

(2014) 04 KAR CK 0109

In the Karnataka High Court

Case No : Writ Petition Nos. 36541 and 22030 of 2013 (EDN-RES)

Bapuji Education Society and Bapuji Polytechnic College

APPELLANT

Vs

The State of Karnataka
 HMS Education Trust (r) Vs
The State of Karnataka

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 25, 26, 29(1), 30

Citation : (2014) 3 AKR 774 : (2014) 3 KCCR 1906

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Prabhuling K. Navadagi, Advocate for the Appellant; B. Veerappa, Additional Government Advocate, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of by this common order. The petitions are brought on behalf of Polytechnic colleges by their respective managements. Except, the petitioner in WP 36541/2013, the other petitioners claim as minority institutions, managed by bodies composed of members belonging to the Muslim community.

It is the case of the petitioners that they have till now had the discretion to have their own seat selection process, but with due regard to maintaining inter se merit among the candidates.

The petitioners, along with other Polytechnic colleges, are said to have made a representation to the State Government dated 23.1.2012, through the Karnataka Aided Polytechnic Association, pleading their case for increasing the grant-in-aid, which till then was 85%, to 100%. Accepting the hardship, as canvassed by the petitioners, the State government had passed an order dated 16.10.2012, increasing the Grant-in-aid from 85% to 100%, but this was with a rider that all the seats of all the Institutions shall be filled up by the Government itself holding

counselling for admissions. This was a modification of the existing arrangement, of the seat sharing pattern by each of the institutions with the Government, of 80:20, with the petitioner and other such institutions being given the discretion of selection of 20 in every 100 students admitted to the institutions. It is the present condition of 100% selection reserved to the Government that is sought to be questioned in these petitions.

2. The learned counsel for the petitioners Shri Prabhuling K. Navadgi contends that the unreasonableness of the condition imposed is patent and is directly in conflict with the settled legal position as declared by the Apex Court-that the right to establish educational institutions would also include the right to administer an institution and for the managements to have their own selection process, without any interference by the State Government. In this regard, the institutions are certainly required to comply with the twin requirements of transparency and ensuring the maintenance of inter-se merit in selection of the candidates for admission.

It is contended that a "quid pro quo" as it were, that is apparently sought to be exacted by the State Government, in enhancing the Grant-in-aid, is hence unconstitutional and unjust.

3. The learned Government Advocate, Shri B. Veerappa, on the other hand, contends that the imposition of conditions under the order dated 16.10.2012 can neither be characterized as unconstitutional or unjust. It is pointed out that the Rules prescribed under the Grant-in-aid Code are of wide import and the imposition by the State government that the selection of the students for admission shall be entirely at the discretion of the State government, is certainly in conformity with the requirement of ensuring transparency by the respective institutions, as is admittedly the law laid down by the Supreme Court. It is emphasized that the action of the State Government is completely in consonance with the Rules. It is also contended that the object of the State is to ensure that the merited and the weaker sections of Society are ensured a level playing field and nothing more and hence, there is no injustice or injury caused to the petitioners by virtue of the impugned Order. It is also pointed out that apart from the present petitioners, no other institutions, even though there are numerous others, who are similarly placed, have complained of any injury or illegality.

It is vehemently contended that at the meeting convened to address the grievance of the petitioners and preceding fee impugned Order, it was agreed by the petitioners and all other institutions that the State Government could have the privilege of total selection-which however, was not recorded in writing, and that the petitioners are seeking to take advantage of that lapse on the part of the concerned in the State government. It is urged that if the petitioners seek to retain the right to select any proportion of the seats, it would require the State to proportionately reduce the Grant-in-aid.

It is also contended that 50% of the tuition fee collected is refunded to the

institution and hence, the hardship pleaded is not as onerous as sought to be made out.

It is contended that the petitioners have no vested right to seek relaxation or reduction of the Government quota seats. The State government in providing the Grant-in-aid certainly has the power to monitor the management of the institutions. Reliance is placed on a decision of the Apex Court in *Association of Management of Private Colleges Vs. All India Council for Technical Education and Others*, .

It is emphasized that the Association of Polytechnic Institutions, including the petitioners, had specifically agreed that in the event of increase of the Grant-in-aid to 100%, the Government would have complete discretion over the seat selection and the present petition seeking the earlier arrangement be continued in maintaining a 80:20 proportion, is contrary to the agreement arrived at by consensus.

4. By way of reply, it is contended that it is incorrect on the part of the State to contend that the petitioners had agreed that on an increase in the Grant-in-aid, the Government could exercise its discretion over 100% of the seat selection. The Rules of the Grant-in-aid do not contemplate any such reciprocity. Further, that the aid is provided only to cover the Salary of the teaching staff and not all and every expense involved in running the institution. And that the reliance sought to be placed on the decision in *Adaikalmath*, *supra*, is inexplicable, as it merely reiterates the settled legal position in favour of the Institutions in the matter of fee and extent of control over the managements by the State. The questions that arise for consideration in the light of the above contentions are:

- a. Whether there is an agreement, under which, the petitioners had conferred the discretion in the selection of seats entirely on the State government.
- b. Whether the condition imposed under the impugned order, that on the increase of the Grant-in-aid, the proportion of seat sharing would correspondingly stand varied, is relatable to any Rule or Regulation.
- c. Whether the imposition under the impugned order can be sustained, when the petitioners" resist the same as being unconstitutional and not having been agreed upon.

As it was the vehement contention of the learned Government Advocate that the petitioners and others had tacitly agreed to confer the complete discretion in the selection of seats on the Government, and as it was equally vehemently denied by the learned counsel for the petitioners, the record pertaining to the meeting, at which such a pact had been arrived at, was summoned and on examination it was found that there was no such agreement recorded. Hence, the first point for consideration would have to be answered in the negative.

In so far as the second point is concerned, a perusal of the Grant-in-aid Code of Technical Education in respect of affiliated institutions under private management

and the Rules there under, it is evident that Grant-in-aid cannot be claimed as a matter of right. The Government has the right to refuse, reduce or withdraw any grant at its discretion. The managements of the Institutions would be bound by conditions imposed with regard to the admission of students to Polytechnic colleges.

The amount of yearly grant shall not exceed 85% of the amount exceeding the approved maintenance expenditure-over and above the "Direct Receipts". The items of expenditure that are to be treated as "Approved Maintenance Expenditure" and items receipts which are to be considered as "Direct Receipts" are detailed in Appendix-I to the Rules.. The same is extracted hereunder for ready reference.

APPENDIX-I

(Rule 17)

Items of "Direct Receipts" and "Approved Maintenance Expenditure" Items of direct receipts (a) + (b)

(a) Fees and Fines:

i. Tuition fees-

ii. Tutorial fees-

at standard rates prescribed by Government for calculation of grant-in-aid. While calculating the receipts from these fees the total strength of students as on rolls has to be taken into account.

iii. Recoveries from students.

iv. Medical Examination Fees.

v. Admission and Readmission fees

vi. Examination fee (Terminal Examinations)

vii. Transfer certificate fees

viii. Fees from Ex-students.

ix. Any other fees for the Institution proper

x. Fines (Penal fees)

xi. Excess of fees vide note below rule 16 (b) (V)

(b) Other miscellaneous receipts.

i. Any charges collected from the students for specific services (e.g., Cycle stand charges, etc.,)

ii. Rent recovered in respect of any of the Institution buildings.

(excluding Hostel, Gymkhana and residential quarters)

iii. Sales and disposals proceeds.

iv. Any other miscellaneous receipts for the maintenance of the Institution.

Items of approved expenditure:-

1. Actual salary of teaching, clerical and inferior staff paid or salary at Government rates whichever is less.

2. Allowances of special nature such as Dearness Allowances. H.R.A., etc., at the Government rates or management rates whichever are lower.

3. Travelling Allowances of the members of staff of the Institution in connection with the work of the colleges in accordance with specific rules as approved by the Department not exceeding the rates admissible as per Karnataka Civil Services Rules subject to annual limit of Colleges Rs. 5,000/-, Polytechnic, Rs. 2,500/-.

4. Management contribution for staff Provident Fund schemes approved by Government.

5. Rents of Institution Buildings.

(a) Rent including ground rent paid to the landlord for Institution Buildings if the Institution does not own its building.

(b) Clause (b) under item (5) of Appendix-I is deleted vide Government Order No. ED 15 TGL 70, dated 13th March 1970.

(c) In respect of the buildings constructed or purchased from funds as grants from Government, Government of India, Local authority or from earmarked donation:-

i. Municipal and other taxes paid on Institution Buildings.

ii. Contribution towards the Depreciation Fund subject to a maximum of 2 percent of the actual cost of construction of that portion of Buildings.

iii. Actual maintenance and repairs including special repair charges to a maximum of 3 percent of the Capital cost of institution buildings.

6. Contingencies:

i. Light, water and power charges.

ii. Printing and Stationery.

iii. Gas.

iv. Postage, Telegram, Telephone charges.

v. Advertisement charges.

vi. Clothing to servants on prescribed scale not exceeding Government scale.

- vii. Audit fees (at rates approved by competent authority)
- viii. Affiliation fees.
- ix. Repairs to furniture, Typewriters and Office equipment
- x. Other Miscellaneous items.

*Total expenditure on Contingent items to be limited to:-

Colleges,.....Rs. 30,000

Polytechnics.....Rs. 10,000

7. Interest of Loans. Sanctioned by Government.

8. Insurance premium on property up to Rs. 1,000 per year.

9. Expenditure on tours or excursions at prescribed rates for the Governments Institutions subject to the maximum of Rs. 5,000/- per annum per Colleges and Rs. 3,000/- for Polytechnics.

10. Expenditure on consumable articles for Laboratories and Workshops subject to ceiling limits as under:-

Colleges Rs. 40,000.

Polytechnics Rs. 15,000

Though it has not been pleaded, it was brought to the attention of the court that the need for enhancement of the Grant-in-aid arose as the University Grants Commission had hiked the salaries payable to the teaching staff and the same was an unexpected burden, which most institutions were unable to bear. It is for this reason that the State government had readily agreed to foot the bill. This circumstance is not denied by the State.

It cannot be doubted that the Government has reserved to itself the absolute power to bring to heel any institution that ventures to avail of the Grant-in-aid, to abide by all and any conditions imposed. That power is however, circumscribed by the settled legal principles as laid down by the Apex Court in the following decisions.

a. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , it is held as follows:

72. Once aid is granted to a private professional educational institution, the government or the state agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The state, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the state. The state would also be under an obligation to protect the interest of the teaching and non-

teaching staff In many states, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The state, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent mal-administration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the Management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by government or as a wholly owned and controlled government institution and interfere with Constitution of the governing bodies or thrusting the staff without reference to Management.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it subject to the fulfillment of the requisite criteria, and the state gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the state cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority

status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

b. In *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, it is observed as follows:

123. Conditions which can normally be permitted to be imposed on the educational institutions receiving the grant must be related to the proper utilization of the grant and fulfilment of the objectives of the grant without diluting the minority status of the educational institution, as held in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*. As aided institutions are not before us and we are not called upon to deal with their cases, we leave the discussion at that only

c) In the case of *Christian Medical College Vellore and Others Vs. Union of India and Others*, it is held as follows:

157. These questions have already been considered and decided in the *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, wherein, it was categorically held that the right to admit students being an essential facet of the right of a private medical institution, and, in particular, minority institutions which were unaided, non-capitation fee educational institutions, so long as the process of admission to such institutions was transparent and merit was adequately taken care of, such right could not be interfered with. Even with regard to aided minority educational institutions it was indicated that such institutions would also have the same right to admit students belonging to their community, but, at the same time, it should also admit a reasonable number of non-minority students which has been referred to as the "sprinkling effect" in the *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, .

158. The rights of private individuals to establish and administer educational institutions under Article 19(1)(g) of the Constitution are now well-established and do not require further elucidation. The rights of unaided and aided religious and linguistic minorities to establish and administer educational institutions of their choice under Article 19(1)(g), read with Article 30 of the Constitution, have come to be crystallised in the various decisions of this Court referred to hereinabove, which have settled the law that the right to admit students in the different educational and medical institutions is an integral part of the right to administer and cannot be interfered with except in cases of maladministration or lack of transparency. The impugned Regulations, which are in the nature of delegated legislation, will have to make way for the Constitutional provisions. The freedom and rights guaranteed under Articles 19(1)(g), 25, 26 and 30 of the Constitution to all citizens to practise any trade or profession and to religious minorities to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health and to the other provisions of Part III of the Constitution, and further to maintain institutions for

religious and charitable purposes as guaranteed under Articles 25 and 26 of the Constitution, read with the rights guaranteed under Article 30 of the Constitution, are also well-established by various pronouncements of this Court. Over and above the aforesaid freedoms and rights is the right of citizens having a distinct language, script or culture of their own, to conserve the same under Article 29(1) of the Constitution.

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166. One of the eleven questions which came to be considered by the eleven-Judge Bench in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , namely, Question 5(a), was whether the minority's rights to establish and administer educational institutions of their choice would include the procedure and method of admission and selection of students. While dealing with one of the five issues reformulated by the Chief Justice as to whether there can be government regulations in case of private institutions and, if so, to what extent, it was indicated in the majority judgment that the right to establish and administer broadly comprises various rights, including the right to admit students in regard to private unaided non-minority educational institutions. It was further observed that, although, the right to establish an educational institution can be regulated, such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management, and that the fixing of a rigid fee structure, dictating the formation and composition of the governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions, would be unacceptable restrictions.

The above views would clearly indicate that the apex court has thought it fit to draw the lines, by which the State is bound and to that extent, the institutions are ensured a "play in the joints".

The reliance sought to be placed on the decisions in *Adaikalamath* and also *Dayanand Anglo Vedic (DAV) College Trust*, etc., by the learned Government Advocate would not be relevant. The points that were framed for consideration in *Adaikalamath* are found at Paragraphs 47.1 to 47.6, and the opinion expressed thereon is not material to the present case on hand. In so far as the *DAV College Trust* case is concerned, it does not alter the legal position as laid down in the cases referred to earlier.

Hence, it is to be held that the power reserved to itself under the above said Rules is not unfettered. It is open for the petitioners herein to question the present imposition of taking away their discretion in the seat selection as it existed hitherto at 80:20, to a situation where the State government would hold sway completely over the seat selection. The State government is not entitled to claim a *quid pro quo*, as it were, in laying down that in view of the enhancement of the Grant-in-aid, the seat selection would be completely in its domain. The

third point for consideration is answered accordingly.

The writ petitions are accordingly allowed, the condition imposed by the State government that on enhancement of the Grant-in-aid, all the seats in the institutions shall be allocated to the government stands quashed. The accepted proportion of seat sharing of 80:20 shall prevail.