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2015

Matter No. 3633 of 1992
In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

Marwari Balika Vidyalaya Society & Ors.

--Versus--

State of West Bengal & Ors.

Present:

The Hon'ble Justice

Altamas Kabir

June 15, 1995.

DICTATED ORDER

THE COURT: Petitioner no. 1 claims to be a registered Society duly registered under the Societies Registration Act, 1860. Petitioner No. 2 claims to be its Secretary. Petitioner No. 3 is Sri Shikshyatan College, which it appears, was established and is managed by the said Society. Petitioner No. 4 is the Secretary of the said College.

In the instant writ application, the petitioners have challenged certain letters issued on behalf of the West Bengal College Service Commission in connection with filling up of the post of Principal of the said College. The said letters dated 15th May, 1992, 19th August, 1992 and 16th September, 1992, have been made Annexures 'L', 'P' and 'R' respectively, to the writ petition.

✓ By the first of the said three letters, the West Bengal College Service Commission forwarded the name of a candidate selected by the said Commission for appointment as Principal of the College within a period of one month from the date of the receipt of the letter as provided in the West Bengal College Teachers (Security & Service) Rules, 1977, with intimation to the Office of the Commission.

The next letter of 19th August, 1992, is also in the same connection, since no steps were taken by the College Authorities to appoint the nominee of the Commission as principal of the College.

For Shri Shikshayatan School

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Secretary General



The last letter of 16th September, 1992, is also in the same vein and in addition it has been mentioned on behalf of the Commission that in the event the College enjoyed a special status of being founded and managed by a linguistic minority community, then necessary papers relating to the agreement executed between the College and the State Government in that behalf was to be forwarded to the Commission at an early date.

Appearing in support of the writ application, Mr. S. Pal, learned Advocate, firstly drew my attention to prayer (a) to the writ petition which is for a declaration that the College is entitled to protection under Article 30 of the Constitution and, accordingly, it has unfettered right to appoint or reappoint its staff and that the West Bengal College Teachers (Security & Service) Act, 1975 and the West Bengal College Service Commission Act, 1978, have no manner of application to the College.

Mr. Pal urged that, although, such prayer had been made in the writ petition, the said issue had since been decided both in respect of the school run by the Society as also the College. Mr. Pal urged that while the status of the School had been decided earlier, since the status of the College had not been decided, a writ application had to be filed and a decision thereupon was available only on 22nd February, 1994.

Referring to the order passed on 3rd April, 1987, in Matter No. 63 of 1982 with Matter No. 690 of 1980 and Matter No. 711 of 1986, being Annexure 'B' to the writ petition, Mr. Pal pointed out that the learned Judge who heard the matter observed that in Matter No. 854 of 1979 it had been held earlier that the Marwari community is a linguistic minority in the State of West Bengal, and, accordingly, in the said writ applications, the same position was reiterated and it was held that the Maheswari community is a part of the Marwari community having the same language, and, accordingly, the said community is also a linguistic minority.

Mr. Pal urged that, thereafter, the question relating to the linguistic minority status of the school came up for consideration in another writ application, being Matter No. 153 of 1988, and a learned Judge of this Court passed a judgment dated 4th August, 1989, reiterating the earlier position and observed that the Marwari community being a linguistic

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minority in the State of West Bengal and having established SriShikshyatan, the said educational institution is an educational institution established and administered by a minority community in the State of West Bengal and, therefore, was entitled to the protection conferred under Article 30(1) of the Constitution.

Mr. Pal urged that since the status of the College was left undecided, a writ application was moved on 26th June, 1979, being Matter No. 655 of 1979, which was ultimately heard and disposed of by a judgment dated 22nd February, 1994, that is, while the present application was pending in this Court. The said judgment has been made Annexure 'A' to the affidavit-in-reply in the instant proceedings and it appears therefrom that the learned Judge held that the College having been established by the members of a linguistic minority community, it was entitled to the protection under Article 30 of the Constitution and was, therefore, entitled to a declaration in terms of prayer (b) to the said petition which runs as follows:-

"(b) A declaration be made to the effect that the members of the Marwari Community, a minority community based on language in the State of West Bengal have the fundamental rights guaranteed under Article 30 of the Constitution of India to administer Shri Sikshayatan College, an educational institution established by them through their Society, i.e., Marwari Balika Vidyalaya Society in accordance with the Constitution of the Society without any interference from any outside agency".

Mr. Pal urged that having regard to the aforesaid decision and since during the pendency of the writ petition the status of the College has been decided by this Court and no appeal having been preferred therefrom, the said judgement has attained finality between the parties and in effect prayer (a) of the writ petition had really become redundant. Mr. Pal, however, urged that having regard to the declaration of the status of the College established and run by the petitioners, the petitioners were entitled to the other reliefs prayed for in the writ application and prayed for an order accordingly.

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Mr. Pal then urged that, although, prayer (a) has since become redundant owing to the judgment delivered on February 22, 1994, the petitioners were entitled to the other reliefs prayed for, having regard to the provisions in-built into the West Bengal College Teachers (Security of Service) Act, 1975, and the West Bengal College Service Commission Act, 1978, themselves.

Mr. Pal drew my attention to the relevant provisions of the two Acts which have been set out in the writ petition. Mr. Pal first drew my attention to the relevant provisions of the West Bengal College Teachers (Security of Service) Act, 1975. Section 3 of the said Act provides for appointment of teachers. The said section provides that the appointment to the post of a teacher shall be made by the Governing Body on the recommendation of the University and College Service Commission to be constituted by the State Government in the manner prescribed. Section 19(a) of the said Act provides that nothing contained in the said Act shall apply in relation to any college established and administered by a minority, whether based on religion or language.

Mr. Pal then drew my attention to the relevant provisions of the West Bengal College Service Commission Act, 1978, which provides that notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, appointments to the posts of teachers of a college shall be made on the recommendation of the Commission. Section 15 of the said Act, however, provides that nothing contained in the Act shall apply in relation to any college not receiving any aid from the State Government or any college established and administered by a minority, whether based on religion or language. Mr. Pal urged that having regard to the findings of this Court in the three separate judgments referred to above regarding the linguistic minority status of the college, by virtue of the aforesaid findings, the said two Acts stood excluded in their operation as far as the college was concerned.

Opposing the writ application, on behalf of the West Bengal College Service Commission, Mr. Pulak Ranjan Mondal, learned Advocate, also

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Kolkata-700011

referred to prayer (a) to the writ petition and urged that since the petitioners had prayed for a declaration of their linguistic minority status, until the same was decided, the other reliefs prayed for in the writ petition could not be granted.

Mr. Mondal has specifically referred to the three impugned letters and urged that the same were written on the request made on behalf of the College asking for the name of a candidate to fill up the post of principal of the College and that till such time as the said position was clarified, no order should be made on the writ petition in respect of any of the reliefs prayed for therein.

Mr. Mondal, however, very fairly submitted that in the event the status of the college had been declared, then, in such event, the provisions of the two above-mentioned Acts would have no application to the college, having regard to the in-built provisions of the said two Acts.

The State had little to add in the matter and on behalf of the State it was merely submitted that an application had been made by the College Authorities and the petitioner No. 1 Society for recognition of its status as a linguistic minority college, but since the same had not yet been disposed of, the writ petition was premature and the reliefs prayed for therein could not be granted.

Incidentally, it may be recorded, that no affidavits have been filed in this matter on behalf of any of the respondents.

However, having considered the submissions made on behalf of the respective parties, there is no room for any doubt that the status of the College and/or School run by the petitioner No. 1 Society has been duly determined in three separate judgements by this Court and it is rather late in the day for any submission to the contrary on behalf of the respondents, particularly when no appeal has been preferred from any of the three judgments.

We are not, however, concerned with the status of the School so far as this writ petition is concerned, but that of the College run by the petitioner No. 1 Society.

Having regard to the specific findings in Matter No. 655 of 1979 that Shri Shikshayatan College, petitioner No. 3 herein, has been established and administered by the members of a linguistic minority committee,

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and its status having been declared as such, the writ petitioners would be entitled to the protection of Article 30 of the Constitution and the reliefs prayed for in the writ petition.

Furthermore, it must also be held that the two abovementioned Acts stood excluded in their application as far as the college was concerned.

Accordingly, the impugned letters, being Annexures L, P and R, cannot stand and are quashed.

There is one other aspect of the matter regarding the continuance of the aid and other monetary benefits being extended to the college. Having regard to the provisions of Sub-Article (2) of Article 30 of the Constitution, the State Government would not be entitled to discontinue such aid and/or financial benefits merely because the college has been held to be one established and run by a linguistic minority.

The respondents are, therefore, directed not to discontinue any grant, aid, salary benefits and/or other existing financial benefits or facilities enjoyed by the college and its teaching and non-teaching staff. The respondents are further directed not to take any steps against the college and other petitioners for non-compliance of the impugned letters, being Annexures L, P and R respectively. In consequence of the aforesaid order, the respondents are also directed not to withhold arrears, if any, in respect of the aforesaid financial benefits and grant being received by the college.

The writ petition and all pending interlocutory applications are, therefore, disposed of. There will be no order as to costs.

All parties are to act on a xerox signed copy of this dictated order on the usual undertaking.

sd/- Altamas Kabir, J.

I do hereby certify that this is a true copy of the Original in my Custody.
Dated this 15th day of July 2015.

Jasim A. Anwar
15/7/15

for Registrar of the High Court at Calcutta, Original Side.



For Shri Shikshayatan School
Vinod Agrawal
Secretary General

Exd Jks.
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D. K. Sanyal
D. Mukherjee
15/7/15

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- i) Date when the Decree or order was completed. 9.7.15
ii) Date of application for 1.7.15
copy.
iii) Date of notifying the 9.7.15
requisite number of
folios and stamp.
iv) Date of delivery of the 10.7.15
requisite folios and
stamp.
v) Date on which the copy 15.7.15
is ready for delivery.
vi) Date when delivery was 16.7.15
taken of the copy by the
applicant.

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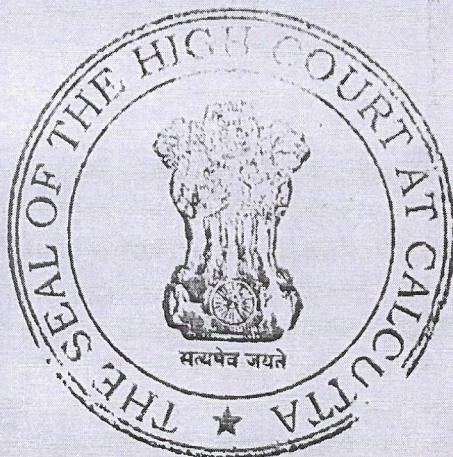
P. Mandal 15/7/15
Superintendent,
Copyists' Department
High Court, O.S.

@ Mandal
15/7/15

Dictated Order passed by the Hon'ble
Justice Altamas Kabir on this the 15th
day of June, 1995.

Filed this 9th day of July, 2015.

Registrar.



Mr. Fazlul Haque, Advocate.

For Shri Shikshayatan School

Vinod Agrawal
Secretary General

