
(1996) 03 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 23951/92

Gnanajyothi Vidya Samsthe (Regd.)	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) ILR (Kar) 351

Hon'ble Judges : H.N. Tilhari, J

Bench : Single Bench

Advocate : Patel D. Karigowda, for the Appellant; L.Y. Premavathi, HCGP, for the Respondent

Judgement

H.N. Tilhari, J

1. This is a petition under Article 226 and 227 of the Constitution of India and the petitioner has prayed for quashing of the order No. ED.592. SES.92, dated 10.7.1992, Annexure-J. The petitioner has further prayed for a direction to be issued to respondent No. 1 to recognise the school run by the petitioner-institution as a Grant-in-Aid School with retrospective effects from 8.7.1985 including the consequential benefits viz., arrears of Grant-in-Aid from 8.7.1985 till date. The petitioner has further prayed for grant of any further relief as this Court deems fit.

2. The petitioner's case is that petitioner is an educational institution registered under the Karnataka Societies Registration Act, 1960 and it was so registered on 27.10.1980. It has been asserted that the object of the petitioner's society has been to run educational institutions in Hiriya Taluk. No doubt the petitioner has stated that the institution is managed by SC/ST Managements for the uplifting of the poor children. Petitioner's case is that petitioner is already running a High School at Yelladakere at Hiriya Taluk in the District of Chitradurga. According to petitioner, the petitioner had applied for the grant of High School at Dindawara Village in Hiriya Taluk on 10.11.1982, 10.11.1983 and 10.11.1984 respectively

as there was need for such a school. The petitioner has further alleged that respondents 3 and 4 had recommended the sanction of High School in Dindawara. The petitioner has annexed the copy of the application dated 14.11.1984 as Annexure-B. Petitioner's further case is that the applications filed in the year 1982 and 1983 were not considered by the respondents. Further, the petitioner's application filed in 1984 was considered and on the basis of the recommendations of respondents 2 to 4 the Government by its letter dated 2.7.1985 sanctioned the private High School at Dindawara to the petitioner-society. On the basis of that letter dated 2.7.1985 passed by the Government the second respondent i.e., The Commissioner for Public Instructions passed an order dated 8.7.1985 granting permission to the petitioner to run the High School at Dindawara from the year 1985-86. The petitioner has annexed the copies of the letter and the order as Annexures C and D. Petitioner's case is that he complied with the conditions imposed by the second respondent including as to the deposit of amount and in pursuance of the above i.e., order dated 8.7.1985 petitioner made appointments of staff and admitted 28 children to the school for the year 1985-86 and intimated to the respondent No. 4 on 17.7.1985. The petitioner further asserts that petitioner has been running the High School since 12.7.1985. The petitioner's further case is that the Government has issued a Corrigendum dated 19.7.1985 in respect of the Government Order dated 2.7.1985 which is at Annexure-C to the Writ Petition, and in accordance with that the petitioner's High School's name was directed to be deleted. The petitioner has asserted that this has been done without notice to the petitioner and without any opportunity of hearing being given to the petitioner. The order dated 19.7.1985 has been annexed as Annexure-E to the Writ Petition - According to the petitioner, petitioner filed W.P.No. 11399/1985 in this Hon'ble Court challenging the order Annexure-E to the present Writ Petition and this Court was pleased to issue rule nisi and had granted at interim stay, staying the operation of the order dated 25.7.1985. The petitioner's further case is that the said Writ Petition was dismissed with certain observations by order dated 11.2.1991. The petitioner has further averred that on 1.3.1991 this Court modified the order dated 11.2.1991 and observed that since the petitioner is running a school for over 6 years question of filing a fresh application is not required. The application filed in the year 1984 is already with the respondents and the respondents have to consider the case of the petitioner favourably. The copies of the orders dated 11.2.1991 and 1.3.1991 have been annexed as Annexures F and F1 to the Writ Petition. The petitioner's case is that after the orders of this Court, the Education Officer, on the directions issued by the Superior Authority, inspected the school and submitted a detailed report on 24.1.1992 to the respondent No. 4 along with the documents given by the Head Master of the said School with the statement of villagers and on the basis of the report respondent No. 4 i.e., The Deputy Director of Public Instructions and recommended the sanctioning of a High School with effect from 1985-86 on the ground that there is need for establishment of a High School in the locality. The petitioner's further case is that the Government thereafter granted Non-Grant High School at Dindawara

vide communication dated 10.7.1992. But while granting that Non-Grant High School the Government did not take into consideration either the observations of this Court or the report which had been submitted by the Education Officer to respondent No. 4. The Communication dated 10.7.1992 has been annexed as Annexure-J to the Writ Petition. The petitioner's case is that petitioner's institution is being run since 1985-86 and that in view of the observations of the Court as quoted in para 10 that sanctioning of a Non-Grant High School at Dindawara Village is nothing but based on the present Rules which came into force subsequent to the starting of petitioner's school; whereas the petitioner institution is running from the year 1985-86. The petitioner claims that a grant of Non-Grant High School was illegal and unjust and needs to be set aside. The counter affidavit and the statement of objections to the above Writ Petition has been filed on behalf of the opposite parties on 1.9.1995. As per the allegations in the statement of objections the case of the respondents is that the present Writ Petition is wholly misconceived and it does not call for interference under Article 226 of the Constitution, the case of the opposite parties is that no doubt by the order WC.E7(H) ONS 28/84-85 dated 8.7.1985 Annexure-D the State Government had accorded permission to start private High School to the petitioner, but since the name of the petitioner's management was included by mistake such error was corrected by State Government by issuing a corrigendum bearing No. ED 51 MHS 85 dated 19.7.1985 Annexure-E to the Writ Petition whereby the High School sanctioned in favour of the petitioner was deleted. The respondent has admitted that petitioner had filed W.P.No. 11399/1985 challenging the validity of the corrigendum Annexure-E dated 19.7.1985 and that Writ Petition was dismissed and later on on 1.3.1991 the Court modified the order in which it observed that the authorities may consider the case of the petitioner favourably and however it is open to the authorities to consider the application of the petitioner in accordance with the law and to pass orders according to law. The Court ordered that when applications are already pending there is no need for filing the fresh application. The opposite parties have averred in the statement of objections that from the orders passed by the Court in W.P.11399/85 it is clear that the validity of the corrigendum dated 19.7.85 was upheld wherein the name of the petitioner's institution or petitioner's High school was deleted from the list of names of Management which had been accorded permission to start private High School in the year 1985-86. The case of the respondents is that the order of this Court dated 1.3.91 by no stretch of imagination directs the authorities to consider the application of the petitioner for grant of permission with effect from 8.7.85. The opposite parties' further case is that as per Rule 16 of the Grant-in-aid Code for secondary schools Grant-in-aid is permissible only to be secured by institutions which have been recognised by the department and that the petitioner's institution is not recognised by the Department. Hence, the petitioner is not eligible to claim Grant-in-aid for the said institution. The opposite parties have contested the petitioner's claim for grant-in-aid prior to the recognition being granted to the institution and they have pressed the claim for period before it was recognised. It is nothing but

putting the horse before the cart. The case of the opposite parties is that the petitioners have no vested right to claim grant-in-aid nor the State Government has got a statutory duty to grant financial aid to the educational institution and the petitioner is not entitled to the grants-in-aid. The respondents have admitted that after the order of this Court a communication copy of which is Annexure-J had been issued with reference to the granting of permission to open a new High School and in that connection petitioner was called upon to submit an affidavit on Rs. 10 non judicial stamp in the prescribed form as enclosed in the letter and to declare that in case the petitioner is granted permission to start the institution in question he will run the institution in accordance with the rules and regulations framed by the Government and the Department and the petitioner will not claim grant permanently from the Government. The case of the opposite parties is that the said requirement is in consonance with the policy decision taken by the Government not to grant aid to the institution to be started in accordance with the grant-in-aid Code, from the academic year 1985-86. The respondent has submitted in the statement of objections which is supported by affidavit that the writ petitioner did not comply with that requirement of the department that is furnishing an affidavit making declaration to the effect that the petitioner's institution will comply with the orders and circulars issued by Government from time to time and with the provisions of Grants-in-aid Code and further making declaration to the effect that he will permanently not claim any grant-in-aid from the Government. As he did not comply with this requirement the petitioner is at fault in not getting the permission. If he would have filed these declarations the permission could have been granted. But the petitioner did not comply. No order could be passed granting him the permission to start the institution. That being the own default of the petitioner the present petition is not maintainable and is liable to be dismissed. No rejoinder affidavit has been filed.

3. I have heard the Learned Counsel for the Writ Petitioner at length and I have also heard the Learned Government Pleader Smt. L.Y. Premavathi.

4. The Learned Counsel urged that the order dated 19.7.85 had been passed without notice to the petitioner where by the petitioner's name was deleted from the list of persons whom the permission was granted. The Learned Counsel submitted that no doubt first the sanction was accorded by the State Government to the petitioner institution for being started but later on it was withdrawn. The petitioner's Counsel submitted that the order of withdrawal has been without jurisdiction and in violation of the principles of natural justice as no show cause notice was given to the petitioner institution before passing the order. He further submitted that once permission had been granted and petitioner-institution had admitted more than twenty eight students and thereafter the State had withdrawn the permission without following the necessary provisions of law. The Learned Counsel submitted that the State had been stopped from withdrawing the permission. In reply learned Government Advocate Smt. Premavathi contended that the validity of Annexure-J cannot be challenged on this ground. She submitted that the petitioner had already filed

W.P.No. 11399/85 challenging the order dated. 19.7.85 i.e. corrigendum Annexure - E to the Writ Petition. A perusal of Annexure-F shows that order dated 19.7.85 deleting the name of petitioner's institution from the list had been challenged in that Writ Petition making the same as Annexure-M to that Writ Petition. The Learned Government Counsel submitted that the order for deletion of the name of the petitioner's institution had been upheld and has not been quashed. The Court had observed that it is open to the petitioner to file a fresh application after fulfilling all the requirements and observed that it was open to the authorities to consider the application according to law. With this observation the Writ Petition had been dismissed. The Learned Government Pleader Smt. Premavathi submitted that in view of the dismissal of the Writ Petition the order has been upheld. It is not open to the petitioner at this stage to challenge that order on the ground that no opportunity was given and that point does not appear to have been raised at the stage of the Writ Petition and when in that Writ Petition when that point was not raised and which ought to have been raised the plea is barred by res judicata.

Thereafter on 1.3.1991 the Court had observed that as per counsel's contention the institution in question is being run for over six years, taking this into account the authorities may consider the case of the petitioner favourably. The Learned Counsel for the petitioner submitted that the Court had observed that there is no need to file a fresh application as one is pending and invited my attention to one sentence. But they cannot be read out of context that that sentence is in relation to the contentions made by the petitioner's Counsel in that case while bringing the application for re-consideration. The Court only referred to those contentions and thereafter the institution was allowed to run for more than six years. The Court observed that the authorities may consider the case of the petitioner favourably and to pass orders in accordance with law. The Court in that case in the original order referring to the contentions of the Learned Counsel for the respondent observed that there was some controversy in the application and that it was not in the proforma and that there was no recommendation made by the Court to the Deputy Director concerned. The Court observed That being so there is no fulfilment of the requirement of the Rules relating to grant of non-Government High Schools. It is in this context the Government thought for correcting its earlier order by issuing a corrigendum Annexure-C and then it again referred to the submission of the Government Counsel that it is open for the petitioner's Counsel to submit a fresh application for grant of permission and thus observed that it is open to him to submit an application with all the requirements and the amount deposited by the petitioner would be adjusted towards the requirement of matter of regrant of permission to the institution and thereafter dismissed the Writ Petition. That being so it appears to me that in the earlier order the order requiring or directing cancellation of sanction was upheld on the ground that the requirement of recommendation of the Deputy Director was not needed there. But it does not appear that any plea was raised to the effect that for the fault of the authorities the petitioner can be made to suffer nor

was any plea raised stating that order dated 19.7.1985 Annexure-C was passed without notice to the petitioner. That plea having not been raised definitely it can be said to be barred at this stage. So once sanction was withdrawn, the petitioner might have been running the institution without sanction and thereafter the authorities in pursuance of the order of this Court got inspection made and then issued another order. In the matter of grant of permission petitioner was required to file and submit an affidavit containing the declaration to the effect that the petitioner will never claim any grants-in-aid at any time permanently. Petitioner did not file the affidavit as the petitioner could not be asked or called to make such a declaration that he will never claim grants-in-aid in perpetuity.

5. In my opinion, when first permission has been withdrawn there was no right to run or continue to run the institution. But the Government could not ask the petitioner or the persons seeking the permission to run the High School to file an affidavit making declaration to the effect that he will never claim any grants-in-aid at any time permanently. Rules are issued or directions are issued to guide the exercise of power. That reference in this connection was made to Rule 22 of Grants-in-aid Code. Rule 22 Clause (iv) of the Grants-in-Aid code provides that no school shall be eligible for grants until and unless it has completed five years. So Rule 22 Clause (iv) only puts a limit that for a period of only five years from the date of grant of permission or recognition an institution or a school will not be eligible for grant but not for antiquity, that is for unlimited period of time. It no doubt reveals that an applicant cannot be called upon to give undertaking that he will not claim any grants-in-aid nor can such declaration be sought from such applicants seeking recognition. Rule itself is clear that for five years institution will not be entitled to the grant. If it is stated that these rules are only directly then it could be said that the institution can claim grant only after the period of five years from the date of recognition. But it could not be directed to give an undertaking that more than five years period it will not claim any grant.

6. This Rule 22 of Grants-in-aid Code is specially contained in Chapter dealing with Primary Schools and not in the chapter of Grants-in-aid Code pertaining to High Schools or say Secondary Schools; so it may not be applicable directly and may not be of avail to petitioner but is indicative of spirit running behind it. That the claim made on behalf of the petitioners' Counsel that petitioners' institution is one run by Schedule Castes or for the benefit of persons belonging to Schedule Castes as such has been entitled to grants-in-aid from the first year is not sustainable firstly as Rule 22 referred to above is inapplicable to the petitioner's case and secondly as no such case has been pleaded.

7. That as regards the Secondary Schools, Provisions with respect thereto are contained in Chapter VI of Grants-in-Aid Code which contain the procedure relating to grants in respect thereof. Rule 21 of the Grants-in-Aid Code for Secondary Education reads as under:

"For the first five years calculated for ten months at the rate of tuition fees

prescribed in Chapter X on the basis of average attendance of pupils during the academic year provided, however the Government may give grants as per Rule 21.

(ii) to the Girls High Schools from the first year. Below Rules 21 and above the Heading maintenance grant, for the existing words 11-Fourth year onwards "read" 11 - From sixth year onwards; Proviso: Provided Government may be under special circumstances, where a registered association formed by parents or parents and teachers starts a school in place of a school or schools closed down by the old management or managements concerned either on their own accord or due to derecognition of such school or schools by the Education Department, sanction grant-in-aid from the year of starting to such a school or schools serving the educational needs of the children of the locality, provided that the new institution caters to the majority, of the children of the locality formerly served by the institution or institutions closed down. Government may also take into account for purposes of grant-in-aid the service rendered by the teachers in the former aided institution for purposes of pay fixation in the new institution and for counting their service for purpose of pension, gratuity and leave.

That a perusal of Rule or para 21 of Grants-in-Aid Code (Chapter V) provides that for the first five years after its recognition to a school a Token Ad hock grant may be granted by the Government which may be calculated for ten months at the rate of tuition fees prescribed under Chapter X on the basis of average attendance of pupils during the academic year and from the sixth year of its recognition onwards a High School or Secondary School may be eligible to make a claim for the grants in its favour under Rule 21 of Chapter V of Grants-in-Aid Code. In the present case it appears just and proper that the opposite parties be directed to consider the petitioner's application for recognition afresh in the light of the law and the provisions contained in either Rule 21 of the Grants-in-Aid for Secondary School or Rule 22 of Grants -in-Aid for Primary Schools, that only if it can there is any bar so to say, that is for five years the institution may not be eligible for grant but thereafter it may become eligible atleast to apply for grants under the Code. But there appears no provision entitling the Government or authorities to seek such a declaration that applicants seeking recognition should before grant of recognition or permission declare on affidavit that they or their school will never claim or apply for Grant-in-Aid. Such a demand appears to be irrational.

8. Keeping this in view the opposite parties may re-consider the question of recognition being granted to institution run by petitioner as sought. It is directed that the question of recognition may be considered in the light of the above observations and it will be open to the authorities to clarify that for first five years the petitioner's institution may not claim any grant from the date of recognition and if other conditions are fulfilled by the institution the question of granting the recognition and permission may be considered favourably. It is

further clarified that if before the authorities the petitioner is able to show that the persons belonging to scheduled castes and scheduled tribes are entitled under any rule or provisions to any special benefit in the matters of grant, it is open to the authorities to apply their mind and pass order. The necessary order may be passed after considering the whole matter before the commencement of the new session or academic session. The petitioner's earlier application shall be deemed to be the application for this purpose.

The Government Counsel may file his memo of appearance within four weeks.