
(2008) 06 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition No's. 310 and 311 of 2008

Bharathambe Vidya Samsthe (Regd) and Another	APPELLANT
Vs	
The State of Karnataka and Others	RESPONDENT

Date of Decision : 16-06-2008

Acts Referred:

Karnataka Education Act, 1983 — Section 41 (5)
Karnataka Educational Institutions (Change in the Governing Council or Change in the Location of Private Educational Institutions) Rules, 2006 — Rule 5

Citation : AIR 2009 Kar 151 : (2008) ILR (Kar) 4406 : (2009) 1 KarLJ 468

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K.O. Vijayakumar, for the Appellant; B. Manohar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In both these writ petitions as the Notification challenged is common and as common questions are raised, they are clubbed, heard together and are disposed off by this common order. For the sake of convenience and to avoid duplication, the facts involved in W.P. No. 311/2008 are dealt hereunder.

2. In W.P. No. 311/2008, petitioner is challenging the validity of Rule 5 of the Karnataka Educational Institutions (Change in the Governing Council or Change in the Location of Private Educational Institutions) Rules, 2006 (hereinafter referred to as "the Rules", for short). Challenge is also made to the communication dated 19.09.2007 issued by the Director for Public Instructions, Secondary Education, Bangalore, the 3rd respondent herein, by which the request made by the petitioner seeking change of location of the high school run by them has been rejected.

3. Petitioner is a society registered under the Societies Registration Act, 1960. It is running a high school at Bambu Bazar, Davangere. The said high school is an unaided educational institution. A resolution was passed by the petitioner on

02.04.2007 resolving to transfer the location of the high school from Davangere to a village by name Benche Hosahatti village, Baramasagar Hobli, Chitradurga Taluk. The said resolution which is produced at Annexure-D states that as the petitioner-Society had financial problems which disabled it from having its own building and as the strength of the students in the high school was very low, it was resolved to transfer the location from Davangere to a village in Chitradurga District where there was need for a high school.

4. Pursuant to this resolution, the Secretary of the petitioner-Society addressed a letter dated 05.05.2007 vide Annexure-E to the 5th respondent-Deputy Director of Public Instructions, Chitradurga, seeking permission for transfer of the high school. The Deputy Director of Public Instructions, Chitradurga, forwarded the said request to the Deputy Director of Public Instructions, Davangere, vide Annexure-F letter dated 05.05.2007. Ultimately, on examination of the request made by the petitioner, the 3rd respondent-Director of Public Instructions, Secondary Education, Bangalore, by the impugned communication dated 19.09.2007 vide Annexure-Q, informed the petitioner that as per Rule 5 of the Rules the transfer of location of the high school was not permissible. Accordingly the request came to be rejected. Aggrieved by this communication and Rule 5 of the Rules, the present writ petition is filed.

5. It is contended by the petitioner that the impugned rule is contrary to law. Learned Counsel for the petitioner assails Annexure-Q order as one opposed to the principles of Natural Justice, arbitrary and discriminatory. He submits that the objects to be achieved by the impugned rules has nothing to do with the furtherance of the interest of the students who intend to get educated. On the contrary, it affects their interest.

6. Learned Addl. Government Advocate who has taken notice for the respondents submits that the rule is in conformity with the provisions contained u/s 41(5) of the Karnataka Education Act and is aimed at preventing commercialization of education by the Managements which have established the educational institution without having necessary infrastructure and which eventually intend to transfer the same by relocating elsewhere for commercial purposes.

7. Upon hearing the learned Counsel for the parties and on careful perusal of the materials on record, the question that arises in this matter is,-

Whether the impugned Rule 5 of the Rules is illegal and is opposed to the purpose and intent of the Education Act?

8. Section 41 of the Karnataka Education Act (Karnataka Act No. 1 of 1995) deals with the "Management of recognised Educational Institutions". Sub-section (1) of the said Section enacts that "no recognised private educational institution shall be managed except in conformity with the rules which the State Government may frame for such institutions after previous publication". Sub-section (5) enacts that "if there is a change in the Governing Council of the institution or change in the location of the institution, a fresh application for recognition shall

be made as if it were a newly started institution." Section 145 of the Act, enables the State Government to make rules to carry out the purpose of this Act. The rules to be made by the State Government, among other things, may provide for the establishment or maintenance and administration of educational institutions, the standards of education and courses of study in educational institutions. It is in exercise of the powers conferred u/s 145 of the Act, the rules providing for change in the location of private educational institutions are framed. Rule 5 of the Rules provide for conditions for change in the location of the private educational institutions. It reads as under:

5. Conditions for change in the location of the private educational institutions:-

(1) No Change in the location of a private educational institution located within the limits of an urban agglomeration, city corporation, city municipal council, town municipal council, town panchayat shall be permitted beyond the limits of such urban agglomeration or city corporation or city municipal council or town municipal council or town panchayat, as the case may be:

Provided that change in the location of a private educational institution may be permitted from a place in one gram panchayat area, where it is located, to another place either within the same gram panchayat area or some other gram panchayat area, which does not fall within the limits of any urban agglomeration.

(2) Change of location shall be permitted by the competent authority only if the governing council has provided all the facilities prescribed at the new location.

(3) Ordinarily, change in the location of the institution shall not be permitted more than once.

(4) The governing council shall ensure that no inconvenience is caused to the students in case change in location is permitted.

(5) If the competent authority permits change in the location, a fresh application for registration and recognition shall be made as if it were a newly started institution.

9. A perusal of Rule 5(1) makes it clear that there is an embargo for effecting change in the location of private educational institution which is located within the limits of an urban agglomeration, city corporation, city Municipal council, town Municipal council and town panchayat beyond the limits of such urban agglomeration or city corporation or city Municipal council or town Municipal council or town panchayat. The rule further makes it clear that if a change is sought for relocating the private educational institutions from a place in one grama panchayat area to another place either within the same grama panchayat area or some other grama panchayat area and which does not fall within the limits of urban agglomeration, the same can be permitted upon satisfaction of certain conditions. No exception is provided in the rule for changing the location of a school from one urban agglomeration to another place beyond the limits of such urban agglomeration. The intention of the rule making authority is to permit

for certain reasons the change of location of the schools in rural areas coming within the limits of panchayats but not to extend the similar benefits to schools in one urban agglomeration to another.

10. It is not the case of the petitioner that the State Government has no authority or power to enact such rules. In fact, as could be seen from Section 145 of Act 1 of 1995, the State Government is clothed with the power to frame such rules. On its own showing, the petitioner has not acquired the required infrastructure to run the educational institution. It does not have the building of its own to house the school, though it claims that the school is permitted as back as in the year 1991. It is to prevent such institutions from making an attempt to carry on their desire to survive by adopting such methods to relocate their institution which have otherwise become a liability and are not carrying on the purpose and object for which they are established, the rules such as the one that is under challenge, are framed.

11. The wisdom of the rule making authority cannot be challenged unless it is shown that it is manifestly arbitrary and illegal and has no purpose or object to achieve consistent with the legislative intent. In the instant case, as stated earlier, the object of framing the rules is to prevent and discourage such institutions from seeking change of location for commercial interests or in order to somehow continue to exist, though they are not in a position to meet the standards prescribed in the regulations and rules regarding infrastructure and other resources. Therefore, the challenge to the rules is totally unfounded.

12. Coming to the impugned communication Annexure-Q, it is seen that the 3rd respondent has acted strictly in conformity with Rule 5 while rejecting the request for relocation. As the rule is held valid, the communication issued after considering the request made by the petitioner and after referring to Rule 5 of the Rules cannot be termed as illegal or unsustainable.

Though learned Counsel for the petitioner contends that the impugned Rule 5 has come into force on 17.04.2007, whereas the resolution was passed by the petitioner-Institution on 02.04.2007 and therefore the rule cannot be retrospectively operated so as to debar the petitioner from maintaining an application, it is seen that the representation addressed to the Deputy Director of Public Instructions, Chitradurga, vide Annexure-E is made on 05.05.2007 after the rules came into force with effect from 17.04.2007. These rules have been framed after due publication as required under Sub-section (1) of Section 145. It is not the case of the petitioner that he had filed any objections to the rules within the stipulated period. In that view of the matter also, the argument advanced by the learned Counsel for the petitioner cannot be sustained.

13. For the foregoing reasons, both the petitions fail and hence the same are dismissed. No costs.