

Al-Karim Educational Trust and another

Vs

State of Bihar and others

Civil Appeal No. 2590 of 1992, WITH Contempt Petn. No. 270 of 1992 and I. A. No. 4 of 1992

(CJI A. M. Ahmadi, S. C. Sen, K. P. Paripoornan JJ)

27.02.1996

JUDGEMENT

PARIPOORNAN J.

1. The appellants in this appeal are (1) Al-Karim Educational Trust, Patna and (2) The Katihar Medical College, Patna, through its Principal. The respondents are (1) The State of Bihar, (2) The Chancellor. Universities of Bihar, Patna, (3) Lalit Narayan Mithila Universities, Patna and (4) Bihar Inter University Board, Patna. The Trust, sponsoring body, is a society under the Societies Registration Act. The appellants filed C.W.J.C. No. 7985/90 before the Patna High Court and sought appropriate directions to the State Government to accord recognition to the appellants college which was within the purview of L. N. Mithila University and to affiliate the college and allow its students to appear in the first part M.B.B.S. examination conducted by the said University, and for other reliefs. By a majority decision dated 7th April, 1992, the High Court held that the provisions of the Bihar Medical Institutions (Regulation and Control) Act will apply to the medical college of the appellants' society, that the said statute does not infringe the fundamental right guaranteed under Article 30 of the Constitution of India, and that the Court is not competent to issue a mandamus directing the University to permit the students of Katihar Medical College to appear at the M.B.B.S. examination conducted by the University unless the statutory requirements with regard to the permission and affiliation are fully complied with. The application if any, filed by the appellants was directed to be disposed of within a specified time. The Writ Petition was dismissed. Aggrieved by the aforesaid decision of the High Court, the appellants having obtained leave of this Court in Special Leave Petition No. 7502/92, have filed this appeal.

2. The appellants claim that the Muslim Religious Minority Community of Bihar founded the Trust, Al-Karim Educational Trust under the Societies Registration Act and established the Katihar Medical College for imparting education in the field of medical sciences to youths in particular and to render medical services to suffering humanity in the District of Katihar, which was in Purnea Division. It is further stated that 40 per cent of the population of the Purnea Division are Muslims. Temporary affiliation for three academic sessions was granted by the L. N. Mithila University by order dated 29-12-1989. When permanent affiliation was not granted, the appellants filed the Writ Petition in the Patna High Court, which was dismissed. This Court, while granting special leave by order dated 16-7-1992, ordered thus :

"By way of an interim order we direct that the students admitted to Katihar Medical College will be permitted to take examination but their result will be withheld till further orders by this Court. The concerned University which will take the examination is B. N. Mandal University at Madhyapur which we are told is successor

university to L.N. Mithila University. We also make it clear that the college will not grant new admissions without express permission of this Court." Consequently, examinations were held in December, 1992.

3. It appears that when the appeal came up for hearing, a plea was raised by the State that in the absence of prior permission to establish the College, the Trust had no right to establish it under the Bihar Medical Educational Institutions (Regulation and Control) 2nd Ordinance, 1980, which later became an Act. This Court by detailed order dated 28-9-1993 disposed of the matter and observed thus :

"From the above provisions it becomes clear that the prior permission of the State Government is a must for establishing a medical college and for imparting education in the science of medicine. This restriction argued by the learned counsel for the appellant violates the fundamental right conferred by Article 30(1) of the Constitution. Insofar as the requirement of State Government's permission for affiliation is concerned, the learned counsel for the appellant contends that the restrictions imposed for the grant of affiliation must answer the test of reasonableness, otherwise same would also be unconstitutional. Now so far as the first part of the challenge based on Article 30(1) is concerned, since lot of water has flown and many activities have already been undertaken for the grant of affiliation, we think it is too late in the day for the State Government to question the legality of the establishment of the college on the ground that prior permission was not obtained and hence we do not think it is necessary for us to examine the constitutional validity of the said provisions under Article 30(1) of the Constitution. We, therefore, are not required to express any opinion in that regard. We, are of the opinion that in the present case it would suffice if we confine ourselves to the limited question in regard to the grant of affiliation.

Now so far as affiliation is concerned, certain conditions laid down by the University Statutes, etc., have to be satisfied. The learned ASG, appearing on behalf of the State of Bihar emphasised before us that the institution has not complied with the conditions and has not satisfied the University as well as the State Government that it has in fact complied with all the legal requirements for the grant of affiliation. Without going into the rival contentions in this behalf, we think that the matter can be sorted out by requiring the appellant-institution to forward to the B. N. Mandal University all the material it has in its power, possession and custody bearing on the requirements for grant of affiliation under Section 21 of the Bihar State Universities Act read with the University statute, vide letter No. BSU/16/86-1098/ 65(1) dated 19th April 1986. In doing so, the institution may also have regard to the spirit of Section 3 of the Bihar Medical Education Institutions(Regulation & Control)Act, 1981 to the extent it has relevance in regard to the grant of affiliation. The appellant may do so within a period of 15 days from today. The State Government in consultation with the University will appoint an Inspection Team within two weeks after the appellant has forwarded the basic information to the University. The inspection Team will submit its report in duplicate within three weeks; one to be forwarded to the Vice Chancellor of the University and the another to the State Government. The State Government will be at liberty to obtain the clearance of the Medical Council of India before finalising the grant of affiliation. The Medical Council of India is requested to expedite the matter and express its opinion within

three weeks from the date of receipt of the requisition from the State Government. After these formalities are completed, the appellants will be informed in writing about the outcome of its requisition for grant of affiliation.

The matter regarding grant of affiliation has been hanging fire since long. The results of some of the students who have appeared in response to the Court orders have been withheld. As the fate of the students hangs in a balance, we hope that all the functionaries involved in the process aforementioned will act with a sense of urgency so that the time schedule is rigidly followed. We also hope that the Medical Council of India which is not a party before us but which may be required to express its views in regard to the grant of affiliation will also appreciate our anxiety to resolve the question of affiliation as early as possible consistently with the standard evolved by it for granting affiliation to minority institutions.

In concluding we make it clear that we are at the post-establishment stage now and the only question which survives in regard to grant of affiliation to the appellant. We have, therefore, refrained from going into the question whether the provisions for prior permission of the State Government for establishment of even a minority institution is ultra vires Article 30(1) of the Constitution. That is because we have taken note of the fact that various acts of commission have been done and orders made by Court from time to time on the assumption that the institution has come into being and the only question that survives is with regard to affiliation. Our order must, therefore, not be understood to mean that we have expressed any opinion even by necessary implication one way or the other in regard to the constitutional validity of the provision which requires the prior permission of the State Government for establishment of a medical College. We have confined ourselves to the post-establishment stage. i.e. grant of affiliation to the institute if it satisfies the requirements adverted to herein before."

(Emphasis supplied)

4. It is thus clear that for the final disposal of the appeal, only the limited question with regard to the grant of affiliation arises for consideration. The Court directed the State to inspect the College and after seeking the opinion of the Medical Council of India, consider the question of affiliation.

5. The later events show that the Government of Bihar by order dated 17-1-1994 declined to grant affiliation on the basis of the report of the Medical Council of India. In the meanwhile, the College fell within the jurisdiction of operation of B. N. Mandal University. Stating that the deficiencies which were pointed out by the Medical Council of India have been removed, the Chairman-cum-Managing Director of the Trust moved this Court to grant affiliation. This Court, by order dated 25-11-1994, disposed of the matter thus;

"In view of the said averments contained in the said affidavit we feel that it would subserve the ends of justice if an assessment is made about the adequacy of the facilities that are now available at the Katihar Medical College and whether the said facilities fulfil the requirements prescribed for an institution imparting medical education. In our view such an assessment can be better made by an Inspection Team appointed by the Medical Council of India. While making the assessment the Inspection Team should bear in mind that students who were admitted during the

academic session 1987-88 and 1988-89 have completed the first part of the MBBS course and they have also been permitted to take the examination but the results have been withheld and in case of affiliation being given to the Medical College would be required to commence teaching for the second part of the MBBS course and that the third part of the MBBS course would start after 18 months. The inspection Team shall make its independent assessment without being influenced by the earlier decision of the Medical Council which was based on report submitted by the Bihar Government which was vague in many respects.

Since the matter regarding grant of affiliation of college has been pending since long and the result of some of the students who appeared in the first part of MBBS examination in response to the orders of the Court has been withheld, the Medical Council of India is requested to have the inspection made expeditiously within a period of two weeks and the report of such inspection may be sent to this Court by December 12, 1994. The Medical Council may also intimate the Charges/expenses for such inspection."

(Emphasis supplied)

6. While passing the order dated 25-11-1994, this Court, in particular, noticed that the report submitted by the Bihar Government was vague in many respects and that the Medical Council of India was directed to carry out the inspection expeditiously. Thereafter, the Medical Council of India submitted its report which is available at pages 54 to 69(short compilation), highlighting certain deficiencies. The matter came up before this Court again on 10-1-1995 wherein it was held thus:

".... This report has pointed out certain deficiencies. Mr. Mukhoty the learned counsel for the petitioner-Institution states that the institution may be given six weeks time to remove the deficiencies, We(accede?) to this request."

7. The Trust filed an affidavit in this Court dated 9-3-1995 along with a tabular statement showing that deficiencies have been removed--pages 71-82 D(short compilation). On 9-5-1995 this Court passed an order to the following effect:

" The petitioner-institution has filed a detailed affidavit dated 9th March, 1995 indicating what action it has taken to remove the deficiencies pointed out in the report earlier submitted. The learned Counsel has for the assistance of the Court also given an information in tabular form copies whereof have been given to counsel for the State Government, University and the Medical Council of India. It would, therefore be necessary to ascertain if the statements made in the affidavit indicating removal of the deficiencies is accurate. In order to avoid delay and multiplicity of inspection we direct that the Medical Council of India will appoint a team to inspect the premises of the petitioner Institutions on which team the University as well as the State Government will nominator one person each and that team would give a comprehensive report to this Court for the purpose of enabling this Court to decide whether or not the institution deserves recommendation/affiliation. The team may be set up as early as possible. The State Government and the University should indicate to the Medical Council of India their nominations on the team and the team should submit a report to this Court within 10 weeks from today. The inspection report need

not be confined to what is stated in the affidavit but it should be a general inspection report from the point of view of determination whether or not recommendation/affiliation is permissible, within 10 weeks. The State Government and the University should nominate their representatives latest by two weeks failing which the Medical Council of India should go ahead and submit a report."

(Emphasis supplied.)

8. The Medical Council of India accordingly filed a report dated 28-6-1995. While stating that the deficiencies pointed out earlier have been removed, Certain new deficiencies were pointed out. The Medical Council of India concluded thus: (available at a page 105 of the short compilation).

"The Staff, space, equipment in college/hospital and clinical material is not adequate to impart proper and purposeful medical education and training to 50 undergraduate students."

Certain details were also given. The Trust filed a tabular statement, available at pages 110-117 of the short compilation, that substantial defects pointed out by the Medical Council of India have been removed and that appropriate orders may be passed. By order dated 9-5-1995, this Court directed the appellants to remove even the new deficiencies which were pointed out by the Medical Council of India. There after the matter came up before this Court for hearing on 5-9-1995. The appellants brought to the notice of this Court a detailed tabular statement filed in court, copy of which is seen at pages 134-151, pointing out that even the new deficiencies pointed out have been removed. The Chairman-cum-Managing Director of the Trust has filed an affidavit dated 4-9-1995 in this Court along with a tabular statement vide pages 638-644, stating that after the previous date of hearing on 28-7-1995, the Institution has removed all the new deficiencies which were pointed out by the Inspection Team in its report dated 27/28-6-1995. Paragraphs 2 and 3 of the said affidavit contained at page 643 of the paper book, which are very relevant, may be quoted as under:

"2 That after the last date of hearing on 28-7-1995 the institution has removed all the new deficiencies which were pointed out by the inspection Team in its report dated 27/28-6-1995. The tabular statement showing the removal of deficiencies be treated as part and parcel of this affidavit.

3. It is reiterated that whatever deficiencies have been pointed out in the consecutive reports called for by this Hannibal Court have been removed." It should be stated that the above averments remain uncontroverted.

9. We heard counsel. The appellants counsel Shri. A. K. Srivastava, emphatically pleaded that all the deficiencies pointed out in the inspection report of the Medical Council of India have been removed and taking into account the fact that the matter is pending for over a period of years, this Court should direct the respondents to grant affiliation to the appellants' institution forthwith. On the other hand, Counsel for the respondents pointed out certain deficiencies and short-comings in the overall requirements.

10. It will be useful to recall the purport of the order of this Court dated 9-5-1995. After adverting to the detailed affidavit of the appellants dated 9-3-1995 wherein it was pointed out that the deficiencies indicated earlier have been removed, this Court directed that the Medical Council of India will appoint a team to inspect the premises and obtain a report to enable this Court to decide

whether or not the statements contained in the affidavit indicating the removal of the deficiencies are accurate and the Institution deserves affiliation. It was further held that the general inspection report can be had for determining, whether or not recommendation/affiliation is permissible, in the light of circumstances existing in the college. We find the Medical Council of India has pointed out certain deficiencies in its report dated 28-6-1995. It is after this report dated 28-6-1995 and after the hearing on 28-7-1995 the appellants have filed a tabular statement along with an affidavit of a responsible officer, dated 4-9-1995 that all the deficiencies pointed out in the inspection report dated 28-6-1995 have been removed. In the normal circumstances, insofar as there is no material contradicting the contents of the affidavit dated 4-9-1995, we do not think that there should be any further delay in the matter of grant of affiliation to the appellants institution.

11. In the matter of grant of affiliation, it is ordinarily for the State Government after consulting the Medical Council of India to arrive at a decision. However, if it is found that the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, this Court would, though reluctantly, be constrained to exercise jurisdiction. We must make it clear that we are not diluting the importance of fulfilling the essential pre-requisite set by the Medical Council before granting recognition. The facts of this case are very special and exceptional. In the present case, we take note of the following aspects :

(a) The appellant institution was granted temporary affiliation nearly 6 years ago (29-12-1989).

(b) More than three years ago, (on 16-7-1992) this court directed that students may be admitted and permitted to take examination, subject to certain conditions and this has been so done.

(c) In view of the earlier orders of this Court dated 28-9-1993, the only question that survives for consideration is whether affiliation should be granted to the appellants.

(d) On more than three occasions, this Court, after perusal of the affidavits, of the parties and report of the concerned authorities about the deficiencies pointed out, directed time-bound inspections, by Medical Council of India, along with other authorities bearing in mind that we are concerned with the post-establishment stage.

(e) At one stage, it came to light that the original deficiencies having been removed, new or further deficiencies were pointed out by the Medical Council of India, which were ordered by this Court to be removed.

(f) Finally, the appellants filed a tabular statement along with an affidavit dated 4-9-1995, stating that even the new deficiencies pointed out have been removed and the averments in that behalf stand uncontradicted.

(g) The appellants, claim to be a minority institution and the difficulties/or even the imponderable to start a new institution, cannot be gain said. To insist on fulfilling all requirements, at a stretch in modern conditions, is not a practical proposition and ordinarily, only those aspects or requirements, which in the minimal will give a good start for effectively imparting education, with ancillary requisites may be considered sufficient, in the extraordinary circumstances of this case.

(h) It is impractical to insist, for a fool proof or absolute adherence to all

requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way, especially because the institution has begun to function, students admitted to institution have taken the examination and the fact of a good many number of students should not hang in the balance in an unending or everlasting manner.

(i) In the final analysis, the question to be posed, is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set up more efficient and more satisfactory, should be insisted as "a wooden" rule.

(j) It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is requirement is a total, practical, overall view in the light of the latest tabular statements filed along with the affidavit dated 4-9-1995. Material placed before the Court goes to show that there has been "substantial" though not literal compliance with the deficiencies pointed out in the latest report dated 28-6-1995.

(k) Lapse of time and the turn of events call for urgent action and any delay on that score will entail untold hardship to the students and the institution.

12. In the totality of the circumstances disclosed in the case and having regard to the fact that at each stage new deficiencies are being pointed out, the latest being the report dated 28-6-1995 (explained by the subsequent affidavit of the appellants dated 4-9-95), we are satisfied beyond any manner of doubt, that the deficiencies have been substantially complied with and minor deficiencies pointed out in the last mentioned report of 28-6-95 are not such as to permit withholding of the affiliation to which the appellants' institution is entitled. From the manner in which the deficiencies have been pointed out from time to time, each time the old deficiencies are shown to have been removed, new deficiencies are shown, gives the impression that the affiliation is unnecessarily delayed. For the removal of the minor deficiencies pointed out in the report of 28-6-95, a compliance affidavit dated 4-9-1995 is filed, Once the institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies, if they exist shall be taken care of by those in charge of the institution. For taking such further steps, the grant of affiliation need not wait. We make this position clear. The steps for the grant of affiliation to the appellants institution may now be expedited and we direct the respondents to issue the necessary orders without loss of time. The appeal is disposed of accordingly. In the facts and circumstances of the case, we make no order as to costs. Contempt Petition No. 270 of 1992 was filed by the appellants to initiate proceedings against the respondents for violating the orders of this Court dated 16-7-1992. It is seen that detailed interim orders were passed on 24-11-1992, 8-12-1992, 10-12-1992, 15-1-1193 and finally on 5-3-1993. The complaint was against the failure to hold the examination. In the final order dated 5-3-1993 this Court held that it would be most appropriate to dispose of the appeal at an early date as the careers of the students belongings to the medical discipline are at stake. Since we have passed final orders in the civil appeal itself, no separate orders are necessary in the contempt petition. Further orders also are not necessary in I.A. No. 4 of 1992. Order accordingly.