

SUPREME COURT OF INDIA

Kolawana Gram Vikas Kendra

Vs.

State of Gujarat

C.A.No.7595 of 2004

(V.S. Sirpurkar and Deepak Verma JJ.)

20.10.2009

JUDGEMENT

V.S.SIRPURKAR, J.

1. In these appeals, the challenge is to the orders of the Division Bench of the High Court dated 30.9.2003 and 7.4.2003 dismissing the Letter Patent Appeal Nos. 529 of 2003 and 1183 of 2002 filed by the appellant herein.

2. The appellant herein is a minority institution and that is an admitted fact. It challenged the order dated 12/13.8.2002 on the ground that the said order is violative of the provisions of Articles 14,29 and 30 of the Constitution of India and is also violative of Section 40A of the Gujarat Secondary Education Act, 1972. By that order, the District Education Officer, Bharuch District, Bharuch had refused the permission to admit the selected candidate in direct pay scheme for the purpose of grant. It so happened that the appellant selected few candidates and sought a relief that their salaries should be paid as the institution was admitted to 100% grant. The appellant admittedly had not intimated the Department before making the selection and proceeded to select the candidates

without scrutiny of the Education Department. This order was challenged before the learned Single Judge.

3. Learned Single Judge, by orders dated 18.9.2002 & 11.3.2003 dismissed the Special Civil Application Nos. 8697 of 2002 and 1022 of 2003 respectively relying on the law laid down by this Court and further relying on the circular dated 6.10.1998 whereby it was obligatory on the part of minority institutions to obtain prior approval from the State Government/competent authority before making any new appointment. The said orders of the learned Single Judge were challenged before the Division Bench which confirmed the said orders relying on the "relevant circulars annexed with the petition". The view taken by the Division Bench was that the no-objection certificate insisted upon by the State Government was only with a view to regulate recruitment process and, therefore, it could not be contended that the said policy violated the constitutional mandate for minority institutions.

4. The Division Bench observed that the minority institution can regulate its own procedure for the purpose of imparting education and managing the institution.

However, for obtaining Government aid and assistance by way of grant for the purpose of schools, it was within the power of the government to put up such conditions of insisting upon no-objection certificate. The orders passed by the Division Bench are in challenge before us.

5. Mr. Huzefa Ahmadi, learned counsel appearing for the appellant in his persuasive way tried to convince us that the aforementioned circular by which the Government had provided that every minority institution should obtain the prior approval from the competent authority to appoint the teachers would amount to interference in the internal administration of minority institution. We do not agree.

All that the circular dated 6.10.1998 provides is that all the government aided educational institutions of the State such as Primary Schools, Middle Schools, Higher Secondary Schools, Colleges, Sanskrit Pathshalas, Sangeet Vidhyalaya etc. will not give effect to any appointment in teaching and non-teaching post without prior approval from the State Government or the competent authority.

6. In our considered view, we do not view this to be the interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any interference from the Government.

However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly;

whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit. Para 3 of the said affidavit reads as under:

"Minority institutions are free to select their teaching and non-teaching staff. No Government Officer or the representative of the Board was appointed in the selection committee of the minority institution.

There is no interference by the Government in the administration of the schools. However, N.O.C. is required to be obtained to verify whether there is a vacancy of a teacher of a particular subject as per the workload fixed by the Gujarat Secondary and Higher Secondary Education Board specially when the government is providing grant-in-aid and that he possesses minimum required qualification for the post he is appointed."

7. From the reading of aforementioned para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments were within the frame work of the rules considering the workload and the availability of the post in that institution and, secondly;

whether the selected candidates had the necessary qualifications for the subjects in which the said teachers were appointed. The same applies to the non-teaching staff also.

8. In view of this clear stand taken by the State Government, we cannot pursue ourselves to hold that the aforementioned circular amounts to any unconstitutional interference in the internal working of the minority institution. In that view, we would choose to dismiss these appeals. However, Mr. Ahmadi raised another point saying that if the prior approval or the no-objection certificate, as the case may be, is not awarded within seven days without any reason, then it would be hazardous for the minority institution to run itself. We do expect the competent authority to issue the no-objection certificate within the time provided in the said circular which is of seven days.

Of course, if there are any objections, the authority will be justified to take some more time within the reasonable limits.

9. With these observations, these appeals are dismissed.

However, there shall be no order as to the costs.