

PETITIONER:
STATE OF TAMIL NADU AND ORS.

Vs.

RESPONDENT:
ST. JOSEPH TEACHERS TRAINING INSTITUTE AND ANR. ETC.

DATE OF JUDGMENT 08/04/1991

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
RAMASWAMY, K.

CITATION:
1991 SCR (2) 231 1991 SCC (3) 87
JT 1991 (2) 343 1991 SCALE (1) 737

ACT:

Constitution of India, 1950: Article 30-Minority Community-Establishing and administering educational institution-Fundamental right of-conditions prescribed for recognition-Necessary for maintaining educational standard-Not complying with the same-No right to insist upon State to allow its students to appear in public examination.

Practice and Procedure: Courts-Relief on humanitarian grounds- Grant of-Not to be contrary to law.

HEADNOTE:

In the appellant State, there were number of educational institutions running teachers training course. Recognition was not accorded to some institutions as they did not fulfill the conditions. In other cases, the recognition was under consideration. Admittedly, none of the respondent-institutions was accorded recognition.

Since the Education Department did not permit their students to appear at the Public Examination, the respondent-institutions filed a Writ Petition before the High Court praying for direction to the appellant-State to recognise the institutions and also for a direction permitting their students to appear at the Public Examination.

Following the decision of the Full-Bench in similar cases, the Division Bench directed the appellant-State to arrange for supplementary examination in respect of the students of the respondent-institutions.

Against the said Judgment the State has preferred these appeals, by special leave.

Allowing the appeals, this court,

HELD: 1.1. In the absence of recognition from the Education Department the students pursuing their studies in such Institution could not appear at the public examination held by the Education Department. The Full Bench rightly held that students of unrecognized educational

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institutions could not be permitted to appear at the public examination held by the Government. On its own findings, the Full Bench should have refused relief to the petitioners. The Full Bench's directions permitting the student to appear at the examination and directing the

appellant authorities to make a special provision for supplementary examination were unauthorized and wholly unjustified. [234E-G]

1.2. The Court cannot be a party to direct the students in disobey the statue as that would be destructive of the rule of law. Courts cannot grant relief to a party on humanitarian ground contrary to law. Since the Division Bench issued the said orders following the Judgment of the Full Bench, the orders are not sustainable in law.

Nageshwaramma v. State of Andhra Pradesh, [1986](Suppl.) SCC 166 and A.P. Christians Medical Educational Society v. Government of Andhra Pradesh & Anr., [1986] 2 SCC 667, relied on.

2.1 Under Article 30 of the Constitution minorities based on religion or language, have fundamental freedom to establish educational institutions of their own choice, but the State has the right to prescribe regulatory provisions for ensuring educational excellence. Minority institutions which do not seek recognition are free to function according to their own choice, but if such an institution seeks recognition from the State it has to comply with the prescribed conditions for granting recognition and in that event the minority institution has to follow the prescribed syllabus for examination, courses of study and other allied matters. These conditions are necessary to be followed to ensure efficiency and educational standard in minority institutions. [235C-F]

2.2. Even if a minority community has fundamental right to establish and administer educational institution, it has no right to insist upon the State to allow its students to appear at the public examination without recognition or without complying with the conditions prescribed for such recognition. [236A-B]

All Bihar Christian Schools Association & Anr. v. State of Bihar & Ors., [1988] 1 SCC 206, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.1761-62 of 1991

From the Judgment and Order dated 13.8.90 of the Madras High Court in C.M.P. No. 10274 and 10275 of 90.

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WITH

C.A. No. 1763-18 of 1991.

V. Krishnamurthy for the Appellants.

Mrs. N. Chidambaram, K.Parasaran, M.N. Krishnamani, G. Srinivasan, B.Rabu Manohar G.Vijay Anand, V. Balachandran and Ajit K. Sinha for the Respondents.

The following Order of the Court was delivered:
Leave granted.

In the State of Tamil Nadu a number of educational institutions were set up for running courses for teachers training. The respondent Institutions and certain other institutions sought recognition from the Director and the Joint Director of Education of the State of Tamil Nadu for running the teachers training courses. In some cases the recognition was not accorded as the institutions did not fulfill the conditions required for setting up the Teachers Training Institution while in other cases the application for recognition was pending consideration. Indisputably none of the respondent Institutions had been accorded recognition but they admitted students to the course of study for conferring the Diploma in Teachers Training.

Since, the Education Department of the State Government was not willing to allow the students of such Institutions to appear at the public examination held by the Government, the affected institutions filed writ petitions before the High Court claiming relief for issuance of mandamus directing the Government to recognise the Institutions and also for a direction permitting the students to appear at the public examination with a further direction for declaring the result of the examination. A learned Single Judge of the High Court referred the matter to Full Bench.

The Full Bench considered the question: "Whether the students of unrecognized Educational Institutions can be permitted to write the public examinations held by the Government." The Full Bench on an elaborate discussion held that in the absence of recognition accorded to an Educational Institution, the students of such Institutions were not entitled to appear at the public examination held by the Government. In this view of the Full Bench the students were not entitled to any relief but the Full Bench adopted a peculiar course to grant relief. The Full Bench on account of the "persistent and persuasive stand of the

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petitioners" issued directions to the State Government and the Education Department on humanitarian ground directing them to hold supplementary examination for enabling the student of the concerned unrecognized Institution to appear at the examination with a condition that the declaration of their result will be subject to the ultimate settlement of the question of recognition. With these directions the Full Bench disposed of the writ petitions before it by its order dated 24.7.1990.

The writ petitions out of which the present appeals have arisen were filed by the unrecognized Educational Institutions. These petitions were heard by a Division Bench of the High Court. The Division Bench following the decision of the Full Bench in Writ Petition No. 2712 of 1990 and other connected matters (Fathima Secondary Grade Teachers Training Institute v. Commissioner and Secretary to Government, Education Department), issued similar directions permitting the student to appear at the examination and directing the State Government to arrange for supplementary examination to enable the students to appear at that examination. These appeals are directed against the order of the Division Bench.

After hearing learned counsel for the parties were of the opinion that these appeals must succeed. There is no dispute that the respondent educational Institutions were established for imparting education in Teachers Training Course without obtaining recognition from the Education Department of the State Government. In the absence of recognition from the Education Department the students pursuing their studies in these Institutions could not appear at the public examination held by the Education Department. The Full Bench rightly held that students of unrecognized educational institutions could not be permitted to appear at the public examination held by the Government. On its own finding, the Full Bench should have refused relief in the petitioners, but it was persuaded to issue directions on humanitarian ground which were in effect destructive of its own findings, and the law laid down by it. The Full Bench issued directions permitting the students to appear at the examination and directing the appellants to make a special provision for supplementary examination. These directions in our opinion were unauthorised and wholly unjustified.

The practice of admitting students by unauthorised educational Institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by this Court.

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In Nageshwaramma v. State of Andhra Pradesh, [1986] Supl. SCC 166 this Court observed that if permission was granted to the student of an unrecognised Institution to appear at the examination, it would amount, to encouraging and condoning the establishment of unauthorised institutions. The Court declared that the Jurisdiction of this Court under Article 32 or of the High Court under Article 226 of the Constitution should not be frittered away for such of purpose. In A.P. Christains Medical Educational Society v. Government of Andhra Pradesh & Anr., [1986] 2 SCC 667 a similar request made on behalf of the institution and the student for permitting them to appear at the examination even though affiliation had not been granted, was rejected by this court. The court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognised would be in clear transgression of the provision of the Act and the regulations. The Court cannot be a party to direct the students to disobey the statute as that would be destructive of the rule of law. The full Bench noted these decisions and observations and yet is granted relief to the students on humanitarian ground Courts can not grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the full Bench are destructive of the rule of law. Since the Division Bench, issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law.

Smt. Nalini Chidambaram contended that under Section 9 of the Tamil Nadu Act a minority community is entitled to establish an educational institution without obtaining permission from the Government and the students of such institution are entitled to appear at the public examinations. We find no merit in the submission. Under Article 30 of the Constitution minorities based on religion or language, have fundamental freedom to establish educational institutions their own choice, but the State has right to prescribe regulatory provisions for ensuring educational excellence. Minority institutions which do not seek recognition are free to function according to their own choice, but if such an institution seeks recognition from the State, it has to comply with prescribed conditions for granting recognition, and in that event the minority institution has to follow prescribed syllabus for examination, courses of study and other allied matters. These conditions are necessary to be followed to ensure efficiency and educational standard in

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minority institutions. See: All Bihar Christian Schools Association & Anr. v. State of Bihar & Ors., [1988] 1 S.C.C. 206. We are, therefore, of the opinion that even if a minority community has fundamental right to establish and administer educational institution, it has no right to insist upon the State to allow students to appear at the public examinations without recognition or without complying with the conditions prescribed for such recognition.

We, accordingly, allow the appeals and set aside the order of the High Court and dismiss the writ petitions filed by the respondents. There will be no order as to costs.
G.N. Appeals allowed.

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JUDIS