

MANU/KE/0403/1964

Equivalent/Neutral Citation: 1964()KLT1015

IN THE HIGH COURT OF KERALA

Crl. R.P. No. 461 of 1963

Decided On: 24.11.1964

Ramachandran Pillai **Vs.** State of Kerala

Hon'ble Judges/Coram:

P. Govinda Menon, J.

Counsels:

For Appellant/Petitioner/Plaintiff: K.V. Surianarayana Iyer, C.M. Devan and K.S. Rajamony

For Respondents/Defendant: V.P.G. Nambiar, Advocate General

ORDER

P. Govinda Menon, J.

1. The petitioner (accused) was tried by the District Magistrate of Trivandrum for an offence punishable under S. 5(b) of the Unsociability (Offences) Act- Act 22 of 1955- (hereinafter referred to as the Act) and found guilty and sentenced to pay a fine of Rs. 101/-, in default to suffer simple imprisonment for one month. On appeal to the learned Sessions Judge of Trivandrum the conviction and sentence were confirmed. Aggrieved by the order the petitioner has now come up to this Court in revision.

The petitioner was the headmaster of Venganoor English Girls High School. The charge against him was that he constituted a separate division 'Standard IX-F' exclusively of Harijan students and thereby discriminated against them on the ground of unsociability.

2. The fact that the Harijan students were segregated and put into a separate class is well proved and is, in fact, not disputed. According to the accused these Harijan students were put into a separate class with the best of intentions to give them better coaching and raise their standard of education and to secure better results in the examination and not to perpetuate unsociability. The accused thereby tries to justify the segregation on the ground that those students were intellectually deficient in comparison with the other students. The evidence of Pws. 3 and 5 and the documentary evidence-produced in the case have demonstrated the hollowness of this claim. It is seen from the mark list produced in the case that both Pws. 3 and 5, the two Harijan students of the 'F division' have secured better marks than several of the non-Harijan students. It is proved that among the pupils segregated there were some who were intellectually very precocious than at least a few others who continued to be in the regular divisions. In the regular divisions there were some who were intellectually more deficient than these Harijans who were segregated. If, therefore, the object was to give better tuition for the weak students certainly some of the non-Harijan students who had fared badly in the examination ought to have been put into this special division.

Probably, realising this difficulty the accused came forward with a case of a special test having been conducted for selection of these students into a separate division. There is,

however; no written record evidencing any such test having been conducted before the students were selected to the 'F' division. Pw. 3' one of the students who had obtained more marks than some of the non-Harijan students was never asked any questions about this so-called test, and Pw. 5 when asked has categorically stated that no such tests were conducted before they were transferred to the 'F' division. It is true that Dws. 1 and 2 and Pw. 4 made an attempt to support the case of the accused but the courts below have rightly found that their evidence is not worthy of acceptance. Sitting in revision the High Court does not, as a rule, interfere with the concurrent findings of fact. Even otherwise on a scrutiny of the evidence I entertain no doubt that the finding is well justified.

3. Now the question that arises for decision is whether-1 the formation of a separate division exclusively for Harijan students is a discriminatory act "against those students coming within the mischief of S. 5 (b) of the Act. What is meant by the word 'discrimination' has not been defined in the Act. One of the meanings given to this word in Concise Oxford Dictionary is, observance of a difference between, or making a distinction etc. In essence, therefore, any denial of equal treatment amounts, to discrimination.

In the, decision of the Supreme Court in *Kathi Raning Rawat v. State of Saurashtra* (MANU/SC/0041/1952 : AIR. 1952. SC. 123), Patanjali Sasferi, C. J., stated:

"The word 'discrimination' does, not occur in Art. 14. The expression 'discriminate against is used in Arts. 15 (1) and Art. 16(2) and it means, according to the Oxford Dictionary, to make an adverse distinction with regard to; to distinguish unfavourably from others.' Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context."

4. Learned-counsel for the petitioner attempted to argue that it is only if these students are discriminated against purely on the ground of their casts that an offence would be committed and relied on the wording in Arts. 15, 16 and 29 of the Constitution. It is true that the discrimination which is forbidden by these articles is only such discrimination as is based solely on the ground that a person belongs to a particular race or caste or professes a particular religion. The contention, therefore, is that a discrimination based on one or more of these grounds and also on other grounds is not hit by the articles, and that discrimination in favour of a caste will be permissible if the classification is the result of other considerations, namely, better provisions for the education of that particular caste as in this case.

5. It would be profitable at this stage to read S. 5 (b) of the Act. It reads:

"Whoever on the ground of 'unsociability'-

(a) - x x x

(b) does any act which discriminates against any such person after admission to any of the aforesaid institutions";

So what is required by the section is the doing of any act which discriminates against any such person on the ground of unsociability. In other words, there is no requirement that the discrimination should only or solely be on the ground of unsociability. It will be noted that the section does not speak of any mens rea or intention with which the act should be committed. The section is entirely different from the wording of Arts. 15, 16

and 29 which says that the discrimination should only or solely be on the ground of untouchability. Under S. 5 of the Act even if the discrimination is not solely or only on the ground of unsociability and if unsociability is only one of the grounds of discrimination the person practicing such discrimination would be guilty of the offence.

Reference may be made to Art. 17 of the Constitution. That Article says:

"Unsociability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'unsociability' shall be an offence punishable in accordance with law."

So, if one of the reasons for the segregation of the 33 students is on the ground of unsociability the offence is made out. On the facts it has been found by the courts below that segregation was not on any of the other grounds set up by the accused.

6. S. 12 of the Act deals with presumption. It says:

"Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste as defined in clause (24) of Article 366 of the Constitution, the court shall presume, unless the contrary is proved that such act was committed on the ground of 'unsociability'."

So when the attempt of the accused to prove the contrary has failed the presumption arises and the court would be justified in holding that the act was committed on the ground of unsociability.

7. It was also contended by the learned counsel that selection of Harijan students into a separate division could not have been on the ground of unsociability as admittedly there were at least 8 Harijan students in the other divisions of the IX Standard. On the language of the Articles of the Constitution and on the language of S. 5 of the Act it is clear that every person who is singled out for differential treatment is the victim of discrimination and to that extent there is discrimination.

The differential treatment cannot be justified on the ground that there was no difference in the treatment accorded to the students in the F division, that Harijan and non-Harijan students used the same well, they were taking their food together either in the classroom or in the dining room, that there was no difference in the teaching, and if at all there existed any difference, the teachers in the F division were more experienced teachers giving better tuition.

8. This theory of 'separate but equal treatment' had come up for consideration before the American Courts in connection with segregation of Negro students. This separate but equal treatment' received the American Supreme Court's formal approval in the case in *Plessy v. Ferguson* (U.S. Supreme Court Reports-MANU/USSC/0197/1896 : 41 Lawyers Edition 256) where it was stated that a law which requires the separation of the white and coloured races in public conveyances is a reasonable exercise of the police powers of a State.

Justice Harlan dissented and stated:

"Our Constitution is colorblind, and neither knows nor tolerates classes among citizens".

The view propounded in *Plessy v. Ferguson* (cited supra) came in for strong criticism in later decisions.

In *McLaurin v. Oklahoma State* (MANU/USSC/0155/1950 : 94 Lawyers Edn. 1149) the Negro student admitted to the common school was differently treated by requiring him to occupy a seat in a row specified for coloured students, at a designated table in the library, and at special table in the cafeteria. He was, of course taught the same lesson allowed facilities of the same library, and served the same food. It was held that there was discrimination.

Finally in the case in *Brown v. Topeka* (98 Lawyers Edition 873), the American Supreme Court unhesitatingly overruled the decision in *Plessy v. Ferguson* (cited supra). The question that was considered was whether the segregation of children in public schools solely on the basis of race, even though the physical and other tangible factors' may be equal, deprive the children of the minority group of equal educational opportunities. Chief Justice Warren in delivering the opinion of the court referred to the intangible consideration that weighed with the court in *McLaurin's* case like "his ability to study, to engage in discussions and exchange views with other students and, in general, to learn his profession," and stated:

'To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in away unlikely ever to be undone.'

The learned Judge concluded by saying that:

"In the field of public education the doctrine of "separate but equal"- has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal, protection of the laws guaranteed by the fourteenth amendment."

I therefore, hold that by segregating the Harijan students into a separate division the petitioner has clearly committed the offence charged against him.

The conviction and sentence are, therefore, confirmed and the revision petition is dismissed.

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