
(1990) 07 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 12729 of 1989

Al Ameen Charitable Fund Trust

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 18-07-1990

Acts Referred:

Karnataka State Universities Act, 1976 — Section 53

Citation : (1991) 4 KarLJ 374

Hon'ble Judges : S. Rajendra Babu, J

Judgement

1. The petitioner in this case is a trust established for the purpose of spreading education principally for the benefit of muslims and claims to be a minority institution protected under Article 30 of the Constitution. Petitioner has established a medical college at Bijapur. On finding that there was need for establishing a dental college for the people hailing from that area and in particular the muslims, the petitioner filed an application under Section 53(2) of the Karnataka State Universities Act, 1976 (hereinafter referred to as "the Act") for grant of affiliation for the academic year 1986-87 for a college imparting education in dental medicine at Bijapur within the time provided under the Act after complying with other formalities like paying fee etc. The syndicate of the university appointed a committee for local inquiry. The committee inspected the proposed college at Bijapur on 23-1-1986 and reported that Bijapur area needs a dental college. It however found certain requirements had not been met and therefore stated that if the university were to feel that affiliation should be granted the petitioner must fulfill certain conditions as stated in the report. A committee of the academic council considered the application along with the report of the local inquiry committee at Item No. 19 in its meeting and by a resolution declined to recommend fresh affiliation to the petitioner-college. The academic council considered this subject of application of petitioner's proposed dental college at Item No. 30 and they resolved to accept the views of committee of academic council as was also done by the syndicate by its resolution 53 in the meeting held on 22-2-1986. The matter was thereafter referred to the

Government under Section 53(5) of the Act but the Government has not taken any action till today. In the circumstances, the petitioner has sought, inter alia, for the relief of quashing the proceedings of the syndicate of the 2nd respondent-university at resolution No. 53, dated 22-2-1986 as being illegal and void and to issue a direction to the Government to grant affiliation to the petitioner-college for the academic year 1989-90 onwards.

2. The second respondent has filed a statement of objections narrating the manner in which the syndicate has dealt with this question. Its case is that the local inquiry committee was not unequivocal in its recommendation in the matter of granting affiliation to the petitioner-college, but has made clear that if the university felt that affiliation should be granted fulfillment of the conditions laid down in the report of the local inquiry committee and those mentioned at Item No. 17 of the pro forma should be mandatory before the actual admission of students to the first year B.D.S. course. It was also suggested by that committee that the petitioner should embark upon the dental college project only after completing its medical college project fulfilling the norms set by the Medical Council of India without which there would be a serious compromise in the quality of dental education and bearing these aspects in mind the university considered the question of affiliation. It was also stated in the statement of objections that the syndicate accepted recommendation made by the academic council after taking into consideration the report of the local inquiry committee in its entirety and thus there is full compliance with Section 53(4)(c) of the Act.

3. The learned counsel for the petitioner submitted that though at the time when the petitioner had applied for grant of affiliation the amendment of the Act by Karnataka Act 23 of 1986 had not come into force. Even so as the Government has to consider the matter now, the same will have to be done in accordance with provisions of the Act as amended by Karnataka Act 23 of 1986. On this point there is no dispute between the parties.

4. On behalf of the petitioner it was submitted that under Section 53(4)(c) of the Act after receipt of the report by the local inquiry committee and making such further inquiry as may be necessary, the syndicate has to record its opinion after consulting the academic council on the question whether the application should be granted or refused either in whole or in part, stating the result of any inquiry referred to in the earlier clauses of the said section. It is submitted that the concept of consultation has been subject-matter of judicial interpretation by courts and when a body is asked to consult another body there will be meeting of minds of the two bodies and there must be due deliberation by the parties concerned and they must make their points of view known to each other, discuss and examine the relative merit of their views. If one party makes a proposal to the other who has a counter proposal which is communicated to the proposer the direction to give effect to the counter proposal without anything more will not amount to consultation and in this context relied upon decisions in *R. Pushpam and Another v State of Madras and Another*, AIR 1953 Madras 392, *Chandra*

Mohan v State of Uttar Pradesh and Others, AIR 1966 SC 1987, Chandramouleshwar Prasad v The Patna High Court and Others, AIR 1970 SC 370 and Narayana Sankaran Mooss v State of Kerala and Another, AIR 1974 SC 175. On the basis of these decisions it was contended that even a bare perusal of the resolution of the university will disclose that its resolution does not come up to the standard set forth above and therefore the resolution of the syndicate does not conform to the requirements of Section 53(4)(c) of the Act and in the eye of law there is no such formation of opinion at all which has resulted after the consultation with the academic council on the question of affiliation as stated in the said section and hence it was submitted that the resolution is non-est and needs to be quashed. It was further contended that the resolution itself should disclose everything it should contain and by statement of objections the same cannot be explained or supplemented.

5. On these two contentions it was submitted on behalf of the second respondent that what the university has done in the statement of objections is to merely explain what is contained in the resolution. It does not add to or detract from the resolution made. Reading the whole of the resolution, it is submitted, it is clear that there was due application of mind to the report of the local inquiry committee, the resolution of the committee of academic council and the resolution of the academic council and therefore when they did not disagree with the views of any of these bodies the question of recording a separate opinion did not arise and that is what is sought to be explained in the course of the statement of objections. But I need not further examine this aspect of the matter inasmuch as the decision in the present case turns on another aspect of the matter.

6. Affiliation to colleges will have to be granted as provided in Section 53 of the Act. The colleges within the university area on satisfying the condition mentioned in the said section may be affiliated to the university as affiliated colleges by the university on the recommendations made by the State Government. The procedure for affiliation is as provided in Section 53(4) of the Act. On receipt of an application under Section 53(2) of the Act the syndicate directs a local inquiry by a committee. The syndicate considers that report under Section 53(4)(a) or after other inquiry as contemplated under sub-clause (b) thereof in consultation with the academic council. So, the decision is ultimately taken is the cumulative effect of deliberation of local inquiry committee, the academic council, the syndicate and the State Government, and so such a decision taken is an institutional decision and until a final view is expressed thereof there is no cause of action at all for the petitioner to urge that any one of the earlier stages of consideration of the same had been vitiated for that aspect of the matter may also be taken note of by any of the authorities while finally deciding the matter. To consider the same at an intermediate stage of the proceedings by this Court may not be appropriate. In the present case, admittedly the 1st respondent has not made its recommendation to the university as provided under Section 53(1) and (5) or (6) of the Act. Hence I decline to examine this aspect of the matter.

7. Now it becomes necessary to consider whether in this case a writ of mandamus could be issued to the Government to consider the case of the petitioner for grant of affiliation to the proposed dental college. On the scope of Section 53 of the Act no objection was raised by the respondents that a mandamus cannot be issued to the Government on the ground that the same is within the discretion of the Government or university to grant affiliation or not in view of clear position in law that when a power is conferred upon an authority coupled with a duty a writ of mandamus would lie. However, it was contended by the learned counsel for the respondents that the petitioner having made an application for affiliation for the academic year 1986-87 it would not be proper for this Court to give a direction to the Government to direct the respondents to consider the same inasmuch as clock cannot be setback; the duration for which affiliation is sought for having expired it would be futile to issue a writ in that regard. It was also contended that for the next year also similar decision had been taken by the syndicate hence this court need not direct the respondents to consider the application filed by petitioner for previous year. In answer to this stand of the respondents, the learned counsel for the petitioner contended that the respondents cannot make their own in action as the basis to defeat a legitimate claim of the petitioner as has been held by this court in *Indian Medical Association v State of Karnataka and Others*, 1985(2) Kar. L.J. 1: ILR 1985 Kar. 1202 and therefore this court can certainly direct the university to consider the case of the petitioner after making such further inquiry as may be necessary as provided under Section 53(5) of the Act.

8. Section 53(5) and (6) of the Act are relevant for the present purpose which are set out hereunder for proper appreciation of the matter:

"53(5) The Registrar shall, within such time as the Government may from time to time specify submit the application and all proceedings, if any, of the academic council and of the syndicate relating thereto to the State Government which after such inquiry as may appear to it to be necessary, shall make their recommendations for the grant of the application or any part thereof or refuse the application or any part thereof and the university shall issue orders accordingly."

"53(6) Where the application or any part thereof is granted, the order of the university shall specify the courses of instruction in respect of which and the period for which the college is affiliated and where the application or any part thereof is refused by the State Government or the university, the grounds of such refusal shall be stated:

Provided that on the recommendation of the State Government, permanent affiliation may be granted to a college which was affiliated continuously for a period not less than five years and fulfilled all the conditions of affiliation and attained the academic and administrative standards prescribed by the university from time to time."

When the Registrar submits the application, the proceedings of the academic council and of the syndicate to the State Government, the Government can still hold further enquiry and make its recommendation for grant of the application or any part thereof and as provided under sub-section (6) thereof while such application is granted the Government can fix the period for which such affiliation is granted. It is, therefore, clear that when the period for which the college could be affiliated could be fixed by the Government even though an application had been filed for a different period, after making such enquiry as may be necessary and after ascertaining the views of the university bodies in that regard. It is open to the Government to recommend affiliation for a period for which the applicant may not have applied because the proviso to sub-section (6) makes it clear that affiliation in each year is not a unit by itself but has cumulative effect on the permanent affiliation to be granted ultimately. Thus, on the question of affiliation it would not be appropriate to think that each year is a unit by itself to be examined in water tight compartment and if in that year a decision is not taken it is open to the Government to consider that application and direct the university after due inquiry to grant affiliation for a later period. Similarly any refusal in another year may also be relevant in considering this question. Thus the refusal of syndicate to recommend affiliation for another year also could be taken note of by the Government. In addition to the reasons stated in Indian Medical Association's case (supra) for the reasons aforesaid I think the application filed by the petitioner even though for an earlier period can be considered for a later period after calling for such information or holding such enquiry as the Government deems fit and thereafter make its recommendations.

9. In the circumstances, the appropriate relief to be granted to the petitioner would be to direct the respondents to dispose off the application filed by the petitioner for grant of affiliation for the year 1986-87 for any later period the Government may deem fit after taking into consideration the present state of affairs and holding such enquiry as it may think necessary in consultation with the university bodies as provided under the Act and in accordance with law, in the light of the observations made above bearing in mind the contentions raised in this petition and the defence of the university, within a period of three months from today. Rule made absolute accordingly.