

(1996) 01 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 40522 of 1995

Amar Giri Polytechnic run by M/s. Maruthi Education and
Seva Trust (Regd.)

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Citation : AIR 1996 Kar 291 : (1996) 7 KarLJ 237

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Madhusudan R. Naik, for the Appellant; N.B. Vishwanath, Govt.
Pleader, for the Respondent

Judgement

1. The petitioner in this case originally approached this Court with a very limited grievance. According to them, the parent body which is running a polytechnic namely, Maruthi Education and Seva Trust had applied to the Government for permission to shift the institution from Arsikere to Bangalore. It is their case that the matter was pending before the concerned authorities and that at one stage they have to even move this Court for appropriate directions. We are concerned with what had happened in the month of November, 1995 when an officer of the Education Department had communicated to the petitioner that as a special case, the 15 students would be permitted to take the ensuing examinations. The Secretary of the Board of Technical Education to whom the directions were communicated sent a reply dated 14-11-1995 pointing out to the petitioner that they should comply with three conditions none of which are of any consequence. The examinations were to commence on the very next day i.e. 15-11-1995 which this officer was aware of and to my mind irrespective of the other technicalities, the predominant consideration could have been that he could have called upon the petitioner, even if he wanted that petitioner to comply with the various requirements, that they should have ensured that these were done without preventing the students from missing the examinations. As a result of the reply dated 14-11-1995, the petitioner's students missed the examinations and they

were forced to move this Court for urgent orders which they obtained. The students accordingly completed their remaining papers except the first three which they had missed.

2. The respondents have now filed their reply and they have raised several issues including the fact that the starting of the institution at Bangalore required not only the sanction of the State Government but also the permission of the AICTE at Delhi and that according to them, up to the present point of time that permission has not been obtained. Their contention therefore is that these are the primary requirements which must have been firstly complied with after which alone the institution can be permitted to start functioning and in the absence of which, it is contended that no recognition can be given to the institution for purposes of permitting its students to appear at the examinations. The matter is further complicated because the petitioner's learned advocate informs me that subsequently the Government has granted the requisite permission for the transfer. He also states that AICTE desires to verify whether these formalities have been completed and that the necessary communication has also gone to the body and he submits that in this back ground the petitioners have every reason to explain that the sanction from that authority will also be obtained. The learned Government Advocate points out and perhaps rightly that this subsequently obtained permission or sanction cannot alter the position that is earlier obtained.

3. It is in the aforesaid background that the petitioner's learned Advocate submits that he is restricting his prayer only to two aspects, the first being that since the Secretary of the Board on technical and unsustainable grounds had prevented the students from taking their three papers that it is only fair that the Board be directed to hold a special examination in these three papers for the students concerned. The second submission is that apart from the theory papers, certain practical examinations are required to be conducted and that the Board should be directed to conduct these practical examinations so that the interim order passed by this Court can be given full effect to in true spirit. The respondents have raised their objections to following this procedure in so far as they maintain that unless and until the institution is duly recognised that they are not obliged to conduct any of these examinations.

4. I do concede that in the facts and circumstances of the case, the State Government ought to have followed the correct procedure of deciding the petitioner's application once and for all. It was wrong that the Officer has issued letters on 8-11-1995 and 10-11-1995 giving anticipatory direction which have no force of law whatsoever. It is most unfortunate that the Education Department and the State Government is functioning in this fashion. The present case is one more glaring instance where a similar situation prevails and this Court needs to point out having regard to such (sic) act on the part of the education department, that it has become virtually an encouragement to all those persons who have decided to set up institutions without following the procedure and the

rules and thereafter the students are projected as the victims and requests made that the poor students and their poor parents should be sympathetically considered. It is undoubtedly true that the Courts in all these instances have looked at the predominant consideration, namely, the interest of the students and has also taken note of the fact that in most of the cases, the students cannot be Warned because they are totally unaware of the legal status of these institutions, the manner in which they are functioning. Because of the concessions that are made in case after case, it is taken as a total licence for the purpose of illegalities and once the concessions are made in favour of the students and the persons running these institutions and the authorities who are acting in partnership with them both go free. In these cases, the Courts will have to seriously consider directing appropriate action against all the culprits in cases of this nature. Even where regulations are promulgated for such action, subsequently decisions are taken by the State Govt. to nullify those very regulations. This Court has come across the further situation that regulations are promulgated to check such malpractices where regulations are not being implemented. This is the sum total of the performance of the Education Department which one needs to record with a degree of concern and as also a degree of alarm "and a degree of regret because it is in such priority areas, as in the field of education that such a situation prevails. The same argument has been canvassed in the present case that the students will be put to hardship if they are not virtually given some relief in order to ensure . that they are able to complete the course. In doing so, I am taking cognizance of the fact that in the meanwhile approval has been granted for the shifting of the institution to Bangalore and that also the correspondence indicates that the Council at Delhi is in the process of finalising its decision in the matter, I have also recorded that irrespective of the back ground, the Secretary of the Board ought not to have refused to permit the students to appear in Nov. 1995 and in view of the fact that the Board has wrongly done this, it is directed that the Board shall hold a special examination in respect of the three papers in which the students were prevented from appearing without insisting on any separate or fresh fees being paid for these three papers. The same fees that held good for the last examination will hold good. The Board is also directed consequently to hold and complete the practical examinations that were yet to be completed in respect of this batch of students, within an outer limit of two months.

5. It is necessary for this Court to observe that since the respondents have raised and to my mind with considerable justification the fact that under normal circumstances, the approval ought to have been first obtained before admitting the students that the petitioner, shall ensure that all permissions and approvals are first completed by them if they desire to admit any further students to the courses that are being conducted which shall be condition precedent.

6. Petition accordingly succeeds to this extent and stands disposed of.

No order as to costs.

7. Petition allowed.