
(1996) 04 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 20064 of 1991

D.R. Sadashiva Murthy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 KarLJ 353

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. By this petition, petitioners have prayed for the issuance of writ or order or direction in the nature of writ of certiorari quashing the order passed by the first respondent i.e., the State of Karnataka, represented by the Secretary of Education Department in No. BRA.E.S. 90, dated 3-8-1991, Annexure-H to the writ petition and for grant such other reliefs as the Court deems fit.

2. By Annexure-H, the first respondent i.e., the Secretary of Education Department in the State of Karnataka sanctioned the opening of the High School at Neralege as per the Government Order No. 334 BR.E.S. 90, dated 3-8-1991. The petitioners' grievance is that there is a High School which is being run by the petitioner 17 since 1984 at Neralege, S. Kallahalli, Chikkajji Kattehalli, Sankehalli and S. Diggenahalli. The petitioners' grievance is that the other i.e. new school that has been permitted to be started is within a radius of less than 5 kms. i.e., the distance between the petitioner's school and the present school in question which has been sanctioned to be run at Neralege is only 2 kms. The petitioners' contention is that the sanction which has been granted for running of the secondary school to the respondent is and appears to be in violation of the directions issued by the Government as per Annexure-K to the writ petition. The petitioners in the writ petition have not very clearly stated what injury they are going to suffer or are suffering from the emergence of another High School sanctioned by the Government under Annexure-H. There is only a vague allegation that the petitioners' may suffer great hardship or difficulty by the sanctioning of this school in dispute to the respondents by respondent 1. The

hardships and difficulties have not been indicated. The petitioners in the writ petition claimed to be the residents of village Diggenahalli and other surrounding villages except petitioners 16 and 17 which are said to be running this school. I mean to say, petitioners 16 and 17 are running the school and other petitioners are only agriculturists and residents of the village. No counter has been filed on behalf of the opposite parties till today, neither by the State of Karnataka represented through Secretary of Education Department nor by the respondents 2 and 3 i.e., Zilla Parishat concerned nor by the Deputy Director of Public Instruction.

3. The petition is of 1991. It has to be decided on the basis of the allegations made in the writ petition. I have heard the learned Counsel for the petitioner Sri Sanaulla, holding brief for Sri J. Lingappa, learned Counsel for the petitioners and learned Government Counsel, Smt. L.Y. Premavathi. Sri Sanaulla, learned Counsel for the petitioners, argued before me that as per Annexure-K to the writ petition, it is clear that no High School shall be opened or shall be allowed within a radius of 5 kms. in the rural area from the one existing in that village. He invited my attention to the Item I with heading "opening of Government High Schools" read with Item II with heading "opening of Private High School". He also invited my attention to Annexure-K and to the governing principles laid down under the heading "opening of Government High Schools", particularly clause (a) and submitted that it has been provided that there shall not be any High School within a radius of 5 kms. in the rural area. The learned Counsel for the petitioners argued that the Government should not have opened or started or permitted opening of Government High School within a radius of 5 kms. I specifically put the question to the learned Counsel for the petitioner what is the force of this Government order, is it is a mere guiding principle or it acts with force as a rule or it is a policy decision. I further put the question to him how he can and does base on it for his right to file this petition. The learned Counsel failed to reply. The learned Counsel was also called upon to explain how the villagers are going to suffer if there are two High Schools in the rural area. If the Government High School is permitted to be started, then because of the competition the private school will also improve its standard, in its competition, to give better education to the students by engaging well and more qualified teachers. If that is so how the villagers are going to be affected adversely. What injury or loss the villagers or the children going to suffer in the matter of education being imparted by private school particularly when private school's management will have to be careful in providing teaching by best qualified persons or better qualified one. The petitioners failed to give satisfactory reply.

4. That on behalf of the respondent, the learned Government Pleader, Smt. L.Y. Premavathi submitted that the petition itself is misconceived. The Government has taken a decision at the higher level through the Secretary to permit opening of Government High School. The learned Government Counsel submitted that the Government has taken this decision on the basis of the representation of the people of that village concerned. Smt. L.Y. Premavathi learned Government

Counsel further submitted that the basic criteria in the matter of opening of either Government Schools or Private Schools is the need for the school in the area. The learned Government Counsel emphasised on the need. The learned Government Counsel also referred to Clause A of Annexure-K as well as the earlier part and submitted that in this letter it has been clearly stated as per the directions issued to him the Director of Public Instructions should examine the need of opening of the new school. The learned Government Counsel submitted that this is the basic criteria that is to be the primary consideration and if there is a conflict between the need of the school and the distance between the two schools, then the need of school in the area is to prevail. The learned Government Counsel further submitted that the intention of the Government is that if there is no need of the school even within a radius of 5 kms. and also looking to the need of the student population for the school if there is no need to start school, the school cannot be established. The learned Government Counsel submitted that the intention of the Government is that if there is a need to start a school, then the Government or the authorities concerned may consider establishing of a school. Otherwise, if the need is not very pressing or prevalent, then the distance may be an important factor. The learned Government Counsel also referred to the part of clause (a) a reference has been made that whether in urban areas or rural areas, insistence should be made on the need and not on distance.

5. I have applied my mind to the contentions raised by the learned Counsel appearing for the parties. The jurisdiction of this Court under Article 226 is meant to be exercised where there is any error or lack of jurisdiction or where there is breach of law or of some mandatory provision coupled with that the order impugned has a tendency to cause substantial injury or injustice to the parties. If no injustice or injury is going to be caused to the petitioner, then in those cases even if there is some error of law or even of jurisdiction, this Court may refuse to interfere with the order as it is not always bound to interfere with the same. Basically, there is a fundamental right of education conferred under the Constitution to every citizen of India whether residing in the urban areas or in the rural areas. It has well been established by the Lordships of the Supreme Court in many cases including the case of Miss Mohini Jain v State of Karnataka and Others¹ and in the case of Unni Krishnan and Others v State of Andhra Pradesh and Others², that every citizen has got a fundamental right of education which emerges out of right to life under Article 21 of the Constitution, as the right to life means right to life with individual's human dignity and honour. To improve the human dignity and stature education is the best instrument to open the windows of the mind of the human being. Where there is a fundamental right of education, a corresponding obligation is cast on the State authorities to make provisions to ensure the fulfilment of that fundamental right of the citizen. It may be fulfilled by the opening of the Government aided institution or it may be fulfilled by making provisions for establishment and opening of the private educational institutions subject to the conditions imposed by the State and the

State authority which grant recognition to such institutions in the best interest of not only of the standard of education but also of the objects enshrined in the preamble of the Constitution. The running of the educational institution is the principal function of the State while running of a private educational institution is the supplementary act to the principal activity carried on by the State. The criteria no doubt is the need of educational institution in the area. The distance may be one of the factors to be taken into consideration but is not the sole determinating factor in such cases. Really the basic criteria while exercising power to open or permit to open a school is the consideration of the need of the school in that area which has to be examined in the context of existing schools and the local population particularly the population of the children needing education. There can be cases where more than one institution may be needed and can be established within the radius of 5 kms. and there can be cases

1. AIR 1992 SC 1858

2. AIR 1993 SC 2178 where only one school can be established. The best judge of these matters is the State and the authorities in this regard. But to say that there shall no institution within the radius of 5 kms. at all in my opinion is not always sound principle and the learned Counsel for the petitioner is mistaken in making such submission. Here the decision to start the educational institution has not been taken by the Deputy Director. It has been taken by the Government itself as a matter of policy. The criteria contained in Annexure-K is the guidance to the Deputy Director concerned. But this is only a guideline. It is open to the Government to change or to take a decision to open a school keeping in view the need of the school in the locality. The Government is the best judge. As the petitioners have failed to show that the petitioners are likely to suffer any injury from the opening of the school by the Government itself, in my opinion, the petitioners have no cause of action or locus to file this petition. The Government has not directed the closure of the institution run by the petitioners 16 and 17. If there are two institutions, one owned and run by the private parties and other by the Government, it will only result in healthy competition in the matter of imparting education to the students. If the petitioners' private institution imparts better education than the Government institution, then in that case, there is no question of any decrease of the number of students approaching the petitioners' institution. But if the institution run by the Government provides better schooling and better education than the one run by the petitioners' private institution and with lesser fee charged than claimed by the petitioners' private institution, the poor and persons belonging to the weaker sections will be benefited. The petitioners will have to consider things in the best interest of the children requiring education. So, opening of the new school by the Government in addition to the private school of the petitioners 16 and 17 will be beneficial in the interest of the people residing in those villages and also to their children who want to get education. Neither petitioners 1 to 15 nor petitioners 16 and 17 are going to suffer any irreparable loss or injury from the opening of the Government High School in the village Neralege. The opening of the Government High School

will, in my opinion, cause no unhealthy competition. Apart from that, running of a Private High School is only a supplementary activity to the principal activity to be carried by the State. It is primary obligation of the State to make arrangement to satisfy and secure the fundamental right and person carrying on activity under the permission granted by the State has this legal right to run school as supplemental activity only. In my opinion, the petitioners have no right to challenge the order impugned. The petition is devoid of merits and the petition is hereby dismissed as it has got no merits. The cost of the petition are made easy i.e., ?respective parties shall bear their own costs. The learned Government Counsel, Smt. L.Y. Premavathi is permitted to file her memo of appearance.