

(1996) 03 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 10800 of 1987

Bapuji Grameena Vikas Samithi (R)

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Karnataka State Universities Act, 1976 — Section 53, 56, 56 (6)

Citation : AIR 1997 Kar 55 : (1997) 1 KarLJ 632

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : B.A. Belliappa for A.K. Subbaiah, for the Appellant; Hemanth R. Chandanagounder for R.H. Chandanagoudar and N.B. Viswanath, Govt. Pleader, for the Respondent

Judgement

1. This petition is filed under Art. 226 of Constitution of India whereby the petitioner has sought for a writ of mandamus or any other writ, order or direction, directing the respondents not to cancel affiliation granted to the petitioners Arts. and Commerce College, Sadashivagad as per Annexures-"A", "B", "C", and "D" and further prayed for quashing of Annexure "G" as unlawful and without jurisdiction.

2. The facts of the case in brief are that the petitioner's society has started a Pre-University College at Karwar by the name Sri. Durgadvi Pre-University College. Subsequently, the petitioner's society thought to open First Grade College for providing higher educational facilities in Arts and Commerce and applied for affiliation with Karnataka University under Karnataka State Universities Act, 1976. The 2nd respondent forwarded the application to the Government for its recommendations for grant of affiliation. According to the petitioner's case, the Government by its order dated 4-11-1986 accorded approval to the opening of a rural Arts and Commerce College. The affiliation was granted as late as 4-11-1986. So as per allegations in W.P. the petitioner's case is that college could not be started for the academic year 1986-87 inspite of the fact that the

petitioner's society had all the infrastructural facilities to open the college. That on 25-11-1986, the 2nd respondent University communicated to the petitioner telegraphically that in view of the Government order dated 4-11-1986 affiliating Arts and Commerce College at Sadashivagad, there is no need to apply for fresh affiliation for the ensuing year 1987-88. Petitioner's case is that this telegraphic message Annexure "C" was followed by a letter dated 11-12-1986. Petitioner's case is that in pursuance of the affiliation granted to it, it had opened Arts and Commerce college and started the courses in B.A. Part I and B. Com. Part-I for the academic year 1987-88. The college was also ingrate by the Union State Minister for Youth, Sports and Women and Child Welfare. Petitioner's further case is that, petitioner had already admitted 60 students in 1987-88 for both B.A. and B.Com. Part I classes. To the petitioner's surprise, petitioner received a communication from the 2nd respondent that petitioner should not start the college. That communication was dated 4-7-1987, copy of which is annexed by the petitioner in Annexure "G" to the writ petition. Petitioner has challenged that order Annexure "G" to the writ petition.

3. The petitioner's case has been that the said order dated 4-7-1987 Annexure "G" is illegal and void. Petitioner's case is that the direction not to start the classes contained in Annexure "G" had been illegal and void. The learned counsel in support of his contention to the effect that order is void as it has not been passed according to Section 56(6) of the Act, invited my attention to Section 56(6) and submitted that University could only withdraw the affiliation and it had to pass a reasoned order and communicate it to the college and it has not done so. The power to cancel the affiliation vested u/s 56 of the Act in the University. The other authorities had only to make recommendatory opinions including Government as the University has got power to pass any order of withdrawal or cancellation of affiliation. This contention of the petitioner was hotly contested by Shri R.H. Chandanagoudar, learned counsel for the University. The learned counsel submitted that, by order communication dated 4-7-1987 Annexure "G", petitioner has only communicated the decision of the Government. The Government orders should have been challenged by the petitioner. It has not done so and therefore, there is no question to challenge the communication dated 4-7-1987 Annexure "G". He further submitted that as the Government Order has not been challenged in this writ petition and it should be dismissed as not maintainable.

4. On the face value of the order Annexure-"G", it appears that the Registrar had only tried to communicate the Government Order which was communicated to it. The letter dated 4-7-1987 Annexure "G" says that:

"I am reproducing below the message received from Government of Karnataka on the subject mentioned below."

The message was to the effect that:

"refer Government letter of even No.DTD 4/11/186(.) Government decides to

withdraw the affiliation granted to the following four private First Grade Colleges.

1. S. C. V. V. Trust Fund Committee, Mahalingpur, Bijapur District;
2. B.L.D.E. Education Society, Bijapur (college to be started at Thikkota);
3. Karnataka Progressive Education Society, Dharwad;
4. Bapuji Grameena Vikasa Samithi, Karwar (college to be started at Sadashivagada).

Do not permit them to start these colleges. Government order follows..... You are therefore informed not to start the college."

Reading of this communication, no doubt, gives support to the contention or submission of the counsel for the University that what has been done by Annexure G is only communicating the order of the Government, good or bad as it may be to the petitioner. But, University has not, by itself cancelled or withdrawn the affiliation. The question before the Court is whether the Government could cancel or withdraw the affiliation. u/s 53 of the Universities Act, the affiliation is to be granted by the University. Sub-sections (1) and (5) of Section 53 of the Karnataka Universities Act as amended by the Act 23 of 1986 reads as under:--

"Section 53(1) -- Colleges within the University area may, on satisfying the conditions specified in this section, be affiliated to the University as affiliated colleges by the University on the recommendations made by the State Government.

"(5) The Registrar shall within such time as the Government may from time to time specify submit application and all the 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."

5. A reading of sub-section (1) of Section 53 of the Act as amended with effect from 14-5-1986 reveals that the Government is only a recommendatory body. The affiliation is always granted by the University. Here it will also be appropriate to reproduce Section 56 of the Karnataka Universities Act as amended by Act 23 of 56 (w.e.f. 14-5-1986). It reads as under:

"56. Withdrawal of affiliation.--

(1) The rights conferred on a college by affiliation may be withdrawn in whole or in part or modified if the college has failed to comply with any of the provisions of Section 53 or the college has failed to observe any of the conditions of the affiliation or the college is conducted in a manner which is prejudicial to the interests of education.

(2) A motion for the withdrawal or the modification of such rights shall be initiated only in the Syndicate. The member of the Syndicate who intends to move such a motion " shall give notice of it and shall state in writing the grounds on which it is made.

(3) Before taking the said motion into consideration the Syndicate shall send a copy of the notice and written statement mentioned in sub-section (2) to the Principal of the college concerned together with an intimation that any representation in writing submitted within a period specified in such intimation on behalf of the college will be considered by the Syndicate:

Provided that the period so specified may, if necessary, be extended by the Syndicate.

(4) On receipt of the representation or on the expiry of the period referred to in sub-section (3) the Syndicate after considering the notice of motion, statement and representation and after such inspection by any competent person or persons authorised by it in this behalf and such further enquiry as may appear to it to be necessary and after consulting the Academic Council shall make a report to the Senate.

(5) On receipt of the report under sub-section (4) the Senate shall, after such further inquiry, if any, as may appear to it to be necessary record its opinion in the matter:

Provided that no resolution of the Senate recommending the withdrawal of affiliation shall be deemed to have been passed by it unless the resolution has obtained the support of two thirds of the members present at a meeting of the Senate, such majority comprising not less than one half of the members of the Senate.

(6) The Registrar shall submit the proposal and all proceedings, if any, of the Academic Council, the Syndicate and the Senate relating thereto, to the State Government which after such further inquiry, if any, as may appear to it to be necessary, shall make their recommendations to the University which shall thereafter make such order as it deems fit.

(7) Where by an order made under sub-section (6), the rights conferred by affiliation are withdrawn in whole or in part or modified, the ground for such withdrawal or modification shall be stated in the order."

6. A perusal of Section 56 reveals that the rights conferred to a college of affiliation may be withdrawn either in full or in part or may be modified if the college appears to have failed to comply with any of the provisions of Section 53 or college has failed to observe any of the conditions of its affiliation or it has conducted in a manner which is prejudicial to the interests of education. It is further provided that motion for withdrawal or modification of affiliation and the rights arising out of affiliation have to be initiated only in the Syndicate by moving for a motion after giving notice and stating the grounds in writing for

which the motion is being made. It is further provided by sub-section (2) that before the motion is taken up for consideration, the Syndicate shall send a copy of the notice and written statement as referred to in sub-section (2) of Section 56 to the Principal of the college with intimation to the effect that if the Principal of the college wants to file any written statement, he may submit the same within the time specified therein. Proviso further confers the powers to extend that period if necessary. This section further provides that after receipt of representation from the college concerned or from the Principal of the college concerned or at least after the expiry of the period mentioned in the notice referred to in sub-section (3), the Syndicate will take into consideration the motion, statement and the representation if any is made and after inspection by competent person in this regard and such further enquiries as the Senate may consider necessary as well as after consulting the academic council, the Senate will make a report. The Syndicate will send a report to the Senate and the Senate is required under sub-section (5) to record its opinion, which it may record after such further enquiry as it may deem necessary. Proviso to sub-section (5) provides that no resolution of the Senate recommending the withdrawal of affiliation shall be deemed to have been passed by it unless it has obtained the support of two-third members of the Senate present at the meeting and that such majority shall not be less than one-half of the total number of the members of the Senate. After the recommendations have been made by the Senate as provided under sub-section (5), the Registrar of the University is required to submit the proposal and all proceedings, if any, of the Academic Council, the Syndicate and the Senate relating thereto, to the State Government. The State Government is again required to apply its mind and if necessary make further enquiries and then the Government is empowered only to make recommendations in regard to that. It is further the University is again required to apply its mind and to make such order in respect of the matter of withdrawal or modification of affiliation as it deems fit. Sub-section (7) further requires that when rights conferred by affiliation are to be withdrawn either in full or in part or to be modified the grounds for such withdrawal or modification shall be stated in the order. It is well settled principle of law that when a power is given to do certain thing such as withdrawal of affiliation or the like and the process is prescribed, about the mode or manner or process of doing that thing is prescribed by the Act, then action has to be taken and power has got to be exercised in the manner prescribed by the Act or the specific manner provided under the Act or relevant Acts. In other words, it means that the power which has been conferred with the specific mode can only be exercised in that mode and manner and not otherwise, i.e. that order passed otherwise in accordance with the order prescribed by the Act, can be said to be illegal and without jurisdiction and null and void. Section reveals that the power of the Government is only recommendatory. The Government has no power to cancel or to withdraw the affiliation itself. It has only power to make recommendations after receipt of the proposal and proceedings of Academic Council, Syndicate and the Senate. Then the State Government has only to make recommendations in the matter

one way or the other. But, the State Government by itself cannot cancel, withdraw or modify the affiliation. In the case of State of Uttar Pradesh Vs. Singhara Singh and Others, dealing with Section 164 of the Code of Criminal Procedure, Their Lordships of the Supreme Court as per the judgment delivered by Sarkar, J., on behalf of the Court in the above case has observed that when a statute confers a power on certain judicial officers, that power can obviously be exercised only by those officers. No other officer can exercise that power, for it has not been given to him. Now the power has been conferred by Section 164 on certain magistrates of higher classes. Obviously it was not intended to confer the power on magistrates of lower classes. After making this observation, Their Lordships further observed that "in this view of the matter, the magistrate of lower classes would not record the statement u/s 164."

7. In the case of Krishan Gopal Vs. Sri Prakashchandra and Others, dealing with Section 80A of the Representation of People Act, Their Lordships appeared to have repeated that principle. In that case Their Lordships have observed that sub-section (2) of Section 80A of the Act provides that the jurisdiction which the High Court has to try an election petition shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose. It is plain that sub-section (2) does not confer jurisdiction to try an election petition. Such jurisdiction is conferred by sub-section (1) of Section 80A upon the High Court. Sub-section (2) merely specifies the instrumentality through which the jurisdiction which is vested in the High Court shall be exercised. The sub-section thus relates to the procedure for the exercise of the jurisdiction and provides that the jurisdiction shall be exercised ordinarily by a Judge of the High Court who has been assigned for the purpose by the Chief Justice. Perusal of sub-section (2) of Section 80A makes it manifest that it is only a judge of the High Court assigned for the purpose by the Chief Justice who can exercise the jurisdiction which is vested in the High Court to try an election petition by sub-section (1) of that Section. The provisions of sub-section (2) are mandatory and a person who is not a judge of the High Court concerned and who has not been assigned for the purpose by the Chief Justice cannot exercise the jurisdiction which is vested in the High Court by sub-section (1) of Section 80A. In this case, Their Lordships have expressed that the power can be exercised by that instrument alone and not otherwise. When I apply these principles of law, it gives doubt that when Government had recommendatory power in the matter of withdrawal of affiliation, but by itself it could not pass an order of cancellation or withdrawal of affiliation. It could only recommend to the University that in number of circumstances, the affiliation may be withdrawn, cancelled or modified. Thereafter, it was for the University under sub-section (6) to apply its mind to the opinion of the Academic Council, Syndicate and Senate and to the recommendations of the Government and then make up its mind as to what order should be passed, whether to withdraw or to cancel either wholly or in part or to make modification of that and then the University is required to pass the order as it deems fit and it requires to state the grounds in the orders for

withdrawal or modification of the affiliation.

8. In this case, the order does not appear to have been passed in consonance with the requirements of sub-section (6) of Section 56 of the Act. Annexure-"G" is only a communication of the recommendation of the Government. Apart from that, it does not indicate any application of the mind by the University itself and the learned Counsel for the University submits that really University has not passed any order of withdrawal of affiliation. The affiliated College could not be restrained-without a reasoned order of withdrawal being passed from starting the College. As such the order under communication Annexure-"G" cannot be taken to be legal or valid order of withdrawal or cancellation of affiliation and it is per se illegal and void. Any way, it is the admitted case of the parties that affiliation had been granted only for two years i.e. 1986-87 and 1987-88. The period has expired and the operation of this order had been stayed. Therefore, if under interim order they have made admissions as there has been no withdrawal of the affiliation for the year 1987-88, neither the admissions of the students made nor their career should be affected at all even if the writ petition is dismissed as having become infructuous.

9. As the present petition does not relate to the matter of future grant of affiliation, there is no need to pass any order. It appears that issue of any further writ will not be any more beneficial and necessary. The Writ Petition really has become infructuous in such circumstances. But, if the affiliation had been granted subsequently to the college subsequent to the filing of the Writ Petition, that will not be affected at all by the decision of this Writ Petition.

10. With these observations, Writ Petition is hereby dismissed as having become infructuous as the- period for which the affiliation had been granted has expired long back and it is clarified that order or communication dated 4-7-1987 vide Annexure-G being illegal and void as held above, the benefits acquired will continue with the Petitioner and the students. Cost of the Petition are made easy.

11. Sri. N. B. Vishwanath, learned High Court Government Pleader is permitted to file his memo of appearance.

12. Petition dismissed.