

(2014) 12 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No. 44402/2014 (EDN-REG-P)

Kannada Nuthana Vidya Samsthe (R)

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0048

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : M.P. Srikanth, Advocate for Parthasarathi M.S., Advocate for the Appellant; Pramodhini Kishan, HCGP, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the endorsement dated 19.06.2014 impugned at Annexure-E to the petition. The petitioner is also seeking that the respondents be directed to register the English Medium Primary School run by the petitioner management.

2. The petitioner with a view to start an English Medium Primary School submitted its proposal dated 31.10.2008 to the Education Department through the Block Education Officer (B.E.O.), Tarikere Taluk, Tarikere, Chikmagalur District. The B.E.O. at the first instance had issued an endorsement that there is no provision to run English Medium School. Subsequent thereto, an endorsement dated 26.03.2009 was issued rejecting the request of the petitioner on the ground that the language policy of the State does not permit starting of the English Medium School and the case of the petitioner seeking permission to that effect cannot be considered, since the State had filed a Special Leave Petition before the Hon'ble Supreme Court against the judgment rendered by a Full Bench of this Court. The petitioner claiming to be aggrieved by such endorsement was before this Court in W.P. No. 12188/2009. This Court by the order dated 24.04.2009 was of the opinion that since a Full Bench of this Court in the case of Associated Managements of Primary and Secondary Schools in Karnataka Vs. The State of Karnataka and Others, had rendered its decision and

even though the same was questioned before the Hon''ble Supreme Court and since there was no interim order therein, the endorsement is not sustainable. Therefore, this Court quashed the endorsement and directed the respondents to consider the application filed by the petitioner in the light of the judgment rendered by a Full Bench of this Court referred therein.

3. Notwithstanding the said order, the respondents have once again issued an endorsement dated 18.07.2009 indicating the very same reason that the matter is pending before the Hon''ble Supreme Court. However, considering the fact that the Hon''ble Supreme Court in the pending proceedings before it had directed the Government not to pass any closure orders of un-recognized schools in the meanwhile, the petitioner who had already made all arrangements to start the English Medium School had proceeded to continue the same.

4. In that light, after the disposal of the matter before the Hon''ble Supreme Court, wherein the judgment of a Full Bench of this Court had been upheld, the petitioner once again made a detailed request dated 29.05.2014 seeking consideration of their case for recognition from the years 2009-2010. In reply to the same, the endorsement dated 19.06.2014 impugned at Annexure-E has been issued. The petitioner therefore claiming to be aggrieved by the same is before this Court.

5. The respondents have filed their objection statement. In the objection statement, the sequence with regard to the earlier proceedings as narrated in the petition is not disputed. The fact that the petitioner had also made a fresh proposal on 29.05.2014 seeking recognition from the years 2009-2010 has also been referred to. However, the contention that is put forth in the objection statement is that the consideration at present cannot be in respect of the years 2009-2010 up to 2013-2014 and the case of the petitioner can only be considered with effect for the years 2014-2015 if such application is made.

6. In the light of the rival pleadings, I have heard the learned counsel for the petitioner and the learned Government Advocate and perused the petition papers.

7. In a normal circumstance, no doubt the respondents would be justified in rejecting the request for recognition if such school seeks for permission after having commenced the same without making any application and thereafter makes an application seeking retrospective permission. However, in the instant facts, it is noticed that the petitioner had made the proposal on 31.10.2008 even before starting the institution. Such proposal is as required under the provisions of the Education Act. It is no doubt true that after such proposal is made, the respondent authorities would have to consider the same and upon grant of the permission, the school should be commenced.

8. In the instant case, it is however seen that the rejection of the request of the petitioner has not been made on the ground that they do not possess the infrastructure for running the school or that they are not otherwise qualified. The endorsement issued at the first instance itself was on the ground that permission

is not being considered in view of the language policy of the State and since the S.L.P. No. 18139-18163/2008 was pending before the Hon"ble Supreme Court. The copy furnished by the learned counsel for the petitioner relating to the interim direction passed in the said S.L.P. would also disclose that a direction had been issued by the Hon"ble Supreme Court not to close the unrecognized schools in the meanwhile.

9. Therefore, in such circumstance, the petitioner having made the proposal in accordance with law and their request being denied only on the ground that the matter was pending before the Hon"ble Supreme Court at that stage and when the decision of the Full Bench of this Court was in operation, their request was required to be considered by the respondents, if not, they would stand protected by interim directions of the Hon"ble Supreme Court.

10. Further, at this point, in any event, the Hon"ble Supreme Court has also dismissed the appeals filed by the State Government in the case of the Nallur Prasad and Others Vs. State of Karnataka and Others, . Therefore, the reason which was being put forth by the respondents in any event is not available to them though at this juncture a contention is being raised that a curative petition is proposed to be filed before the Hon"ble Supreme Court.

11. In that light, if the facts in the instant case is perused, it is seen that the petitioner was before this Court in W.P. No. 12188/2009 at the first instance itself when the endorsement was issued and this Court had quashed the endorsement and directed consideration and despite the same, a similar endorsement was issued which only indicates that for the reason the S.L.P. was pending before the Hon"ble Supreme Court, the respondents had persisted issuing endorsements to the same effect. In that background, considering the fact that the petitioner on disposal of the matter before the Hon"ble Supreme Court had referred to all these aspects and made representation dated 29.05.2014 with reference to the application that had been made for commencing the classes with effect from 2009-2010, the respondents would not be justified in issuing the endorsement dated 19.06.2014 at Annexure-E to indicate that the request with effect from the years 2009-2010 cannot be considered. When the reason as being put forth by the respondents throughout to deny permission to the petitioner due to the pendency of the matter before the Hon"ble Supreme Court and in that light, the petitioner had commenced the course, more particularly, in a circumstance when they were before this Court at the earliest instance and this Court had directed consideration of the case of the petitioner in the light of the decision rendered by the Hon"ble Full Bench of this Court, it was necessary for the respondents to consider the application and if the petitioner had indicated that they had the infrastructure to commence the institution as on the year 2009, the application of the petitioner was liable to be considered and appropriate orders were to be passed with regard to permission for recognition and if such permission was to be granted, certainly, it was to be with effect from 2009-2010.

12. Needless to mention that if by the subsequent circular if the respondents

have brought in any additional requirements to be complied, those would remain operational only from the date on which the same has been issued and such requirement could be made applicable accordingly.

13. Therefore, for the reasons stated above, the endorsement dated 19.06.2014 is quashed. The respondents are directed to consider the application of the petitioner which had been pending consideration from the year 2008 onwards and pass appropriate orders in that regard keeping in view the above observations made herein within six weeks from the date on which a copy of this order is furnished to the respondents.

In terms of the above, the writ petition stands disposed of.