

(2003) 10 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No's. 32764 to 766 of 2000

Bharati (Private) Education Society

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Karnataka Education Act, 1983 — Section 39 (2)

Citation : (2004) 1 KCCR 123

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.M. Siddappa, for the Appellant; B. Manohar, High Court Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The Petitioner in these petitions is a registered Education Society, registered under the Karnataka Societies Registration Act. In these petitions, the Petitioner has questioned the correctness of the orders passed by the first Respondent dated 20th July 2000, 8th July 2000 and 20th July 2000 vide Annexures-J, K and L respectively, and the order passed by the second Respondent - The Director of Pre-University Education, dated 8th August 2000 vide Annexure-M.

2. The principal submission canvassed by the learned Counsel appearing for the Petitioner - Education Society in the instant writ petitions is that the main aim and object of the Petitioner - Education Society is to promote education both in rural and urban areas and in order to achieve its object, the Petitioner - Education Society established schools and colleges in different places in the State of Karnataka, particularly in Bangalore Rural and Urban District. The Petitioner started three Pre-University Colleges after obtaining the necessary permission from the competent authority for the academic year 1992-93. Be that as it may. A show-cause notice was issued by the second Respondent to the Petitioner on 7th March, 1998 as to why the permission accorded should not be withdrawn and

the Petitioner's case should not be recommended for cancellation of recognition in view of the non-compliance of the mandatory provisions of the Karnataka Education Act, 1983 (herein after called as the "Act") and the Karnataka Education Rules (hereinafter referred to as the "Rules"), and for not possessing the necessary infrastructure and other facilities as required under the Act. It is his submission that without issuing notice and without conducting enquiry, the Director of Pre-University Education has passed the order dated 8th August 1999, rejecting the approval of the three institutions run by the Petitioner for the academic year 1999-2000. Being aggrieved by the said order passed by the Director, Pre-University Education, the Petitioner has filed the Appeal Nos. 196 of 1999, 1971 of 1999 and 198 of 1999 respectively on the file of the appellate authority and those appeals are pending adjudication before the appellate authority. When things stood thus, the first Respondent, without following the mandatory provision of Section 39(2) of the Act, has passed the impugned orders dated 20th July 2000, 8th July 2000 and 20th July 2000 vide Annexures-J, K and L respectively, without notifying the Petitioner or affording an opportunity of hearing to the Petitioner and also without verifying the material available on records, withdrawing the permission granted in respect of the three colleges run by the Petitioner - Education Society. Feeling aggrieved by the impugned orders passed by the first Respondent, the Petitioner has presented these petitions.

3. The principal ground urged by the learned Counsel appearing for the Petitioner is that, when the matter is seized by the appellate authority, the first Respondent ought not to have proceeded and passed the impugned orders without following the mandatory provisions of Section 39(2) of the Act, that too, without issuing notice and without conducting any enquiry whatsoever as required under the mandatory provisions of the Act. If opportunity had been afforded to the Petitioner, the Petitioner - Education Society would have brought to the notice of the first Respondent about the pendency of the appeals before the appellate authority and therefore, by no stretch the impugned orders passed by the first Respondent are sustainable in law and the same are liable to be set aside.

4. Per contra, the learned Government Advocate, inter alia, contended and substantiated the impugned orders passed by the first Respondent on the ground that, the Petitioner does not possess the necessary infrastructure as per the norms prescribed under the relevant provisions of the Act and Rules and the Respondents have rightly proceeded and passed the impugned orders after receipt of the report from the competent authority. Further, to substantiate his submission, he submitted that during the pendency of the writ petitions, this Court has directed the second Respondent to inspect the three Pre-University colleges run by the Petitioner and to submit a report within four weeks as to whether the said colleges have necessary infrastructure for grant of recognition/continuation of recognition. Accordingly, the report has been filed before this Court after verifying the ground reality, the infrastructure, stocks etc., and the same is produced along with the memo dated 7th September, 2002. He

submitted that based on the report submitted by the second Respondent, the first Respondent has passed the impugned orders. He further submitted that the Petitioner has not made out any good grounds to interfere with the impugned orders passed by the authorities.

5. Having heard the learned Counsel appearing for the Petitioner and the learned Government Advocate appearing for Respondents, and after careful perusal of the material available on file and considering the contentions urged by the learned Counsel appearing for the parties, the only question that would arise for consideration in these petitions is as to whether the first Respondent has followed the mandatory provisions of the Act and decided the same in accordance with law ? After careful perusal of the impugned orders passed by the first Respondent vide Annexures-J, K and L, it is manifest on the face of records that the first Respondent has committed an error and irregularity in not following the mandatory provision of Section 39(2) of the Act. It is worthwhile to extract Sub-section (2) of Section 39 of the Act which reads as follows:

Section 39(2) :

Where the State Government is of the opinion that the recognition granted to any local authority institution or private educational institution should, in the public interest be withdrawn, they may after giving to the local authority or as the case may be the Governing Council of the institution one month's notice to make any representation, withdraw by notification the recognition granted to the said institution.

In the instant case, in the orders passed by the first Respondent vide Annexures-J, K and L, it is crystal clear that there is no reference regarding one month's notice to be given to the Petitioner to make the representation before withdrawing the recognition accorded to the Petitioner. Therefore, the impugned orders passed by the first Respondent are not sustainable. Hence, they are liable to be set aside. However, it is significant to note that the impugned orders passed by the first Respondent are vitiated for non-compliance of the principles of natural justice and for not conducting the enquiry and for not verifying the material on record. In the instant case, it is not in dispute, as rightly pointed out by the learned Counsel appearing for the Petitioner that, appeals have been filed by the Petitioner before the appellate authority in Appeal Nos. 196 of 1999, 197 of 1999 and 198 of 1999, feeling aggrieved by the order passed by the Director of Pre-University Education, rejecting the approval for the academic year 1999-2000, and that those appeals are pending adjudication before the appellate authority. This aspect of the matter has been completely overlooked by the first Respondent which clearly establishes beyond all reasonable doubts that the first Respondent has proceeded to pass the impugned orders contrary to the mandatory provisions of the Act and without application of mind. Therefore, in my considered view, the impugned orders passed by the first Respondent are liable to be set aside.

6. Having regard to the facts and circumstances of the case, as stated above, and having regard to the factual legal aspect of the matter, as enumerated above, I do not find any justification to sustain the impugned orders passed by the first Respondent.

7. For the foregoing reasons, the writ petitions filed by the Petitioner succeed and stand disposed of with the following directions:

1) The writ petitions filed by the Petitioner are allowed.

2) The impugned orders passed by the first Respondent dated 20th July 2000, 8th July 2000 and 20th July 2000 vide Annexures-J, K and L respectively, are hereby set aside and the matter stands remitted back to the first Respondent for reconsideration of the matter afresh with a direction to proceed with the matter and decide the same in strict compliance of the mandatory provisions of the Act and Rules, after affording an opportunity of hearing to the Petitioner, as expeditiously as possible, within six months from the date of receipt of a copy of this order.

8. The learned Government Advocate is permitted to file memo of appearance within two weeks.