

CASE NO.:
Appeal (civil) 3232-3234 of 2000

PETITIONER:
Ramakrishna Vivekananda Mission

RESPONDENT:
State of West Bengal & Ors.

DATE OF JUDGMENT: 29/11/2004

BENCH:
Y.K. Sabharwal & D.M. Dharmadhikari

JUDGMENT:
J U D G M E N T

Y.K. Sabharwal, J.

The appellant Ramakrishna Vivekananda Mission (for short, 'the Mission') has challenged in these appeals a common judgment of the Division Bench of the High Court whereby two appeals challenging the order of a learned Single Judge and a Writ Petition No.18402(W) of 1997 filed by the Mission were dismissed.

The Mission is running a school known as Ramakrishna Vivekananda Mission Vidya Bhawan. The school is affiliated to the West Bengal Board of Secondary Education (for short, 'the Board') and is governed by the West Bengal Board of Secondary Education Act, 1963 (for short, 'the Act'). The two private respondents Swapna Panda and Tapan Negoi were appointed as teachers in the school in the years 1977 and 1986 respectively. Both were approved teachers. The other respondents in these appeals are State of West Bengal and the education authorities under the Act.

The West Bengal Board of Secondary Education (Manner of Hearing and Deciding Appeals by Appeal Committee) Regulations, 1964 (for short, 'the Regulations') and Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 (for short, 'the Rules') have been framed under the provisions of the Act.

According to the Mission, since the aforesaid two teachers refused to do hostel duty, show cause notice dated 4th April, 1996 was issued to them. The teachers, in reply to the said notice, took the stand that they had become 'approved teachers' and were no longer bound by the terms and conditions of service requiring them to do hostel duty. In terms of letters dated 18th May, 1996, services of these teachers were terminated. For proper appreciation of the controversy, it is necessary to note the proceedings under the Regulations that were initiated by the teachers challenging the validity of termination and orders passed thereon besides the proceedings in the High Court and the orders passed by the High Court as also the provisions of the Act, Regulations and the Rules. The orders passed in Writ Petition No.2041 of 1986 that was filed by the Mission claiming certain rights under Articles 14, 26 and 30 of the Constitution of India are also relevant for the present purpose.

The school run by the Mission is affiliated to the Board established under the Act. 'Board' means the West Bengal Board of Secondary Education established under the Act [Section 2(a)]. Sections 18 to 26 are in Chapter III of the Act which, inter alia, deals with constitution of various committees. Section 18 provides that as soon as may be after the Board is established, the Board shall constitute committees mentioned therein. One of the Committees with which we are concerned is the Appeal Committee. The constitution of the Appeal Committee has been provided for in Section 22 of the Act. Sub-section (3) of Section 22 provides that it shall be the duty of the Appeal Committee to hear and decide appeals filed

by teachers and other employees against decisions of Managing Committees of institutions adversely affecting them, in accordance with the regulations made in this behalf. Section 27 provides for powers and duties of the Board. Section 27(3) empowers the Board to make regulations in respect of any matter for the proper exercise of its powers under the Act. Section 45 is a rule making power of the State Government. Section 45(1) provides that the State Government may, after previous publication, make rules for carrying out the purposes of the Act.

In exercise of powers under Sub-section (3) of Section 27 read with Sub-section (3) of Section 22 of the Act, the Board made the Regulations providing for filing of appeal against the decision of the Managing Committee. The expression 'Managing Committee' is defined in Section 2(d) of the Act. The said section states that the 'Managing Committee' used in reference to an institution includes the Governor or Governing Body of such an institution. The 'institution' means a secondary school or an educational institution or part or department of such school or institution imparting instructions in secondary education [(Section 2(c))]. Regulation 3 provides that a teacher who feels to have been affected adversely by any decision of the Managing Committee of the institution he serves or has served, may appeal direct to the Appeal Committee against such decision in accordance with the provisions of the Regulations. Regulation 4 provides that the Managing Committee against whose decision an appeal is intended to be preferred shall, on demand in writing furnish a copy of the decision in question to the appellant within a week from the date of such demand. The adversely affected teacher has been referred to as the appellant in the Regulations. Regulation 4(2) stipulates that the appellant shall submit to the Secretary to the Board, by registered post with acknowledgement due, a memorandum of appeal within one month from the date on which he receives a copy of the decision from the Managing Committee. The Regulation further provides for the manner of processing and hearing of the appeal and matters connected therewith.

In exercise of power under Section 45 of the Act, the State Government has framed the Rules. Rule 28 sets out powers of the Committee of an aided institution subject to the approval of the Director. For the present purpose, Sub-Rule (8) of Rule 28 is relevant. It reads as under :

"Both in aided and unaided Institutions the Committee shall have the power, subject to the prior approval of the Board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose the Committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned, and offer him reasonable facilities for defending himself. The teacher or the employee proposed to be proceeded against shall submit his explanation, ordinarily, within a fortnight of the receipt of the charge-sheet. The Committee shall send to the Board all relevant papers including the charge-sheet, explanations submitted by the teacher or the employee concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the Board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee concerned to show cause, ordinarily within a fortnight, why he should not be dismissed or removed from service. The Committee shall, then, send again, to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the Committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the Board shall be

final:

Provided that the Board may delegate to any Committee constituted under Section 24 of the Act the powers and functions conferred on the Board by this sub-rule."

Rule 33 provides for the power of the State Government to frame further Rules for certain institutions. It reads as under :

"Power of the State Government to frame further rules for certain Institutions : Nothing in these rules shall affect the power of the State Government to frame, on the application of any Institution or class of Institutions, to which the provisions of Article 26 or Article 30 of the Constitution of India may apply, further or other rules for the composition, powers, functions of the Managing Committee or Committees of such Institution or class of Institutions."

The Mission wanted the State Government to frame Rules under the aforesaid Rule 33, hereinafter referred as 'Special Rules'. A writ petition (being No.2041 of 1986) was filed by the Mission seeking directions against the State Government requiring it to frame the Special Rules in exercise of power under Rule 33. The claim of the Mission was that it fulfilled all the requisites of being a religious denomination within the meaning of Article 26 of the Constitution of India, its further case being that the State Government having framed Special Rules in respect of several institutions governed by Article 26 or 30 of the Constitution which had identical religious beliefs, objects and functions as that of the appellant Mission, the denial of framing Special Rules for the Mission was also violative of Article 14 of the Constitution. The Mission wanted that the Special Rules adopted by it in November 1986 for the management of the school shall be approved. The grievance of the Mission was that the State Government was illegally not sanctioning the Special Rules although it had sanctioned the same in respect of the Ramakrishna Mission and Ramakrishna Sharda Mission despite the fact that their objects were the same as that of the appellant Mission. By orders dated 14th October, 1993 passed in Writ Petition No.2041 of 1986, a learned Single Judge of Calcutta High Court came to the conclusion that the appellant Mission is entitled to the approval of their rules as Special Rules for their school. Accordingly, the State Government and Education Department were directed to approve the Special Rules of the appellant Mission within one month from the date of communication of the order. The order dated 1st March, 1994 passed by the High Court records the statement made by the counsel representing the State Government that the Government has no objection for granting Special Rules for the management of the school of the Mission excepting that the Mission may be persuaded to opt out of the grant-in-aid scheme. Rejecting the said stand the High Court held in terms of judgment and order dated 1st March, 1994 that the grant of Special Rules cannot be linked with the grant-in-aid. The benefit of grant-in-aid cannot be withdrawn by granting Special Rules. In no school where Special Rules have been granted, grants-in-aid have been withdrawn or denied. The order then records the statement of counsel for the State that Special Rules in terms of the orders dated 14th October, 1993 have already been approved and the file was also produced before the Court. Writ Petition No.2041/1986 was disposed of in terms of judgment and order dated 1st March, 1994 by issue of certain other directions as well which are not relevant for the present purposes.

Reverting now to the orders of termination of two teachers referred to hereinbefore, two appeals (Appeal Nos.9 and 10 of 1996) were filed by the teachers on 10th June, 1996 before the Appeal Committee of the Board under the Regulations. Almost at the same time, the teachers also filed on 12th June, 1996 Writ Petition Nos.7932-7933 of 1996 before the High Court challenging the orders of termination. The Mission also filed on 14th August, 1996 Writ Petition Nos.1750-1751 of 1996 challenging the

competence of the Appeal Committee to hear the appeals. Admittedly, both the teachers withdrew their appeals (Appeal Nos.9 and 10) pending before the Appeal Committee. The appeals were unconditionally dismissed as withdrawn on 16th December, 1996. On 17th December, 1996, aforesaid two writ petitions filed by the teachers were also unconditionally withdrawn.

After sometime, applications were filed by the teachers before the Appeal Committee seeking restoration of the two appeals that had been dismissed on 16th December, 1996. The Mission approached the High Court by filing an application in Writ Petition Nos.1750-1751 of 1996 contending that the Appeal Committee had no power to entertain and hear the appeals which had already been dismissed as withdrawn. A Division Bench of the High Court, by order dated 11th February, 1997 disposed of Writ Petition Nos.1750-1751 of 1996 holding that after the appeals had been allowed to be withdrawn by the Appeal Committee of the Board, the Appeal committee had become completely functus officio and had no jurisdiction to proceed with the said appeals. In that view, it was held that the writ petitions of the Mission had become infructuous because the appeals were no longer subsisting and were not alive. As already noticed, the challenge of the Mission in the said writ petitions was to the competence of the Appeal Committee to hear the appeals. The Division Bench did not adjudicate the question whether against the orders of termination the Appeal Committee of the Board could entertain fresh appeals under law and observed that if the situation arise, the parties would be at liberty to take steps in the matter according to law. It was observed that the Court was not called upon to decide the future course of action the Appeal Committee of the Board may take in the facts and circumstances of the case.

On 3rd April, 1997, two fresh Appeal Nos.3 and 4 of 1997 were filed by the teachers challenging the orders of termination above referred. The competence of the Appeal Committee to hear the fresh appeals filed by the teachers was challenged by the Mission by filing Writ Petition Nos.804-805 of 1997. In the said writ petitions, the High Court directed the Appeal Committee to proceed in two stages (1) to decide on the maintainability of the appeals; and (2) hear the appeals on merits but shall not pass any final order without obtaining leave of the Court. The Appeal Committee rejected the preliminary objection about the maintainability of the appeals. Aforesaid, writ petitions were dismissed by the learned Single Judge on 25th February, 1998 upholding the order of the Appeal Committee which had quashed the order of termination by orders passed on 17th September, 1997. It seems that during the course of hearing of the writ petitions, the Board handed over to the court a sealed cover which contained the final determination of the Appeal Committee. In so far as the Mission is concerned, it seems that the communication about the order setting aside the order of termination was sent to it only on 15th November, 1999. The Mission filed two appeals against the order of learned Single Judge which were dismissed by the impugned judgment.

The Mission had also filed another Writ (being Petition No.18402/97), inter alia, praying for formal communication of the approval of the Special Rules and to publish such approved Special Rules in the Official Gazette. The said writ petition was disposed of along with the aforesaid two appeals by the Division Bench by a common judgment. The writ petition has also been dismissed.

The Division Bench mainly considered two questions, namely (1) whether Special Rules in fact had been approved or could be approved in terms of the provisions of the Act and the Rules and (2) whether the publication of the Special Rules was mandatory and the effect of non-publication.

The aforesaid questions have been decided against the Mission in as much as the High Court in the impugned judgment has held that publication of the Special Rules in the Gazette was mandatory and since the publication was not done, the order dated 1st March, 1994 would be without jurisdiction and thus not binding on the teachers. Further, on the question of the non-maintainability of second set of appeals, the High Court has merely noticed that liberty was granted to the teachers to file

fresh appeals and, therefore, those appeals would be maintainable. Insofar as the prayers made in Writ Petition No. 18402 of 1997 seeking formal approval of the rules which, in other words, means publication of the said rules at that stage, since the publication was held mandatory by the High Court, no specific orders have been passed except stating that writ petition deserves to be dismissed.

On behalf of the appellants, Mr. Dipankar Gupta, senior advocate submits that the Division Bench committed serious illegalities both, on facts and law since no liberty has been granted to the teachers to file fresh appeals and the factum of the approval of Special Rules, as noticed in the order dated 1st March, 1994, could not be disputed by the State Government and that order was erroneously held to be without jurisdiction. Learned counsel further submits that in any case, on the Division Bench coming to the conclusion that the publication was mandatory, orders sought for in Writ Petition No.18402/97 ought to have been passed and publication should have been directed to be made at that stage.

Before we examine aforesaid contentions, it may be noted that an additional ground was also taken by the appellant by filing an application challenging the validity of Rule 28(8) but Mr. Dipankar Gupta did not press the said challenge as the validity of the Rules was not challenged before the High Court. In this view, we need not examine the validity of the said Rule. We may also note that so long as Special Rules under Rule 33 are not legally made or come into force, 1969 Rules will prevail and continue to apply which, in other words, means Rule 28(8) would continue to apply. Regarding the publication of the Rules, neither can it be seriously disputed nor it has been so disputed that the requirement of Section 45 of the Act is mandatory. Section 45 requires the State Government to make rules for carrying out the purposes of the Act after previous publication. In this background, the points to be examined are :

1. Is the appellant entitled to claim rights under Article 26 of the Constitution of India and on that basis seek framing of Special Rules under Rule 33;
 2. What is the effect of non-publication of the Special Rules referred to in the order dated 1st March, 1994 passed by the High Court in Writ Petition No.2041/86;
 3. Whether an order for publication of the Rules ought to have been made in Writ Petition No.18402/97;
 4. Whether the second set of appeals (Nos.3 and 4 of 1997) filed by the teachers were maintainable, if not, its effect
- Point No.1 :

The claim of the Mission for framing of Special Rules based on Articles 14 and 30 of the Constitution has not been pressed before us. Learned counsel for the appellant has only relied upon Article 26 of the Constitution. The Division Bench in the impugned judgment, after quoting a passage from the decision in *Bramchari Sidheswar Shai & Ors. v. State of W.B. & Ors.* [(1995) 4 SCC 646], has observed that 'This Bench, thus, will have to proceed on the basis as to whether special rules allegedly framed by the petitioner itself could have been approved'. The passage from *Bramchari Sidheswar Shai's* case, quoted in the impugned judgment is as under :

"We think that the learned Judges of the High Court should not have decided on the general question whether educational institutions established and maintained by religious denomination including those established and maintained by Ramakrishna Mission for general education get the protection of Article 26(a) of the Constitution when that question in a general form, was not really at issue before them. Therefore, the views expressed on the question shall, according to us, ought to be treated as non set and the question is left open to be decided in proper case, where such question really arises and all the parties who might be concerned with it are afforded adequate opportunity to have their

say in the matter."

The aforesaid passage occurs in para 65 of the decision in Bramchari Sidheswar Shai's case. The observations in para 65 were made while considering the question that if Ramakrishna Mission as religions denomination or a section thereof establishes and maintains educational institutions, can such institutions be regarded as institutions established and maintained for charitable purpose within the meaning of Article 26(a) of the Constitution of India. By the aforesaid observation, this Court held that the High Court should not have decided the general question whether educational institutions established and maintained by religious denominations including Ramakrishna Mission for general education would get the protection of Article 26(a) when that question in general was not really at issue before the High Court. It was in this connection that this Court held that the views expressed on the question ought to be treated as non est and left the question open to be decided in a proper case. It may also be noticed that in paras 57 and 58, it was held that no good reason was shown for not accepting the view that Ramakrishna Mission or Ramakrishna Math is 'a religious denomination' and that the persons belonging to or owing their allegiance to Ramakrishna Mission or Ramakrishna Math belong to a religious denomination within the Hindu Religion or a section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India. Point No.2 in that case was as under :

"Do persons belonging to or owing allegiance to Ramakrishna Mission belong to a religious denomination or any section thereof as would entitled them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India?"

The said question was answered in the affirmative as noticed in para 58 of the report.

In any case, the question now stands settled by a decision rendered by a 11 Judge Bench in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. [(2002) 8 SCC 481] para 26 whereof reads thus :

"The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase "private educational institution" as used in this judgment would include not only those educational institutions set up by secular persons or bodies, but also educational institutions set up by religious denominations; the word "private" is used in contradistinction to government institutions."

The point whether the appellant is entitled to rights under Article 26 has, in fact, not been seriously disputed either by learned counsel

appearing for the State Government or the private respondents.

Having regard to the aforesaid, the first point is answered in favour of the appellant.

Point Nos. 2 and 3 :

The background leading to the passing of the Order dated 1st March, 1994 has already been noticed hereinbefore. It cannot be seriously disputed that the special rules framed under Rule 33 require prior publication as postulated by Section 45 of the Act. It further cannot be disputed that before such publication the procedure prescribed under Section 24 of the West Bengal General Clauses Act, 1899 had to be complied with. Section 24 of the West Bengal General Clauses Act reads as under :

"24. Provisions applicable to making of rules or by-laws after previous publication.\027 Where by any Bengal Act or West Bengal Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply namely:-

(1) the authority having power to make the rules or by laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and, where the rules or by laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule, or by-law purporting to have been made in exercise of a power to make rules or by laws after previous publication shall be conclusive proof that the rule or by-law has been duly made."

The Special Rules have the effect of encroaching upon the rights of the teaching and non-teaching staff in the school. On publication of the draft rules, those affected by the Special Rules are granted opportunity to file objections and suggestions to those rules. Section 24 postulates fixing of date for consideration of draft Rules by the State Government. The objections or suggestions that may be received are required to be considered before taking a decision to publish the rules in official gazette as the said publication is conclusive proof of the rules having been duly made.

In the instant case, effect of the Special Rules is to deprive of the teachers of valuable rights under Rule 28(8). Under the said Rule, the decision of the Board on the disciplinary matters is final whereas under the Special Rules, it would be the decision of the Committee which would be final. It is true, as already noticed, that the High Court was informed that the Rules had been approved as recorded in the order dated 1st March, 1994 in Writ Petition No.2041 of 1986. The said order cannot, however, adversely affect the teachers here, particularly, when the private

respondents (teachers) were not parties in those proceedings and also when the law was not followed insofar as the previous publication was concerned. We are unable to accept the contention that there was sufficient and enough publication of the Special Rules. There has to be strict compliance of the provision regarding previous publication as it vitally affects the teaching and non-teaching staff which has a valuable right to object to the Special Rules when its draft is published. The teaching class can put forth its view point and give suggestions to the State Government on publication of the draft Rules. Admittedly, nothing of the kind was done. It cannot be held that valid Special Rules came to be made only because of orders dated 1st March, 1994. In the absence of Special Rules, 1969 Rules would continue to apply and prevail.

Having reached the aforesaid conclusion but, at the same time, bearing in mind the proceedings and orders passed in Writ Petition No.2041 of 1986 as referred to earlier, the learned Division Bench committed serious illegality in not allowing prayer made in Writ Petition No.18402 of 1987 by directing publication of the Special Rules in terms of Section 45 of the Act and Section 24 of the General Clauses Act. The Special Rules were approved by the Stated Government as noticed in the order dated 1st March, 1994. These Rules ought to have been treated as the draft Rules under Rule 33 and directions for its previous publication by following the procedure under Section 24 ought to have been made. It is, however, for the State Government to consider the objections and suggestions, if any, that may be filed on the publication of the draft Rules and to consider the same in accordance with law and thereafter to notify the Special Rules in the Official Gazette in case the Government comes into conclusion that the said Rules deserve to be made under Rule 33.

In view of the aforesaid, we direct the State Government to treat the Rules mentioned in orders dated 1st March, 1994 as draft rules and proceed to follow the procedure contemplated by Section 24 of the General Clauses Act. The draft Rules shall be published within a period of two months specifying in the notice the date of not later than one month from the date of the notice when the draft will be taken up for consideration. The procedure prescribed under Section 24 shall be completed within a period of four months and if the rules are to be notified, the decision shall be taken within four months. The decision on objections or suggestions that may be received on publication of the draft Special Rules shall be taken, one way or the other within the said period of four months.

Point No.4

The regulations under which an appeal could be filed have already been noticed hereinbefore as also the facts about filing of first set of appeals, unconditional withdrawal thereof, the dismissal of application for revival of those appeals, the filing of second set of appeals and the connected matters. The High Court fell into error in coming to the conclusion that any liberty had been granted to the teachers to file second set of appeals. The order of the High Court dated 11th February, 1997 which had attained finality shows that no such liberty was granted. In fact, the said order postulates that in case second set of appeals were filed, their maintainability would be decided in accordance with law. Under the regulations, there is no provision for filing of second set of appeals when earlier appeals are unconditionally withdrawn. The irresistible conclusion, therefore, is that Appeal Nos.3 and 4 were not maintainable. The effect of it would be that the order of termination of the services of the teachers would remain unchallenged. The teachers did not file any writ petition challenging the order of termination, since they had succeeded before the Board in second set of appeals (Appeal Nos.3 & 4).

In view of the above, peculiar situation has arisen. On one hand the Special Rules have not come into force on account of non-publication thereof and, thus, the appellant was required to follow the procedure under Rule 28(8). Admittedly, that was not followed. On the other hand, the orders of termination have attained finality as second set of appeals under the Regulations were not maintainable. Having regard to this peculiar position, we are of the view that the power under Article 142 deserves to be exercised for doing complete justice to the parties. In this view, even in

absence of any substantive proceedings by the teachers, we hold that the orders of their termination are not valid. Both teachers would be entitled to be reinstated into service but without payment of arrears of salary and on their giving undertaking to the appellant to do hostel duties as had been agreed at the time of induction into service. Point No.4 is decided accordingly.

For the foregoing reasons, we set aside the impugned judgment and dispose of the appeals in terms of the aforesaid directions.

JUDIS