of students if co-education is permitted in Secondary Schools does not seem to be the main basis of this Rule, although it may be a secondary one. The very fact that girls can be admitted into a boys school situated at a place where there are no girls School in the town or the area leads to this conclusion. It is to be remembered that no category of a school as a boys' school is specified in the Act or the Rules. Nor was our attention drawn to any provision enabling the educational authorities to force the school authorities to admit girls in the School where they don't want to admit them. The self-imposed restriction by the management in vogue for a number of years restricting the admission for boys only, per se, is wholly insufficient to cast a legal ban on them not to admit girls. The ban provided in Rule 12(iii) as already adverted to is of a very limited character and for a limited purpose. Permission was granted to Dr. Pereira for opening the school in 1947 as a high school. No restriction in terms was imposed for not admitting any girl students. If the successor school authorities wanted to depart from the self-imposed restriction, they could only be prevented from doing so on valid, legal and responsible grounds and not otherwise. As is apart from the impugned order dated June 5, 1973 of the Regional Deputy Director of Public Instruction as also from the passage of the High Court judgment which we have extracted above the permission sought for by the appellant for admission of girls in the St. Vincents School was refused not on the ground of any apprehended deterioration of morality or discipline but mainly, or perhaps, wholly in the interest of the existing Muslim girls school, respondent 4, in the locality. The basis of the Rule, as marked by the High Court, seem to be "that it will be better for the girls to get instruction in girls' schools as far as possible". If that be so, then clearly the Rule violates the freedom guaranteed to the minority to administer the school of its choice. But, as already stated, in our opinion this is not the dominant object of the rule. The Christian community in the locality, for various reasons which are not necessary to be alluded to here, wanted the girls also to receive their education in this school and specially of their community. They did not think it in their interest to send them to the Muslim girls school which is in educational institution run by the other minority community. In that view of the matter the Rule in question its wide amplitude sanctioning the withholding of permission for admission of girl students in the boys minority school is violative of Article 30. If so widely interpreted it crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30. The Rule, therefore, must be interpreted narrowly and is held to be inapplicable to a minority educational institution in a situation of the kind with which we are concerned in this case. We do not think it necessary of advisable to strike down the Rule as a whole but not restrict its operation and make it inapplicable to a minority educational institution in a situation like the one which arose in this case. It follows, therefore, that the impugned orders dated June 5, 1973 and May 2, 1974 passed by the Regional Deputy Director and the District Education Officer respectively are bad and invalid and must be quashed.

7. In the result, we allow this appeal and set aside the judgment and order of the High Court and grant the relief to the appellant to the extent and in the manner indicated above. In the circumstances, we make no order as to costs.

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