
(2013) 04 AP CK 0129

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11493 of 2010

Bharathi Degree College

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2013) 6 ALT 321

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : A. Santhosh Kumar, for the Appellant; Deepak Bhattacharjee, Counsel for Respondent No. 2, Mr. C. Sudesh Anand, SC for APSCH for Respondent No. 3 and Mr. C.V.R. Rudra Prasad, Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.—In this writ petition the petitioner college, which is established by M/s. Sri Balaji Educational Society, Wardhannapet, Warangal District, challenges G.O.Rt. No. 314 Higher Education (CE-II) Department dt. 1.5.2010 issued by 1st respondent as illegal, arbitrary and contrary to the provisions of Andhra Pradesh Education Act, 1982 (for short "the Act") and the Rules made thereunder. M/s. Sri Balaji Educational Society, Wardhannapet, Warangal District is a society registered under the provisions of the Societies Registration Act to impart education to the student community in and around the area of Wardhannapet Mandal in Warangal District. The petitioner college was established in the year 2005 and it is recognized by the Government of Andhra Pradesh and affiliated to 3rd respondent University. The petitioner college offers several courses such as B.Sc.(BZC, MPC), B.Com, B.A.(EPP, HEP) and has total intake capacity of 290 students. Apart from petitioner-degree college, there are also two junior colleges in the locality.

2. While so, the 2nd respondent which is the competent authority for granting permission for establishing new degree colleges, has surveyed the areas in the State of Andhra Pradesh including the locality where the petitioner college is

being run for the academic years 2008-09, 2009-10 and 2010-11 and issued notification No. APSCHE/NDC/UG/PG/2010 dt. 5.2.2010 inviting applications from the registered educational societies/affiliated aided and un-aided degree colleges for starting new private un-aided degree colleges (including Hotel Management Colleges) under-graduate and post- graduate courses for the academic year 2010-11 in the State of Andhra Pradesh in identified revenue mandals enclosed to the said notification. Wardhannapet Mandal in Warangal District was not included in the said notification as an identified revenue Mandal for establishing new private unaided degree colleges.

3. The 4th respondent had made an application in the year 2008 seeking to shift its college from Mulugu to Wardhannapet. Petitioner college filed its objections/representation on 26.2.2008 and also on 3.4.2008 stating that there is no need for establishing a new educational institution in the said locality and that permission for shifting may not be granted to 4th respondent.

4. When the objections of the petitioner college were not considered by 2nd and 3rd respondents, it filed W.P. No. 8047 of 2008 before this Court and by interim order dt. 2.5.2008 this Court directed 2nd and 3rd respondents to consider the representations/objections of the petitioner before taking any decision with regard to grant of permission for shifting of any other college to the locality of Wardhannapet. The said W.P. No. 8047 of 2008 was partly allowed by this Court by order dt. 14.12.2012.

5. While so, the impugned G.O.Rt. No. 314 dt. 1.5.2010 was issued by 1st respondent relaxing Rule 14(3) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987, (for short "the Rules") in so far as 4th respondent is concerned and granting permission to 4th respondent for shifting its degree college by name "Nalanda Degree College" from Mulugu to Wardhannapet.

6. Sri A. Santosh Kumar, learned counsel for the petitioner submits that Rule 14(3) of the Rules prohibits grant of permission for shifting of an educational institution from one locality to another locality; no valid reasons have been mentioned for granting exemption to 4th respondent institution from the applicability of Rule 14(3) of the Rules; survey conducted by 2nd respondent u/s 20 of the Act did not show that there is any necessity to have another degree college in the locality of Wardhannapet Mandal and the said Mandal was also not included in the list of identified revenue Mandals mentioned in the notification dt. 5.2.2010; it is not open to respondents 1 to 3 to permit 4th respondent to shift its college from Mulugu to Wardhannapet Mandal.

7. The learned Government Pleader for Higher Education appearing for 1st respondent supported the issuance of G.O.Rt. No. 314 dt. 1.5.2010 issued by 1st respondent and contended that grant of permission to new private un-aided degree colleges by determining the need by conducting survey u/s 20 of the Act is different from grant of permission for shifting of existing college from one

locality to another locality; there is no necessity for prior survey and determination of needs of locality in case of shifting of degree college from one locality to another locality; the 1st respondent is granting permissions for shifting of colleges in co-ordination with 2nd and 3rd respondents; an application to shift existing college from one Mandal to another Mandal or within the Mandal in a District would be made to the concerned University i.e., College Development Council (for short "CDC"), the said Council inspects the facilities (such as infrastructural and instructional) and submits its report to 2nd respondent that its recommendations together with the inspection report of the Dean, CDC of concerned University would be forwarded to 1st respondent and then the 1st respondent in exercise of its powers u/s 100 of the Act grants exemption. He contended that this procedure had been followed while granting permission to 4th respondent to shift its college from Mulugu to Wardhannapet Mandal under the impugned CO.; that 1st respondent has powers u/s 100 of the Act to grant permission or relax any rules made pursuant to the Act; therefore for valid reasons, it issued the impugned G.O.Rt. No. 314 dt. 1.5.2010 relaxing application of sub-rules (3) and (4) of Rule 14 of the above mentioned rules; that notification issued by 2nd respondent year after year for establishing new private un-aided degree colleges in the State of Andhra Pradesh identifying the Mandals has no bearing or relevance with regard to shifting of colleges from one location to other location either within the Mandal or from one Mandal to other Mandals; that "locality" is not defined either in the Act or in the Rules made thereunder and there is no bar for "District" to be taken as locality or unit insofar as shifting of the colleges are concerned; that in the five Mandals surrounding Wardhannapet Mandal there are only three degree colleges and when number of persons passing out at intermediate level is taken into account and compared with the seats in degree college in and around Wardhannapet Mandal, the need of having additional degree colleges is seen. He, therefore, prayed that the writ petition be dismissed.

8. The learned counsel for respondents 2 and 4 have adopted the submissions of the learned Government Pleader for Higher Education.

9. I have considered the above submissions of the parties.

10. Section 20 of the Act enables the competent authority from time to time to conduct survey in order to identify the educational needs of a locality under its jurisdiction and notify in the prescribed manner through local news paper calling for applications from educational institutions/ agencies desirous of establishing educational institutions. On receipt of applications from such educational agencies, it scrutinizes them and before permission is accorded it has satisfy itself that there is need for providing educational facilities for the people in the locality.

11. In exercise of the powers conferred by Section 20 of the Act, the 1st respondent framed the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules

1987 vide G.O. Ms. No. 29 Education (Rules) dt. 5.2.1987 referred to above and Rule 14 of the said Rules states as follows.

14(3). No institution for which permission to establish has been granted to meet the educational needs of a particular locality, shall be permitted to be shifted to another locality....

Section 100 of the Act deals with the power of the State Government to grant exemption to any educational institution from the operation of all or any of the provisions of the Act or the rules made thereunder and it states as follows:

100. Exemption: - The Government may, by notification and for reasons to be specified therein, exempt any educational institution from the operation of all or any of the provisions of this Act or the rules made thereunder, subject to the conditions as they may deem fit to impose and may likewise vary or cancel such exemption.

12. In 2013 (2) ALD 612 a Division Bench of this Court had an occasion to consider the issue of grant of permission for shifting of a degree college from one locality to another locality and grant of relaxation of Rule 14(3) and 14(4) of the Rules. This Court held that under Rule 14(3) of the Rules, the term "locality" would mean a place with an area which is sufficiently small and compact, so that naming it amounts to a notice to all inhabitants of that area; and that rules for establishment of a new educational institution must equally apply to shifting of an institution. Even if the Government thought it fit to grant exemption to a particular educational institution by relaxing sub-rule (3) of Rule 14, it must be done within the parameter of the meaning of the said Rule. The Division Bench also held that a statutory functionary cannot justify its decision by assigning reasons by way of affidavits in the absence of reasons in the impugned order. It relied on Commissioner of Police, Bombay Vs. Gordhandas Bhanji, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The Division Bench further held that Section 100 of the Act is couched in such mandatory terms that unless reasons for grant of exemption by 1st respondent from the application of the provisions of the Act and the Rules are stated in the notification (sic. order), the exemption granted by 1st respondent cannot be sustained.

13. In the present case, admittedly in the survey conducted by the 2nd respondent, Wardhannapet Mandal (where the petitioner college is being run) was not identified as a revenue Mandal for grant of permission to start new private un-aided degree college. The notification dt 5.2.2010 issued by 2nd respondent omitted the name of the Wardhannapet Mandal. From this, it follows that the 2nd respondent did not feel the need to grant permission for starting new private un-aided degree college in Wardhannapet Mandal. As the parameters for establishing a new educational institution would clearly apply for shifting of an educational institution also as held in Sadasiva Sri Educational Society (supra), it has to be held that without 2nd respondent surveying and identifying

Wardhannapet Mandal as a locality where a new private un-aided degree college can be established, permission for shifting 4th respondent's college to Wardhannapet Mandal from Mulugu should not have been granted. Moreover, grant of exemption to the 4th respondent from application of Rule 14(3) of the Rules and grant of permission for shifting its college is required to be supported by reasons and admittedly G.O.Rt. No. 314 dt. 1.5.2010 does not disclose any reasons. Therefore absence of reasons for grant of exemption vitiates the impugned G.O.Rt. No. 314 dt. 1.5.2010. The Supreme Court in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, has held that:

....Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is a purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable....

14. In *S.N. Mukherjee Vs. Union of India*, , the Supreme Court has held as follows :

An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

Moreover, the 1st respondent is seeking to justify grant of exemption in favour of 4th respondent by mentioning reasons in the counter affidavit filed by it in the writ petition. As held in *Sadasiva Sri Educational Society's case* (supra), *Gordhandas Bhanji's case* (supra), *Mohinder Singh Gill's case* (supra), a statutory functionary cannot justify its decision by assigning reasons by way of affidavits in the absence of reasons in the impugned order. Therefore the reasons stated by 1st respondent in the counter affidavit for grant of permission for shifting of 4th respondent college cannot be taken into account.

15. Learned Government Pleader also contended that term "locality" would

include District as a whole and as Warangal District is mentioned in the notification dt. 5.2.2010 issued by 2nd respondent, the impugned G.O. should be sustained. This contention has no legs to stand because revenue Mandal in a district was taken as a unit for survey and for determination of educational needs by 2nd respondent and the district as a whole was not taken as unit for determination of educational needs. A similar contention was also specifically rejected by the Division Bench of this Court in Sadasiva Sri Educational Society's case (supra). For the aforesaid reasons, the impugned G.O.Rt. No. 314 dt. 1.5.2010 is arbitrary and is contrary to law and is accordingly quashed. The writ petition is allowed with costs of Rs. 5,000/- payable by respondents to petitioner.