

(2008) 10 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition 10500 of 2007, 7029 of 2008, 7179 of 2008, 7080 of 2008, 7030 of 2008, 7031 of 2008, 7032 of 2008, 7079 of 2008, 7569 of 2008, 7544 of 2007, 8104 of 2008, 7790 of 2008, 9502 of 2007, 7805 of 2007, 7730 of 2007, 7728 of 2007, 8190 of 2007, 80

Good Samaritan Education Society, Good Samaritan English School and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 21

Citation : (2008) 10 KAR CK 0008

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : P.D. Surana, in WP Nos. 1249 and 10500/07, 7790 and 8104/08, P.S. Dinesh Kumar, in WP Nos. 10500/07 and 7029-32, 7079, 7080, 7129, 7569, 8076 and 8078/08, D.L. Jagdeesh, in WP No. 7544/07, B.K. Manjunath, in WP No. 9502/07, Vijetha R. Naik, in WP No. 7805/07, K. Raghavendra Rao, in WP Nos. 7728, 7729 and 7730/07, Kasturi Associates, in WP No. 8190/07, M.S. Parthasarathy, in WP No. 7941/08, M. Raviprakash, in WP No. 6659/07, M.S. Rajendra Prasad Assts., in WP Nos. 7783 and 8537/07, C. Shivakumar, in WP No. 9337/07, Maheshwaraswamy Hiremath, in WP Nos. 7248, 7545, 7546, 7555, 7692, 7843, 7844, 7881 and 16389/07, B.M. Baliga, in WP Nos. 7707, 7736, 7737, 7738, 7739, 7837, 7838, 7950 and 8563/07, K. Giridhar, in WP No. 7574/07, G.R. Mohan, in WP No. 7596/07, K. Sachindra, in WP No. 5192/07. Ko Vijayakumar, in WP No. 10148/07, A.V. Srinivas, in WP No. 7868/07 and S.B. Hebballi, in WP No. 1227/08, for the Appellant; B. Manohar, GA, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—In these set of writ petitions, petitioners have sought for issuance of a writ of certiorari to quash the various Official Memorandums annexed to the respective writ petitions, issued de-recognizing the petitioners schools as violative of Article 14, 19(1)(g) and 21 of the Constitution as also the show cause notices issued for the violation of permission of recognition granted

and the undertaking given to run kannada medium on the ground that the schools were being run in english medium.

2. The petitioners are all established educational institutions imparting education at primary level as per the circular specified by the State Government. It is their case that they are imparting education to the students both in kannada and english medium. According to them, when they applied for recognition to run the respective schools in english medium, the Government has refused to grant such recognition based on the government order dated 28.4.1994 prescribing the mother tongue Kannada to be the medium of instruction from 1st to 4th standard in educational institutions. However, permission was granted to run kannada medium primary schools. Some of the schools have conducted classes in english medium from 1 to IV standard despite obtaining recognition to run only kannada medium. Consequently, several orders have been passed withdrawing the recognition earlier granted. Aggrieved by the action of the respondent authority, petitioners are before this Court in these petitions.

3. Heard the counsel for the petitioners and the Government Advocate.

4. It is the submission of the petitioners' counsel that when they approached the government authorities seeking for permission to run the school with english as medium of instruction, citing the government order dated 28.4.1994, the State has refused to accord permission for recognition to run the school in english medium. It is their case that to over come the practical difficulty, they necessarily have to obtain recognition from the government and in that view of the matter, by following the procedure and formalities they took permission to run primary school which although was in kannada medium, but thereafter, virtually they were teaching in english as a medium of instruction as there was demand by the parents to impart education to their children in english. Apart from that, it is also their contention that during pendency of the matter, the Full Bench of this Court in Associated Management of Primary & Secondary Schools in Associated Managements of Primary and Secondary Schools in Karnataka Vs. The State of Karnataka and Others, has taken a decision that the Government Order dated 22.4.1994 & 29.4.1994 is violative of Article 19(1)(a), 21, 29(2) & 30(1) of the Constitution as such, certain show cause notices withdrawing the recognition granted in their favour is honest and also is violative of Article 19(1)(a)(g), 29 and 21 of the Constitution. It is also contended in similar matters which were disposed of, the order passed by the respondent authority is only by way of cycle-styled orders and there is non-application of mind and they have not assigned or furnished any reasons and the objections filed by them have not been considered. In such circumstances, they have sought for quashing the impugned notifications.

5. In these petitions, the petitioners' grievance is regarding the official memorandum regarding the Voluntary Scheme (12.4.2007) as also the official memorandum withdrawing the recognition of schools for violation of the conditions of recognition. Of course the Full Bench of this Court has considered

the Government Order as regards the language policy and it has been held that some of the conditions in the said government order are ultra vires the constitution. As regards the notices that have been issued by the government, it is submitted that there is non-compliance of natural justice in that, without considering the very objections and without giving an opportunity of personal hearing, the show cause notices have been issued.

6. Of course in this regard it has to be noted in view of the Full Bench decision in the case cited supra upholding certain conditions and quashing certain other conditions imposed in the said government order, the notices issued withdrawing me recognition granted which are found to be in a cyclo styled form and without application of mind and without considering the objections filed by the petitioners, have to be quashed.

7. In WP 9307/2008 decided on 17.9.2008 and in WP 10342/2007 decided on 20.9.2008, learned Single Judge of this Court referring to the case of Sanna Basappa Shankarappa Ballagodu Vs. Basappa Sathyappa and Others, has quashed the impugned order holding that the order passed by the Education Department are all in a cycle-styled manner which depicts non-application of mind.

8. At this juncture, Government Advocate submitted that against the order of the Full Bench of this Court the Government has approached the Supreme Court in SLP and the matter is pending consideration and already notices have been ordered. In the circumstances, unless this issue is finally settled, the very decision taken would be subject to the result of the decision in the SLP and accordingly submitted that the State exercising power under Article 350 as well as Article 15 of the Constitution has imposed such conditions which does not call for interference.

9. It is further submitted that for the violation of the conditions of recognition, necessarily the State has come forward to take action as a matter of regulatory measure and that shall not be quashed.

10. Might be the April 1994 government order as to the medium of instruction was there and the said government order was challenged before this Court in various petitions. Ultimately, the matter was finally decided by the Full Bench after a lapse of fourteen years. Due to various reasons, the private educational institutions have also sought to open english medium schools although there was an undertaking given by them to run schools with Kannada as a medium of instruction. As per the contention of the petitioners, since certain conditions imposed in the said government order are violative of Article 19(1)(a)(g) & 21 of the Constitution as is held by the Full Bench while striking down the conditions as unreasonable, for the present, keeping in view the fact that all the orders/notices issued de-recognizing the schools are shown to have been issued in a mechanical manner, it is writ large that there is non-application of mind. As such, those show cause notices issued for taking action against the petitioners herein are quashed.

It is for the respondent authority to reconsider the matter in the light of the Full Bench decision and act in accordance with law. However, liberty is given to the State to hear the grievance and consider the case of the petitioners and such other similarly placed persons, on their representation and take a decision in accordance with the decision rendered by the Full Bench.

11. But, so far as the official memorandum dated 12.4.2007 is concerned, keeping in view the ratio laid down by the Full Bench and various other decisions of this Court as well as the Apex Court, it is for the government to consider the prayer of the petitioners and such other similarly placed persons who seek recognition to run the schools in either english or kannada medium. The State shall take a reasonable view in the matter while according permission to run english medium schools in view of the Full Bench decision and also to see that the interest of such of the children who intend to pursue education in english medium, is protected.

12. With the above observation, Petitions are accordingly, disposed of.