
(1993) 01 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 12555 of 1992

1canara High School Association, Mangalore

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 18-01-1993

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (1994) 1 KarLJ 198

Hon'ble Judges : Kedambady Jagannatha Shetty, J

Judgement

1. The petitioner filed this petition praying for issue of writ in the nature of mandamus directing the respondent-State Government to grant permission to the petitioner to start the English Medium Primary School in Mangalore City and recognise the same from the academic year 1988-89 and also issue a writ in the nature of certiorari quashing the Order No. ED. 5-PGC. 90, dated 6-2-1992 (Annexure-A) passed by the State Government.

2. The facts in brief are: the petitioner-Association has started the education institution and is being primarily for the members of the Gowda Saraswath Community in Mangalore Town, which is a linguistic minority within the meaning of Article 30 of the Constitution of India. It is stated, the English Medium Primary School is for the benefit of the children of the Konkani speaking community in the City of Mangalore. Secondly for the migratory groups residing in the City of Mangalore.

3. On 27-10-1988 the petitioner applied to the II Respondent, who is the competent authority to receive the applications for starting the English Medium Primary School from 1989-90 with standards I to V. The said application was accompanied by necessary enclosures required by the Department of Public Instruction. The object of starting the English Medium Primary School was principally to equip the linguistic minority of Konkanis, who are predominantly residing in the area and prepare themselves, to further their career prospects in the country. In response to the said application, the petitioner received a letter

dated 5-3-1989, from the subject Inspector, D.D.P.I., Mangalore, intimating the spot inspection. The Inspector inspected the institution on 10-3-1989 and sent a report, stating that the petitioner has satisfied all the requirements to start English Medium Primary School and it has got necessary infrastructure and he has further stated that the petitioner may go ahead with the starting of the school from the academic year 1989-90. The petitioner wrote a letter on 3-4-1989 to the subject Inspector for the grant of permission to start the first standard in the Canara Higher Primary School, Urva, Mangalore. To the said letter, an endorsement was received from the subject Inspector dated 6-4-1989 stating that permission cannot be granted. No reason was given in that endorsement. The petitioner wrote a letter to the D.D.P.I. on 29-4-1989 requesting him to reconsider the request for starting English Medium Primary School at Urva. It appears that the D.D.P.I. forwarded the letter to the Commissioner for Public Instruction who in turn forwarded the same to the State Government. The petitioner received an endorsement on 24-8-1989 from the State Government. By the said endorsement the State Government had rejected the application for grant of permission.

4. Being aggrieved by that order of rejection passed by the State Government the petitioner filed Writ Petition No. 21225 of 1989 and this court by its order dated 19-4-1990 allowed the writ petition holding that the order was not a speaking order and therefore the same required to be quashed and directed the State Government to consider the application on merits and in accordance with law. After a long delay about 2 years the State Government by its order Annexure-A, dated 6-2-1992 rejected the application made by the petitioner to start English Medium Primary School. The reason given for rejection of the application is that-

"1. In accordance with Rule 12 of the Grant-in-Aid Code, the English Medium Primary School does not have the requisite students strength.

2. That within a distance of 3 Kms. of the place where the school has been established, there are three recognised Primary Schools and they can cater to the needs of primary students.

3. The school has been started by the petitioner contrary to Rule 10 of the Grant-in-Aid Code namely without obtaining prior permission of the State Government."

The petitioner contended that the petitioner-institution is minority institution and therefore, entitled to establish and maintain educational institutions of its choice as guaranteed by Article 30 of the Constitution. He further submitted that in view of the judgment of the Supreme Court that subject to the minority complying with academic standards for the need of the minorities, is entitled to the grant of recognition. He has further contended that the petitioner having the necessary infrastructure and comply with the requirements of the Rule 12 of the Grant-in-Aid Code, the order passed by the 1st respondent is violative of Article 30 and Articles 14 and 19(1)(g) of the Constitution.

5. Government has not filed any return. However, the learned Government Advocate appearing for respondent has submitted that in view of the latest Government Order dated 28-4-1992, the matter has to be considered by the respondent afresh in the light of the conditions laid down in the order.

6. The learned counsel appearing for the petitioner relied upon two decisions reported in *Deccan Modern Education Society v State of Karnataka*, 1983(1) Kar. L.J. 337, in the decision it is observed:

"An Educational Institution established and administered by a religious or linguistic minority need not obtain any permission at all. The need to seek recognition of such institution arises only when it wants to conform to the general education"

and the decision of Supreme Court in *Managing Board of the Milli Talimi Mission, Bihar and Others v State of Bihar and Others*, AIR 1984 SC 1757, where it is observed that in para 23-

"Thus, the position is that the State has refused to grant affiliation on purely illusory grounds which do not exist and failed to consider the recommendation of the Education Commissioner which was made after full inspection for grant of affiliation. In other words the affiliation was refused without giving any sufficient reasons and such a refusal contravenes the provision of Article 30 of the Constitution."

7. The learned counsel appearing for the petitioner has contended that the petitioner is a minority Institution and it has complied with the requirements of the Rule 12 of the grant-in-Aid Code such as that in every standard there were strength of minimum 45 students and there is no rule that there could be no school within 3 kilometres distance. As regards the third point, that no school he started without previous permission, it is stated that such previous permission need not be required to commence the school, for without commencing the school, question of seeking recognition does not arise for it would amount to seeking recognition of non existing school. In view of the decision of this court in 1983(1) Kar. L.J. 337, as observed above, the minority institution need not obtain any previous permission at all. If this institution conforms with the requirements of rules it is entitled to recognition.

8. It is an undisputed fact that the petitioner is the linguistic institution which comes under Article 30 of the Constitution; that impugned order of the respondent apart from having on illusory ground, it is violative of Articles 30, 14 and 19 of the Constitution. It is further clear that the reason given for rejecting the application is that the petitioner started the school without prior permission lacks rational justification. To my mind it appears, that the impugned order is irrational as to fall under the constitutional condemnation of arbitrary action. The learned Government Advocate has brought to my notice the subsequent order passed by the Government in which it has laid down several conditions for grant of permission to English Medium School, as such the application of the petitioner

will have to be considered in the light of the latest order of the Government as to whether the permission is to be granted or not. It is very clear that a report of the subject Inspector, recommended to grant permission, that apart it is borne on record that the petitioner's Institution has got the strength in each standard more than 45 and as such it fully complied with the requirements of Rule 12.

The order of the 1st respondent refusing permission is highly unjust arbitrary and it is peculiarly harsh and short sighted. In the decision laid down by this court in G.N. Education Society v State of Karnataka, 1990(4) Kar. L.J. 272, it is observed that:

"the principles laid down by this court and also the Supreme Court referred above are in favour of not to refuse to grant permission or recognition to start schools with English as medium of instructions wherever such need exists and in case of religious and linguistic minority give permission and then to insist of recognition and on its failure to do-recognition."

9. As per the latest order of the Government it is very clear that the permission to English Medium Primary School is permitted to existing unauthorised schools strictly conforming to Rule 12 of Grant-in-Aid Code. As pointed out in this case the petitioner has fully complied with the subject Inspector. For the reasons stated above this writ petition is allowed with a direction to respondent No. 1 to accord permission.

10. Now I proceed to pass the order as follows:

The order passed by the 1st respondent (Annexure-A) is quashed. Writ of mandamus in the nature of direction to respondent-1 is issued directing the 1st respondent to accord permission to the petitioner to run English Medium Primary School, within two months from the date of receipt of this order. A copy of this order should be communicated to the 1st respondent forthwith. Rule made absolute.

No costs.