
(1996) 01 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 673 of 1988

Karnataka Education Society, M.B. Nagar, Dharwar	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 KarLJ 237

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the order bearing No. ED 41 SCH 86, dated 31-10-1987-Annexure-G to the writ petition. The petitioner has also prayed for issuance of such other writ or direction as this Court deems fit under the circumstances of the case including incidental and consequential to the main relief.

2. The brief facts of the case in brief are that the petitioner-Society has started an Institution known as New Girls High School at Dharwar in June 1973 and subsequently in the year 1976-77 converted the said school into a Co-education High School and a permission was issued in favour of the petitioner. The petitioner's case is, the State Government by its order bearing No. ED 34 SCH 76, dated 25-4-1978 granted approval to convert the petitioner-Institution into Co-education High School. This copy of the order is annexed as Annexure-C to the writ petition. The order read as under:

"..... I am directed to state that the Government have no objection for the conversion of the New High School, Dharwar into Co-education High School from 1976-77 subject to the specific condition that the school after conversion, into Co-education will be treated as a New High School for all purposes and it will not be entitled for grants for a period of five years from the year 1976-77".

According to petitioner, petitioner in pursuance of that approval started admitting students from 1978-79. The petitioner's further case is that petitioner learnt that in the matter of Laxmi High School, Kadanga, in District Kodagu, the sanction

was accorded to convert that High School into Co-education School and admitting the students from the year 1978-79. The petitioner claims it should be treated at par with that Laxmi High School. The petitioner made representations to the Government on 21-8-1979 and 20-11-1978. The petitioner's case is that by order dated 6-1-1979, the sanction was accorded for payment of the grant-in-aid to the New High School, Dharwar i.e., the petitioner-Institution with effect from the year 1978-79 onwards as per provisions contained in Government Order No. ED 155 FCC 74, dated 6-6-1977. The petitioner's case is that as per this order, petitioner-Institution was granted the aid with effect from the session 1978-79. That according to petitioner it commenced as per financial year i.e., from 1-4-1978 and per tenor of order dated 12-1-1979 the Government modified its earlier order and treated the expiry of five years from 1973, the period when the Institution had been started. The petitioners further case is that in spite of the order dated 12-1-1979, the copy of which is Annexure-D to the writ petition, the amount relating to grant-in-aid was paid by the Commissioner of Public Instructions with effect from 1-7-1979 and he did not release the grant-in-aid money from 1-4-1978. Having felt aggrieved from the non-imburement of the amount for the period 1978-79, the petitioner approached the Secretary to education for proper direction to the Commissioner, Public Instructions for release of the arrears for the period of 1978-79 and prayed that the petitioner-Institution may be treated on par with Laxmi High School, Kadanga and for release of the grant from 1-4-1978. This appeal/representation made to the Secretary to Government is contained in Annexure-F to the writ petition. It appears as per Annexure-G to the writ petition which as per petitioner's case, has been issued on 31-10-1987 and which bears No. ED 41 SCH 86, the Under Secretary to the Government disposed of the representation and replied the notice in the following words:

"With reference to the above subject, I am directed to State that under Rule 3 of the Grant-in-Aid Code for Secondary Schools in Karnataka, the Government has absolute power to refuse, withdraw or reduce any grant at their discretion, without assigning any reasons therefor. In the case under consideration, there were sufficient grounds for the Government to prescribe any conditions for the admission of the school for payment of grants. The school authorities cannot claim the grant as a matter of right. Hence no further action could be taken".

Having felt aggrieved with this reply, contained in Annexure-G from the Government, the petitioner has filed this petition under Articles 226 of the Constitution of India for writ or order or direction in the nature of certiorari to quash that order as well as for suitable directions to the respondents.

3. I have heard Sri R.U. Goulay, the learned Counsel for the petitioner and the learned Government Advocate, Sri A.V. Srinivasa Reddy. I have applied my mind to the records of the case as well.

4. The learned Counsel for the petitioner submitted that the respondents were wrong in taking the view that the State can in its absolute discretion, arbitrarily

and without assigning any reasons refuse or cancel or reduce the grant-in-aid. He submitted that a perusal of the contents of Annexure-G indicates that the Government thinks that it is quite absolutely discretionary to grant the grant-in-aid to one and to refuse to other without assigning any reasons in arbitrary manner. He further submitted that in the present case as per Annexure-D to the writ petition dated 12-1-1979, the payment of grant-in-aid to the petitioner's-Institution had been sanctioned with effect from 1978-79 onwards and once it has been sanctioned, the rights accrue in favour of the petitioner-Institution to get that amount released from the date of commencement of the session of 1978-79, namely, from the first date of the financial year which is 1st April, 1978. He submitted that the Commissioner of Public Instructions ought to have released the amount from 1st April, 1978 or at least from 1st of July, 1978, if it is taken to be the commencement of session or year. The learned Counsel further submitted that a representation has been made to the Government and a notice was also given to the Education Department, Secretary. It was required of the opposite party to have applied its mind to the fact that it has already been sanctioned from 1-4-1978 or from the beginning of the academic session 1978-79 and it should have ordered the Commissioner of Public Instructions to release the amount for the academic session or for the financial year i.e., 1978-79. But the authority has illegally refused to grant the same and passed the order Annexure-G to the writ petition, taking the view that no further action can be taken. The learned Counsel submitted it is a well-settled principle of law that in a social welfare democratic State, the society is governed by the rule of law and reason and not by arbitrary action. The arbitrary action is always indication of rule of law.

5. On behalf of the opposite parties, the learned Government Advocate urged that so far as the making grant-in-aid is concerned, no doubt it is a matter of discretion of the Government guided by reasons, etc. and there can be no dispute that reason is the rule of law. The Government can withdraw or can reduce the grant. In this case, the learned Advocate has failed to show that any order has been passed to withdraw or to cancel or to reduce the grant-in-aid made in favour of the petitioner for any reason.

6. I have applied my mind to the contentions of the learned Counsel for the parties. The order Annexure-G issued by the Under Secretary, firstly appears to be based on misconception of law and misconception as to the democratic set-up of social welfare society and a society established under the Constitution which assures justice, social, economic and political. The persons acting as instrumentality for the State are expected to take note of that in a society governed by democratic Constitution which assures its people of justice, social, economic and political and equality. The rule of law is an important factor and reason is always an important factor to control the law. Laws are also expected to be based on reason. Arbitrary action is the negation of rule of law. It will be appropriate at this stage to refer to the basic principle of law as laid down in record in the case of *Ramana Dayaram Shetty v The International Airport*

Authority of India and Others, AIR 1979 SC 1628, on this aspect of the matter:

"Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set-forth by Herry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in Democracy, Equality and Freedom "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual.

Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement".

Their Lordships further observed:

"The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.

We agree with the observations of Mathew, J., in *V. Punnen Thomas v State of Kerala*, AIR 1969 Ker. 81, that: "The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal".

At page 1637, their Lordships further observed:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a prive individual, deal with any person its pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory".

7. These observations of their Lordships of the Supreme Court are by themselves

sufficient to indicate of the officers, like the officer who has issued Annexure-G, that in a democratic Government based on rule of law, the Governmental action has to be based on some norms and standards and arbitrary action is not permissible. The orders contained in Annexure-G. In this case when Annexure-G is passed, it appears he did not applied his mind to the merits of the matter. Any way, in Annexure-D, Order No. ED 109 SCH 78, dated 12-1-1979, in the earlier part of the order, it appears that the authority had considered the case of the petitioner and had also considered the letter dated 27-11-1978 of the Director of Public Instructions for the release of grant from the year 1978 onwards and thereafter ordered as has been referred to in the earlier part of this judgment, sanctioning the payment of grant to the petitioner-Institution with effect from 1978-79 session/year under the provisions contained in G.O. No. ED 155 FCC 74, dated 6-6-1977 and was issued that order with the concurrence of the Finance Department. Once this has been granted with effect from 1978-79, the petitioner had been entitled to the release of the amount with effect from the beginning of 1978-79 session onwards. If the amount for the period 1978-79 in spite of this order dated 12-1-1979 had not been released by the Commissioner of Public Instructions, a proper direction should have been issued by the Government itself.

8. As the Government had failed to issue the due and proper direction for the compliance of order dated 12-1-1979, it appears just and proper in such a case that direction be issued to the respondent to issue the direction for compliance of the order dated 12-1-1979, directing the Commissioner of Public Instructions or the Competent Authority who has to release the amount of grant sanctioned for the year 1978-79 session, that it should also be released. The writ petition as such is allowed. Let a direction in the nature of mandamus be issued to the respondent to issue proper directions for the release of the amount of grant in pursuance of the order dated 12-1-1979, Annexure-D to the writ petition from the period and for the session 1978-79 and as the Counsel for the parties state that the session will commence from 1-4-1978 uptill the period for which it has not been so far released.