

(2019) 03 KAR CK 0027

In the Karnataka High Court

Case No : Writ Appeal No. 200075, 200076 Of 2015

Basava Jyothi Education And Ors

APPELLANT

Vs

State Of Karnataka And Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Right Of Children to Free and Compulsory Education Act, 2009 — Section 4, 6, 9(d), 12(2), 14(1), 15(g), 18, 18(1), 18(2), 18(3), 19, 20, 21(2)(d), 25, 22(1), 23, 23(3), 24(1)(f), 24(3)(o), 27, 30(2), 31(3), 33(3), 34(3), 38
Karnataka Education Act, 1983 — Section 145
Waqf Act, 1995 — Section 32, 32(2), 67(1)(d), 83
Karnataka Educational Institutions (Recognition Of Primary and Secondary Schools) Rules, 1999 — Rule 3, 3(1)

Citation : (2019) 03 KAR CK 0027

Hon'ble Judges : P.B.Bajanthri, J;P.G.M.Patil, J

Bench : Division Bench

Advocate : Roja Amaresh Sharanappa, K.M.Ghate

Final Decision : Allowed

Judgement

1. Appellant is a registered trust, registered with a reason and object to part primary and higher level education for the benefit of residents of Kalaburagi city. From 30th October 2014 for the purpose of running school for standard 6th to 8th an application was presented for the purpose of registration and sanction to run the school for the 6th to 8th standard. In this regard, the appellants were stated to have complied Rule 3 of the Karnataka Educational Institutions (Recognition of Primary and Secondary Schools) Rules, 1999 (for brevity 'Rules 1999'). During pendency of the appellant's requisition, State Government issued notifications dated 11.11.2014 and 14.11.2014 in respect of certain modification of contents in Rule 3 of the Rules 1999 in particularly, table under Rule 3, item No.2 Upper Primary School (including Composite School) and Secondary School (including Composite School) value of security deposit is Rs.20,000/- and

Rs.30,000/- respectively. Value of security deposit (for 6th standard to 8th

standard) has been enhanced from Rs.5,000/- to Rs.50,000/- for Kannada medium and from Rs.10,000/- to Rs.1,00,000/- for English medium plus additional fees of Rs.20,000/- respectively. The aforesaid notifications dated 11.11.2014 and 14.11.2014 are with reference to provisions of Right of Children to Free and Compulsory Education Act, 2009 (for brevity 'Act 2009'), in particularly, Sections 19 and 25 of the Act 2009, towards construction of school and basic infrastructure. Feeling aggrieved by the notifications dated 11.11.2014 and 14.11.2014, appellants had presented writ petitions, which were dismissed on 06.02.2015. Hence, the present appeals.

2. Learned counsel for the appellants submitted that Rule 3 of Rules 1999 provides for procedure for recognition of registered educational institutions. Under the aforesaid Rule table is also incorporated. In terms of the table, value of security deposit for class 5th to 7th is Rs.20,000/- and for class 8th to 10th Rs.30,000/- whereas notification dated 11.11.2014 read with 14.11.2014 prescribes on a higher side i.e. Rs.50,000/- for Kannada medium and Rs.1,00,000/- for English medium plus additional fees of Rs.20,000/- respectively. It was submitted that modification of a table under Rule 3 of Rules 1999 by means of a notification is impermissible. It was pointed out that Section 145 of the Karnataka Education Act, 1983 (for brevity 'Act 1983') provides for framing Rules. Item Nos.(xiv) and (xvi) to Section 145 of Act, 1983 provides for the grant of registration or recognition to educational institutions and the conditions therefor and the form of the register maintained for registration of educational institutions and tutorial institutions and of the registration certificate. State Government has issued Rules 1999. Section 19 of Act 2009 provides for norms and standards for school. Impugned notification dated 11.11.2014 read with 14.11.2014 are contrary to statutory provisions, in particularly, Rule 3 of Rules 1999 read with table and Section 145 of the Act 1983. These legal issues have not been appraised by the learned Single Judge in its order dated 06.02.2015. Therefore, there is an error in the order of the learned Single Judge in not appreciating Section 145 of the Act 1983 read with Rule 3 of Rules 1999 and table thereunder. Hence, the order of the learned Single Judge is liable to be set aside.

3. Per contra, learned counsel for the respondent-State supported the order of the learned Single Judge and further contended that impugned notification dated 11.11.2014 and 14.11.2014 are in terms of Section 19 and 25 of the Act 2009. Act 2009 would prevail over the Act 1983 read with Rules 1999. Hence, no interference is called for.

4. Heard the learned counsel for the parties.

5. Core issues in these appeals are:

1) Whether learned Single Judge has not noticed the statutory provision of Section 145 of the Karnataka Education Act, 1983 read with Rule-3 and Table thereunder of Rules 1999 or not?

2) Whether Act 2009 occupy the field in respect of item Nos.(xiv) and (xvi) of Section 145 of the Act, 1983 read with Rules, 1999 or not?

Undisputedly, learned Single Judge had no occasion to consider the provisions of Act, 1983 and Rules, 1999. Apparently it was not appraised. In other words, there is no consideration in respect of provisions under the Act, 1983 and Rules, 1999.

145. Power to make rules.-

(1) The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:-

(xiv) the grant of registration or recognition to educational institutions and the conditions therefore;

(xvi) the form of the register maintained for registration of educational institutions and tutorial institutions and of the registration certificate;

(4) Every notification issued and every rule made under this Act, shall immediately after it is issued or made be laid before each House of the State Legislature if it is in session and if it is not in session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session in the notification or in the rule or in the annulment of the Notification or the rule, the notification or the rule shall from the date on which the modification or annulment is notified have effect only in such modified for or shall stand annulled, as the case may be; so, however, that any such modification or annulment, shall be without prejudice to the validity of anything previously done under that notification or rule.

Further Rule-3 and Table to Rules, 1999 reads as under:

3. Procedure for recognition of registered educational institution.-

(1) Every registered institution shall file an application for recognition in the month of July of the academic year in which the institution has been started but not later than 31st August, to the Competent Authority. The application shall be filed in triplicate and shall be in Form 1. If the management fails to submit the proposal in the prescribed form within the time stipulated above, a notice shall be issued to such management directing to submit the proposal within a period of two weeks from the date of receipt of such notice, failing which the permission granted to the institution shall be withdrawn.

(2) The amount of security deposit shall be as specified in column (4) of the Table below for the class of Educational Institutions and standards specified in the corresponding entries in columns (2) and (3) thereof respectively.

TABLE

Sl. No

Class of Educational Institutions

Standards governed

Value of Security Deposit

1.

Lower Primary School

I-IV

10,000/-

2.

Upper Primary School (including Composite School)

V-VII

20,000/-

3.

Secondary School (including composite school)

VIII-X

30,000/-

Sections 19, 25 and 38 of the Act, 2009 reads as under:

19. Norms and standards for school.-(1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of

continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

25. Pupil-Teacher Ratio.-(1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non- educational purpose, other than those specified in section 27.

38. Power of appropriate Government to make rules.-(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;

(b) the area or limits for establishment of a neighbourhood school, under section 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;

(e) any other document for determining the age of child under sub-section (1) of section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under section 15;

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of section 18;

(h) the form, the period, the manner and the conditions for issuing certificate of recognition, under sub-section (2) of section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;

(j) the Other functions to be performed by School Management Committee under clause

(d) of sub-section (2) of section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of section 24;

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of section 34.

(3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made; before the State Legislatures."

6. Impugned notifications are contrary to Act, 1983 and Rules 1999 and Section 38 of Act, 2009. Rule-3(1) of Rules, 1999 provides for procedure of recognition of registered education institution for which value of security deposit for class of educational institutions read with standards governed have been stipulated. In other words class of educational institutions, standards governed and value of security deposit has been stipulated under Rule-3 itself. Therefore, if the Government intends to enhance the value of security deposit stated in the table supra, Rule-3 of Rule 1999 is required to be amended appropriately and not by means of issuance of notification. Act, 2009 do not override the Act, 1983 read with Rules, 1999. In other words, subject in issue is already occupied by a law and Rule if there is anything required to be added/removed/replaced, in

particularly, in the present case, Rule-3 stipulates value of security deposit in respect of certain class of educational institutions. In such circumstances, only remedy available to the State is to amend Rule-3 of Rules, 1999. Therefore, resorting to modify or enhance the value of security deposit in respect of class of educational institutions by means of notification is impermissible. In other words statutory Rules prevails over the notification. When statute stipulate that certain things are required to be done in particular manner, the same shall be adhered by the competent authority. In the present case, there is deviation in issuing notification in the absence of amendment to Rule 3 of Rules, 1999. The Hon'ble Supreme Court time and again held that in respect of particular statute which stipulates certain conditions or manner of implementation of statute it has to be done only in a particular manner which is stipulated in the statute. In the case of *Dhanajaya Reddy vs. State of Karnataka* reported in (2001) 4 SCC 9 Hon'ble Supreme Court at para-23 has held as under:

"23. It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in *State of U.P. v. Singhara Singh* (AIR p.361, para 8) held "A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down.""

In the case of *Chairman-cum-Managing Director, Coal India Limited and others vs. Ananta Saha and others* reported in (2011) 5 SCC 142 the Hon'ble Supreme Court at paras-32 and 33 has held as under:

"32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath v. Govt. of T.N.* this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders."

In the case of *M.P.Wakf Board vs. Subhan Shah (Dead) by LRs and others* reported in (2006) 10 SCC 696, the Hon'ble Supreme Court at paras-27, 28 and 29 has held as under:

"27. The Wakf Act is a self-contained code. Section 32 of the 1995 Act provides for powers and functions of the Board. Sub-section (2) of Section 32 of the 1995 Act enumerates the functions of the Board without prejudice to the generality of the power contained in sub-section (1) thereof. Clauses (d) and (e) of sub-section (2) of Section 32 of the 1995 Act read as under:

32. (2) (d) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct-

(i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation-For the purposes of this clause, the powers of the Board shall be exercised-

(i) in the case of a Sunni wakf, by the Sunni members of the Board only; and

(ii) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause.

28. The Tribunal had been constituted for the purposes mentioned in Section 83 of the 1995 Act. It is an adjudicatory body. Its decision is final and binding but then it could not usurp the jurisdiction of the Board. Our attention has not been drawn to any provision which empowers the Tribunal to frame a scheme. In absence of any power vested in the Tribunal, the Tribunal ought to have left the said function to the Board which is statutorily empowered therefor. Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute.

29. It is trite that when a procedure has been laid down the authority must act strictly in terms thereof."

In the case of Captain Sube Singh and others vs. LT. Governor of Delhi and others reported in (2004) 6 SCC 440, the Hon'ble Supreme Court at para-29 has

held as under:

"29. In Anjum M.H. Ghaswala a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhanajaya Reddy v. State of Karnataka.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof."

7. In the present case, as is evident from the notification read with Rule 3 of Rules 1999, it is crystal clear that impugned notification dated 11.11.2014 is in violation of Rule-3 of Rules, 1999. Even assuming that Act, 2009 is a central legislation in such circumstances also State has not invoked Section 38 of Act, 2009, which provides respective Government to issue notification, make rules, for carrying out the provisions of the Act, whereas field is already occupied by Act, 1983 read with Rules 1999. Therefore, Government has to issue rules only and not notification like impugned notifications dated 11.11.2014 and 14.11.2014.

8. In view of legal position stated supra, learned Single Judge's order do not sustain. Accordingly, impugned order dated 06.02.2015 in W.P.Nos.207029-30/2014 and connected matters and impugned notifications dated 11.11.2014 and 14.11.2014 are set aside. Writ petitions filed by the petitioner are allowed.

Accordingly, writ appeals are allowed.