

(1987) 01 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No. 21258 of 1986

Margadarshana Shikshana Saunsthe

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-01-1987

Acts Referred:

Citation : AIR 1987 Kar 202

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : S.B. Habballi, for the Appellant; N. Devadas, High Court Govt. Pleader, for the Respondent

Judgement

1. This writ petition is by Margadarshana Shikshana Samsthe, Huvina Hippargi in the District of Bijapur, praying for the issue of a writ of mandamus directing the respondents to accord permission for starting C.P.Ed. Course during the academic year 1986-87.

2. This petition has come up for preliminary hearing after notice to the respondents. By consent of both the counsel, it is taken up for final hearing.

3. The facts of the case, in brief, are as follows: The petitioner is a society registered under the Societies Registration Act. The object of the society is to start educational institutions. The petitioner made an application seeking permission to start a new college for imparting instructions leading to C.P.Ed. Course at Huvina Hippargi, Basavanabagewadi Taluk, Bijapur District. Instructions were issued by the Commissioner of Public Instructions to the Deputy Director, Bijapur, to cause an inspection of the building and other equipments provided by the petitioner to decide as to whether the permission sought for could be granted. By a communication dated 28-10-1986 (Annexure F) the petitioner was informed that the Government has decided to refer the applications of all those institutions whose names have been set out in the annexure to the said letter, to a Technical Committee to be constituted by the

Government. The application of the petitioner is one of them.

4. Learned counsel for the respondents produced the Government Order dated 11th September 1986, by which the Technical Committee had been constituted. The relevant portion of the order reads:

"Order No. Ed 115 UBC 86, BANGALORE Dated: The 11th Sept. 1986.

Government are pleased to constitute a Technical Committee consisting of the following members to examine the proposals pending with the Government for starting the B.Ed, B.P.Ed., C.P.Ed. and T.C.H. Colleges for the year 1986-87.

1. The Commissioner of Public Instructions, Bangalore. .. Chairman.

2. The Addl. Secretary to

Government, Education, Dept. ..Member-Secretary.

3. Prof. Rohidekar .. Member

The terms of-reference of the Committee shall be as follows :

(i) Whether or not the facilities available with the applicant institutions for starting new colleges are adequate in terms of building, equipments, staff and other requirements.

ii) Whether or not the feeding institutions to the proposed colleges are adequate.

iii) Whether or not the applicants are financially sound and stable.

iv) Whether or not the proposed colleges will maintain high standard of education.

v) Whether or not the proposed colleges will serve the interest of SC/ST, Minorities and Women organisations.

vi) Whether or not the proposed colleges are from Backward Districts or Border areas where these institutions are inadequate.

The above committee is authorised to divide its procedure of work according to its convenience.

The Committee is permitted to use the departmental vehicle for this purpose. The expenditure of T.A., D.A. and other charges in this behalf may be met from the Budget Provision of Commissioner for Public Instruction, Bangalore.

The list of applicant institutions for starting such colleges will be issued separately.

xxx xxx xxx." 5. To this committee the application of the petitioner and others were referred, as stated in the letter of the Government dated 28-10-1986. The learned counsel submitted that the Technical Committee was examining the feasibility of granting permission to the C.P.Ed. institution sought to be established by the petitioner.

6. In the circumstances, as the petitioner complains that the application is not yet disposed of, a direction would have to issue to the respondents to expedite the consideration of the application of the petitioner.

7. Learned Counsel for the petitioner, however, submitted that a direction should also be issued to the respondents to permit the students of the institution of the petitioner to appear for the C.P.Ed. Examination scheduled to be held in March, 1987.

8. This submission made by the learned counsel clearly establishes that the petitioner has already admitted students during the academic year 1986-87 to the C.P.Ed. Course even though no permission or recognition has yet been granted to the petitioner.

9. There can be no doubt that if an application is made by any organisation seeking permission to start an educational institution for the purpose of imparting instructions leading to a public examination conducted by the State or by an instrumentality of the State, such an application has to be disposed of by the Government or the concerned authority, prior to the date on which the academic year is scheduled to commence. But, if such action is not taken, it is open for the party aggrieved by the non-disposal of the application, to approach this Court seeking for the issue of an appropriate writ to the Government or the authority concerned. But the applicant cannot take the liberty of starting the institution, invite applications from the intending students and admit the students. For, recognition or permission from the Government or the University to. an institution, is a condition precedent for the eligibility of the students of such institution to appear for a public examination to be conducted by the Government or the University, as the case may be.

10. In this behalf, the observations made by this Court in the case of *Indian Medical Association v. State of Karnataka* (ILR (1985) Ker 1202) are apposite. In the above case, it was held that securing of affiliation from the University was a condition precedent for the commencement of a medical college and making admissions of students to the college for the purpose of imparting instructions which make them eligible to appear for the examination conducted by the University. The same principle applies in respect of all institutions in respect of which permission or recognition from the Government is necessary in order to enable the institution to sponsor the candidates' studies in the institution to the public examination conducted by the Secondary Education Examination Board or the Department of Public Instructions, as the case may be.

11. Learned counsel for the petitioner submitted that there were institutions to whom the Government had accorded such permission, even though such institutions had taken the liberty of starting the educational institutions and making admissions without securing permission from the Government. Such a practice on the part of the Government or the Department concerned has to be stopped if they are anxious to put an end to the starting of unauthorised

educational institutions and/or making admissions without permission. However, such according of permissions is no ground to issue a direction to do so in the case of petitioner also.

12. Another aspect which remains for consideration is that the application of the petitioner was for permission to start the C.P.Ed. course during the academic year 1986-87. A substantial portion of the academic year 1986-87 is already over. Therefore, the only direction that could be issued to the respondent is to consider the application of the petitioner seeking permission to establish C.P.Ed. course during the academic year 1986 87, for according permission to start the C.P.Ed. course, during the academic year 198788.

13. In the result, I make the following order:

(i) The writ petition is allowed.

(ii) A direction shall issue to the respondents to consider the application of the petitioner seeking permission to start C.P.Ed. course during the academic year 1986-87, for according permission to start the C.P.Ed. course during the academic year 1987-88;

(iii) Respondents are directed to dispose of the application of the petitioner before 30th April, 1987.

(iv) No costs.

14. Petition allowed.