

Rev. Father W. Proost And Ors vs The State Of Bihar & Ors on 13 September, 1968

Equivalent citations: 1969 AIR 465, 1969 SCR (2) 73, AIR 1969 SUPREME COURT 465

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.C. Shah, V. Ramaswami, G.K. Mitter, A.N. Grover

PETITIONER:

REV. FATHER W. PROOST AND ORS.

Vs.

RESPONDENT:

THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT:

13/09/1968

BENCH:

HIDAYATULLAH, M. (CJ)

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HIDAYATULLAH, M. (CJ)

SHAH, J.C.

RAMASWAMI, V.

MITTER, G.K.

GROVER, A.N.

CITATION:

1969 AIR 465

1969 SCR (2) 73

CITATOR INFO :

RF 1970 SC 259 (20)

R 1970 SC2079 (10)

RF 1971 SC1737 (7)

D 1974 SC1389 (11,24,83,97,103)

RF 1975 SC1821 (23)

RF 1979 SC 52 (39)

R 1979 SC 83 (5)

RF 1980 SC1042 (2,35,81,94,108)

RF 1988 SC 305 (7)

ACT:

Constitution of India, Articles 29(1) and 30(1)-Whether minority can only claim protection under Art. 30(1) in furtherance of rights under Art. 29(1).

HEADNOTE:

The St. Xavier's College was established by the Jesuits of Ranchi and was affiliated to Patna University in 1944. The management of the College was in the hands of a governing body consisting of 11 members. The terms of service of the religious staff of the College were determined by the Jesuit Mission authorities and those of the lay staff, including their appointment, were determined by the governing body of the College. The object of rounding the college inter alia was "to give Catholic youth a full course of moral and liberal education, by imparting a thorough religious instruction and by maintaining a Catholic atmosphere in the Institution". However, the college was open to non-Catholics and all non-catholic students received a course of moral science.

The petitioners in the present petition under Article 32 contended that the college was rounded by a Christian minority and claimed the right to administer it as a constitutional right guaranteed to minorities by Art. 30. The petitioner's complaint was that the Bihar Legislature, by introducing s. 48-A in the Bihar Universities Act with effect from March 1, 1962, deprived them of the right under Art. 30 in that its provisions required, inter alia: that appointments, dismissals, reduction in rank, etc., of staff must be made by the Governing body on the recommendation of the University Service Commission for affiliated colleges; in no case could the Governing body appoint a person not recommended by the Commission; the Commission had to be consulted in all disciplinary matters and any punishment imposed on a teacher only in accordance with the findings of the Commission, etc. Subsequent to the introduction of s. 48-A, in view of differences arising between the University and the college, the University withdrew the affiliation of the college on September 26, 1967 for violating the provisions of the Act and the statute of the University.

While the present petition under Art. 32 of the Constitution was pending s. 48-B was inserted into the Bihar Universities Act whereby it was provided that the Governing body of affiliated colleges established by a minority based on religion or language which the minority had a right to administer, would be entitled to make appointments, dismissals, termination of service or reduction in rank of teachers or take other disciplinary measures subject only to the approval of the Commission and the Syndicate of the University. The petitioners therefore also claimed the protection of s. 48-B.

On behalf of the respondents it was conceded that the Jesuits answered the description of a minority based on religion; but it was contended that as the protection to minorities in Art. 29(1) is only a right to conserve a

distinct language, script or culture of its own, the college did not qualify for the protection of Art. 30(1) because (i) it was not bounded

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to conserve them and (ii) it was open to all sections of the people. The question therefore was whether the college: could only claim protection of s. 48-B of the Act read with Art. 30(1) of the Constitution if it proved. that it was furthering the rights mentioned in Art. 29(1).

HELD: The protection claimed by the petitioners clearly flowed from the words of Article 30(1).

The width of Art. 30(1) cannot be cut down by introducing in it considerations on which Art. 29(1) is based. The latter article is a general protection which is given to minorities to, conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institutions seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. This is a circumstance irrelevant for the application of Art. 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case. [80 G, H]

In re the Kerala Education Bill, 1957, [1959] S.C.R. 995, Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr. [1963] 3 S.C.R. 837, 850; considered.

JUDGMENT:

ORIGINAL JURISDICTION: Wilt Petition No. 1 of 1968. Petition under Art. 32 of the Constitution of India for the enforcement of the fundamental rights. M.C. Setalvad and R. Gopalakrishnan for the petitioners. C.K. Daphtary, Attorney-General and U.P. Singh, for respondents No. 1 and 4.

P.K. Chatterjee, for respondent No. 3. R. Gopalakrishnan, for the interveners.

The Judgment of the Court was delivered by Hidayatullah, C.J. The Principal and the Rector of St. Xavier's College, Ranchi and two parents of students have filed the present petition under Art. 32 of the Constitution. The petition also purports to be filed on behalf of St. Xavier's College, Ranchi and the Association of St. Xavier. The petitioners challenge s. 48-A of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960 as amended by Second Amendment Act, 1961 as ultra vires Arts. 29 and 30 of the Constitution. St. Xavier's College was established by the Jesuits of Ranchi. It was affiliated to Patna University in 1944. The management of the college vests in a Governing Body consisting of 11 members. They are:

"(i) The Superior Regular of Ranchi Jesuit Mission

--President ex-officio.

(ii-v) Four Counsellors to the Superior Regular to be nominated by the Jesuit Mission authorities.

(vi) The Principal of the College--Vice-President and Secretary ex-officio.

(vii) One representative of the teaching staff of the college elected by the members of the staff.

(viii) One representative of the Patna University.

(ix-xi) Three persons to represent Hindu, Muslim and Aboriginal interests."

The terms of service of Religious staff are determined by the Jesuit' Mission Authorities, but those of the members of the Lay staff including their appointment are determined by the Governing Body. All appointments to the teaching staff, both Religious and Lay are reported to the Syndicate of the Patna University. The object of founding the college inter alia is 'to give Catholic youth a full course of moral and liberal education, by imparting a thorough religious instruction and by maintaining a Catholic atmosphere in the institution.' The college is, however, open to all non-catholic students. All non-catholic students receive a course of moral science.

The College was thus founded by a christian minority and the petitioners claim they have a right to administer it, a constitutional right guaranteed to minorities by Art. 30. The petitioners' complaint is that the Bihar Legislature passed an amending Act and introduced in the Bihar Universities Act s. 48-A to come into force from March 1, 1962, which deprives them of this protection and is, therefore, ultra vires. The provisions of this section are as follows:--

"48~A. Establishment of a University Service Commission for affiliated colleges not belonging to the State Government and. its powers and functions :-

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the University Service Commission. (2) The said Commission shall be a body corporate having perpetual succession. and a common seal, and shall by the said name sue and be sued.

(3) The commission shall consist of a Chairman and two other members to be appointed by the State Government who shall be whole time officers, and shall hold office for a term of three years from the date of assumption of charge of office, on the expiration of which term they, or any of them, may be reappointed for only one more term which shall not exceed three years.

(4) There shall be a Secretary to the Commission who shall also be a whole-time officer to be appointed by the State Government.

(5) Other terms and conditions of service of the Chairman members and the Secretary shall be determined by the State Government.

(6) Subject to the approval of the University, appointments, dismissals, removals termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the college on the recommendation of the Commission. (7) (i) In making recommendations for appointment to every post of teacher of any such affiliated college, the Commission shall have the assistance of two experts in the subject for which an appointment is to be made, of whom one shall whenever possible be a teacher of the University to be nominated by the Syndicate and the other shall be a person, other than a teacher of the University, to be nominated by the Academic Council.

(ii) The experts shall be associated with the Commission as assessors whose duty it shall be to give expert advice to the Commission but who shall have no right to vote.

(8) The Commission shall, wherever feasible, recommend to the governing body of a college for appointment to every post of teacher of the college names of two persons arranged in order of preference and considered by the Commission to be the best qualified' therefore.

(9) In making appointment to a post of teacher of a college, the governing body of the college shall, within three months from the date of the receipt of the recommendation under sub-Section (8), make its selection out of the names recommended by the Commission, and in no case shall the governing body appoint a person who is not recommended by the Commission.

(10) Notwithstanding anything contained in the preceding sub-sections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the College:

Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of which the appointment shall be deemed to have been terminated at the end of six months.

(11) (ii) The Commission shall be consulted by the governing body of a college in all disciplinary matters affecting a teacher of the college and no memorials or petitions relating to such matters shall be disposed of nor shall any action be taken against, or any punishment imposed on, a teacher of the college otherwise than in conformity with the finding of the Commission:

Provided that it shall not be necessary to consult the Commission where only an order of censure, or an order withholding increment, including stoppage at an efficiency bar, or an order of suspension pending investigation of charges is passed against a teacher of a college.

(12) It shall be the duty of the Commission to present annually to the University a report as to the work done by the Commission in relation to such colleges affiliated to the University and a copy of the report shall be placed before the Senate at its next meeting, and the University shall further prepare and submit to the State Government a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance and the State Government shall cause the same to be laid before the Legislature of the State".

This provision completely takes away the autonomy of the Governing Body of the College and virtually vests the control of the college in the University Service Commission. Long correspondence ensued into which it is not necessary to go because of what followed. The University began enforcing Article 178(2) of the New Statutes. That Article provides:

"178(1) All appointments of teachers in admitted colleges shall be made by the Governing Body of the college concerned on the recommendation of the University Service Commission, and shall be subject to the approval of the Syndicate. No such appointment shall be approved unless:

- (a) the post exists or the Vice-Chancellor is satisfied and its creation is necessary;
- (b) the claims of teachers, possessing the requisite qualifications and serving in a lower grade in the college, for promotion have been examined and rejected;
- (c) the vacancy was duly advertised, except where promotion was recommended;
- (d) the person appointed possesses the minimum qualifications prescribed for the post; and
- (e) the appointment was made by the Governing Body at its meeting. (2) Within a fortnight of the appointment of any teacher or teachers made by the Governing Body of any admitted college on the recommendation of the University Service Commission, the Secretary of the College shall forward to the University, along with a copy of the advertisement for the post, the following information:
 - (a) Names of the candidates recommended by the University Service Commission together with the name or names of the candidates appointed by the Governing Body;
 - (b) Age;

- (c) Home address;
- (d) Previous appointment held by them, if any;
- (e) Whether they are qualified to teach through the medium of Hindi;
- (f) Nature of the appointment and the vacancy against which the appointment has been made;
- (g) If the order of preference indicated by the University Service Commission has not been followed by the Governing Body, the reason for not following the order of preference shall be indicated. If no appointments were made against the recommendation received from the University Service Commission, the reason for not making the appointments shall also be indicated."

More correspondence followed. The University asked for an explanation under Art. 179 of the Statutes, how the Governing Body had by-passed the University Service Commission and some teachers were appointed without prior consultation. Finally the University by a letter, September 26, 1967, communicated to the College that the Senate had decided on September 24, 1967 to withdraw the affiliation of the College under Article 171 of the Statutes for violating the said provisions of the Act and the Statutes With effect from the session of 1969-70. The Senate, however, was: generous enough to put on record its appreciation of the good work done by the college in the field of education. The petition was then filed to. impugn the offending s. 48-A. While this petition was pending in this Court, the Governor of Bihar promulgated an Ordinance o.n July 16, 1968. It amended the Bihar State Universities Act, 1960 by inserting s. 48-B after s. 48-A. The new section read:

"48-B. College established and administered by a minority entitled to make appointments etc. with approval of the Commission and the, Syndicate.

Notwithstanding anything contained' in sub-section (6), (7), (8), (9), (10) and (11) of Section 48-A, the Governing Body of an affiliated college established by a minority based on religion or language, which the minority has the right to administer, shall be entitled to make appointments, dismissals, removals, termination of service or reduction in rank of teachers. or take other disciplinary measures subject only to the approval of the Commission and the Syndicate of the University".

Simultaneously the Magadh University Act, 1961 was also similarly amended.

The petitioners, therefore, claim the protection of section 48-B and submit that as an affiliated college established by a minority based on religion or language, they are exempt from the operation of s. 48-A (6), (7), (8), (9), (10) and (11). They say that if this position is accepted, they will withdraw the petition which has become superfluous. now. The learned Attorney General while conceding that the Jesuits answer the description of minority based on religion, argues that the protection is available only if the institution was rounded to conserve 'language, script or culture' and since the

college is open to all sections of the people and there is no programme of this kind, the protection of Article 30(1) is not available. In our opinion, this argument cannot be accepted. Before we give our reasons we may read Arts. 29 (1) and 30 (1), which are involved:

"29. Protection of interests of minorities. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

"30. Right of minorities to establish and administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

The learned Attorney General seeks to read into the protection granted by Art. 30(1) a corollary taken from Art. 29(1). He concedes that the Jesuits community is a minority community based on religion and that, therefore, it has a right to establish and administer educational institutions of its choice. But he contends that as the protection to minorities in Art. 29 (1) is only a right to conserve a distinct language, script or culture of its own, the college does not qualify for the protection of Art. 30(1) because it is not founded to conserve them. The question, therefore, is whether the college can only claim protection of s. 48-B of the Act read with Art. 30(1) of the Constitution if it proves that the college is furthering the rights mentioned in Art. 29 (1).

In our opinion, the width of Art. 30(1) cannot be cut down by introducing in it considerations on which Art. 29 (1) is based. The latter article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Art. 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.

The learned Attorney General refers to two cases of this Court which he thinks support his contention. What we find in them does not bear out this submission. On the other hand, they point the other way. In *In re the Kerala Education Bill, 1957*(1), Arts. 29 and 30 were considered in relation to an Education Bill referred by the President of India to the Supreme Court for its advisory opinion. The points that arose in the case were different but certain passages from the opinion were brought to our notice. The Court after pointing out that Arts. 29 and 30 are grouped together under the heading "Cultural and Educational Rights" points out that the articles are intended to confer certain fundamental rights on certain sections of the community which constitute minority communities. Explaining clause (1) of Art. 29, this Court observed at p. 1047:

" It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to

establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full ".

The learned Attorney General argues that here the two articles were read together. But the other side relies on two other passages. The first is at page 1050. The argument on behalf of the State there appears to be that there are three conditions. before the protection and privileges of Art. 30(1) may be claim-

"(1) there must be a minority community, (2) one or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and (3) the educational institution must be established' for the members of his or their own community."

This Court repelled the contention that the protection and privilege of Art. 30(1) extended only to the educational institutions established after the Constitution. Dealing with Art. 29 (1) this Court observed:

"The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be (1) [1959] S.C.R. 995.

a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution."

While one side considers that the observation suggests that the two articles go together, the other side contends that mixing of the other communities with the minority community in the benefits of educational institution shows that the real test is not that there must be an institution purely of one community. The learned Attorney General places great importance on the word 'sprinkling' -and says that the minority must found the institution for itself and not for others and the aim or object must be to conserve distinct language, script or culture. In our opinion both sides are attempting to read far too much into these observations. They are not intended to be read in every context. On the other hand, in *Rev, Sidhaibhai Sabhai and others v. State of Bombay and Another*(1), there is the following passage :--

" The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof."

The emphasis here was rightly placed not upon the needs of the community exclusively but .upon the educational needs of the citizens or sections thereof. In other words, the suggestion that Art. 30(1) is limited to the needs of a single community or that only its own culture, language or script need to be provided for is not the right approach. Here too if we may say so, the point decided was different but the observation does make Art. 30 (1) much wider than the learned Attorney General would have us hold. In our judgment the language of Art. 30(1) is wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words. Here the protection clearly flows from the words and there is nothing on the basis of which aid can be sought from Art. 29 (1).

We are, therefore, quite clear that St. Xavier's College was rounded by a Catholic Minority Community based on religion and that this educational institution has the protection of Art. 30(1) (1) [1963] 3 S.C.R. 837, 850.

of the Constitution. For the same reason it is exempted under s. 48-B of the Act. The petition will therefore be allowed with this declaration but in the circumstances of the case we make no order about costs.

R.K.P.S.
allowed.

Petition