Supreme Court of India
A.N. Parasuraman Etc vs State Of Tamil Nadu on 5 October, 1989
Equivalent citations: 1990 AIR 40, 1989 SCR Supl. (1) 371
Author: L Sharma
Bench: Sharma, L.M. (J)

PETITIONER:
A.N. PARASURAMAN ETC.

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT05/10/1989

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
THOMMEN, T.K. (J)

CITATION:
1990 AIR 40 1989 SCR Supl. (1) 371
1989 SCC (4) 683 JT 1989 (4) 69
1989 SCALE (2)759

ACT:
Constitution of India, 1950: Article 14--Tamil Nadu Private Educational Institutions (Regulation) Act, 1966--Whether violative of.
Tamil Nadu Private Educational Institutions (Regulation) Act, 1966: Sections 2(c), 3(a), 3(b), 6, 7, 15, 22 and 28--Whether invalid and ultra vires.
Administrative Law: Delegation of power----Determining legislative policy and rule of conduct--Essential functions of Legislature-Whether could be delegated.

HEADNOTE:
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 Tamil Nadu Private Educational Institutions (Regulation) Act, 1966. The vires of the Act especially sections 2(c), 3(a), 3(b), 6, 7, read with sections 15, 22 and 28, was challenged before the High Court, by way of a writ petition.
The High Court struck down section 28 and upheld the other sections. This appeal by certificate is against the High Court's judgment upholding the validity of the said

sections. As regards the striking down of section 28, it has not been impugned by the respondent-State.

The appellants contended that the Act does not lay down any guideline for the exercise of power by the delegated authority and so the decision of the competent authority is bound to be discriminatory and arbitrary. It was also contended that the Act imposed unreasonable restrictions on the appellants in the running of tutorial institutions, and such regulations were violative of Article 29(1)(g) of the Constitution of India.

On behalf of the respondent, it was stated that sufficient guidance is available to the authority concerned, by virtue of subsection (2)(c) of Section 4 and hence the appellants' contentions were not justified.

372

Allowing the appeal,

HELD: 1.1. 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. Examined in this light, the impugned provisions of the Tamil Nadu Private Educational Institutions (Regulation) Act, 1966 miserably fail to come to the required standard. These sections are held to be invalid. They 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. Hence, the entire Act is declared ultra vires. [376D-E; 379G]

1.2. 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. Even 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 under Section 2(c) of the Act in the choice of competent authority. [377E-G]

2.1. Section 6 which empowers the competent authority to grant or refuse to grant 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 under the Act, nor are the tests indicated for

refusing permission or cancelling under Section 7 of an already granted permission. [376H; 377A]

2.2. 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 as Section 7 dealing with

373

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. [378B-D]

2.3 Section 15 is too wide in terms and does not indicate the nature of the direction or the extent within which the authority should confine itself while exercising the power. Similarly under Section 22, the State Government has been vested with unrestricted discretion in picking and choosing the institutions for exemption from the Act. [378D-E]

State of West Bengal v. Anwar Ali Sarkar, [1952] SCR 284; Kunnathat Thathunni Moopil Nair v. The State of Kerala and Anr., [1961] 3 SCR 77; Harakchand Ratanchand Banthia and Ors. v. Union of India & Ors., [1970] 1 SCR 479, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 182 1 to 1826 of 1971 etc. etc. From the Judgment and Order dated 11.8.1971 of the Madras High Court in Writ Petition Nos. 3818, 4019, 4020, 4254, 4566 of 1968 and 82 of 1969.

S. Padmanabhan, K.R. Nambiar, A.T.M. Sampath for the Appellants and Appellant-in-person in C.A. No. 2062 of 1971. K. Rajendra Chowdhary and V. Krishnamurthy for the Respondent.

The Judgment of the Court was delivered by SHARMA, J. 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 educa- tional institutions, which are covered by the expression "private educational institution" within the meaning of s. 2(f) of the Act. The main challenge is directed against ss. 2(c), 3(a), 3(b), 6, 7 read with ss. 15, 22 and 28. The High Court struck down s. 28 and upheld the other sections. That part of the judgment where s. 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 education- al 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 s. 4, make an applica- tion for permission in the prescribed form accompanied by a fee. Section 6 lays down the power of the competent authori- ty 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 appli- cation:
>
> 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 to one-half of the amount of the fee accompanying the application.

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

> "22. Power to exempt--Notwithstand- ing anything contained in this Act, the Government may, subject to which 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 any- thing 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 guide line for the exercise of the power by the delegated authority, as a 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 discrimi- natory 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 s. 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. (1) .....

(2) Every such application shall--

(a) .....

.....

(c) contain the following particulars, namely:--

(i) the name of the private educa- tional 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 stu- dents 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 qualifica- tions 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 stu- dents;

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

(ix) the situation and the descrip- tion 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 pre- scribed."

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 ade- quate guide lines 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 pri- vate 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 and run with the object of prepar- ing, training or guiding its students for any certificate, degree or diploma", and it can, therefore, be readily in- ferred 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 exhorbitantly 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 under the Act, nor are the tests indicated for refusing permission or cancelling under s. 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 s. 4(2)(c) (quoted above in paragraph 4), the Act must be deemed to have given adequate guide lines. Special emphasis was given by the learned counsel on sub- clauses (iii), (iv) and (v) of s. 4(2)(c), which ask for information about the amenities for the students--the equip- ments, laboratory, library and other facilities for instruc- tion--and, the names of the teachers with their qualifica- tions. It may be noted that the Act, beyond requiring the applicant to make a factual statement about these matters, 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 cer- tain other aspects, not so important, have been dealt with differently in several other sections including s. 4, 5, 9, 10 and 11. Section 4(2)(b) mandatorily requires the appli- cant to pay the "prescribed" fee; s. 5 gives precise direc- tion regarding the name by which the institution is to be called; and s. 9 about the certificates to be issued by it; and s. 11 makes it obligatory to maintain accounts in the "prescribed" manner. But, there is no indication, whatsoev- er, 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 s. 27 in 1968 and called the Tamil Nadu Private Educa- tional 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 s. (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 s. 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 discrimi- natory treatment. So far s. 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, misrepre- sentation, suppression of material particulars or contraven- tion 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" (empha- sis added). The section is too wide in terms without indi- cating 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 exemp- tion from the Act. The power to grant exemption is contained in s. 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 s. 2(2)(c) as also in picking and choosing the institutions for exemption from the Act under s. 22. Such an unguided power bestowed on the State Government was struck down as offend- ing Article 14 in the case of the State of West Bengal v. Anwar Ali Sarkar, [1952] SCR 284. A similar situation arose in Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another, [1961] 3 SCR 77, where, under s. 4 of the Travancore-Kochin Land Tax Act, 1955, all lands were sub- jected to the burden of a tax and s. 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 s. 7.

9. Similar is the position under ss. 6 and 7 of the present Act. The learned counsel for the respondent-State contended that by reference in s. 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 Ranthia and Others v. Union of India and Other, [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 sta- bility 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 renew- al of licences the "Administrator shall have regard to the number of dealers existing in the region in which the appli- cant intends to carry on business as a dealer". The expres- sion "region" was not defined in the Act and s. 27(6)(b) required the

Administrator to have regard to "the anticipat- ed 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 Adminis- trator, which this Court rejected, holding that the expres- sion "anticipated demand" was vague and not capable of objective assessment and, therefore, was found to lead to a great deal of uncertainty. The other provisions mentioning "suitability of the applicant" in s. 27(6)(e) and "public interest" in s. 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 sec- tions of the Act must be held to be invalid. These provi- sions 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.

G.N. Appeal allowed.