

(2011) 01 KAR CK 0155

In the Karnataka High Court

Case No : Writ Petition No's. W.P. No's. 24654 of 2005, 15296 and 34192 of 2009

Air Force School Parent's Welfare Association

APPELLANT

Vs

The State of Karnataka, The Central Board of Secondary Education, I.A.F. Educational and Cultural Society, Air Force School Welfare Education Society (Awes) and The Principle Air Force School
 Ranjitha Kankaraj Vs The State of Karnataka and Others
 Parachute Regiment School Parents Association Vs The State of Karnataka

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21A, 45
Karnataka Education Act, 1983 — Section 131, 133

Citation : (2011) 2 KarLJ 363 : (2011) 2 KCCR 1320

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Kiran C.V., for Rex Lex Inc in W.P. No. 34192/2009, L. Govindaraj, in W.P. No. 24654/2005 and Ramesh Chandra, in W.P. No. 15296/2009, for the Appellant; Ashok Haranahalli, General, Keshava Reddy, GA, K.S. Malli Karjunaiah, GP for R 1, M.R. Shailendra, for R 2 and H. Jayakara Shetty, for R 3 and 4 in W.P. No. 15296/2009, W.P. No. 24654/2005 and W.P. No. 15296/2009, D.N. Nanjunda Reddy for B.M. Arun, for R 2 and 7, Aditya Sondhi, for R 4, A. Lobo, for R 6 in W.P. No. 24654/2005 and Shwetha Krishnappa, for K. Shashikiran Shetty, for R 3 in W.P. No. 15296/2009, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In all these writ petitions the Respondent - schools are situated in different parts of Karnataka and they are affiliated to Indian Council for Secondary Education (ICSE) or Central Board of Secondary Education (CBSE) syllabus. The Petitioners in W.P. No. 34192/2009 and W.P. No. 15296/2009 are the parents and parent's associations of the students studying in the Respondent schools. The parents and parent's associations are before this Court questioning

the hike in school fee made by Respondent schools under the impugned circulars, letters of intimation etc., as arbitrary, unilateral, unjust and illegal.

2. The Petitioner in W.P. No. 24654/2005 is an employee of Respondent No. 3 school controlled and managed by Respondent No. 2. The Petitioner in this petition contends that office of Principal of the Respondent school became vacant on account of retirement of the then principal on 31.05.2005. In anticipation of the vacancy of Principal post Respondent No. 2 invited applications from eligible candidates to fill the vacancy vide their notification dated 09.02.2005 as per Annexure E. The Petitioner submitted her application as per Annexure F for the post of Principal. Overlooking the claim of Petitioner, the Respondent No. 2 appointed Respondent No. 4 as the Principal. Aggrieved by the appointment of Respondent No. 4 as the Principal, the Petitioner filed a petition before Respondent No. 1 -- Government of Karnataka under Sections 131 and 133 of the Karnataka Education Act (for short "Education Act"). Respondent No. 2 entered appearance before the Government and filed objections inter alia contending that the provisions of the Education Act are not applicable to the educational institutions affiliated to ICSE or CBSE syllabus schools including Respondent No. 3 herein which is affiliated to CBSE syllabus. At that time the Petitioner filed this writ petition questioning the constitutional validity of Karnataka Act 8 of 1998 amending the Education Act excluding the schools affiliated to ICSE and CBSE syllabus from the purview of Education Act. During the pendency of the writ petition, Respondent No. 1 - Government dismissed the petition filed by the Petitioner under Sections 131 and 133 of the Education Act as not maintainable on the ground that the provisions of the Education Act are not applicable to Respondent Nos. 2 and 3 schools.

3. Heard arguments on both the side and perused the entire writ papers. On the basis of pleadings and arguments the following points will arise for my consideration.

i. Whether Section 1(iii-a) of the Karnataka Education Act as amended by Karnataka Act 8 of 1998 is discriminatory and violative of Article 14 of the Constitution of India?

ii. Whether the impugned circulars, letters of intimation etc., issued by the Respondent schools hiking the school fee are liable to be quashed as arbitrary, unilateral, illegal, unjust and unreasonable?

4. In order to decide these two points it is necessary to know what is the importance of education and the history of education in India.

The purpose of education

5. It has been said that the process of evolution from ignorance to knowledge, from knowledge to wisdom and from wisdom to understanding of consciousness takes place through education. It is the education that helps to develop the capacity, talent in human nature and to co-ordinate their expression for the

enrichment and progress of society. It is the education which teaches purity of mind, righteousness of conduct and truthfulness of soul and power to assert right. Education has its functionalism in all most all spheres of life. It is a continuous and creative process. Today education is a social as well as political necessity. Further the education has become a basic need for every human being in the present scientific world. The Education Commission popularly called as "KOTHARI COMMISSION 1964 66" in its report said, "Education as Instrument of Change. If this change on a grand scale is to be achieved without violent revolution, there is one instrument, one instrument only, that can be used, Education."

Education in ancient India

6. Indian society based on caste division and hierarchy, was known for the exclusion of the vast majority of the masses from access to formal education. The Shudras and the untouchables were deprived access to formal education. Girls of all castes were also discriminated against acquiring education. The access to formal education in the past was determined by birth. This is evident from the story of Ekalavya from the great Indian Epic Mahabharata.

Education was based on religious and caste lines. Education was imparted in the Gurukulas. The medium, of instruction was Sanskrit. Primarily the syllabus was art of administration, art of war and art of specialization in weaponry. The beneficiaries were the upper castes and privileged section of the society.

Education during British Rule

7. In 1813, the British Parliament decided to support education in India by directing the East India Company to provide finance for the revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India. In 1835 the British took a major policy decision to impart education through the medium of English. The demand for English education increased later, when the British decided to give preference to persons educated in English for employment and appointment to higher positions. In 1854 a new education policy was introduced for a coordinated system of education from the primary to university level. Through this new policy there came to be a diffusion of western natural and physical sciences, technology, medicine and the dissemination of democratic ideas of Europe. The English education introduced by the British rulers did helped the Indians and had broken the traditional education system. it had helped the Indians to know the happenings in the modern world. The education during British Rule had its own limitations and the same can be summed up as under:

- i. The education was meant only for few classes and individuals.
- ii. The type of education was helpful only for Administrative machinery of the British Rule than for socio-economic development of the Country.

- iii. The upward movement ration was very limited in different stages of education.
- iv. it was urban centered and rural population was deprived from educational opportunities.
- v. It had kept away the working class and socially backward classes. It was not accessible to them.
- vi. The type of education had evil design to break national integration and opposed to Indian nationalism.

Education in our Constitution

8. During freedom struggle it was realised that basic education as an important pre requisite for the creation of an independent and united India. The demand for free and compulsory education echoed during our freedom struggle. After India became Independent in 1947 it also became Republic in 1950 by adopting the world's biggest written constitution. However the founders of Indian Constitution did not provide the due share to the children of India by making the Right to education as fundamental right. Instead the right to education was transformed into a non-justifiable right in the Directive Principles in Article 45 which says "The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education to all children until they complete the age of fourteen years". Now by an amendment this Article 45 is substituted as "The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

In 2002 the constitution was amended by introducing Article 21A providing "every child between the ages of six to fourteen fundamental right to free and compulsory education, which the state shall provide in such manner as the state may, by law determine". The Government of India has now enacted the Right of Children to Free and Compulsory Education Act 2009.

Achievement after independence

9. According to recent statistics, the total number of Government schools imparting elementary education was 10,02,915 and the private schools was 2,43,895. The Government. Schools imparting school education constitute approximately 80% and the private schools constitute 20%. The statistics further reveals nearly 96% of the children of the country are having access to school education. The desire to ensure that children get a good education runs deep in most Indian families. Parents will sacrifice their personal needs and save to invest in their children's future. Even poor families, including the homeless with no secure shelter, find a way of sending their children to school. The achievement of Independent India in the filed of education can be summed up as under:

- a. To a large extent we have phased out the concept of class education and inculcated the concept of mass education.

- b. We have encouraged regional medium of instruction and thereby affording an opportunity for their study.
- c. We have given priority for generalisation of primary education.
- d. We have brought into force uniform education pattern all over the country in order to remove regional imbalances.
- e. We have extended the benefits of promotional schemes such as scholarships, fee exemption and reservation facilities to the downtrodden, backward classes, minorities, exploited classes, scheduled castes and scheduled tribes.
- f. We provided incentives such as free text books, stationary school uniforms, bicycles, mid-day meals, hostels etc, to increase school attendance.

Continued Problems

10. Despite all the good achievement, progress and development in the field of school education, the children of the Country are facing certain problems and challenges. A study by a non-governmental organisation says that, nearly half of children between the age of six and fourteen go to schools. A little over 1/3 rd of all children who enroll in grade one reach grade eight. It is to be presumed that the children who are out of schools are engaged as child labour, child commercial sex workers etc.

11. Today in our country the following category of institutions are imparting education to the children between six and sixteen years.

- i. The schools that are affiliated to international Boards.
- ii. The schools that are affiliated to the Indian Council for Secondary Education (ICSE) and Central Board of Secondary Education (CBSE).
- iii. The schools that are affiliated and recognized by the State Board as Private English Medium Schools.
- iv. The schools run and aided by the state.
- v. The Non Formal Education (NFE) Centers and Education Guarantee Scheme (EGS) under Sarva Shikshana Abhiyan.

The present system of education at elementary stage is promoting segregation, disparity and discrimination among children. This system of education is widening the gap between rich and poor through glaring discrimination. We are socially and economically unequal and unjust society and children are born unequal, but it is a crime to deny these children to education of equitable quality. This is opposed to constitutional imperatives like equality, equity and social justice. It is the right of every child to have access to free and good quality of education.

12. In 1949, the University Education Commission had emphasized the need for

clear knowledge of social order for which the youth is being educated. The social order sought to be created by the Constitution of India is an order based on equality and social justice. Later in 1964-66 the Education Commission in unequivocal terms recommended the common school system. The Education Commission further recommended the common school system as integral part of the programme to promote the education for poor, reduce its dual character in which have receive one type of education and have-nots another and to create a socially cohesive and egalitarian society. The Government of India in its policy document on Education in 1968, 1986 and 1992 underlined to promote social cohesive and national integration as the necessity of common school system. But this commitment to achieve common school system remained as dream even after 60 years of Republic.

On point No. 1

13. The quality of school education depends upon the content of education. The content of education is not only important from the point of view of entitlement, but is also important in the context of compulsion and nature of relationship between the State and parents regarding the child's education. Therefore, the content of education shall make every child a good member of family and community, a good citizen of the country and the world and a good human being. The social responsibility of modern schools shall be to unite the disunited world and to develop the human resources for the welfare of mankind. Several States indicate that lack of value based education is one of the causes for global problems like international terrorism, deteriorating global environment, trafficking of women and children, threat of wars etc. Therefore, the content of education shall motivate and encourage the children to think about solutions to global problems. Further the content of education shall promote values like unity, truthfulness, social responsibility, dutifulness, justice, courtesy, discipline, peace and social transformation. The content of education should be free from prejudices and incitement. In the prevailing system of education there is disparity in terms of content taught in different schools affiliated to different syllabus. Neither the Government nor any independent body evaluated the content of education taught in these schools in the context of global problems, national problems and the regional problems. It is the obligation of the State to promote the content of education which addresses the issues confronting it. The content of education cannot be left to the individual schools or group of schools or class of schools. It is the State and State alone shall discharge this constitutional obligation of promoting the content of education to achieve the basic features of our Constitution Therefore it is necessary to regulate the content of education in the schools by the State.

14. The Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, observed that "an educational institution cannot grant admission on its whims and fancies and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or

regulation that does not give the institution the rights to reject candidate who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6) though appropriate guidelines/modalities can be prescribed for holding the entrance test, in a fair manner. When the institution rejects such students, such rejection must not be whimsical or for extraneous reasons". Therefore it is necessary for the State to regulate the affairs of private unaided schools in the matter of entrance test, admission of students, reservation of seats etc. A proper and efficacious forum is to be provided for redressal of grievances in the matter of admission of students.

15. The Supreme Court in TMA Pai Foundation's case declared that every education institution is free to devise its own fee structure subject to the limitation that there can be no profitory and no capitation fee can be charged directly or indirectly or in any form. The fee so charged shall not be unreasonable and exorbitant. The fee in relation to each and every private unaided educational institution shall be determined separately keeping in view several factors, including the facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion, betterment of educational standard etc. The commercialisation of education is totally prohibited. It is the obligation of the State to prevent commercialisation and exploitation in private unaided educational institutions. When a particular private unaided educational institution is engaged in commercialization and exploitation activity, then it is to be prevented and regulated by an enactment legislated either by the Central Government or State Government. But at present there is no law regulating the fee structure adopted by the Respondent schools. There is no forum for redressal of grievances by any aggrieved party in regard to fee structure.

16. The guidelines for affiliation to ICSE and CBSE specify certain minimum requirements in the matter of appointment of teaching and non-teaching staff. But for redressal of grievances of employees who are subjected to punishment or termination of service, there is no mechanism provided or prescribed under these guidelines. Driving the aggrieved employee to a civil court for redressal of grievances is not an efficacious remedy. Therefore, the activity of private unaided schools affiliated to ICSE or CBSE syllabus required to be regulated by the State.

17. The Respondent Government of Karnataka filed an affidavit stating that the Respondent private unaided educational institution Affiliated to ICSE or CBSE syllabus are given various concessions and exemptions. Rule 19 of the Karnataka Land Grant Rules, 1969 provides that the Deputy Commissioner may lease, the lands to the educational institutions at concessional rates. Section 1.1.0 of the Karnataka Municipal Corporation Act, 1976 provides exemption of property tax both on lands and buildings belonging to private unaided educational institutions. The electricity department is also extending the concession to the private unaided educational institutions as per the Electric Power Tariff, 2009. Further

the Motor Vehicles run by the private unaided educational institutions are given concession under the Karnataka Motor Vehicles Taxation Act and the Rules. When the State Government is providing various concessions and exemptions to the Respondent - private unaided schools, then there is no reason as to why they are excluded from the operation of the provisions of the Karnataka Education Act.

18. The Supreme Court in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, held that "law made by parliament or legislature can be struck down by the Courts, on two grounds alone viz. (i) lack of legislative competence and (ii) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision." Therefore if the law enacted by the Legislature is found to be violative of any of the Articles of the Constitution then this Court is empowered to strike down the law. It is contended that the impugned Act 8 of 1998 inserting Section 1(iii-a) is discriminatory and violative of Article 14 of the Constitution.

19. The Supreme Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, held "Article 14 of the Constitution forbids the State to deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 14 however, does not forbid classification. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the territory of India irrespective of differences of circumstances. It only means that all persons similarly circumstanced should be treated alike and there should be no discrimination between one person and another as regards the subject matter of legislation, their position is substantially the same. By the process of classification, the State has the power to determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject. The classification to be valid, however, must not be arbitrary but must be rational. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable nexus or relation to the object of the legislation. In order to pass the test, two conditions have to be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) the differentia must have a rational nexus or relation to the object sought to be achieved by the legislation.

20. Keeping the law laid down by the Apex Court in the decisions referred to supra, it is necessary to examine the fact situation in the present case. The Education Act came into effect on 20.1.1995. Section 1 of the Act reads as under:

1. Short title, extent, application and commencement -

(1) This Act may be called the Karnataka Education Act, 1983.

(2) It extends to the whole of the State of Karnataka.

(3) It extends to all educational institutions and tutorial institutions in the State

except, -

(i)

(ii)

(iii)

At the commencement in 1995 the Education Act was made applicable to all the educational institutions including the private unaided schools affiliated to ICSE and CBSE syllabus in the State of Karnataka as specified in Section 1 of the Act. By Act 8 of 1998 Sub-section (iii-a) was inserted in Section 1 and the same reads as:

(iii-a) Educational Institutions affiliated to or recognized by the Council of Indian School Certificate Examination or Central Board of Secondary Education respectively By this amendment to Section 1 the schools affiliated to ICSE and CBSE syllabus are excluded from the purview of Education Act.

21. The private unaided educational institutions affiliated to the State syllabus are governed by the provisions of Education Act. But the private unaided schools affiliated to ICSE or CBSE syllabus are excluded from the application of the provisions of Education Act. ICSE is an autonomous self-financing body and CBSE is a registered society. Both ICSE and CBSE are not established or constituted by any Act. Both these schools are private unaided schools and they are deriving various concessions and exemptions from the State Government. Merely because the Respondent schools are affiliated to the ICSE or CBSE syllabus they are excluded from the application of provisions of Education Act, by amendment Act of 1998. This differentia between private unaided educational institution affiliated to the State syllabus and Respondent - schools affiliated to ICSE or CBSE syllabus hap no rational nexus. On the basis of affiliation to a particular syllabus the said school do not become different class from others. Therefore the impugned amendment is violative of Article 14 of the Constitution.

22. The statement of objects and reasons of Education Act states that "It is considered necessary to provide for the planned development of educational institution, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation discipline and control over educational institution is the State with a view to fostering the harmonious development of the mental and physical facilities of students and cultivating a scientific and secular outlook through education". Under the impugned Act 8 of 1998 the schools affiliated to ICSE or CBSE syllabus are excluded from the purview of Education Act. By this exclusion the State Government cannot regulate the admission of students, fee structure, service condition of the employees etc., in the schools affiliated to ICSE or CBSE syllabus. There is no Central Act or any other statutory body to regulate these schools. Thus these schools are autonomous institutions. But these institutions arc enjoying various concessions and exemptions from the State Government.

Thus the impugned amendment. Act 8 of 1998 is contrary to the objects sought to be achieved under the Education Act. Therefore the impugned insertion of Section 1(iii-a) in the Education Act is violative of Article 14 of the Constitution of India.

23. Learned Counsel for the Respondent school contends that they have transferred Respondent. No. 4 - Principal and therefore the cause of action in this writ petition will not survive for consideration. Placing reliance on a judgment of the Supreme Court in the case of Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, learned Counsel for the Respondents contend, that the Court should not undertake to decide an issue unless it is living between the parties. I decline to accept this contention of the learned Counsel for the Respondent. Firstly, the Supreme Court in Dhartipakar Madan Lal Agarwal's case decided the matter relating to election arising out of Representation of the People Act but in the instant case the question of constitutional validity of Section 1(iii-a) of the Education Act is involved; secondly, the facts before the Supreme Court in Dhartipakar Madan Lal Agarwal's case are entirely different from the facts on hand; thirdly, even after transferring Respondent No. 4 as Principal of the Respondent school the grievance of the Petitioner still survives. Further the larger issue involved in these cases requires consideration of constitutional validity of Section 1(iii-a) of the Education Act.

On point No. 2

24. Under the impugned circulars, letters of intimations etc., the Respondent schools have hiked the school fee. The Respondents contend that the hike in school fee is commensurate with the expenditure they have incurred. On the other hand the Petitioners contend that the hike in school fee is exorbitant, arbitrary and profit making. The hike in the school fee under the impugned circulars and letters of intimation are not based on any Central Act or Karnataka Education Act. The Respondent schools have not placed before the Court any methodology or scheme adopted by them for increasing the fee. The hike in fee is not examined and certified by any Statutory Committee or Board or Body to the effect that the hike in fee is commensurate with the expenditure. A school may incur expenses more than what is needed and essential and still contend that the hike in fee is commensurate with expenditure. For example a school requires only one play ground but they may maintain three or four play grounds and charge more fee. A school may appoint more number of employees than what is essential, incur more expenses and contend that the hike in fee is commensurate with the expenditure. At present there is no efficacious forum to resolve the disputes relating to hike in fee. The resolution of disputes is an essential element of social peace and harmony.

25. The Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999 specifies the manner in which a private unaided primary, secondary and pre-university institution to fix the school fee. Further the Karnataka Educational Institutions (Classification, Regulation etc.) Rules, 1995

provides for an aggrieved parent to question the fixation of fee before District Level Education Authority. Admittedly the impugned hike in fee is not in accordance with these Rules. Therefore the impugned circulars and letters of communication increasing the school fee are liable to be quashed.

26. However, the Respondent schools are at liberty to fix the school fee in accordance with the Education Act and the Rules. If the Petitioners are aggrieved by the action of Respondent schools, then they are at liberty to question the same before appropriate authority under the Rules.

27. For the reasons stated above the following;

ORDER

i) The writ petitions are hereby allowed.

ii) Insertion of Section 1 (iii-a) in the Karnataka Education Act as amended by Karnataka Act 8 of 1998 is hereby quashed as discriminatory and violative of Article 14 of the Constitution of India.

in) The impugned circulars, letters of communication issued by the Respondent schools are hereby quashed.

iv) Liberty is reserved to the Respondent schools to fix the school fee in accordance with the Karnataka Education Act and the Rules.

v) Consequently the order of the Government dismissing the petition filed by the Petitioner in W.P. No. 24654/2005 u/s 131 and 133 of the Karnataka Education Act is hereby quashed. The Respondent Government shall consider the claim of this Petitioner in accordance with law.

vi) Ordered accordingly.