

(2007) 06 KAR CK 0026

In the Karnataka High Court

Case No : Writ Appeal No. 1040 of 2007

Karnataka (Reg.) Unaided Schools Management's Association **APPELLANT**
Vs

State of Karnataka, Education Department and The Director,
Primary Education, Public Instructions **RESPONDENT**

Date of Decision : 25-06-2007

Acts Referred:

Citation : AIR 2007 Kar 157 : (2007) ILR (Kar) 3755 : (2007) 6 KarLJ 129

Hon'ble Judges : Cyriac Joseph, C.J.;B.S. Patil, J

Bench : Division Bench

Advocate : S. Vijaya Shankar, for G.R. Mohan, for the Appellant; B. Manohar, AGA, for the Respondent

Judgement

Cyriac Joseph, C.J.—This Writ Appeal arises from Writ Petition No. 7596/2007 filed by the Karnataka Unaided Schools Managements" Association. The challenge in the Writ Appeal is against an interim order passed by the learned Single Judge on 29.05.2007. The appellant is the petitioner in the writ petition.

2. The only challenge in Writ Petition No. 7596/2007 is against Annexure-F order dated 12.04.2007 issued by the Government of Karnataka, formulating a Voluntary Scheme for Recognised Private Schools which had obtained registration and recognition from the State Government after giving an affidavit of undertaking to run the school with Kannada/Mother Tongue as medium of instruction but later violated the undertaking and the conditions of recognition by running the school with English as medium of instruction. The said Government Order dated 12.04.2007 was issued against the following background:

The State Government had issued an order dated 29.04.1994 stipulating that medium of instruction in Standards I to IV of the primary schools shall be the Mother Tongue of the child or Kannada. The said Government Order was challenged by several individuals and institutions in writ petitions filed in this Court. In Writ Petition No. 14363/1994 filed by Associated Managements of Primary and Secondary Schools in Karnataka, a learned Single Judge on

24.05.1994 recorded the submission of the learned Advocate General that respondents would not direct closure of any recognised institution for non-compliance with Government Order dated 29.04.1994 for a period of three weeks. On 09.06.1994 the case was referred to Division Bench and it was also directed that the statement of the Advocate General would hold good till 24.06.1994. On 24.06.1994 the effect of the undertaking was extended for a further period of 3 weeks by the Division Bench. On 29.08.1994 the Division Bench referred the case to the Full Bench and directed that "in the meanwhile status quo as directed earlier shall continue till further orders by the Full Bench in that behalf." The Full Bench on 19.09.1994 directed that the order of status quo would continue until further orders. From the above mentioned interim orders dated 24.05.1994, 09.06.1994, 24.06.1994 and 29.08.1994 passed in Writ Petition No. 14363/1994, it is obvious that the undertaking given by the Advocate General and the direction issued by the Court to maintain status quo were in respect of the withdrawal of recognition granted to the schools prior to the issuance of Government Order dated 29.04.1994. Admittedly, the said direction to maintain status quo is still in force and the writ petition is still pending before the Full Bench. It may also be mentioned that the petitioner in Writ Petition No. 14363/1994 is different from the appellant in this Writ Appeal and there is no material to show that members of the two Associations are the same.

After the Government Order dated 29.04.1994 was issued, several individuals and institutions applied for and obtained registration and recognition for their private unaided primary schools, by giving affidavits of undertaking to run the schools with Kannada/Mother Tongue as medium of instruction from Classes I to IV. Government granted such registration and recognition on condition that the medium of instruction shall be Kannada/Mother Tongue. However, having obtained registration and recognition subject to the condition that medium of instruction shall be Kannada/Mother Tongue, some of the managements started running the schools as English Medium Schools in clear violation of the conditions of recognition. When such violation of conditions of recognition came to the notice of the Government, inquiries were conducted and it was found that out of 7211 private primary schools which obtained recognition to teach in Kannada, 2698 schools were imparting education in English Medium in violation of the conditions of recognition. Out of the said 2698 schools, in the case of 2215 schools recognition was withdrawn and action for withdrawing the recognition of the remaining 483 schools was underway. But, considering the representation that de-recognition of the schools in the middle of the academic year will cause hardship and difficulties to the students admitted in those schools, the Government issued an order dated 06.11.2006 keeping in abeyance the orders of derecognition till 10.04.2007. The Government noted that more than 3 lakhs students are studying and about 12,000 teachers are teaching in such schools. Government felt that if the orders withdrawing recognition were implemented, the schools would have to be closed down and the students studying in standards

I to IV during the academic year 2006-2007 would face serious difficulty if the medium of instruction was suddenly changed in their case from English to Mother Tongue or Kannada and 12,000 teachers would become jobless. In order to avoid such a situation, Government formulated a Voluntary Scheme for such schools and the Voluntary Scheme was introduced through the impugned Government Order dated 12.04.2007.

3. As per the Voluntary Scheme introduced through the Government Order dated 12.04.2007, it is merely a voluntary scheme and the educational institutions concerned can opt for it voluntarily. There is no element of compulsion involved in the matter. The educational institutions intending to opt for the voluntary scheme were to intimate their willingness to the Deputy Director of Public Instructions before 15.05.2007. The time was subsequently extended till 15.06.2007. The managements opting for the voluntary scheme were to submit applications to the competent authorities for fresh recognition. They were also required to pay a sum of Rs. 25,000/- towards Administrative Expenses in the case of schools in rural areas and Rs. 1 lakh towards Administrative Expenses in the case of schools within the jurisdiction of Bruhat Bengaluru Mahanagara Palike and Rs. 50,000/- towards Administrative Expenses in the case of schools in other urban areas. On obtaining the required recognition from the competent authorities, the schools will be entitled to run the school with Kannada/Mother Tongue of the child as the medium of instruction. Admissions from 2007-08 shall be only to Kannada/Mother Tongue medium. Students who were already admitted to Standards I to IV in the said schools during the year 2006-2007 will be allowed to continue to study in English medium upto standard V. In the case of such students Kannada shall be taught as a compulsory language. In the case of educational institutions which do not opt for the voluntary scheme, the order of de-recognition, if already issued, will be implemented and if no order of de-recognition has already been passed, action will be continued to withdraw recognition. It is obvious from the above mentioned features of the Voluntary Scheme that in spite of the blatant violation of the conditions of recognition by the schools concerned, the Government, taking a sympathetic view of the plight of the students and the teachers, came forward to introduce the Voluntary Scheme offering a last chance to the schools to abide by the conditions of recognition, and avoiding hardship and difficulty to the students already studying in the schools. But the appellant herein filed Writ Petition No. 7596/2007 challenging the Government Order and the Voluntary Scheme.

4. While issuing notice to the respondents in the writ petition on 10.05.2007, the learned Single Judge passed an interim order staying Annexure-F Government Order dated 12.04.2007 for a period of three weeks. The said order was later modified on 24.05.2007 making it clear that the interim order passed on 10.05.2007 would apply only in respect of the writ petitioner and the members of that Association. It was further directed that the interim order dated 10.05.2007 shall be operative only till 04.06.2007. The respondents in the writ petition filed IA-I/2007 praying for vacating the interim order dated 10.05.2007. While

disposing of the said application on 29.05.2007, the learned Single Judge refused to vacate the interim order of stay already granted. However, the learned Single Judge directed the petitioner which represents a large body of educational institutions, to secure and file affidavits of each one of the institutions undertaking to impart education in the medium of instruction which was the condition imposed at the time of granting recognition by the State Government. It was also observed by the learned Single Judge that any breach of the undertaking will lead to serious consequences. This Writ Appeal has been filed challenging the above mentioned order dated 29.05.2007 passed by the learned Single Judge, to the extent it directed the appellant to secure and file the affidavits of undertaking from the individual institutions.

5. It is not disputed that the appellant/petitioner is only espousing the cause of the private primary schools which had sought and obtained recognition after 29.04.1994 to run the school in Kannada/Mother Tongue medium and later violated the undertaking given and the condition of recognition and started running the school in English medium. The appellant has no case that the recognition granted to any school without the condition to run the school in Kannada/Mother Tongue medium, has been withdrawn or that the impugned Government Order and Voluntary Scheme apply to such schools. The respondents took action to withdraw the recognition of schools only on the ground of violation of the undertaking and the conditions of recognition.

6. The action taken by the respondents to withdraw recognition of the schools is not under challenge in the writ petition. The challenge in the writ petition is confined to Annexure-F Government Order dated 12.04.2007 introducing a Voluntary Scheme for the schools whose recognition was withdrawn or is sought to be withdrawn. Therefore, the validity of the action to withdraw recognition of the school is not directly an issue in the writ petition or the writ appeal.

7. Admittedly, the schools represented by the appellant have not obtained any order from any Court staying the order withdrawing recognition or the action initiated to withdraw the recognition. In such a situation, the natural consequence is that the schools will have to be closed down and the students in the schools will have to seek admission in other recognised schools and the teachers working in the schools will lose their job. It is to avoid such hardship and difficulty for the students and the teachers working in the schools that the Government introduced the Voluntary Scheme to give one more opportunity to the schools to abide by the conditions of recognition regarding the medium of instruction and to admit the students to Kannada/Mother Tongue medium from 2007-08. Since the scheme itself is voluntary in nature and since it is open to the schools either to opt for it or to reject the scheme, there is no valid reason or justification for the petitioner to challenge the scheme contained in Annexure-F Government Order dated 12.04.2007. In that view of the matter, there was no valid and sufficient ground for passing an interim order in the writ petition staying the Government Order. However, having regard to the entire facts and

circumstances of the case, the learned Single Judge appears to have taken a lenient view and passed the impugned order refusing to vacate the interim order staying Annexure-F Government Order, but imposed the condition that at least from the year 2007-2008 instruction shall be imparted to the newly admitted students in the medium of instruction specified in the order of recognition. To ensure that students are admitted for the year 2007-2008 only in the medium of instruction for which recognition was granted, the learned Single Judge directed that individual institutions shall file affidavits undertaking to impart education in the medium of instruction specified in the order granting recognition. In other words, the learned Single Judge made the stay conditional. The effect of the impugned order passed by the learned Single Judge on 29.05.2007 is that the Voluntary Scheme introduced through Annexure-F Government Order will stand stayed in respect of the schools represented by the writ petitioner but the said schools are obliged to admit students for the year 2007-08 only in the medium of instruction for which recognition was granted by the Government. Students who had already been admitted during the previous years and are studying in standards II to V in English medium can continue to study in English medium till they pass out of standard V. Not being satisfied with the sympathy and indulgence shown by the learned Single Judge, this writ appeal has been filed contending that the schools should be allowed to continue the violation of the conditions of recognition.

8. Having considered the submissions made by the learned Counsel for the appellant and having considered the facts and circumstances of the case, we are clear in our mind that the schools represented by the appellant were legally and morally bound to run the school in the medium of instruction for which recognition was sought and obtained. If any of the individuals or societies represented by the appellant were aggrieved by the language policy contained in the Government Order dated 29.4.1994 and wanted to assert their right to obtain recognition for English medium primary school, it was open to them to challenge the language policy and seek necessary orders from the court permitting to run English medium primary schools. The appellant has no case that any of the institutions concerned had obtained an order of the court enabling or authorising it to run the school in English medium. On the contrary, it is admitted that the schools concerned gave an undertaking to run the school in Kannada/Mother Tongue medium and obtained recognition to run the school in Kannada/Mother Tongue medium. In such circumstances, the institutions were bound to run the school only in the medium of instruction for which recognition was sought and obtained. Any violation of the conditions of recognition is bound to invite action for withdrawal of recognition. Therefore, the action taken by the respondents to withdraw recognition on the ground of violation of conditions of recognition cannot be said to be illegal or arbitrary. The Court cannot come to the aid of the erring schools to continue the violation of the conditions of recognition.

9. Learned Counsel for the appellant submitted that the language policy

introduced in the Government Order dated 29.04.1994 is under challenge in the cases pending before the Full Bench and there is an interim order directing to maintain status-quo and therefore the institutions represented by the appellant are not bound to have Kannada/Mother Tongue as medium of instruction. According to the learned Counsel, undertaking was taken from the appellant's schools in view of the language policy contained in the Government Order dated 29.04.1994 in respect of which an interim order directing status quo is in force and therefore the undertaking cannot be enforced against them. We do not find any merit in the contention. As we have already observed, none of the institutions concerned has claimed that it had challenged the Government Order dated 29.04.1994 and obtained an interim order enabling it to run the school in English medium. On the contrary, it is admitted that, after the Government Order dated 29.04.1994, the appellant's schools undertook to run the school with Kannada/Mother Tongue as medium of instruction and obtained recognition with the condition that medium of instruction shall be Kannada/Mother Tongue. Therefore the appellants cannot claim any benefit or right under the interim order of status quo passed in the case pending before the Full Bench. Moreover, there is no stay of the Government Order dated 29.04.1994. The direction to maintain status quo was only in respect of withdrawal of recognition already granted to the schools prior to 29.04.1994. The appellant's institutions got recognition only after 29.04.1994, that too, with a condition that medium of instruction shall be Kannada/Mother Tongue. Further, in the writ petition or writ appeal there is no challenge against the Government order dated 29.4.1994. There is also no direct challenge against the action to withdraw recognition. The only prayer in the writ petition is to quash Annexure-F Government Order dated 12.04.2007 which introduced the Voluntary Scheme. Therefore, the appellant cannot claim any benefit or protection on the ground of pendency of the case before the Full Bench or the interim order of status quo passed in that case.

10. As already pointed out the only challenge in the writ petition is against Annexure-F Government Order. But there is no element of compulsion in Annexure-F Government Order. If any particular school does not want to opt for the Voluntary Scheme it is free to do so. The only consequence is that it will not get the benefit under the scheme. If the benefit of the scheme is not available, the school is bound to face action for withdrawal of recognition on the ground of violation of conditions of recognition. Merely because a school or some schools do not want to opt for the Voluntary Scheme, the schools which want to opt for the scheme need not be denied the opportunity and the benefit of the scheme. Hence there is absolutely no justification for staying the scheme as prayed by the appellant. However the learned Single Judge has granted an order of stay subject to the condition that the schools shall file individual affidavits undertaking to run the school in the medium of instruction specified in the order of recognition. If the institutions fail to abide by the condition imposed by the learned Single Judge, they will not be entitled to the benefit of the interim order of stay. We do not find anything wrong, arbitrary, illegal or unjust in stipulating a condition that

if Annexure-F order should be stayed, the schools in question should admit students from 2007-2008 only in the medium of instruction for which recognition was granted by the Government. Therefore, we do not find any valid reason to interfere with the impugned order dated 29.05.2007 passed by the learned Single Judge.

11. Learned Counsel for the appellant submitted that the time granted by the learned Single Judge for filing affidavits by individual institutions expired on 14.06.2007 and since the affidavits were not filed, the learned Single Judge vacated the order of stay. When the institutions failed to file individual affidavits as directed in the impugned order dated 29.05.2007 the stay order was liable to be vacated and we do not find anything improper about it. But having regard to the facts and circumstances of the case and considering the interests of the students who are studying in the schools, we are inclined to extend the time for filing the affidavits by one more week. In other words, if the individual institutions file affidavits within a week from today, undertaking to admit students in Standard I for the year 2007-2008 only in the medium of instruction for which recognition was granted by the Government, the recognition of the institutions shall continue to be in force subject to the final decision in the writ petition. Similarly, in the case of schools which are willing to opt for the Voluntary Scheme contained in Annexure-F Government Order, the time for intimating option shall stand extended upto 02.07.2007.

12. Learned Counsel for the appellant pointed out that the schools which opt for the Voluntary Scheme have to deposit a substantial amount towards Administrative Expenses along with the application for fresh recognition. Learned Counsel submitted that considering that the schools had been granted recognition and that the schools have been functioning so far, the liability to deposit the amount towards Administrative Expenses may be dispensed with. We are of the view that the question whether the schools should be made liable to deposit any amount towards Administrative Expenses must be left to be decided in the writ petition and that pending final decision in the writ petition, the deposit of Administrative Expenses should be deferred. Hence, we direct that pending final decision in the writ petition, in the case of schools which opt for the Voluntary Scheme, Administrative Expenses as mentioned in Annexure-F Order shall not be demanded till the final decision in the writ petition. It is also made clear that the schools which file individual affidavits as directed above and in terms of the impugned order dated 29.05.2007 also need not pay the Administrative Expenses pending final decision in the writ petition.

13. The order dated 29.05.2007 passed by the learned Single Judge in W.P.No. 7596/2007 will stand modified to the above extent. With the above mentioned modifications of the impugned order of the learned Single Judge, the Writ Appeal is disposed of.