

(1989) 07 KAR CK 0018
In the Karnataka High Court
Case No : W.P. Nos. 9495/1989, etc

Gandhi Vidya Shala Educational Trust APPELLANT
Vs
State of Karnataka and Others RESPONDENT

Date of Decision : 20-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 2 KarLJ 416

Hon'ble Judges : N. Venkatachala, J

Judgement

Venkatachala, J.-Since these writ petitions are founded on almost common fact situations and the points arising for decision in them are common, they are disposed of by this common order.

2. Petitioner in each of these writ petitions, is a Teachers Training Institution which has been established in one or the other part of Karnataka State and is being run with due recognition granted by the State Government under the Grant-in-Aid Code for Primary Teachers Training Institutes (hereinafter referred to as "the Code"). However, the State's Cabinet, in its meeting held on 22-4-1987, resolved that a study of the working of the existing Teachers Training Institutions in the State should be undertaken by the Education Department so as to enable the State Government to de-recognise the non-viable and non-quality institutions. In pursuance thereof, Government Order No. ED 10 PTI 87 dated 14-3-1988 came to be issued thus:

"Sanction is accorded to the constitution of Three-Man Committee under the Chairmanship of Commissioner for Public Instruction, Bangalore, and the following as Members:

1. Director of Public Instruction (Research & Training), Bangalore. Member
2. Sri Y.R. Achuta Rao, Deputy Director of Public Instruction (Planning) Member Secretary

The Committee shall study the working of the existing Teacher Training

Institutions in the State and recommend to Government for de-recognition of non-viable and non-quality institutions.

The Committee shall submit report to Government within 3 (three) months from the date of issue of this Government Order."

The Committee, so constituted, having undertaken a study of the working of Teachers Training Institutions, submitted its report thereon to the State Government recommending closure of 25 of them. Later, another Committee constituted by the State Government with the Director of Public Instruction as its Chairman, was directed by the State Government to physically verify the Teachers Training Institutions, the closure of which had been recommended by the earlier Committee, and submit its report to the State Government with a recommendation as to which of them required closure. Accordingly, the later constituted Committee submitted its report to the State Government recommending for the closure of 18 and continuation of 7, out of 25 Teachers Training Institutions, whose closure had been recommended by the earlier Committee. Petitioners Teachers Training Institutions were among those institutions, the closure of which was recommended by the later constituted Committee. On the basis of that report received from the later constituted Committee, the Secretary to Government of Karnataka (Education Department), by his letter No. ED 49 TTI 89(P) dated 8-2-1989, directed the Commissioner for Public Instruction to take urgent steps under Rule 39 of the Code to serve show cause notices on the Institutions, whose closure was recommended, calling upon them to submit explanations within 15 days of the date of service of such notices, as to why action should not be taken against them for noncompliance with the stipulations laid down under the Code, and send the names of such of those Institutions which had failed to comply with the stipulations, to the Government together with a recommendation for their closure. Such show cause notices being served upon the petitioners-Institutions, they duly sent their explanations in answer thereto.

4. Despite the receipt of explanations of the petitioners-Institutions by the Commissioner of Public Instruction, an Official Memorandum of almost similar content was issued by him to each of the petitioners-Institutions withdrawing their recognition. Official Memorandum dated March 25, 1989, received by the petitioner-Institution in Writ Petition No. 9552 of 1989 since gives out such content, it is excerpted:

"OFFICE OF THE COMMISSIONER FOR PUBLIC INSTRUCTION IN KARNATAKA,
NEW PUBLIC OFFICES, BANGALORE-1.

No. TEI/DIET/CLS/88-89 dated 25 MAR 1989

OFFICIAL MEMORANDUM

Sub: Withdrawal of Recognition to Hamdard Teachers Training Institute, Hubli.

Ref: 1. G.O.No. ED 10 PTI87 dt.14-3-88

2. G.O.No. ED 49 PTI 87 dt.1-12-88

3. Show-cause Notice No.TEI/ DIET/ CLS/ 88-89 dt. 27-2-89 issued on the Management.

4. Replies furnished by the Management in their letter No.

Preamble:

The Government of Karnataka constituted a Committee to study the working of Teachers' Training Institutes in the State and to recommend for derecognition of Non-viable and Substandard Teachers' Training Institutes vide Govt. Order cited under reference (1).

The Committee collected the information from the Institute through a questionnaire and then it visited the Teachers' Training Institutes. All the Sub-standard T.T.ts. identified by the above Committee even revisited by another Committee constituted by Government in G.O. dt. 1-12-1988.

This Committee visited the above Institute and submitted a report that the Institute which was established during 1986-87 does not have the minimum infrastructure like a suitable building, playground, adequate equipments and teaching aids and that the financial position of the management is not sound.

The Secretary to Hamdard Teachers Training Institute, Hubli was issued a Show-cause Notice on 27-2-1989 to explain why action should not be taken under Rule 39 of the Grant-in-aid Code for Primary Teachers Training Institute to withdraw the Recognition for non-compliance of conditions laid down for grant of Recognition.

The Secretary of the above Institute furnished his replies on 15-3-89 denying the factual report of the Committee without providing any evidence in support of his replies and thus his replies are not acceptable.

ORDERS THEREON:

On careful consideration of the replies furnished by the Secretary, Hamdard Teachers Institute, Station Road, Hubli to the Show-cause notice, the undersigned is convinced that the Management has not provided the minimum infrastructure like a suitable building, Playground, equipments and teaching aids and has violated the conditions of Recognition.

Hence, under the powers vested in me under Rule 39 of the Grant-in-aid for Primary Teachers Training Institute, it is ordered that the Recognition to Hamdard Teachers Training Institute, Hubli, Dharwar Dist. is withdrawn from the academic year 1989-90.

The Management is directed not to make any admissions in I Year TCH during 1989-90.

The Deputy Director of Public Instruction, Dharwar Dist., shall make alternate

arrangements to admit the II Year TCH candidates in the neighbouring Teachers Training Institutes during 1989-90.

Sd/-Commissioner for Public Instruction."

It is the said Official Memoranda received by the petitioners-Institutions which are impugned in these writ petitions and against which writs of certiorari are sought.

5. The challenge to the validity of the impugned Official Memoranda, by which recognition granted to the petitioners-Institutions were withdrawn, is made on grounds,-firstly of absence in the Commissioner for Public Instruction either authority under letter No. ED 49 TTI 88(P) dated 8-2-1989 of the Secretary to the State Government issued to him, or power under sub-rule (a) of Rule 39 of the Code, in that regard and secondly, of non-compliance with the requirement of the proviso to sub-rule (a) of Rule 39 of the Code as a condition precedent for exercise of power of withdrawal of recognition under that sub-rule, assuming, but without conceding, that the Commissioner for Public Instruction was invested with such power.

6. However, the learned High Court Government Pleader relying upon the second proviso to sub-rule(a) of Rule 39 of the Code, which confers a right of appeal to an Institution respecting an order of withdrawal of its recognition before the State Government, urged that that right of appeal, an alternate remedy, available respecting the impugned Official Memoranda when was not exhausted, no challenge to such Official Memoranda could be made by invocation of this Court's extra-ordinary jurisdiction under Article 226 of the Constitution. Then, he sought to refute the second ground of challenge directed against the Official Memoranda urging, inter alia, that (i) non-compliance with the condition in the first proviso to sub-rule (a) of Rule 39 of the Code before issue of the impugned Official Memoranda withdrawing the recognition of the petitioners-Institutions, cannot vitiate the Official Memoranda, in that, the first proviso to sub-rule (a), which has no force of a statute being a non-statutory rule, cannot affect the validity of the impugned Official Memoranda; and (ii) giving of show-cause notices to the petitioners- Institutions to furnish explanations as to why the recognition granted to them should not be withdrawn within a period of 15 days from the date of receipt of such notices, has to be regarded as sufficient compliance with the first proviso to sub-rule (a) of Rule 39, in that, adoption of such course would satisfy the requirement of principle of natural justice of affording the petitioners-Institutions an opportunity of hearing before the impugned Official Memoranda were issued.

7. Controversies arising from the above arguments of learned Counsel, for consideration and determination, admit of the formulation of the following points:

(i) Whether the non-availing of the remedy of appeals against the impugned Official Memoranda available to the petitioners-Institutions under the Second proviso to sub-rule (a) of Rule 39 of the Code could be held against them as a

thresh-old bar to challenge such Official Memoranda, by invoking the jurisdiction of this Court under Article 226 of the Constitution;

(ii) Did the Commissioner for Public Instruction not possess any authority or power to issue the impugned Official Memoranda. Has such want of authority or power rendered the Official Memoranda issued by him a nullity; and (iii) Even if it is assumed that the Commissioner had the power to issue the impugned Official Memoranda under sub-rule(a) of Rule 39 of the Code withdrawing recognition granted to the petitioners-Institutions, do those Official Memoranda stand vitiated on account of its issuance without complying with the procedural requirement of the first proviso to that sub-rule; or will they not stand vitiated either because the first proviso being a non-Statutory rule, its non-compliance was not obligatory or because of the show cause notices issued to the petitioners-Institutions calling upon them to show cause within 15 days as to why withdrawal of recognition granted to their institutions should not be withdrawn, complying with the requirement of principle of natural justice of affording an opportunity of hearing before issuance of the impugned Official Memoranda.

As the above points need consideration and determination having regard to the scope and ambit of the provision in sub-rule (a) of Rule 39 of the Code, it could be, with advantage, excerpted.

"39. Withdrawal of recognition.

a) Recognition granted to any institution may at any time be withdrawn by the Director, if any of the conditions of recognition are not observed or are violated or if the standard of instruction imparted is in the opinion of the Inspecting Officer found to be not satisfactory or for any other valid reasons. Where an institution is mismanaged and the Departmental rules are violated, the Director after due enquiry, may declare the management as unfit to run the Institution. Thereupon, unless the managing body is re-constituted, and the affairs are set right, the recognition shall not be continued.

Provided that due warning has been given to the Management and reasonable time allowed to rectify the defects pointed out and to carry out the instructions of the Department.

Provided further that an institution which is aggrieved by the decision on withdrawal of recognition may submit an appeal to Government within a period of 30 days from the date of receipt of communication of the withdrawal of recognition. The decision of Government thereon shall be final.

b)....."

8. I shall now take up for consideration and determination the points adverted to earlier.

Re. Point (i):

No doubt, the second proviso to sub-rule (a) of Rule 39 of the Code confers a

right upon a Teachers Training Institution which may be aggrieved against an order or Official Memorandum withdrawing its recognition, to prefer an appeal before the State Government questioning such order or Official Memorandum (decision). But, the question is whether the right of appeal given to a Teachers Training Institution to question the decision of withdrawal of its recognition before the Government could be held to be a thresh-old bar in the instant cases, to approach this Court challenging the impugned Official Memorandum invoking this Court's jurisdiction under Article 226 of the Constitution. The answer to that question could be in the affirmative if the remedy of appeal conferred on the petitioners-Institutions under the second proviso to sub-rule (a) of Rule 39 of the Code be regarded as an adequate and efficacious alternate remedy. In so far as issuance of the Official Memoranda (orders) to the petitioners-Institutions are concerned, it is undisputed that they are issued by the Commissioner for Public Instruction in response to the Government Letter No. ED 49 TTI 88(P) dated 8-2-1989, adverted to earlier. Thus, when the impugned Official Memoranda are issued by the Commissioner acting in response to the letter of the Government, it would be difficult to conceive that appeals, if filed before the Government-appellate authority under the second proviso, could be decided by it having got rid of its initial bias in the matter. This situation renders the remedy of appeal available in the second proviso to sub-rule (a) respecting the impugned Official Memoranda both inadequate and inefficacious. Hence, the remedy of appeals available to the petitioners-Institutions against the impugned Official Memoranda under the second proviso to sub-rule (a) of Rule 39 of the Code, cannot be held to be a thresh-old bar for the petitioners to challenge the same in this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution.

Re. Point (ii):

Admittedly, the issuance of the impugned Official Memoranda by the Commissioner for Public Instruction was done in response to the Government Letter No. ED 49 TTI 88 (P) dated 8-2-1989 received by him. That letter reads:

"Sir,

Sub: Closure of Sub-standard TTIs.

With reference to the above, I am directed to state that the Committee constituted under Sri Shanthayya, Director of Public Instruction and Chairman, K.S.E.E.B., to physically verify those Teacher's Training Institutions that have been recommended as Sub- standard and unviable institutions by C.P.I. and submit a report for their closure. The Committee has submitted the report recommending for closure of 18 T.T.Is. and continuing the remaining 7 Institutions.

2. I am further directed to enclose herewith a copy of letter No. PS(DH) 88-89 dated 1-2-1989 together with its enclosures received from the Chairman of the Committee and to request you to take urgent steps to issue notices under Section 39 of Grant-in- Aid Code for TTI to those TTIs. recommended for closure

mentioning therein all the irregularities noticed by the Committee. In the notices the Managements should be directed to furnish explanation within 15 days from the date of receipt of notice as to why action should not be taken to close the institution for non-compliance of stipulations laid down in the Grant-in- Aid Code for TTIs. After the expiry of the stipulated period, action should be taken to send the names of those institutions which have not complied to the notices served on them with recommendation for their closure....."

From the underlined sentence in the above letter, it could be seen that the Commissioner for Public Instruction was directed by the Government merely to send the names of such of the Institutions which had failed to comply with the requirement of the show cause notices recommending to the Government their closure, but was not authorised to issue the impugned Official Memoranda withdrawing their recognition, ie., ordering their closure. Thus, it becomes obvious that the Commissioner for Public Instruction, in issuing the impugned Official Memoranda, had acted without any authority from the Government conferred upon him in that regard.

As could be seen from the impugned Official Memoranda, one of which is excerpted for illustrating the similar content of all of them, the same has been issued by the Commissioner of Public Instruction purporting to be in exercise of the powers vested in him under Rule 39 of the Code. Then, sub-rule (a) of that Rule vests power of withdrawal of recognition granted to an Institution in the Director, ie., the director of Public Instruction in Karnataka, or the Additional Director of Public Instruction in-charge of Training Programme [Vide Rule 6(b)], but not in the Commissioner for Public Instruction. Hence, I am not left in doubt that the Commissioner for Public Instruction was not vested under sub-rule (a) of Rule 39 of the Code with the power of withdrawal of recognition granted to a Teachers Training Institution.

For the foregoing reasons, I hold that the Commissioner for Public Instruction had no authority or power to issue the impugned Official Memoranda and as such, the Official Memoranda issued by him in the purported exercise of power vested in him under sub-rule (a) of Rule 39 of the Code are nullity.

Re. Point (iii):

The provision in sub-rule (a) of Rule 39 of the Code empowering the designated Officer of the State Government to make a decision withdrawing recognition granted to the Teachers Training Institutions, if exercised, would bring about serious civil consequences upon the Institutions, is undisputed. Such power is made exercisable by the designated Officer subject to the condition of his giving to the management of the Institution concerned, a fore-warning and reasonable time to rectify the pointed out defects or given departmental instructions as contained in the first proviso to that sub-rule, is a procedural safeguard incorporated in the rule obviously to obviate the exercise of power by the designated Officer arbitrarily or whimsically or capriciously without giving

thought to the consequences which may ensue by making a decision in the matter of withdrawal or recognition granted to such Institutions, and saving the power of withdrawal exercisable by the designated Officer from the challenge of being violative of Article 14 of the Constitution. If that is the purpose sought to be achieved by the proviso, compliance with the proviso necessarily becomes a condition precedent for exercise of the power of withdrawal by the designated Officer and its breach would render the decision of withdrawal of the designated Officer a nullity. Hence, it has to be held that non-compliance with the requirement of the first proviso to sub-rule (a) of Rule 39 of the Code as a condition precedent before issue of the impugned Official Memoranda under that sub-rule, has rendered the Official Memoranda a nullity, even if it is assumed that he had the power of withdrawal under the sub-rule.

9. What was submitted on behalf of the Commissioner for Public Instruction was that the first proviso to sub-rule (a) of Rule 39 of the Code being one which has no statutory force, non-compliance with such proviso will not enable the petitioners- Institutions to challenge the decision in the Official Memoranda withdrawing recognition granted to their institutions as a nullity. The first proviso to sub-rule (a) of Rule 39 of the Code, as pointed out earlier, is obviously one made by the Executive Government of the State for being observed by the designated Officer before making his decision in the matter of withdrawal of recognition granted to the Teachers Training Institutions. As held by the Supreme Court in *Ramana Devaram Shetty v International Air-port Authority of India* (AIR 1979 SC 1628) following the rule of administrative law enunciated by Mr. Justice Frankfurter in *Vitareli v Seaton* [(1959) 359 US 535], it is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

10. The said well settled rule of administrative law being applied by the Supreme Court in *B.S. Minhas v Indian Statistical Institute* (AIR 1984 SC 363), while negating a contention raised therein, that action taken by an authority without complying with a condition required to be complied under a bye-law having no force of statute, would not be invalid, the Supreme Court has held relying on the pronouncement of *Ramana Dayaram Shetty*'s case (*supra*) thus:

"In view of the pronouncement of this Court on the point, it must be held to be obligatory on the part of respondent No.1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Respondent No.1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-law 2."

Hence, the submission made on behalf of the Commissioner that non-compliance with the requirement of the first proviso a nonstatutory rule, will not affect the withdrawal of recognition granted to the petitioners-Institutions by issue of the impugned official Memoranda, cannot succeed. So also, the other submission made on behalf of the Commissioner that issue of show cause notices to the

petitioners- Institutions calling upon them to show cause within 15 days therefrom as to why the recognition granted to them should not be withdrawn, since satisfies the requirement relating to observance of principle of natural justice relating to affording of an opportunity before taking a prejudicial action against a party, the non-observance of the requirement of the first proviso cannot vitiate the action of the Commissioner in issuing the Official Memoranda, cannot be of any assistance in sustaining the Official Memoranda. As pointed out by the Supreme Court in Ramana Dayaram Shetty's case (supra), an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. Such standards in the instant cases being one imposed on the designated Officer under the first proviso to sub-rule (a) of Rule 39, action taken in violation thereof has resulted in invalidation of its action, namely, issuance of the Official Memoranda. Thus, this point has to be held in favour of the petitioners-Institutions and against the respondents.

11. In the result, these writ petitions are allowed and the impugned Official Memoranda (Annexure-A in Writ Petition No. 9495/89, Annexure-E in Writ Petition No. 9552/89, Annexure-E in Writ Petition No. 9566/89, Annexure-D in Writ Petition No. 9628/89 and Annexure-D in Writ Petition No. 11244/89) are quashed.

As a consequence, the date fixed as 20-7-1989 for issue of applications for admission of students to the petitioners-Institutions shall be regarded as extended upto 27-7-1989, the date fixed for receipt of applications by the Institutions.

Writ Petitions allowed.