

VIRENDRA NATH GUPTA AND ANR.

v.

DELHI ADMINISTRATION AND ORS.

A

MARCH 2, 1990

[K.N. SINGH, T.K. THOMMEN AND N.M. KASLIWAL, JJ.]

B

*Constitution of India—Articles 29 and 30—Delhi School Education Act 1973/Delhi School Education Rules—Section 8/Rule 100—Kerala Education Society—School authorities providing that incumbent holding office of Principal/Vice-Principal to have knowledge of Malayalam—Whether permissible and valid.*

C

The appellants are teachers in the Kerala Education Society Senior Secondary School, New Delhi. They challenged the appointment of Respondent No. 5 as Vice-Principal by filing a writ petition in the Delhi High Court. The circumstances that led to the filing of writ petition are:

D

The Kerala Education Society is a recognised and aided Society. Its primary objects are to promote the study of Malayalam language and to provide facilities for the education of children and to conserve Malayalam language, script and culture. In furtherance of these objectives, the Society is running Senior Secondary School in New Delhi. Delhi Administration as also the educational authorities have recognised the Institution, as a linguistic minority school. The institution is regulated by the provisions of the Delhi School Education Act and the rules framed thereunder. One post of Vice-Principal was created in the school w.e.f. 1.10.80. In March 1981, Departmental Promotion Committee was constituted to make selection for the appointment to the post of Vice-Principal in accordance with the recruitment rules. The Departmental Promotion Committee made selection from amongst the teachers of the institution to fill up the post of Vice-Principal by promotion in accordance with the Rules. The Departmental Promotion Committee recommended the name of Respondent No. 5 for promotion to the post of Vice-Principal though he did not fall within the zone of consideration being junior to the appellants. The management of the school accepted the recommendation of the Departmental Promotion Committee and forwarded the papers to the Director of Education for necessary approval. The appellants made representations to the Director of Education against the selection and appointment of Respondent No. 5. The Director of Education rejected the proposal of the

E

F

G

H

A management and declined to approve the selection and appointment of Respondent No. 5 on the ground that he did not fall within the zone of consideration and further that he did not possess the necessary qualification of five years experience as Post Graduate Teacher as required by the recruitment rules. The Director of Education however permitted the management to advertise the post for filling the same by

B direct recruitment. The management then issued advertisement prescribing the necessary qualifications for the post which included Master's Degree with second division; five years teaching experience as Post Graduate Teacher or 10 years experience as trained graduate teacher and ability to speak Malayalam as an essential qualification. The appellants were straightaway not eligible for appointment as they were not able to speak or write Malayalam. On the recommendation of

C the selection committee, respondent No. 5 was appointed as direct recruit to the post of Vice-Principal and the Director of Education approved the appointment. Thereupon the appellants, as stated earlier filed writ petition in the High Court challenging the appointment of Respondent No. 5 and the writ petition was dismissed. Hence this

D appeal by special leave.

Dismissing the appeal, this Court,

E HELD: An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of Government aid, it is subject to the regulatory provisions made by the State. The regulatory provisions however cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30. [811F-G]

F The Kerala Education Society is a recognised and aided institution. It is subject to the regulatory provisions contained in the Delhi School Education Act, 1973 and the rules made thereunder. [811H]

G The institution is for promotion of Malayalam language and as Malayalam is a compulsory subject for students upto Vth standard and it is an optional subject for VIth to XIIth standard. In the circumstance it is not only proper but desirable that the incumbent holding the office of Principal or Vice-Principal being administrative in nature should have knowledge of speaking and writing Malayalam. [812B]

H The management of the institution acted within its right in pre-

scribing an additional essential qualification regarding knowledge of Malayalam and no exception can be taken to the same as it is the constitutional right of the linguistic minority to insist on the knowledge of the language, on the basis of which the linguistic minority is recognised. [812C] **A**

*The Kerala Education Bill, 1957 Reference under Article 143 of the Constitution*, [1959] SCR 995; *The Ahmedabad St. Xaviers College Society and Anr. v. State of Gujarat and Anr.*, [1975] 1 SCR 173; *Lilly Kurian v. Sr. Lewina and Ors.*, [1979] 1 SCR 820; *Frank Anthony Public School Employees' Association v. Union of India & Ors.*, [1986] 4, SCC. 707; *Mrs. Y. Theclamma v. Union of India and Ors.*, [1987] 2 SCC 516 and *All Bihar Christian Schools Association v. State of Bihar*, [1988] 1 SCC 206. **B**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3678 of 1984. **C**

From The Judgment and Order dated 5.1.1982 of the Delhi High Court in Civil Writ Petition No. 2923 of 1981. **D**

R.B. Dattar, S. Wasim Qadi for the Appellants.

V.C. Mahajan, K.K. Venugopal, G. Viswanatha Iyer, R.B. Mishra, Ms. A. Subhashini, Mrs. Baby Krishnan, C.B. Vaidyanathan, K.V. Mohan, Dilip Pillai, P. Kesava Pillai and N. Sudhakaran for the Respondents. **E**

The Judgment of the Court was delivered by

**SINGH, J.** The two appellants, S/Sh. Virendra Nath Gupta and Mohammad Aslam Kidwai are teachers in the Kerala Education Society Senior Secondary School, New Delhi. They challenged the appointment of T.N. Vishwanathan Nair, respondent No. 5 as Vice-Principal of the Institution by means of a writ petition before the Delhi High Court under Article 226 of the Constitution of India. The High Court by its order dated January 5, 1982 dismissed the petition *in limine*. Hence this appeal by special leave. **F**

The Kerala Education Society (hereinafter referred to as 'the Society') is a Society registered under the Societies Registration Act, XXI of 1960. The Society is running the Kerala Education Society Senior Secondary School in New Delhi. The Delhi Administration as **H**

A well as the Education Authorities have recognised the Institution as a linguistic minority school. The Institution is aided and recognised by the Delhi Administration. The objects of the Society are: (i) to provide facility for the education of children in the Union Territory of Delhi by making provision for suitable institutions; (ii) to promote the study of Malayalam. A sizable number of persons belonging to State of

F Kerala who speak Malayalam are residents in Delhi and they constitute a linguistic minority. The Malayalees have their own language, script and culture, and in order to preserve the same they established the Institution which is administered by the linguistic minority, with the primary purpose of promoting the study of Malayalam and also for preserving their culture, dance, music and other Kerala Arts. Teaching of Malayalam in the aforesaid Institution is compulsory from Clases

C I to V, as the medium of instruction is Malayalam. However, Malayalam is an optional subject in VI to XII standard. The school has 1700 students and more than 60% of parents and guardians belong to the lower income group of Malayalam speaking community.

D The Institution is regulated by the provisions of the Delhi School Education Act 1973 (hereinafter referred to as the Act) and the Rules framed thereunder, namely, Delhi School Education Rules 1973 (hereinafter referred to as the Rules.) One post of Vice-Principal was created in the Institution in the pay scale of Rs.650-1200 with effect from 1.10.1980. In March, 1981 a Departmental Promotion Committee

E (hereinafter referred to as DPC) was constituted to make selection for appointment to the post of Vice-Principal in accordance with the recruitment rules made under Section 8(1) of the Act read with Rule 100 of the Rules issued on 25.2.1980 and published in the Delhi gazette Extraordinary dated 7.4.1980. The DPC made selection from amongst the teachers of the Institution to fill up the post of Vice-Principal by

F promotion in accordance with the aforesaid Rules. The DPC recommended the name of T.N. Vishwanathan Nair, respondent No. 5 for promotion to the post of Vice-Principal although he did not fall within the zone of consideration as he was junior to the appellants at Sl. No. 10 in the seniority list. The Management of the Institution accepted the recommendation of the DPC and forwarded papers to the Director

G of Education for approval. Meanwhile, the appellants made representation to the Director of Education against the selection and appointment of respondent No. 5. The Director of Education rejected the Management's proposal and refused to approve the selection and appointment of respondent No. 5 on the ground that he did not fall within the zone of consideration according to the Rules and further he

H did not possess the essential qualification of five years' experience as

Post Graduate Teacher as required by the Recruitment Rules. Since no suitable candidate was available for promotion within the zone of consideration the Director of education permitted the Managing Committee to advertise the post for filling the same by direct recruitment. Thereafter, advertisement was published on 24.9.1981 inviting applications for the post of Vice-Principal. The advertisement stated the essential qualifications being Master's Degree with second division, five years' teaching experience as Post Graduate Teacher or ten years' teaching experience as Trained Graduate Teacher, and also ability to speak and write Malayalam. Since the knowledge of Malayalam was prescribed as an essential qualification, the appellants were not eligible for selection or appointment as they could not speak or write Malayalam. On the recommendation of the Selection Committee respondent No. 5 was appointed as a direct recruit to the post of Vice-Principal and the Director of Education approved his appointment.

Learned counsel for the appellants assailed the validity of the appointment of respondent No. 5 on three grounds; (i) since under the Rules post of Vice-Principal was a promotional post, no direct recruitment was permissible; (ii) respondent No. 5 did not possess the essential qualification of Master's Degree in second division; (iii) the Management malafide introduced knowledge of Malayalam as an essential qualification with a view to favour respondent No. 5 and to oust the appellants even though the Rules did not permit knowledge of Malayalam as an essential qualification. We will deal with these submissions in seriatim.

There is no dispute that the recruitment/appointment to the post of Vice-Principal in the Government aided schools and recognised schools in the Union Territory of Delhi is regulated by the Rules published on 7.4.1980, a copy of which has been placed before us, framed under Section 8(1) of the Act read with Rule 100. Since the Institution is an aided and recognised school the aforesaid Rules were applicable for the purpose of recruitment to the post of Vice-Principal. According to the Rules recruitment to the post of Vice-Principal is to be made by selection. The Rules prescribe educational and other qualifications. The Rules provide that the post of Vice-Principal should be filled by promotion failing which by direct recruitment as stated in Col. 8 of Annexure B to the Rules. As noticed earlier the Management made attempt to fill the post of promotion and the DPC had considered the case of teachers of the Institution for promotion to the post of Vice-Principal and it recommended respondent No. 5, but the same was not approved by the Director of Education. The selection Com-

- A mittee, had considered the appellants also but it did not find them suitable for promotion, instead it recommended respondent No. 5 for promotion but the recommendation of the Selection Committee was not approved by the Director of Education. The Director of Education by his letter dated 2.5.1981 directed the Management of the Institution to fill the post by direct recruitment. Pursuant to that direction the
- B Management issued advertisement for making the recruitment. The Rules thus contain express provision for direct recruitment to the post of Vice-Principal and as such we find no merit in the submission made on behalf of the appellants.

- Admittedly, respondent No. 5 did not possess Master's Degree in second division, which was an essential qualification but Column
- C No. 5 to Annexure B to the Rules which prescribes essential qualifications, states: "Condition of second division relaxable in case of candidates belonging to the same school and also in case of Scheduled Castes/Scheduled Tribes." The Rules further contain a note; "Competent authority may relax the essential qualifications in exceptional
- D cases of the candidates of the same school, after recording reasons therefor". The Selection Committee as well as the competent authority granted relaxation to respondent No. 5 as he belonged to the same school. Further he had ten years' experience as Trained Graduate Teacher and as such he was eligible for direct recruitment under the Rules. The appellant's plea that since the Management was interested
- E in appointing respondent No. 5 to the post of Vice-Principal, it manipulated to get his selection made for appointment to the said post, is without any foundation. The Selection Committee consisted five members out of which three were representatives of the Education Department appointed by the Director of Education. The Selection Committee made the selection in accordance with the Rules and found
- F respondent No. 5 suitable for appointment to the said post. In this view there is no merit in the second submission made on behalf of the appellants.

- The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam
- G was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the Institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and preserve
- H Malayalee dance, culture and art. Article 29 of the Constitution of

India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the Legislature or by rule made by executive authorities. However, the Management of a minority institution has no right to mal-administer the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See "*In Re The Kerala Education Bill, 1957. Reference under Article 143(1) of the Constitution of India*, [1959] SCR 995; *The Ahmedabad St. Xaviers College Society & Anr. v. State of Gujarat & Anr.*, [1975] 1 SCR 173; *Lilly Kurian v. Sr. Lewina and Ors.*, [1979] 1 SCR 820; *Frank Anthony Public School Employees' Association v. Union of India & Ors.*, [1986] 4 SCC 707; *Mrs. Y. Theclamma v. Union of India & Ors.*, [1987] 2 SCC 516 and *All Bihar Christian Schools Association v. State of Bihar*, [1988] 1 SCC 206. Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of Government aid, it is subject to the regulatory provisions made by the State. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Article 29 and 30.

The Kerala Education Society is a recognised and aided institution, it is subject to the regulatory provisions contained in the Delhi

A

B

C

D

E

F

G

H

A School Education Act 1973 and the Rules made thereunder. The question is whether the Management of the Institution could validly prescribe knowledge of Malayalam as an essential qualification for the post of Vice-Principal. Admittedly, the Institution is for promotion of Malayalam language and as Malayalam is compulsory for students upto Vth standard and it is one of the optional subjects from VIth to

B XIIth standard, it is not only proper but desirable that the incumbent holding the office of Principal or Vice-Principal being administrative in nature should have knowledge of speaking and writing Malayalam. The requirement of knoweldge of Malayalam is closely connected with the right of the linguistic minority to subserve its script, language and culture. The Management of the Institution acted within its right in

C prescribing an additional essential qualification regarding knowledge of Malayalam and no exception can be taken to the same as it is the constitutional right of the linguistic minority to insist on the knowledge of the language, on the basis of which the linguistic minority is recognised. The provisions of the Act and the Rules are subject to the guarantees of constitutional rights of the minorities' institutions. In

D our opinion, the Management acted within its constitutional right in insisting the knowledge of Malayalam as an essential qualification for the post of Vice-Principal. The Education Department of Delhi Administration did not raise any objection to the Management's action; on the other hand, the Selection Committee constituted by the Director of Education made its recommendation on the basis of the

E qualifications prescribed in the advertisement and the Director of Education approved the appointment of respondent No. 5. In this view we find no merit in the appellants' submission that the knowledge of Malayalam was prescribed *mala fide* with a view to oust them from consideration.

F In view of the above discussion we find no legal infirmity in the appointment of respondent 'No. 5 as Vice-Principal. It appears that during the pendency of the appeal a vacancy arose in the post of Principal to which respondent No. 5 was promoted. Consequently there was a vacancy in the post of Vice-Principal to which K.D. Antony, another teacher of the School was appointed. The appellants

G filed an application for impleading K.D. Antony to the appeal but no relief was claimed against him. The application for impleading K.D. Antony is accordingly rejected.

The appeal fails and it is accordingly dismissed. There will be no order as to costs.

H Y. Lal

Appeal dismissed.