

(2016) 11 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 33045 of 2016 (EDN-RES)

Adi Chunchanagiri Shikshana Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 14-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Education Act, 1995 — Section 12

Citation : (2017) 1 AirKarR 285

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri. T.P. Rajendra Kumar Sungay, Advocate, for the Respondent Nos. 4 to 5; Sri. Pramodhini Kishan, HCGP, for the Respondent Nos. 1 to 3; Sri. K.N. Putte Gowda, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

B. Veerappa, J. - The petitioner/Education Trust is before this Court for a writ of certiorari to quash the notices dated 20.05.2016, vide Annexure-G and dated 27.05.2016/01.06.2016, vide Annexures-H, issued by the 4th respondent, as being violative of Article 14 of the Constitution of India and also for a writ of mandamus to the 4th respondent not to dispossess the petitioner from the campus where it is running the school under the name and style "BGS Kuvempu Primary School", Shankaraghatta, Bhadravathi Taluk, Shivamogga District, without due process of law.

2. It is the case of the petitioner that it is a Trust established with an object of establishing educational institutions, hospitals, spreading of essence of spiritualism, establish universal brotherhood and global peace. Several educational institutions including technical and medical have been started at various places all over India under the aegis of the petitioner Trust. Besides, there are more than 30 branches of the Trust which received patronage and there are more than 400 institutions starting from LKG to Post Graduation. About

10.000 needy students are being given free boarding and lodging facilities and more than 90.000 students are studying at various institutions which are being run by the petitioner Trust all over India. There are 9 institutions established in Shivamogga District. Out of 9, one institution called "BGS Kuvempu Kannada Primary school" was commenced at Kuvempu University campus, Shivamogga, in the year 2006, at the request of respondents 4 and 5, for the benefit of the children of its employees. Respondents 4 and 5 had assured the petitioner to give free accommodation to run the school, in its campus. In view of the said assurance given by the respondent University, the petitioner made an application to respondents 1 to 3 for permission to commence the school called "BGS Kuvempu Kannada Primary School" at Shankaraghatta, Bhadravathi Taluk, Shivamogga District. On such an application being filed by the petitioner, respondents 4 and 5 provided accommodation to the petitioner to commence the school, in their premises. Thereafter, respondent University wrote a letter dated 09.06.2006, vide Annexure-A, to the 3rd respondent to give permission to the petitioner to run the school in its campus. On the basis of the said letter, the 3rd respondent granted permission to commence the school, vide Annexure-B.

3. In pursuance of such correspondence between respondents 1 to 5, the respondent University handed over possession of the premises to the petitioner and the petitioner commenced the classes in the said building in the year 2006. The petitioner admitted students from LKG to 7th standard and as of today, there are about 517 students. At the time of handing over of the building to the petitioner, the respondent University had put an oral condition that the children of the University employees are to be given concession in the admission and tuition fee. Accordingly, petitioner was charging admission and tuition fee at the rate of Rs.6,500/- per annum per student to the outsiders and Rs.3,500/- per annum per student to the children of the University employees. From the academic year 2008-09, the said fees was increased from time to time and for the academic year 2015-16, the outsiders were charged at Rs.9,100/- and children of the University employees were charged Rs. 5,100/- per annum per student. Except the children of University employees, the remaining students are from rural and surrounding area. The students strength in the petitioner institution during the academic year 2016-17 is as under :

1. LKG - 43 students
2. UKG - 56 students
3. I standard - 51 students
4. II standard - 57 students
5. HI standard - 47 students
6. IV standard - 46 students
7. V standard - 57 students

8. VI standard - 59 students

9. VH standard - 48 students

4. The petitioner obtained permission from the 2nd respondent to run the school in English Medium from the academic year 2015-16, vide Annexure-D order dated 22.05.2015. When the things stood thus, respondents 4 and 5 wrote a letter dated 24.02.2016 to the petitioner to close the school situated at University campus from the year 2016-17 onwards, without giving any opportunity to the petitioner to have its say in the matter, by making certain allegations. The petitioner submitted its reply on 08.03.2016. The respondents, without considering the reply given by the petitioner and without providing an opportunity of hearing to the petitioner, took an unilateral decision on the basis of the Syndicate Resolution dated 06.01.2016 to stop admission of students to the petitioner institution for the academic year 2016-17 and to direct the petitioner to vacate the premises from the academic year 2017-18 onwards. Hence the petitioner is before this Court.

5. This Court, by an order dated 14.06.2016, granted interim stay of the operation of notices dated 20.05.2016, Annexure-G and dated 27.05.2016/01.06.2016, Annexure-H, issued by the 4th respondent until further orders.

6. The respondent Nos.4 and 5 filed objections, denied the averments made in the writ petition and contended that during the year 2005/2006 the responsible officers on behalf of the petitioner Trust visited the University with a representation that they are going to open a school in the name of "BGS Kuvempu School" at B.R. Project/Shankarghatta and that they need the co-operation of the University. They met several employees of the University with a view to assess the demand and the need for a school. In view of the opinion expressed by several employees of the University, the University welcomed the venture of the petitioner Trust for opening a school in B.R. Project/Shankaraghatta area.

7. It is the further case of the respondents that, finally the petitioner came with a permission from the Department of Education to start the school from the academic year 2006-07 in Shankaraghatta/B.R. Project area. At that time, it was made clear to the University authorities that the permission from the department to start the school was not in the campus of the University and on the contrary, it was in Shankaraghatta/B.R. Project area. After obtaining the permission from the department to start the school from the academic year 2006-07, the petitioner gave a representation that they have not been able to acquire their own campus and build their own building and that if they do not start the school from 2006-07, they would lose the permission and as such, they sought permission to start the school in the University campus in one of the vacant buildings of the University, purely on temporary basis with an assurance that at the earliest possible time, they would acquire their own land, build their own building and

shift themselves to their own premises. Based on the promise/assurance given by the petitioner, it was permitted to run the classes in the University campus in one of its vacant buildings.

8. It is the further case of the respondents that the petitioner, as a measure of goodwill, started offering some concessions to the children of the employees of the University which was also increased in a phased manner. Hence, petitioner cannot, as a matter of right continue to run its institution within the University campus in the guise of offering concession to the children of the employees of the University, and also contended that there were several complaints against the petitioner institution and permission was granted purely on temporary basis and as the same is withdrawn, petitioner cannot remain in the premises, and therefore, sought for dismissal of the writ petition.

9. Having heard the learned counsel for the parties to the lis, it is an undisputed fact that the 5th respondent addressed a letter to the 3rd respondent on 09.06.2006 informing that they have provided the required building for running LKG and UKG. It is also not in dispute that on the request made by the respondents, petitioner started school in one of the building provided by respondents 4 and 5. It is also not in dispute that the petitioner institution gave concession to the children of the University employees. There are more than 500 students studying in various classes in the school. Apart from the children of the University employees, there are students coming from adjoining areas and rural areas.

10. Though the respondents filed objections and contended that there were several allegations against the petitioner, they have not issued any show-cause notice on such allegations. The only notice issued by the respondent for the first time is on 24.02.2016 on the ground that there was no Memorandum of Understanding between the petitioner and respondents 4 and 5. The petitioner gave a detailed reply to the said notice and specifically brought to the notice of the respondents 4 and 5 that there are more than 500 students studying in the school which includes the students from rural areas and nearby areas. Therefore, requested to continue the permission to run the school.

11. It is the specific contention of the learned counsel for the petitioner that without considering the reply of the petitioner, the respondent University cannot issue notice; there are more than 500 students studying in the school and it is difficult to secure the alternative accommodation immediately and the future of more than 500 students will be put in dark. It is submitted that petitioner is making efforts to get accommodation and also is making efforts to get the land from the Government and it takes at least 10 years to get the land and put up construction and shift the school, etc. The respondents 4 and 5 without considering the request made by the petitioner, proceeded to pass the impugned order without giving an opportunity to the petitioner to putforth its case.

12. In view of the aforesaid reasons, petitioner is directed to treat Annexures-G

and H as show-cause notices and submit its objections to the respondents within a period of four weeks from the date of receipt of copy of this order. On such objections filed by the petitioner, respondents 4 and 5 are directed to consider the same and pass orders after giving an opportunity of hearing the petitioner, keeping in mind the paramount interest of the students who are studying in the petitioner institution.

13. For the reasons stated above, writ petition is disposed of. Petitioner is permitted to file its objections to notices at Annexure-G dated 20.05.2016 and Annexure-H dated 27.05.2016/01.06.2016, within a period of four weeks from the date of receipt of copy of this order. On such objection filed by the petitioner, respondents shall consider the same and pass orders in accordance with law. Till such consideration, the interim order granted by this court on 14.06.2016 shall enure to the petitioner.