

(2002) 04 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 139 and 1847 of 2002 and Writ Petition No. 46943 of 2001

K.S. Raja Educational Trust

APPELLANT

Vs

National Council for Teacher Education Southern Regional Committee

RESPONDENT

Date of Decision : 18-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

National Council for Teachers Education Act, 1993 — Section 14, 16, 3 (2)

Citation : (2002) 4 KCCR 2771

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : Basavaraj V. Sabarad, in Writ Petition No. 139 of 2002, B.L. Sanjeev, in Writ Petition No. 1847 of 2002 and L.S. Chikkanagoudar and A/s in Writ Petition No. 46943 of 2001, for the Appellant; N. Devadas, for Respondent 2 and 3 in Writ Petition No. 139 and 1847 of 2002 and Respondent 1 in Writ Petition No. 46943 of 2001 and R. Veerendra Sharma, for Respondent 1 in Writ Petition No. 1847 of 2002, for the Respondent

Final Decision : Allowed

Judgement

A.V. Srinivasa Reddy, J.—The Petitioners in these petitions have all approached the Respondent-National Council for Teacher Education ("the NCTE" for short) u/s 14 of the National Council for Teacher Education Act, 1993 ("the Act" for short) for grant of recognition to the institutions already established by them or in the process of being established. The NCTE in all these cases has refused to consider their applications presented u/s 14 of the Act on the ground that the same were not accompanied by a "no objection certificate" from the State Government. Aggrieved by the refusal of the NCTE to consider their applications, the Petitioners have presented these writ petitions.

2. The Act was enacted by the Central Government in 1993 and it came into force with effect from 2.9.1995. The matter of recognition of teacher education

institutions was left to the National Council u/s 14 of the Act. Every existing institution and every institution proposed to be established had to submit an application for recognition within the period prescribed along with the prescribed fee. Section 16 of the Act bars holding of examination after the appointed date i.e. 2.9.1995 by any examining body for any course or training unless the institution concerned has obtained recognition u/s 14 of the Act. The Respondent is one such Regional Council constituted u/s 3(2) of the Act having jurisdiction over the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Lakshadweep and Pondicherry in Southern India. As required by the provisions of the Act, the Petitioners presented their respective applications with the requisite fee to the Respondent for grant of affiliation. The Respondent failed to consider their applications on the ground that they are not supported by the "no objection certificate" from the State Government as required under Regulation 5(e) of NCTE Regulations. The Petitioners are aggrieved by the inaction of the Respondent in the matter of recognition and hence have come up before this Court in these writ petitions.

3. I have heard the learned Counsel for Petitioners in their respective writ petitions as also Mr. N. Devadas, learned Standing Counsel for the Respondent.

4. Mr. Devadas, learned Counsel appearing for the Southern Regional Committee, raised a preliminary objection regarding the maintainability of Writ Petition No. 139 of 2002 and Writ Petition No. 1847 of 2002 on the ground that the institutions being located in Tamil Nadu, the writ petitions filed in this Court are not maintainable. The learned Standing Counsel relying on the decision in Writ Petition No. 21779 of 2001 (dated 17.7.2001) submits that a learned Single Judge of this Court in *St. Johns Teacher Training Institute for Women v. Union of India Ministry of Human Resources and Ors.* ILR 2001 Kar 5617 took the view that this Court does not have jurisdiction in the case of institutions which are situated in Tamil Nadu despite the fact that the Regional Council of the Respondent is situate in Bangalore. On the other hand, learned Counsel for the Petitioner relied on a decision rendered by another learned Single Judge (Tirath Singh Thakur, J) in Writ Petition No. 26942 of 2001 (dated 15.10.2001) to the effect that the location of an institution will not act as a bar against invoking of jurisdiction by this Court under Article 226 of the Constitution.

5. In the light of the foregoing, the twin points that arise for my consideration are:

i) Whether this Court can invoke its jurisdiction under Article 226 of the Constitution in the matter of recognition by Respondent of an institution which is situated in Tamil Nadu?

ii) Can the Respondent refuse to consider and determine an application presented to it for recognition u/s 14 of the Act on the ground of want of "no objection certificate" from the State Government?

Point No. 1:

6. The Petitioners in Writ Petition Nos. 139 of 2002 and 1847 of 2002 are located in Tamil Nadu. The power in the matter of issuing of writs by High Courts is subject to only two limitations placed on its exercise under Article 226; (a) that the power is to be exercised "throughout the territories in relation to which it exercises its jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction; (b) that the person or authority to whom the High Court is empowered to issue the writs "must be within those territories", and this implies that they must be amenable to the jurisdiction of the Court either by residence or location within those territories. This Court in the present case may be prevented from exercising its jurisdiction under Article 226 on the ground that the institution is located in a territory which is not subject to its jurisdiction but, the bar under (a) would get obliterated if it is found that the person or authority whose action is under challenge is located within the territorial jurisdiction of this Court. If the authority is situated within the territorial jurisdiction of this Court, then, whether or not a bar operates against the exercise of jurisdiction by this Court in the light of the territorial limitation imposed under part (a), this Court can very well invoke its jurisdiction under part (b) for the purpose of issuing a writ. The language employed in Article 226 speaks of power to issue writ not only with reference to the location of the person or institution aggrieved; but also with reference to the location of the person, authority or the Government whose exercise of power is questioned by the aggrieved person. Even if the Petitioner has his location or residence in a place outside the territorial jurisdiction of the Court, it can still move this Court if it is aggrieved by an order made by any person, authority or Government which is situate within the territorial jurisdiction of this Court. The situation of the Regional Council in Bangalore, which lies within the territorial jurisdiction of this Court, would entail an institution aggrieved by any order passed by it, irrespective of the fact whether the institution is situated within the territorial jurisdiction of this Court or not, to move this Court under Article 226 of the Constitution to call in question the order passed by it. It would suffice for the purpose of jurisdiction that one of the conditions necessary for the exercise of jurisdiction by this Court under Article 226 of the Constitution is satisfied and it is not necessary that both the person or the institution aggrieved and the person or authority or Government by whose action or inaction the Petitioner is aggrieved must be amenable to the territorial jurisdiction of this Court.

7. The view taken by the learned Single Judge in Writ Petition No. 21779 of 2001 is also not at variance with the view taken by me now. But the fact situation in the said case was such that the cause of action for the relief sought did not at all arise within the territories in relation to which this High Court could have exercised its jurisdiction under Article 226 of the Constitution. The order impugned was passed by the Regional Council situate at Delhi and the Petitioner-institution itself was located at Madras. This becomes clear if we refer to para 12.2 of the order passed in the said case where the Court observed:

Similarly, where a Tribunal/Authority situated in Bangalore, passes an order

exercising jurisdiction in regard to a matter arising from Tamil Nadu, it is no doubt true that the Karnataka High Court will have jurisdiction to entertain writ petitions against such order of the Tribunal/Authority by reason of Article 226(1).

But, in further examining the aspect of jurisdiction, the learned Single Judge observed that this Court may be reluctant to invoke its jurisdiction not because it has no powers but because of the self-imposed restrictions, to ensure equal treatment and to avoid conflicting decisions of the nature which are demonstrable from the facts of the case.

8. The granting of recognition for teaching institutions by N.C.T.E. is governed by the very same provisions of the Act and the Regulations which have been made applicable to all the regions coming under the authority of the Respondent, which includes several States and a Union Territory. Since these regions are governed by the same set of rules, exercise of jurisdiction by this Court under Article 226 of the Constitution would not conflict with the jurisdiction exercised by any other High Court at the instance of any other Petitioner who may be situated in any other territory outside the jurisdiction of this Court, the law applicable being one and the same. Merely because there is a possibility of different High Courts interpreting the provisions of the Act differently, the scope and ambit of the jurisdiction enjoyed by the High Courts cannot be curtailed by giving a narrow interpretation to Clause (i) of Article 226 which would be quite contrary to the Constitutional mandate as expressed in Article 226 of the Constitution. Thus, in my considered view, this Court can exercise jurisdiction to determine the prayer sought in this writ petition.

Point No. 2:

9. Coming to the prayer in these petitions, the requirement of producing a N.O.C. along with the application having been held to be purely regulatory by a Division Bench of this Court in National Council for Teacher Education, Southern Regional Committee, Bangalore and Another Vs. Dr. Sri Jachani Rastriya Seva Peetha, Bangalore and Another, , the Respondent could not have declined to consider the application of the Petitioners for recognition merely on the ground of non-complying with the requirement of Regulation 5(e) of the Regulations. This question is no longer res integra as it has been authoritatively settled by the decision of this Court referred to supra. Therefore, the Petitioners are entitled to a writ in the nature of direction, directing the Respondent to consider the applications presented to it u/s 14(3)(b) of the Act without insisting on the production of the "no objection certificate". It is only in cases where any requirement is made a condition precedent or mandatory that an authority can decline to examine a request made before compliance by the Petitioner of a requirement which is mandatory in nature. All other requirements which are merely regulatory or directory cannot be compulsorily foisted on the persons seeking a relief before an authority and their compliance cannot be made condition precedent for examining the requests made. Any such insistence for compliance of a requirement which is purely regulatory in nature for performing

a statutory function amounts, on the part of the authority, in declining to perform its statutory functions which such an authority is bound to perform.

10. In the result, for the reasons stated above, these writ petitions are allowed and Rule is issued. The Respondent-NCTE is directed to consider the application presented to it by the Petitioners u/s 14(3)(b) of the Act and pass appropriate orders in accordance with law within three months from the date of receipt of the certified copy of this order.