

(2010) 07 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14607 of 2004

Mathrusree Educational Society

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2(12), 20, 21
Andhra Pradesh State Council of Higher Education Act, 1988 — Section 11, 18
Constitution of India, 1950 — Article 14

Citation : (2010) 5 ALD 268

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : A. Santosh Kumar, for N. Sridhar Reddy, for the Appellant; Assistant Government Pleader for Higher Education for Respondent No. 1, C. Sudesh Anand and Deepak Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a Mandamus to declare the action of respondent No. 2 in granting permission to respondent No. 4, vide proceedings dated 11.08.2004, for starting a new private unaided degree college as illegal and without jurisdiction.

2. At the hearing the learned Counsel for the petitioner, the learned Assistant Government Pleader for Higher Education and learned Counsel representing standing counsel for respondent No. 3 University are present. The learned Counsel for respondent No. 3 submitted a bunch of papers with counter on behalf of counsel for respondent No. 2.

3. The petitioner is an educational society which has established Manjira Vidyalyayam wherein it is running classes 1 to 10 at Ramayampet village, Nalgonda District. It has pleaded that intending to start a degree college in Ramayampet it was awaiting notification in that regard to be issued by respondent No. 2. It has further averred that it has learnt that respondent No. 4

has made an application for grant of permission for running an unaided degree college at Ramayampet for the year 2003-04 in pursuance of a notification issued by respondent No. 2 for the academic year 2003-04 and that respondent No. 2 has rejected the said application on the ground that respondent No. 4 does not have the necessary paraphernalia for running a degree college; that respondent No. 4 evidently prevailed over respondent No. 1 which issued G.O. Rt. No. 759 dated 10.09.2003 according special permission to consider the former's proposals to establish new private unaided degree college for the academic year 2003-04 at Ramayampet (outside the framework of guidelines given to the task force). The petitioner specifically pleaded that respondent No. 1 ought not to have interfered in the matter by issuing the said G.O. and has also alternatively pleaded that when the said G.O. was issued for the academic year 2003-04, the same should not have been acted upon by respondent No. 2 for the subsequent year as the academic year for which the said G.O. was issued has lapsed.

4. No counter-affidavits have been filed by any of the respondents, except respondent No. 2. It is stated in the said counter that based upon the need of locality, respondent No. 2, after consulting the Osmania University and as per the directions of respondent No. 1, permitted respondent No. 4 society to establish new degree college vide its proceedings dated 11.08.2004. It is further stated that the said decision was also in accordance with the directions given by respondent No. 1, vide G.O. Rt. No. 759 dated 10.09.2003. It is also averred that under G.O. Ms. No. 278 dated 24.07.1995, respondent No. 1 delegated powers to respondent No. 2 to grant permission for starting private unaided degree colleges/courses and post graduate courses and that under the Andhra Pradesh State Council of Higher Education Act, 1988 (for short "1988 Act"), respondent No. 2 has powers to do certain academic functions in the State of Andhra Pradesh such as to formulate the principles as per the guidelines of the Government and to decide upon approval and sanction of new educational institutions by according permission keeping in view the various norms and requirements to be fulfilled. Respondent No. 2 further pleaded that in its emergency meeting dated 18.07.2003, the Council has decided to constitute an expert and independent committee to examine the proposals of the managements pending with it and that accordingly a task force comprising three members was constituted; that the three category of cases, which were pending before the Council, were identified and that under item No. 2.08, the reports on the processed applications of the said task force and the pending applications in accordance with the minutes of emergency meeting dated 18.07.2003 were placed and respondent No. 2 approved the said reports. It is further stated that the report submitted on the application of respondent No 1.4 pointed out two deficiencies and that in its 59th meeting of the council held on 04.09.2004, it has resolved to note and approve the consideration of proposals for the academic year 2003-04 for permission to start new private unaided degree colleges for the year 2004-05 as per the reasons detailed in the agenda note.

5. At the hearing Sri A. Santosh Kumar, learned Counsel representing Sri N.

Sridhar Reddy, learned Counsel for the petitioner, submitted that respondent No. 2 has not issued any notification for the academic year 2004-05 inviting applications and that the application of respondent No. 4 made for the academic year 2003-04 ought not to have been considered and approved by respondent No. 2 for 2004-05. The learned Counsel further submitted that the approval given by respondent No. 2 was solely based on G.O. Rt. No. 759 dated 10.09.2003 issued by respondent No. 1 which had no power or authority to interfere in the affairs of respondent No. 2. Alternatively he has submitted that the said G.O. was issued only permitting respondent No. 4 to start the degree college for the academic year 2003-04 and therefore, respondent No. 2 ought not to have permitted respondent No. 4 to start the college during 2004-05. The learned Counsel further advanced that the action of respondent Nos. 1 and 2 in permitting respondent No. 4 to start the college ignoring the recommendations of the task force constituted by respondent No. 2 is arbitrary and unsustainable.

6. No specific contentions have been advanced on behalf of any of the respondents. I have carefully considered the submissions made by the learned Counsel for the petitioner and perused the record.

7. In order to deal with the above contentions, it is necessary to refer to the relevant provisions of the Andhra Pradesh Education Act, 1982 (for short "1982 Act") and the 1988 Act. Section 20 of 1982 Act deals with permission for establishment of educational institutions. Under this provision, the competent authority from time to time shall conduct a survey as to identify the educational needs of the locality under its jurisdiction and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions. This provision also envisages the conditions to be satisfied by an educational agency applying for permission. Section 21 of 1982 Act postulates grant or withdrawal of recognition of institutions imparting education. It empowers the competent authority in writing to grant recognition in respect of any institution imparting education or for a higher class in any such institution permitted to be established u/s 20 of 1982 Act subject to such conditions as may be prescribed in regard to accommodation, equipment, appointment of teaching staff, syllabi, textbooks and other matters relating thereto. Section 2(12) of 1982 Act defines "competent authority" as any person, officer or authority authorised by the Government by notification to perform the functions of the competent authority under the 1982 Act for such area or for such purposes as may be specified in the notification.

8. In the material papers filed by respondent No. 2, I find G.O. Ms. No. 278, Education (U-E-II-2) Department, dated 24.07.1995, wherein respondent No. 1 purportedly delegated the powers of granting permission for starting private unaided degree colleges/courses and post graduate courses to respondent No. 2, with immediate effect. Respondent No. 2 has been constituted under the provisions of 1988 Act. u/s 11 of 1988 Act, it shall be the general duty of the Council to coordinate and determine the standards in institutions of Higher

Education or Research and Scientific and Technical institutions in accordance with the guidelines issued by the University Grants Commission from time to time. Some of the functions are also enumerated in the said provision which include planning and coordination in respect of the higher education in the State in accordance with the guidelines that may be issued by the University Grants Commission from time to time. u/s 18 of 1988 Act, respondent No. 2 shall be guided by such directions on questions of policy relating to State purposes or in case of any emergency as may be given to it by the Government.

9. A conjoint reading of provisions of both these Acts - 1982 Act and 1988 Act, would reveal that in the matter of ascertaining the need for establishment of educational institutions and granting permission for such establishment, respondent No. 2 is conferred with wide powers subject only to the power of Government to issue directions on questions of policy relating to State purposes or in case of any emergency. Keeping this position of law in mind, the material placed before the Court needs to be examined.

10. Respondent No. 2 issued a notification for inviting applications for establishment of private unaided degree colleges for the year 2003-04. Respondent No. 4 appeared to have made its application for starting a degree college at Ramayampet. As several applications were pending before respondent No. 2, it has decided to constitute a task force with the following persons as members:

(1) Prof. P.S.N. Reddy, Professor of Chemistry, Osmania University, Hyderabad,

(2) Prof. Y.R. Haragopal Reddy, Dean and Professor of Law and Dean, Nagarjuna University, Guntur, and

(3) Prof. B.C. Jinaga, Professor of Electronics and Director of Academic and Planning, Jawaharlal Nehru Technological University, Hyderabad, to consider various applications which were classified under three categories. The task force which met on several occasions commencing from 21.07.2003 processed the pending applications in accordance with the minutes of the emergency meeting of respondent No. 2 and after a thorough examination of those applications, has placed the application of respondent No. 4 under "proposals not considered by task force committee category". In its 57th meeting held on 01.12.2003, respondent No. 2 has inter alia stated in item 5 as under:

5. Based on the recommendations of the Task Force, rejection letters were sent to the following categories of Private Managements (81 applicants).

11. Respondent No. 4 is included in serial No. 2 of category-b among those 81 applicants. Immediately after receipt of rejection letter from respondent No. 2 and even before the 57th meeting held by respondent No. 2, respondent No. 4 appeared to have approached respondent No. 1 which in turn issued G.O. Rt. No. 759 dated 10.09.2003. It is stated therein that the Government accords special permission to consider the proposals of respondent No. 4 for establishment of

new private unaided degree college for the academic year 2003-04 (outside the framework of guidelines given to the task force). It has directed the Secretary of respondent No. 2 Council to take further action in the matter. The fact however remains that the said G.O. was not given effect to for the 2003-04 academic year for which it was issued. But respondent No. 2 in its 59th meeting has considered four applications including that of respondent No. 4 for according permission for the year 2004-05.

12. The proceedings of respondent No. 2 in respect of respondent No. 4's application read as under:

Government issued an order to consider the proposal (G.O. Rt. No. 759, Dt.10.09.2003) but was kept pending by Osmania University as the last date for admissions in the Osmania University area was 31.08.2003 for the year 2003-2004 and hence the same was considered for 2004-2005

13. The facts chronicled above would clearly reveal that but for the interference by respondent No. 1 by issuing G.O. Rt. No. 759 dated 10.09.2003, there would have been no question of respondent No. 2 considering the application of respondent No. 4. Though this Court asked the learned Government Pleader whether any power is vested with respondent No. 1 to issue G.O. Rt. No. 759 dated 10.09.2003 granting special permission to respondent No. 4, he is unable to invite this Court's attention to any provision under either of the two Acts i.e., 1982 Act and 1988 Act. As noted above under Sections 20 and 21 of 1982 Act, it is the competent authority which is vested with the power of ascertaining the need and granting permission to establish new educational institutions. As noted above the competent authority is defined u/s 2(12) of 1982 Act. As seen from G.O. Ms. No. 278 dated 24.07.1995, respondent No. 2 is named as the competent authority though the said G.O. has deployed the words "hereby delegate the powers". In my opinion, delegation of powers in the present context is a misnomer because the Acts vest the powers only in the competent authority to be notified by the Government. Respondent No. 1 is, therefore, required to specify the competent authority by a notification. As such the purported delegation is to be understood as the act of authorizing respondent No. 1 to act as the competent authority to exercise the powers and functions under Sections 20 and 21 of 1982 Act. Therefore, it logically follows that once respondent No. 2 is notified as competent authority, it alone is entitled to exercise any of the powers and functions under Sections 20 and 21 of the 1982 Act. Even u/s 18 of 1988 Act, respondent No. 1 has powers to issue directions on questions of policy only. It is not the pleaded case of the respondents that G.O. Rt. No. 759 dated 10.09.2003 is traceable to the said power and in any view, granting of permission to an individual does not fall within the expression of policy. Therefore, respondent No. 1 had no power or jurisdiction to interfere in the matter pertaining to permission to establish a degree college. Afortiori, G.O. Rt. No. 759 dated 10.09.2003 issued by respondent No. 1 suffers from inherent lack of jurisdiction.

14. Another strong reason for invalidating the said G.O. is that respondent No. 1 has not assigned any reasons whatsoever in the G.O., as to what prompted it to accord special permission to respondent No. 4 to establish a degree college "outside the framework of guidelines given to the task force". The law is well settled that arbitrariness is anathema to Article 14 of the Constitution. Every action of the executive Government should be free from arbitrariness. Any governmental action that fails to satisfy the test of reasonableness would be liable to be struck down as unreasonable (See *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , *Mahabir Auto Stores v. Indian Oil Corporation* AIR 1990 SC 10313 , *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*,

15. Coming to the action of respondent No. 2 in issuing proceedings dated 04.09.2004, a perusal of the said proceedings would reveal that in issuing the same, it was solely guided by the G.O. referred to above. It has taken note of the fact that G.O. Rt. No. 759 dated 10.09.2003 issued by the Government permitting respondent No. 4 to start degree college for the year 2003-2004 could not be implemented as the last date for admissions in the Osmania University area was 31.08.2003. When the G.O. itself was issued for the year 2003-04, it is not explained by respondent No. 2 as to how such a G.O. was made the basis for permitting respondent No. 4 to commence the college from the academic year 2004- 2005. It is not the case of respondent No. 2 that respondent No. 1 has issued a fresh G.O. for the said academic year (not to say that such a G.O. if issued would have validated the action of respondent No. 2). It is also not the pleaded case of respondent No. 2 that it has rejected the recommendations of the task force while granting permission to respondent No. 4. On the other hand, as already noted above, while respondent No. 1 accepted the recommendations of the task force by issuing rejection order to respondent No. 4 along with 80 other applicants. This being the admitted fact position, this Court is unable to comprehend as to how respondent No. 2 has permitted respondent No. 4 to start the degree college during the academic year 2004-05 for which it has not even invited fresh applications. I find merit in the submission of the learned Counsel for the petitioner that had a fresh notification been issued for the academic year 2004-05, his client would have also applied and competed with other applicants.

16. The material discussed above would lead to the inevitable conclusion that respondent No. 2 was solely guided and dictated by G.O. Rt. No. 759 dated 10.09.2003 which had no validity in law for more reasons than one as discussed above. In my opinion, respondent Nos. 1 and 2 have chosen respondent No. 4 for a special treatment and acted totally outside the legal framework in permitting the latter to start the degree college for the academic year 2004-05. While respondent No. 1 exercised the powers not vested in it, respondent No. 2 failed to exercise its power in accordance with and for the purposes for which such power is vested in it. Therefore, the action of these respondents cannot be

sustained in law.

17. Accordingly, the Writ Petition is allowed and the proceedings dated 11.08.2004 issued by respondent No. 2 are quashed. Respondent No. 2 shall pay costs of Rs. 5,000/- (Rupees five thousand only) to the petitioner. Respondent No. 2 is entitled to make alternative arrangements for accommodating the students of respondent No. 4 in other colleges to ensure that their careers will not receive a set back.