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A.S.T. 192 of 2014

With
A.S.T.A. 141 of 2014
With
A.S.T.A. 140 of 2014
With
C.A.N. 4410 of 2015
Sk. Md. Rafique & Ors.
-Versus-
Managing Committee,
Contai Rahmania High Madrasah & Ors.

With

A.S.T. 130 of 2014

With
C.A.N. 3078 of 2014
Secretary, West Bengal Madrasah
Service Commission & Anr.
-Versus-
Managing Committee,
Contail Rahamania High Madrasah & Ors.

With

M.A.T. 473 of 2014

State of West Bengal & Ors.
-Versus-
Managing Committee,
Contail Rahamania High Madrasah & Ors.

Mr. B.R. Bhattacharyya
Mr. Subrata Mukhopadhyay
Mr. Soumen Dutta
Mr. Atarup Banerjee
Mr. Somnath Bakshi ...For the Appellants

Mr. Jayanta Mitra,
Learned Advocate General
Mr. Tapan Kumar Mukherjee
Mr. B. K. Mukherjee
Mr. Supratim Dhar ...For the State

Mr. P.S. Sengupta
Mr. Ekramul Bari
Mr. S.M. Ali ...For the Commission

Mr. Kamalesh Bhattacharyya
Mr. S.S. Areffin ...For the Applicant in
C.A.N. 7539 of 2015

Mr. Amal Baran Chatterjee
Mr. Arup Sarkar ...For the Applicant in

C.A.N. 9100 of 2015

Mr. P.S. Bhattacharyya

...For the Applicant in
C.A.N. 4410 of 2015

Mr. Swapan Bnerjee

...For the Writ Petitioner /
Respondent

The writ petitioners who approached the learned trial Judge challenged the enactment of the West Bengal Madrasah Service Commission Act, 2008 (hereinafter referred to as the Act). It is not in dispute the writ petitioners' status as minority institutions and on the other hand there was a declaration to that effect. The writ petitioners' contentions before the learned Single Judge were nothing but taking away the rights of the minority groups guaranteed by the Constitution of India. In other words, such legislation and/or restriction imposed by the said Act in question was an inroad into the fundamental rights of the minority institutions guaranteed by the Constitution.

The stand of the State was that since the Madrasahs are fully aided so far as the finance is concerned, therefore, the State Government has power to interfere with the selection process of the teachers to be appointed in such Madrasahs. The other ground of defence was since the selection committee merely makes recommendation to the Managing Committee for appointment, therefore, overall control remained with the Managing Committee, therefore, there is no interference of the Government in the affairs of the Madrasahs. In other words they tried to impress upon the learned Single Judge that role of the Commission is mere recommendatory in

nature and nothing else. They also contended that in order to achieve implementation of quality education, such enactment was necessary and therefore, the writ petitioners could not have challenged such genuine policy of the State.

Learned Trial Judge after referring a judgment of a Constitutional Bench of the Apex Court in the case of ***State of Kerala Etc. Vs. Very Rev. Mother Provincial Etc.***, reported in **(1970) 2 SCC 417** was justified in opining that right to establish an institution of the minority's choice includes the right to administration of such institution completely and effectively by the minority institution since such right is accorded to them as fundamental rights under Article 29 and Article 30 of the Constitution.

The learned Judge made a detail reference to several judgments including the Apex Court decision in the case of ***Secretary, Malankara Syrian Catholic Vs. T. Jose and Ors.***, reported in **(2007) 1 SCC 386** where right of the minorities to administer their educational institutions of their choice was discussed in detail and ultimately held that the appointment of teachers/lecturers and Headmasters/Principals as also non-teaching staffs and to take action against them is the exclusive right of the minority institution as it is nothing but part of the administrative control of the Management over such employees.

The present enactment is sought to be defended by the State on the ground of funding the

institutions and opining that it is only recommendatory process and not interference with the overall administration of the institutions. We are afraid whatever be the nature of recommendations it would definitely touch upon the administrative authority or control to be exercised by the minority institutions while administering their institutions in every aspect and respect since institutions would not have the option to choose individuals beyond the recommendations so made. Hence, the scheme of the Act instead of being regulatory, prohibits the freedom of minority institution in selecting its own personnel. It is one thing to regulate the process of appointment by providing guidelines etc. it is however entirely different to clog the right of choice of the minority institution by prohibiting them to choose any candidate otherwise eligible except from those recommended by the Commission. Since appointment of teachers etc. is very relevant so far as the quality of education is concerned, if there are any mala fides statutory infirmities brought to the notice of the State Government as it is completely funded by the State Government, it is open to the State Government to withdraw financial support if mala fides/illegalities are found in such process of selection of teaching staffs etc. Such right is always with the State Government irrespective of minority institutions or other institutions.

So far as the present enactment is concerned we cannot deviate from the opinion of the learned Single Judge that such act is nothing but violation of the fundamental rights guaranteed by the Constitution in

terms of Article 29 and 30 of the Constitution of India. Therefore, we decline to interfere with the opinion expressed by the learned Single Judge and accordingly appeals deserve to be dismissed.

We have also heard the submissions made by the learned Counsels who are appearing for some of the teachers who are already appointed and are in service for the last five years or waiting for the appointment of teachers as empanelled in the list.

Since the Act of 2008, according to us is nothing but violation of the fundamental rights guaranteed by the Constitution to the minority institutions, it is exclusively left to the concerned Madrasahs either to accept contention of such teachers, who are already in service and permit them to continue in service and/or to provide appointment to the candidates who are empanelled by the Commission awaiting such appointment.

With these observations, the appeals are disposed of along with the connected applications.

(Manjula Chellur, Chief Justice)

(Joymalya Bagchi, J.)