

Bharat Sevashram Sangh and Others

Vs

State of Gujarat and Others

Writ Petitions Nos. 205 of 1975, 16988-17055 of 1984 and 2837-38 of 1983, Transfer Cases Nos. 9-10 of 1985, Civil Appeal No. 2440 of 1982 and Special Leave Petition (Civil) No. 2659 of 1982

(E. S. Venkataramiah, Ranganath Misra JJ)

18.08.1986

JUDGMENT

VENKATARAMIAH, J. –

1. In these cases the petitioners and the appellants, as the case may be, have questioned the constitutional validity of the Gujarat Secondary Education Act, 1972 (Gujarat Act 18 of 1973) (hereinafter referred to as 'the Act') which has been enacted to provide for the regulation of secondary education in the State of Gujarat and to establish a Board for that purpose.
2. These cases can be divided into three groups. Writ Petition No. 205 of 1975, Writ Petitions Nos. 16988-17055 of 1984 and Writ Petitions Nos. 2837-38 of 1983 are writ petitions filed in this Court under Article 32 of the Constitution. T.C. Nos. 9 and 10 of 1985 are writ petitions filed under Article 226 of the Constitution in the High Court of Gujarat which have been withdrawn under Article 139-A of the Constitution for being heard along with the above writ petitions filed in this Court. Civil Appeal No. 2440 of 1982 is an appeal filed under Article 136 of the Constitution against the judgment dated July 6, 1981 in Special Civil Application No. 2140 of 1980 of the Gujarat High Court and SLP (Civil) No. 2659 of 1982 is a petition filed against the judgment and order of Gujarat High Court. All these cases are heard together since common questions of law have been raised in these cases. All of them are disposed of by this common judgment.
3. The Act received the assent of the President on September 28, 1973 and was published on the same day. Section 11 of the Act came into force at once but its remaining provisions came into force on October 13, 1973 on the issue of a notification by the State Government in that regard as provided in sub-section (3) of Section 1. The Act provides for the constitution, incorporation and powers of the Gujarat Secondary Education Board, its finances, accounts and audit, registration of schools imparting secondary education, taking over of management of registered schools, recruitment and conditions of service of persons appointed in registered private schools and certain other ancillary and incidental provisions. Chapter II of the Act contains the provisions relating to the Constitution, incorporation and powers of the Gujarat Secondary Education Board (hereinafter referred to as 'the Board'). The Board consists of the Director of Education, the Director of Technical Education, the Director of Agriculture, the Chairman of the Board of Primary Education, the Director, Gujarat State Board of School Text books, the Director, State Institute of Education, the Director of Manpower, Employment and Training, an officer of the Education Department not below the rank of a Deputy Secretary designated by the State Government, the Chairman, State Board of Examinations and the Chairman, Technical Examination Board. In addition to these officers there are certain elected members and nominated members on the Board. Amongst the

elected members there are five members elected by the headmasters of registered schools other than Post Basic Schools, one member elected by the teachers of Post Basic Schools registered under the Act, two members elected by the representatives of managements of registered secondary schools registered under the Societies Registration Act, 1860 and three members elected by the Presidents of the Parents' Associations of registered private secondary schools. Three members are to be nominated by the State Government from amongst persons who have special knowledge or practical experience in the field of science, industry or commerce. Thus it is seen that the Board consists of members representing different interests which are affected by the Act, namely, the government, the management of the institutions, the teachers, the parents of students and the members of the public. The powers and duties of the Board are set out in Section 17 of the Act. The Board is required to advise the State Government on matters of policy relating to secondary education in general and on certain other matters specified in that section. The powers and duties of the Board amongst others are to prescribe measures for promotion of physical, moral and social welfare of, and for inculcation of spirit of discipline among students in registered schools and to prescribe standards of conditions of residence to be provided in hostels, to lay down standards for testing students, for conducting examinations and for promotion of students from one standard to the next higher standard of a registered school and to prescribe the standards, including qualifications, for appointment of the staff of a registered school and the standard requirements in respect of building, laboratory, library, furniture, equipment, stationery and other articles for conducting registered schools.

4. Section 31 of the Act prescribes that no person shall impart secondary education through a school unless such school is registered under the provisions of the Act and its provisions are complied with.

5. Aggrieved by the enforcement of the Act and the regulations made thereunder the petitioners/appellants in these petitions have challenged the provisions of the Act and the regulations made thereunder on many grounds but at the hearing the learned counsel for the petitioners/appellants urged the following grounds only :

(i) the assent given to the Act by the President being a qualified one, the Act was not enforceable; and

(ii) Sections 33, 34, 35 and 36 of the Act were contrary to the constitutional provisions.

6. The contention relating to the alleged invalidity of the assent given by the President is formulated by the learned counsel for the petitioner/appellants thus. The Bill was passed by the legislature of the State on February 15, 1973 and it was immediately thereafter forwarded to the Governor for his assent. The Governor reserved the Bill for the consideration of the President under Article 200 of the Constitution and the subsequent events according to the learned counsel showed that the President did not either give his assent or withhold his assent as contemplated under Article 201 of the Constitution but he gave a qualified or conditional assent which was not contemplated under Article 201 of the Constitution. It is argued that since the President did not give absolute assent but only a qualified or conditional assent the Bill in question had not become a law. In reply to these averments in the petitions the Under Secretary to the Government of Gujarat, Education Department has stated in his counter-affidavit that the Bill was presented to the Governor of Gujarat after it was passed by the Assembly. The Governor of Gujarat reserved the Bill for the consideration of the President under Article 200 of the Constitution since he felt that in view of Clause 33 of the Bill which provided for taking over of the management of a school for a limited period in public interest it was necessary to reserve the Bill for the consideration of the President. Accordingly the Bill was

referred to the President. At the meeting held in the Ministry of Home Affairs, Government of India on August 3, 1973 to discuss the Bill it was suggested by the representatives of the Central Government that the provisions of the Bill which did not exclude institutions established or administered by the minorities from their scope were repugnant to Article 30 of the Constitution and therefore the Bill should be suitably amended. It was also suggested to the representatives of the State Government that it would be better to carry out the requisite amendments by promulgating an ordinance. Accordingly the draft of the ordinance which was ultimately promulgated as Ordinance 6 of 1973 was forwarded for the instructions of the President under Article 213(1) of the Constitution. Thereafter the draft of the Ordinance and the Bill were both considered by the President and he assented to the said Bill and issued instructions as required by the proviso to Article 213 of the Constitution for the promulgation of the said Ordinance on September 28, 1973. Accordingly the said Bill became law on its publication on the very same day. The Ordinance was issued on September 29, 1973. In the circumstances it cannot be said that the assent which was given by the President was conditional. The records relating to the above proceedings were also made available to the court. On going through the material placed before us we are satisfied that the President had given assent to the Act and it is not correct to say that it was a qualified assent. The Act which was duly published in the official Gazette contains the recital that the said Act had received the assent of the President on September 28, 1973. Moreover questions relating to the fact whether assent is given by the Governor or the President cannot be agitated also in this manner. In *Hoechst Pharmaceuticals Ltd. v. State of Bihar* [(1983) 3 SCR 130 : (1983) 4 SCC 45 : 1983 SCC (Tax) 248 : AIR 1983 SC 1019] this Court has observed at page 194 thus : (SCC p. 101, para 86)

We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent.

The above contention relating to the assent given by the President is, therefore, rejected.

7. The next provision of the Act whose validity is questioned is Section 33. That section provides that notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the manager of any registered private secondary school has neglected to perform any of the duties imposed on him by or under the Act or the regulations, and that it is necessary in the public interest to take over the management of the school, it may, after giving to the manager of such school a reasonable opportunity of showing cause against the proposed action and after considering the cause, if any, shown by him, take over the management of the school for such period as the State Government may, from time to time fix, so however, that such period shall not exceed five years in the aggregate. Under the Grants-in-Aid Code the government is under an obligation to pay to all private secondary schools registered under the Act 100 per cent grant towards the teachers' salaries as also 30 per cent grant by way of "Maintenance Grant" from the public exchequer. It is, however, open to any school not to accept the grant but that would not make any difference insofar as the power of the State to regulate the imparting of secondary education by the registered schools in which the entire society and in particular the parents of the children are vitally interested. A large number of teachers are employed by these schools. The protection of their interests is also equally important from the point of view of the State. In these circumstances a provision like Section 33 of the Act which provides for the taking over of the management of a school whenever it is found that the school is not being run in accordance with the statute and in the best interests of the students and the community is necessary. The management of a school cannot be taken over for an indefinite period because the said section provides such taking over shall not exceed five years in the aggregate. Before a school is taken over a reasonable opportunity has to be given to its manager for showing cause against the proposed action. In these circumstances it cannot

be said that Section 33 of the Act which provides for taking over of management of any registered private secondary school for a temporary period in the public interest is unconstitutional. The said provision is introduced in the interest of the general public and does not in any way affect prejudicially the fundamental right of the management guaranteed under Article 19(1)(g) of the Constitution.

8. The next section which was attacked before us is Section 34 of the Act. Section 34(1) of the Act provides that 15 per cent of vacancies of the teaching staff of a registered private school shall be filled up by persons belonging to the Scheduled Castes and the Scheduled Tribes. It is argued that the above provision interferes with the managerial function. As already mentioned a large number of teachers whose salaries are met by the grants given by the State under the Grants-in-Aid Code are employed by the managements. The State should therefore, have a voice in the method of recruitment. The State should also make provision for reservation of certain percentage of seats for members belonging to the Scheduled Castes and the Scheduled Tribes under Article 16(4) of the Constitution. The insistence on having teachers belonging to the Scheduled Castes and the Scheduled Tribes is also in the public interest. Children should be brought up in an atmosphere where there is opportunity to mix freely with students and teachers belonging to traditionally disfavoured communities also. The opportunity to show reverence to teachers belonging to the Scheduled Castes and Scheduled Tribes will in the long run enable the child brought up in that atmosphere to shed the feeling of superiority over members belonging to the Scheduled Castes and the Scheduled Tribes. Such an atmosphere would also be congenial to the development of a society consisting of persons free from feelings of hatred or contempt towards others. Section 34 of the Act serves the above mentioned laudable purpose. Even the teachers who belong to the Scheduled Castes or the Scheduled Tribes have to possess the requisite qualifications for the posts. We do not, therefore, find any illegality in Section 34 of the Act.

9. Section 35(1) of the Act requires every registered private secondary school to have two committees (i) a school staff selection committee for the purpose of recruiting the teaching staff of the school other than the headmaster and (ii) a special school committee for the purpose of recruiting the headmaster and for the purpose of the initial recruitment of the headmaster and the teaching staff of a school started after the appointed day. The school staff selection committee consists of the following members, namely (i) two representatives of the management of the school to be nominated by the management; (ii) the headmaster of the school; (iii) in the case of a school the total number of teachers in which is more than six, two teachers to be elected by the teachers of the school from amongst themselves, and in the case of a school the total number of teachers in which is or is less than six, one teacher to be elected by the teachers of the school from amongst themselves; and (iv) one representative of the Board to be nominated by the Board. The special school committee consists of the following members namely : (i) two representatives of the management of the school to be nominated by the management and (ii) two representatives of the Board to be nominated by the Board. These committees are required to select the headmaster and the teachers in the school under Section 35 of the Act. Their functions are also set out in it. There appears to have been some modification in the composition of these committees subsequent to the filing of the first writ petition in this Court. That however is immaterial for purposes of considering the contention urged before us. The argument urged on behalf of the petitioners/appellants is that the representatives of managements being in a minority in the said committees they would have practically no voice in the selection of the teachers. We again do not find any substance in the argument. The two committees which are to be constituted under Section 35 of the Act consists of the representatives of the management and the representatives of the teachers. The presence of the teachers working in the very school and of the representatives of the Board on the committees does

not have the effect of silencing the voice of the management. The provisions of Section 35 of the Act do not appear to confer any arbitrary power on the selection committees nor can it be said that there are no guidelines regarding the mode of selection. They have got to select the teachers in accordance with the regulations. We do not, therefore, find any merit in this contention.

10. Section 36 of the Act which came under attack in the course of the arguments deals with the dismissal, removal and reduction in rank of certain employees of the school. No person who is appointed as a headmaster, a teacher or a member of non-teaching staff of a registered private secondary school can be dismissed or removed or reduced in rank nor can his service be otherwise terminated by the manager until he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken against him and the action proposed to be taken has also been approved in writing by an officer authorised in this behalf by the Board. We do not find any constitutional invalidity in this provision. It protects the tenure of the teachers and of the non-teaching staff of a registered private secondary school and acts as a shield against arbitrary actions of the management resulting in wrongful termination of their services. If the management is aggrieved by the decision of the authorised officer it may prefer an appeal before the Tribunal under Section 36(5) of the Act within 30 days from the date of the decision of the authorised officer. Section 39 of the Act provides for the establishment of a Tribunal. The Tribunal consists of a District Judge or a person who has been or is qualified to be a judge of a High Court or a District Judge. The provision for an appeal to the Tribunal is a sufficient guarantee against any arbitrary order of the authorised officer refusing to grant unreasonably his approval to the termination of the services of an employee. Merely because the management cannot terminate the services of a teacher or a member of a non-teaching staff forthwith without the approval of the authorised officer it cannot be said that an unreasonable restriction has been imposed on the right of the management guaranteed under Article 19(1)(g) of the Constitution.

11. Section 40-A of the Act which was introduced into the Act by the Gujarat Act 25 of 1973 provides that nothing contained in clause (26) of Section 17, Sections 34 and 35 and clause (b) of sub-section (1) and sub-sections (2), (3), (4) and (5) of Section 36 shall apply to any educational institution established and administered by a minority whether based on religion or language. In view of this provision no minority institution also can complain about the Act.

12. We agree with the decision of the High Court on the questions raised before it. All the contentions urged before us in these cases, therefore fail. These petitions and the appeal are accordingly dismissed. There will be no order as to costs.

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