

DISCIPLINARY CONTROL OVER THE STAFF OF MINORITY EDUCATIONAL INSTITUTION

By

—V. PANDU,
L.L.M. (Constitutional Law)
Osmania University

Under the Constitution, minorities have the right to establish and administer education institutions of their choice. The framers of the Constitution considered education as having the potential to bring about a change in the socio-economic structure of the community and contribute to achieving the idea of a Welfare State. With this idea the framers of the provided certain privileges to the minorities in the matter of establishing and administering educational institutions of their choice. The provisions of the Constitution would show that there is autonomy conferred on these institutions in regard to certain matters basic to the concept of educational institutions. The phraseology of the provisions guaranteeing the rights is such that questions have arisen more than once as to the amount of autonomy guaranteed to the minorities : whether it is limited to managing the routine business of the institutions or it is vast enough to include major decision making process as well. More importantly, whether the autonomy include the authority to control the discipline of the staff and students. Whether it include the authority of minorities in regard to examinations, administration, finance and academic matters also.

This article examines the scope of constitutional provisions with regard to the authority to have disciplinary control over the staff of the minority institutions.

The following are the specific provisions with regard to educational rights of the minorities :

Article 29 :—Article 29 guarantees two Fundamental Rights, namely that,

- (1) Any section of the citizens residing in the territory of India or any part thereof having to conserve the same; and
- (2) No citizens shall be denied admission into any educational institution maintained by the State receiving aid out of State funds on grounds only of religion, race, caste language or any of them;

This Article further provides that the State shall not, in granting aid to such institutions, discriminate against any educational institution either on the ground of religion or language.

Article 30 :

- ① ***Rights 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.

Rights of minorities to establish educational institutions is contained in Article 30(1), which gives a right to the minority community to give education to the children of their own community in their own institutions and in their own language and if such right is infringed an institution run by it may seek relief for violation of the Fundamental Rights.

The Right to Exercise Disciplinary Control over the Staff :—The expression ‘disciplinary control’ refers to the power or authority, which the management can exercise in various matters of service. The precise

question, which arises for consideration, is whether the management is free to deal with the service conditions without interference by an external authority or its authority is subject to that of an external institution.

In *re Kerala Education Bill*¹, the Supreme Court was called upon to express its opinion over the right of minority institutions to take disciplinary action against their staff. In this case the Supreme Court reviewed the Constitutional propriety of an enactment by the Kerala Legislature of clause 12(4). This clause had provided that “no teacher in aid Schools shall be dismissed, removed, reduced in rank or suspended by the management without the previous sanction of the authorised officer.”

In *State of Kerala v. Mother Provincial*², the Supreme Court examined the question of interference with the right of management by the University authorities. Section 56(2) of the Kerala University Act 1969 had provided that no teacher of a private College would be dismissed, removed, or reduced in rank by the governing body or managing Council without the previous sanction of the Vice-Chancellor. It further provided that no such teacher would be placed under suspension for a Continuous period exceeding fifteen days without such previous sanction.

Section 56(4) provided that a teacher against whom disciplinary action was taken would have a right of appeal to the Syndicate and the Syndicate would have power to order reinstatement of the teacher in the case of wrongful removal or dismissal and to order such other remedial measure as may be deemed fit.

A Constitution Bench, speaking through Justice *Hidayatullah* held this provision of taking away the power of disciplinary action

as arbitrary, and as such not permitted by Article 30(1).

Similar provisions were incorporated in the Gujarat University Act 1972, which came under attack in *St. Xavier's College v. State of Gujarat*³. Their main contention was against Section 33(a), which provided for the Constitution of the governing body and the selection Committee. Sections 40 and 41 had converted Affiliated colleges into Constituent Colleges.

Section 51(a) of the Act provided that no member of teaching or non-teaching staff of an affiliated College shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard before imposing a penalty and until he has been given a reasonable opportunity of making representation on any such penalty. Clause (V) of this section had provided that no such penalty should be inflicted unless the Vice-Chancellor or any other officer approved it appointed by him. Section 52(a) made similar provisions in respect of termination of service not amounting to dismissal or removal.

A bench of 9 Judges Supreme Court heard all the parties who had appeared before the Court in response to individual and public notices issued by the Supreme Court. The Bench was called upon to determine the following questions.

Whether the rights conferred on religious and linguistic minorities by Article 30(1) namely were with regard to the preservation of the language, script or culture of the said minority or whether those rights extended also to establishing education institutions imparting general secular education.

In *Lily Kurien v. Sri. Lewing* the two questions, which had arisen before the Court for determination, were:

1. AIR 1958 SC 956.
2. AIR 1970 SC 2079.

3. AIR 1974 SC 1389.

- (i) Whether the Vice-Chancellor while exercising the appellate powers under Ordinance No.33(4) had the power to direct reinstatement of a teacher or grant a declaration that his dismissal was wrongful;
- (ii) Whether a right of appeal given to the teacher of Private colleges under Ordinance 33(1) and (4) in the matters of suspension and dismissal was violative of Article 30(1). The High Court and Kerala came to the conclusion that the Vice-Chancellor could have no such power.

On the second question the High Court of Kerala came to the conclusion that the provision did not attract Article 30(1). In appeal a bench of five Judges of the Supreme Court said:

“Protection of minorities is an article of faith in the Constitution of India. The right to the administration of institution of minority’s choice enshrined in Article 30(1) means ‘management of the affairs of the institutions....Article 30(1) is not a Charter of real administration, Regulations so that the right to administer may be better exercised for the benefit of the institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an important right to administer, the Article comes into play”.

The All Saints High School Case involved the claim of minority institutions to have autonomy in the matter of disciplinary control over their staff and the claim of the State to regulate such matters in the interest of security of tenure and the general welfare of the Staff employed in such institutions.

In this case Sections 3 to 7 of the Andhra Pradesh recognised Private Educational Institutions Control Act, 1975 were the

subject-matter of dispute before the bench of three Judges *Chandrabud C.J Murtuza Fazl Ali, J. and Kailsam, J.*

The Supreme Court declared Section 3(1) and (2) as Constitutionally inapplicable to minority institutions for the following reasons:

First : If the State wanted to regulate the conditions of services of teacher it should have taken care to make proper rules giving sufficient power to the management specifying the manner in which it was to act.

Second : The induction of an outside authority over the head of the institution and making its decisions final and binding on the institutions was a blatant interference with the administrative autonomy of the institution.

Third : While giving approval the competent authority was not required to ascertain the view of the governing body so as to know their viewpoint and the reasons why action had been taken against a particular teacher.

Fourth : The competent authority was not given any guidelines for exercise of his discretion and the power in respect of approval of the action could be exercised on purely subjective satisfaction.

Fifth : While under Section 4(a) right was given to the aggrieved teacher to prefer an appeal before the competent authority no such right was acceded to the minority institutions.

Sixth : Section 3 specified no time within which the competent authority was to give its approval, which was bound to create a stalemate.

On the question of right of appeal under Section 4, which provided that any teacher who was dismissed, removed or reduced in

rank or, whose pay or allowances or any of whose conditions of service were altered to his disadvantages could prefer an appeal before the prescribed authority declaring Section 4 as inapplicable to minority institutions.

In *Indulal Hiralal v. S.S. Salgondkar*⁴, the question arose with regard to the disciplinary control which a minority institution can exercise over its employees. In this case the management had taken sanctions against certain teachers of their Schools, for they had violated the conditions of service. In the latter of appointment the stipulation was regarding wearing of Khadi clothes, but these teachers had not been wearing Khadi dress in School. They were called upon to explain for their failure to observe the condition of service. According to the management the conduct of the teacher was in breach of the conditions on which their appointments were made and amounted to gross insubordinate. The teachers were served with

show-cause notice. After a formal enquiry the management terminated their service.

The School being an aided School the teachers approached the Director of Education, who by a separate order set aside the termination of teachers.

The management of the School filed a writ petition before the Bombay High Court and contended that their instituting being a minority institution the Government could not interfere in the internal affairs of the institutions because the minorities had a right to administer the institutions.

Relying on the decision of the Supreme Court in *All Saints High Schools v. Government of Andhra Pradesh* the Bombay High Court held that the Government had no right to interfere with the autonomy of the minority institution and therefore the order of the Director of Education setting aside the termination of teachers was unconstitutional.

ARTICLE ON LAW OF CARRIAGE OF GOODS CARRIAGE ACT, 1865⁵

By

—M.S. KRISHNA MOHAN,

M.A., P.G.P.M., LL.B., LL.M.,

Principal,

J.B. Law College,

(JBIET Campus) (V) Venkapalli,

(ML) Moinabad, R.R. District

The Carriage Act, 1865 has been governed by rules and regulated under under Sections 151 to 152 of the Indian Contract Act. These provisions enforces as per law, liabilities, incurring on The Carriage Act, of 1865. And extended services to universe which plays a vital role in commercial transaction for

remuneration then a contract of carriage comes into existence, by land, or inland navigation, and accordingly classified into the following two categories: -

1. Common carrier
2. Private carrier

- Wherein, common carrier is defined under Section 2 of The Carriage Act, 1865. Though

4. AIR 1983 Bom. 83.

5. Reference Book - A Text Book of Mercantile Law : By P.P.S. GOGNA