
(1982) 10 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 25277 of 1981

Deccan Model Education Society, Bangalore

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 07-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 29, 30, 30 (1)

Citation : AIR 1983 Kar 207 : (1983) 1 KarLJ 337

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : V.K. Varadachari, for the Appellant; M.H. Motigi, Govt. Pleader, for the Respondent

Judgement

1. The petitioner, in this writ petition, has prayed for issue of a writ or order in the nature of mandamus directing the respondents to grant recognition to the Tagore Memorial High School, Rajajinagar, Bangalore.

2. The circumstances in which the petition has been presented may be stated briefly and they are as follows: It is convenient first to set out those facts which are not in dispute. The petitioner is a Society known by the name "Deccan Model Education Society." It is registered under the Karnataka Societies Registration Act, 1960. It is asserted by the petitioner that the members are all Christians and it was formed by the Christians for the purpose of establishing educational institutions of their choice. The petitioner's Society runs a primary school up to VII standard at Rajajinagar and that primary school has been recognised by the respondents. The primary school is run in the name and style of Tagore Memorial Nursery and Primary School." On 8-10-1979, the society decided to start an unaided High School for standards VIII to X in continuation of the primary school, as the primary school would be feeding the High School, for the academic year 1980-81. The application for starting a Secondary School is required to be made by 31st Oct, of the previous year to the year in which the High School is to be started. The Director of Public Instruction in Karnataka has to communicate

his decision whether the permission is granted or not before 15th March of the year in which the school is to commence in the event of refusal of permission, the applicant can file an appeal before 15th of April. The petitioner has asserted that though an application was made on 8-10-1979, no communication from the 2nd respondent ever came as to whether permission was granted or not till the date on which the petition was filed. However, the petitioner started VIII standard class on 1-6-1980 and has been running the class with trained staff. The students who had passed the VII standard in the primary school run by the petitioner-institution were admitted to the VIII standard as they did not apply to other High Schools for admission. On 5-10-1980 again an applications was sent for permission and recognition for VIII and IX standards for the academic year 1981-82. In response to the latter application, the Deputy Director of Public Instruction having jurisdiction sent a communication for spot inspection of a school on 20-11-1980. On the said date, he carried out the inspection. The petitioner on 15-1-1981 sent a petition to the Minister for Education in Karnataka requesting recognition for the High School. It is asserted that to the best of the knowledge of the petitioner-Society, the Department officials recommended the grant of permission and recognition to the school and sent the file to the Government on 12-5-1981. However, on 21-1-1981 the Deputy Director of Public Instruction sent an endorsement to the Secretary of the School directing the Society to close down the High School, as the same was unauthorised. Aggrieved by the same, the petitioner has approached this Court under Art. 226 of the Constitution inter alia contending that the department had no authority to direct the High School to close down. The Deputy Director of Public Instruction had no authority to require the High School to be closed down inasmuch as the school is run by a religious minority institution and in terms of sub-Art. (1) of Art, 30 of the Constitution, the petitioner-Society had a fundamental right to start a school of its choice subject only to such reasonable restrictions which the State may impose in order to maintain general standards of education and security of the State and safeguard public health. It is contended for the petitioner that the teaching staff of the VIII and IX standards of the High School consists of Christians only and that there was more than 200 Christian students studying in the Primary and High School classes run by the Society. It is also contended that the High School satisfies all the requirements of R. 9 of the Grant-in-Aid Code for Secondary School in Karnataka. The petitioner-Society has made a further grievance in the petition that the Director of Secondary Education has been repeatedly publishing in the newspapers advising the parents not to send their wards to the schools of the petitioner, even without refusing to recognise the school or without disposing of the applications pending before the department for permission to start the school.

3. Respondents 1 and 2 have entered appearance and filed their statement of objections. In the statement of objections, they deny that the petitioner is a minority institution and is entitled to the rights under Art, 30 of the Constitution. It is also stated that the Government of Karnataka has not recognised the

petitioner-institution as a minority institution within the meaning of Art. 30(1) of the Constitution. It is further stated that permission/recognition could only be given in accordance with the provisions of the Grant-in-Aid Code for Secondary Schools in Karnataka State. It is stated that when the petitioner approached for permission to start VIII standard, the department examined the claim of the petitioner for permission and after spot inspection, the department felt that there was no need for starting the VIII standard and the department was not satisfied in regard to the premises accommodation, location, equipment and the like and therefore it rejected the claim for the petitioner. The petitioner was accordingly informed on 4-6-1980. It is further stated for the respondents that when the petitioner again applied for permission in the year 1981-82 and for similar reasons, the request was rejected and the endorsement was issued on 25-6-1981. It is asserted that the respondents by several press notes issued and published in the newspapers intimated the public that the High School commenced by the petitioner was unauthorised and therefore the public should not admit students to the institution. It is admitted by the respondents that one of the Inspectors of Schools having jurisdiction visited for the purposes of inspection of primary section and not for any other purpose. In these circumstances, the respondents claim that the petitioner is not entitled to the mandamus or an order in the nature of mandamus which it has prayed for.

4. In addition to the facts placed before the Court the learned High Court Government Pleader has made available the records of the case for perusal of the Court. The facts which are really in dispute are:

(1) That no communication from the department was received by the School in respect of the application made in 1979 and in 1980:

(2) That the petitioner-Society is not a minority institution and therefore not entitled to any protection or right under Art. 30(1) of the Constitution:

(3) That having made no application for recognition, the petitioner is not entitled to a writ of mandamus; and

(4) That no duty is cast upon the respondents to give recognition to the institution which has not applied for such recognition.

5. I have heard the Counsel for the petitioner and the learned High Court Government Pleader for the respondents. I have also perused the records of the case.

6. The controversy in this case really lies in a very narrow compass and it is most unfortunate that the respondents have taken shelter behind technicalities instead of approaching the problem of the petitioner in a practical manner without violating the fundamental rights of the petitioner.

7. It will be convenient to take up the question of the status of the petitioner-Society and its claim for the protection of its rights under Art. 30(1) of the Constitution. A certified copy of the Memorandum of Association of the petitioner-

Society is made available to the Court, According to the certificate issued by the Registrar of Societies in Karnataka, Bangalore the objects of the Society are:

- (a) To run educational institutions like Nursery, Primary and High Schools in Bangalore.
- (b) To introduce, adopt and follow such plans as are conducive to the moral growth of Christian Children of school going age in Bangalore.
- (c) To carry on such other cultural activities for the benefit of Christians in Bangalore to help the poor and jobless Christian ladies.

In the list of Managing Committee members who are seven in number, it is seen that they are all Christians. Therefore, it is not open to the respondents to contend that the petitioner is not a Christian institution and therefore a minority institution in the State of Karnataka which enjoys its fundamental right to start and administer schools of its choice in the State of Karnataka in terms of Art. 30(1) of the Constitution. Somewhat similar question arose for consideration by me in the case of Socio Literati Advancement Society, Bangalore Vs. State of Karnataka and Others, . The respondents therein had taken somewhat similar stand that the petitioner therein could not claim rights under Arts. 29 and 30 of the Constitution and in any event this Court ought not to embark upon an investigation whether the Society-institution is a minority institution or not in proceedings under Art. 226 of the Constitution. Repelling that contention I held that there was no fetter on this Court under Art. 226 of the Constitution to investigate the status of the petitioner who asserts his or her fundamental rights under Arts. 29 and 30 of the Constitution. I have also pointed out that once the individual institution has established, prima facie, that it was a minority institution within the meaning of the term occurring in Art. 30 of the Constitution, the burden of proving that it is not so was on those who asserted the contrary.

8. But for the bald denial by the State of the status of the petitioner, no material is placed before the Court to disprove the assertions of the petitioner that it is a Christian minority institution in the State. In fact, the learned Government Pleader, does not dispute that the Christians do constitute religious minority in the State of Karnataka. Therefore, one has to come to the conclusion on the facts of this case that the petitioner is a minority institution and therefore entitled to assert its fundamental rights under Art. 30(1) of the Constitution.

9. However, Shri M. H. Motigi, learned High Court Government Pleader appearing for the respondents, contended that this claim had been made for the first time in this Court in these proceedings and it was never the claim before the authorities either in 1979 or 1980 in the applications made by it for permission to start the High School as a religious minority institution. Therefore, it is argued, the question of the respondents considering the case of the petitioner in terms of the rights of the petitioner under Art. 30(1) of the Constitution did not at all arise and perusal of the applications in the records would disclose that no specific

claim was made by the petitioner that it was a religious minority institution which was starting a school of its choice. Even in the covering letter dated 27-10-1980 there is nothing to indicate that the applications made earlier were by a religious minority institution. But the language in the letter is, even as on 27-10-1980, the school has expressed its anguish that it has not heard from the department in respect of its earlier application. Among the enclosures given certificate of incorporation under the Registration Act is one. The other enclosure is the list of names of the members of the managing committee. Out of seven indicated, six of them are apparently Christians. It is unnecessary to refer to the other enclosures.

10. If the department had applied its mind to the applications particularly to the enclosures to which I have reference it should have at least provoked the department to cause enquiries to be made as to the status of the petitioner-institution which apparently has not been made. In any event, the entire question of the status of the petitioner has now become academic because in this Court the petitioner has unequivocally claimed status of a minority institution and this Court has already ruled that that status should be granted to the petitioner having regard to the memorandum of association.

11. The question, therefore, de hors the fundamental rights under Art. 30 of the Constitution, has become now unnecessary in the instant case to examine whether the application made by the petitioner in 1979 was properly considered and rejected by the department and whether that rejection was communicated to the petitioner-institution. The application made in 1979 is to be found in the records. On receipt of that application, the Deputy Director of Public Instruction has made a report. The report of the Deputy Director of Public Instruction is also to be found in the record itself. In that report the Deputy Director of Public Instruction for reasons stated therein has recommended for rejection of the application. Thereafter, it is found in the records that 165 applications were all rejected and that communication was sent to the 165 institutions one of which by cross-reference can be made out is the petitioner-institution. It has been despatched to 165 institutions as seen from the entry made in the despatch register pertaining to the date of 4-6-1980. When it was actually posted is not borne out by any material to be found in the despatch register or in the records. No separate copy of the communication rejecting the application sent to the petitioner is to be found in the records. There is a single copy of a rejection communication giving seven reasons for rejection. It is claimed that this was sent to all the 165 institutions in respect of the applications seeking permission to start the High School Classes in the academic year 1980-81. The learned Government Pleader was unable to point out which one of the seven reasons contained in the copy was applicable to the case of the petitioner. In fact, none of the seven reasons given has anything to do with the reasons recorded by the Deputy Director of Public Instruction for his recommendation to reject the application of the petitioner. The very fact that a cycle styled rejection has been issued to 165 institutions at the same time, maintaining a single copy thereof

evidences a mechanical rejection without proper application of mind. This, coupled with the doubtful question of communication having been made to the institution concerned, I am of the view that the 2nd respondent-Director of Public Instruction was in error in rejecting the application.

12. In the circumstances stated above, the order of rejection which was arbitrary, without applications of mind and therefore not liable to be taken notice of by this Court as valid. Similar is the case of the application made for the year 1980. All administrative decisions must also stand the test of judicial scrutiny when they are made arbitrarily without assigning proper reasons. More so, when they involve rights of parties under Part-III of the Constitution.

13. Apart from these, having regard to the numerous decisions rendered by the Supreme Court in the context of the rights of the parties under Art. 30(1) of the Constitution, I am of the view that an educational institution established and administered by the religious or linguistic minority need not obtain any permission at all. The right under sub art. (1) of Art. 30 of the Constitution has been held to be more absolute, than the rights under Article 19. It is true that nothing is absolute in the sense that term is used in metaphysics. But comparing the rights under Art. 19 which are subject to reasonable restrictions which the State may impose on the citizens and others the restrictions which can be imposed on the rights of the minorities under Art. 30(1) of the Constitution are far less. One may straightway say that the minority institution under Article 30(1) of the Constitution does not have the fundamental right to start the educational institution which will endanger the security of the State or peace and harmony of the Society, create disturbance or cause danger to public health or even threaten the integrity of the Country. Barring instances like the ones I have enumerated right to be exercised by the minority institution under Art, 30(1) of the Constitution or for that matter, Art. 29 of the Constitution is absolute. For the reasons I have already given that the petitioner is a Christian minority institution seeking to establish an educational institution to impart general education, it need not seek the permission of the respondents in terms of the Grant-in-aid Code. I must hasten to add that the minority institution need not have sought permission for the establishment of an educational institution of its own choice, which may not impart general education. By the same token it need not seek permission to start a school of general education.

14. The parents of the Students have made their choice to admit such students to the institution and if that right cannot be questioned to start an educational institution which does not conform to the general pattern to education imparted by the schools recognised by the Government, then even to start a school imparting general education of the type which is imparted in the State, permission to establish and administer, does not arise. But, however, the need even for the minority institution to seek recognition of such institution administered by it arises only when it wants to conform to the general education imparted and recognised by the State. The decided cases of the Supreme Court

and the High Court on this aspect are while right to recognition may not be a fundamental right, nevertheless a minority institution is entitled to be treated equally as any other applicant for recognition of its jurisdiction.

15. It is seen that no application has been made by the petitioner-institution for recognition as such in the manner prescribed under R. 12-A of the Grant-in-Aid Code for Secondary Education in Karnataka Sri. V. K. Varadachari, learned Counsel for the petitioner, has relied upon the case decided by me in the case of Socio Literati Advancement Society, Bangalore Vs. State of Karnataka and Others, and pointed out that this Court did issue a mandamus to recognise the petitioner-institution in that case. That was in totally different circumstances. There, the recognition had been refused by the State on grounds of policy which was found to be factually incorrect inasmuch as it will not be encouraging more Teachers Training Institution in the State was erroneous, as a later applicant had been given recognition contrary to the declared policy. It was in that circumstances that a mandamus for recognition of the petitioner which was a linguistic minority institution was issued by this Court.

16. It is now well settled by a catena of decisions that any educational institution of general education even though established and administered by minorities must nevertheless conform to the standards prescribed by the State if it is recognised by the State as an institution of general education. (See The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, .

17. I must notice that the petitioner has started VIIIth, IXth and Xth standards in the interregnum between 1979 Oct. and the date of this order. Many students joined despite the newspaper publications by the department. Sri Motagi, learned High Court Government Pleader, submitted that the respondents would make adequate arrangements for these students to be absorbed in other institutions and their interests would not suffer if the petitioner's prayer is rejected. But I have already demonstrated that the applications of the petitioner could not so easily have been rejected, it being a minority institution which has established an educational institution of its choice. I have found from the records two reasons given by the Deputy Director of Public Instruction for recommending the rejection of permission: one is that the petitioner did not have adequate space for running the High School. The second was that there were already schools in the area which did not permit of another High School in the same area. The second of the reasons is totally irrelevant where the right to establish by minority educational institution of its choice is concerned. Therefore, that cannot be a ground as to why recognition should not be accorded. It is brought to the notice of the Court by the Counsel for respondent (?) that since the making of the application in addition to taking on lease a building where the primary school was being run, new accommodation on its own site has been built by the school and that it is more than adequate to run the primary school as well as three classes of the High School. This matter is not for this Court to investigate but for the

department to investigate. Under R. 11 of the Grant-in-Aid Code there are several conditions mentioned which are conditions precedent for recognition. If the petitioner presently satisfies those conditions, notwithstanding that there are other High Schools in the area, the department is bound to give recognition.

18. In these circumstances, the only appropriate order this Court can make is to direct the petitioner within four weeks from today to make an application for recognition in accordance with procedure prescribed under Rule 12A of the Grant-in-Aid Code. If such an application is made, the 2nd respondent shall consider the same with reference to the conditions mentioned in R. 11 of the Grant-in-Aid Code for secondary schools and pass appropriate orders after due application of mind and necessary investigation in that behalf keeping in mind that the applicant is a minority institution which has established a school of its choice in exercise of its right under sub-Art. (1) of Art. 30 of the Constitution. The decision on any application made by the petitioner may be communicated by the registered post to the institution within four weeks from the date of receipt of the application.

19. I have refrained from expressing any view in regard to the contention raised by the learned Government Pleader that rejection of the permission was in fact communicated, in the light of the conclusions reached by me, the petitioner was not required to apply for permission at all. The matter regarding the entries in the despatch register has become academic for the other reason given by me.

20. In the circumstances, there will be no order as to costs.

21. Sri. M. H. Motigi, learned High Court Government Pleader, is permitted to file his memo of appearance within two weeks from today.

22. Order accordingly.