

A. N. Parasuraman And Others

Vs

State of Tamil Nadu

Civil Appeal Nos. 1821-26, 2045-48, 2062 of 1971 and 54-55

(L. M. Sharam, Dr. T. K. Thommen JJ)

05.10.1989

JUDGMENT

SHARMA, J. –

1. The question involved in these appeals relates to the vires of the Tamil Nadu Private Educational Institutions (Regulation) Act, 1966, hereinafter referred to as 'the Act'. The appellants are interested in running educational institutions, which are covered by the expression "private educational institution" within the meaning of Section 2(f) of the Act. The main challenge is directed against Section 2(c), 3(a), 3(b), 6, 7 read with Sections 15, 22 and 28. The High Court struck down Section 28 and upheld the other sections. That part of the judgment where Section 28 has been declared to be invalid has not been impugned by the respondent-State.

2. The provisions of the Act which are relevant for appreciating the ground urged by the appellants are as follows. Section 3 mandatorily requires a private educational institution to obtain the permission of the competent authority for the purpose of running it. The Manager of such an institution has to, as required by Section 4, make an application for permission in the prescribed form accompanied by a fee. Section 6 lays down the power of the competent authority to deal with such an application in the following terms :

"6. Grant of permission. - On receipt of an application under Section 4 the competent authority may grant or refuse to grant the permission after taking into consideration, the particulars contained in such application :

Provided that the permission shall not be refused under this section unless the applicant has been given an opportunity of making his representation :

Provided further that in case of refusal of permission the applicant shall be entitled to refund of one-half of the amount of the fee accompanying the application."

The competent authority is empowered under Section 7 to cancel the permission in certain circumstances. One of the conditions for exercise of power is contravention of any direction issued by the competent authority under Section 15. The power to exempt any institution from the provisions of the Act is vested in the State Government under Section 22, which is quoted below :

"22. Power to exempt. - Notwithstanding anything contained in this Act, the government may, subject to such conditions as they deem fit, by notification exempt any private educational institution or class of private educational institutions from all

or any of the provisions of this Act or from any rule made under this Act."

Section 28, which has been declared invalid by the High Court, states that if any difficulty arises in giving effect to the provisions of this Act, the government may "do anything which appears to them to be necessary for the purposes of removing the difficulty".

3. The Act is impugned on the ground that it does not lay down any guideline for the exercise of the power by the delegated authority, as result of which the authority is in a position to act according to his whims. The Act having failed to indicate the conditions for exercise of power, the decision of the competent authority is bound to be discriminatory and arbitrary. It has also been argued that the restrictions put by the Act on the appellants, who are running tutorial institutions are unreasonable and cannot be justified under sub-clause (g) of Article 19 (1) of the Constitution.

4. The learned counsel appearing for the respondent has attempted to defend the Act on the ground that sufficient guidance is available to the authority concerned from sub-section (2)(c) of Section 4 which enumerates the particulars required to be supplied in the application for permission. They are 10 in number and are mentioned below :

4. Application for permission. -

(2) Every such application shall -

(c) contain the following particulars, namely :

(i) the name of the private educational institution and the name and address of the manager;

(ii) the certificate, degree or diploma for which such private educational institution prepares, trains or guides or proposes to prepare, train or guide its students or the certificate, degree or diploma which it grants or confers or proposes to grant or confer;

(iii) the amenities available or proposed to be made available to students;

(iv) the names of the members of the teaching staff and the educational qualifications of each such member;

(v) the equipment, laboratory, library and other facilities for instructions;

(vi) the number of students in the private educational institution and the groups into which they are divided;

(vii) the scales of fees payable by the students;

(viii) the sources of income to ensure the financial stability of the private educational institution;

(ix) the situation and the description of the buildings in which such private educational institution is being run or is proposed to be prescribed;

(x) such other particulars as may be prescribed."

5. The point dealing with legislative delegation has been considered in numerous cases of this Court, and it is not necessary to discuss this aspect at length. It is well established that determination of legislative policy and formulation of rule of conduct are essential legislative functions which cannot be delegated. What is permissible is to leave to the delegated authority the task of implementing the object of the Act after the legislature lays down adequate guidelines for the exercise of power. When examined in this light the impugned provisions miserably fail to come to the required standard.

6. The purpose of the Act is said to regulate the private educational institutions but does not give any idea as to the manner in which the control over the institutions can be exercised. The Preamble which describes the Act "for regulation" is not helpful at all. Learned counsel for the State said that the Object and the Reasons for the Act are to eradicate corrupt practices in private educational institutions. The expression "private educational institution" has been defined as meaning any college, school or other institution "established had run with the object of preparing, training or guiding its students for any certificate, degree or diploma", and it can, therefore, be readily inferred that the purpose of the Act is to see that such institutions do not exploit the students; and while they impart training and guidance to the students; of a standard which may effectively improve their knowledge so as to do well at the examination, they do not charge exorbitantly for their services. But the question is as to how this objective can be achieved. Section 6 which empowers the competent authority to grant or refuse to grant the permission for establishing and running an institution does not give any idea as to the conditions which it has to fulfil before it can apply for permission or cancelling under the Act, nor are the tests indicated for refusing permission or cancelling under Section 7 of an already granted permission. The authority concerned has been left with unrestricted and unguided discretion which renders the provisions unfair and discriminatory.

7. It was argued on behalf of the State that since an application for permission has to supply the particulars as detailed in Section 4(2)(c) (quoted above in paragraph 4), the Act must be deemed to have given adequate guidelines. Special emphasis was given by the learned counsel on the sub-clauses (iii), (iv) and (v) of Section 4(2)(c), which ask for information about the amenities for the students - the equipments, laboratory, library and other facilities for instruction - and, the names of the teachers with their qualifications. It may be noted that the Act, beyond requiring the applicant to make a factual statement about these matter, does not direct the institution to make provisions for them (or for any or some of them) as condition for grant of permission. The maintenance of any particular standard of these heads are not in contemplation at all, although certain other aspects, not so important, have been dealt with differently in several other section including Sections 4, 5, 9, 10 and 11. Section 4(2)(b) mandatorily requires the applicant to pay the "prescribed" fee; Section 5 gives precise direction regarding the name by which the institution is to be called; and Section 9 about the certificate to be issued by it; and Section 11 makes it obligatory to maintain accounts in the "prescribed" manner. But, there is no indication, whatsoever, about the legislative policy or the accepted rule of conduct on the vital issue about the maintenance of academic standard of the institution and the other requirements relating to the building, library and necessary amenities for the students, as the Act is absolutely silent about the criteria to be adopted by the prescribed authority for granting or refusing permission. The rules which were made under Section 27 in 1968 and called the Tamil Nadu Private Educational Institutions (Regulation) Rules, 1968, are not called upon to lay down any norm on these issues and naturally do not make any reference to these aspects. The result is that the power to grant or refuse permission is to be exercised according to the whims of the authority and it may differ from person to person holding the office. The danger of

arbitrariness is enhanced by the unrestricted and unguided discretion vested in the State Government in the choice of "competent authority" defined in Section 2(c) in the following words :

"(c) "competent authority" means any person, officer or other authority authorised by the government, by notification, to perform the functions of the competent authority under this Act for such area or in relation to such class of private educational institutions, as may be specified in the notification;"

The only safeguard given to the applicant institution is to be found in the first proviso to Section 6 which says that the permission shall not be refused unless the applicant has been given an opportunity of making his representation, but that does not by itself protect the applicant from discriminatory treatment. So far Section 7 dealing with power to cancel the permission granted earlier is concerned, no objection can be taken to the first part of the section, whereunder the permission may be cancelled in case of fraud, misrepresentation, suppression of material particulars or contravention of any provision of the Act or the Rules. But the other ground on which the authority can exercise its power being contravention "of any direction issued by the competent authority under this Act" again suffers from the vice of arbitrariness. Section 15, the relevant section in this regard, states that "the competent authority may, from time to time issue such directions regarding the management of a private educational institution as it may think fit". The section is too wide in terms without indicating the nature of such direction or the extent within which the authority should confine itself while exercising the power. Similar is the situation in the matter of exemption from the Act. The power to grant exemption is contained in Section 22, quoted in paragraph 2 above.

8. The provisions of the Act indicate that the State Government has been vested with unrestricted discretion in the matter of the choice of the competent authority under Section 2(c) as also in picking and choosing the institutions for exemption from the Act under Section 22. Such an unguided power bestowed on the State Government was struck down as offending Article 14 in the case of the State of West Bengal v. Anwar Ali Sarkar (1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510). A similar situation arose in K. T. Moopil Nair v. State of Kerala ((1961) 3 SCR 77 : AIR 1961 SC 552) where, under Section 4 of the Travancore-Cochin Land Tax Act, 1955, all lands were subjected to the burden of a tax and Section 7 gave power to the government to grant exemption from the operation of the Act. The section was declared ultra vires on the ground that it gave uncanalised, unlimited and arbitrary power, as the Act did not lay down any principle or policy for the guidance of exercise of the discretion in respect of the selection contemplated by Section 7.

9. Similar is the position under Section 6 and 7 of the present Act. The learned counsel for the respondent-State contended that by reference in Section 4 to the particulars to be supplied in the application for permission, it can be easily imagined that the competent authority has to take into account all that may be validly relevant for the grant or refusal of permission. We are afraid, the section cannot be saved by recourse to this argument in absence of any helpful guidance from the Act. The position in this case cannot be said to be on a better footing than that of the Gold (Control) Act, 1968, which was challenged in Harakchand Ratanchand Banthia v. Union of India ((1969) 2 SCC 166 : (1970) 1 SCR 479). As is indicated by the judgment, the Gold (Control) Act had to be passed as gold was finding its way into the country through illegal channels, affecting the national economy and hampering the country's economic stability and progress, and the customs department was found unable to effectively combat the smuggling. Section 27(6)(a) of the said Act stated that in the matter of issue or renewal of licences the "Administrator shall have regard to the number of

dealers existing in the region in which the applicant intends to carry on business as a dealer". The expression "region" was not defined in the Act and Section 27(6)(b) required the Administrator to have regard to "the anticipated demand, as estimated by him, of ornaments in the region". The argument in support of the validity of the Act was that these provisions provided adequate guidance to the Administrator, which the Court rejected, holding that the expression "anticipated demand" was vague and not capable of objective assessment and, therefore, was bound to lead to a great deal of uncertainty. The other provisions mentioning "suitability of the applicant" in Section 27(6)(e) and "public interest" in Section 27(6)(g) were also held to have failed in laying down any objective standard or norm so as to save the Act. The provisions of the Act, with which we are dealing in the present cases, are far less helpful for the purpose of upholding its validity.

10. For the reasons mentioned above, the impugned sections of the Act must be held to be invalid. These provisions are inextricably bound up with the other parts of the Act so as to form part of a single scheme, and it is not possible to sever the other parts of the Act and save them. In the result, the entire Act is declared ultra vires. The appeal is accordingly allowed, but, in the circumstances, without costs.

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