
(1991) 10 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 12549 of 1991

Modern Homeopaths Society

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-10-1991

Acts Referred:

Karnataka State Universities Act, 1976 — Section 4, 4 (xix), 53, 56

Citation : (1991) ILR (Kar) 3924 : (1992) 1 KarLJ 349

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : H.K. Vasudeva Reddy, for T.P. Rajendra Kumar, for the Appellant; N.B.N. Swamy, Government Advocate for R-1 and N.B. Bhat, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Shivaraj Patil, J.—Briefly stated the facts of the case are:

The first petitioner is a registered Society which runs the second petitioner-College. The first petitioner-Society was registered with the object of preserving and propagating the principles and practice of Homeopathy. In furtherance of its object the said Society started a Homeopathic College - second petitioner herein in the year 1968. The petitioners claim that the College is one of the oldest Institutions of repute in the State of Karnataka possessing all necessary infrastructures such as building facility, teaching staff, hospital facility and library.

On the recommendation of the Board of Homeopathic System of Medicine the State of Karnataka accorded recognition to the College and such recognition was continued from time to time. By the order dated 19/12-12-1987 recognition was continued for the academic years 1986-87 and 1987-88. The College even received the grants from the Government for the years 1983-84 and 1984-85 as can be seen from Annexure-B.

The second respondent-University had not granted affiliation to any Homeopathic

College prior to 1989-90 as there was no separate faculty and syllabus in the University for Homeopathy Courses. It started granting of affiliation to Homeopathic Colleges from the academic year 1989-90. The petitioners made an application for grant of affiliation for the year 1989-90 to conduct degree course in the Bachelor of Homeopathic Medicine and Surgery (B.H.M.S). Based on the recommendation of the Local Inquiry Committee appointed by the University, the State Government by its order dated 23-6-1989 directed the University to give affiliation as required u/s 53 of the Karnataka State Universities Act, 1976 (for short "the Act"). The University gave affiliation on certain conditions as is clear from letter dated 27-7-1989 - Annexure-D. The petitioners further contend that the College strictly adhered to the conditions imposed and the standards laid down. The University on being satisfied continued affiliation for the academic year 1990-91. The College made an application for continuation of the affiliation for the academic year 1991-92. The University appointed a Local Inquiry Committee again. The said Committee having visited the College on 9-1 -1991 submitted its report stating that affiliation for BHMS Course need not be continued. The University by its letter dated 15-4-1991 as per Annexure-E informed the College that the Academic Council and the Syndicate of the University having accepted the report of the Local Inquiry Committee not to continue affiliation for BHMS Course directed the petitioners not to make admissions for the year 1991 -92 to the said Course.

The petitioners had impleaded Sri R.Y. Nadaf as respondent No. 3 as certain allegations were made against him stating that he is the Principal of A.M. Shaik Homeopathy Medical College, Belgaum and he being one of the Members of Local Inquiry Committee which inspected the second petitioner College was biased and was interested to see that the affiliation is not granted to the second petitioner College. Consideration of this aspect of the case of the petitioners is unnecessary in view of deletion of respondent No. 3 as per the order of this Court dated 7-6-1991.

The further case of the petitioners is that the second petitioner-College is one of the oldest institutions of considerable repute. On satisfaction of the facilities provided, the Local Inquiry Committee recommended for grant of affiliation for the year 1989-90. The College has adhered strictly to the conditions laid down while according affiliation. Neither the Government nor the University at any point of time has intimated to the College that it has to improve the standards or provide such other facilities, failing which the affiliation would not be continued for succeeding year. This being the position there was no reason as to why the Local Inquiry Committee which once recommended for grant of affiliation should take a different view and recommend not to continue affiliation for the academic year 1991 -92. It is under these circumstances the petitioners have filed this Writ Petition seeking a Writ in the nature of Mandamus to respondents 1 and 2 to grant affiliation to the second petitioner-College for the academic year 1991-92 and also for a Writ of Certiorari quashing the letter dated 15-4-1991, issued by the second respondent (Annexure-E).

2. The second respondent-University has filed the statement of objections contending that by a communication dated 27-9-1989 (Annexure-D) the second petitioner was asked to send a compliance report in respect of the conditions imposed for grant of affiliation so that the University could issue a Notification granting affiliation. The College did not send compliance report and as such the University did not issue a Notification for affiliation in respect of the College. An application dated 30-10-1989 was made to the University for continuation of affiliation for the year 1990-91. The Local Inquiry Committee visited the College on 17-11-1989 and made a report recommending continuation of affiliation subject to certain conditions. The College sent a compliance report on 21-5-1990. Several of the conditions had not been complied with. An application dated 4-10-1990 was made to the University for continuation of affiliation for the year 1991-92. The Local Inquiry Committee having visited the College on 9-1-1991 made a report with a recommendation that continuation of affiliation to the said College need not be considered. The said recommendation was accepted by the Academic Council and the Syndicate. In view of the same, the affiliation was not granted to the second petitioner-College for the year 1991-92 and the Principal was asked not to make any admissions for the year 1991 -92 as per the letter dated 15-4-1991 - Annexure-E.

The second respondent further contends that the power to grant/refuse continuation of affiliation is available to the University under the proviso to Sub-section (9) of Section 53 of the Act. In the instant case the decision not to continue affiliation was taken by the Syndicate in consultation with the Academic Council in strict compliance with the said proviso. The Scheme of Section 53 of the Act does not require the University to obtain the approval of the Government before exercising its power under the said proviso. Thus, the University justifies its action in issuing the impugned letter dated 15-4-1991 (Annexure-E).

3. The petitioners filed a reply statement dated 31-7-1991 stating that the College has 10 full time Teachers in Homeopathy and 8 Teachers in Allopathy out of which 2 are full time Teachers. At the time of granting affiliation for the year 1989-90 the University had directed the college to appoint 7 full time Teachers and 6 part-time Teachers. The College is ready to appoint more Teachers once the second and third year B.H.M.S. Courses commence. The College is housed in a huge building belonging to the Municipal Corporation. The Government has taken a decision to allot 1 acre 34 guntas of land to the College. The petitioners will take up the construction work immediately after the College is put in possession of the said 1 acre 34 guntas of land. The requirement that College has to make provision of Rs. one lakh for development of Department and Hospital has been complied with. The College was started in the year 1968 even before the University started granting affiliation. Not a single College in the State of Karnataka has obtained approval from the Central Council of Homeopathy.

4. Sri H.K. Vasudeva Reddy, learned Counsel for-the petitioner, urged that:

(1) The second petitioner-College being one of the oldest Colleges of repute

established in the year 1968 ought to have been permitted to continue B.H.M.S. Course by granting affiliation for the academic year 1991-92 particularly so when the affiliation was granted for the academic year 1989-90.

(2) The College has necessary infrastructure and facilities. The deficiencies pointed out were also made up. If there is anything which remains to be fulfilled all efforts will be made by the College within the reasonable time. The petitioners have already made efforts and got 1 acre and 34 guntas of land allotted to put up the construction. The petitioner has appointed sufficient number of Teachers and even has made provision for development fund. Under the circumstances the second respondent was not justified in issuing the letter dated 15-4-1991 - Annexure-E refusing affiliation and asking the College not to make admissions.

(3) The second respondent has committed an error in refusing affiliation without placing the papers before the State Government and even before the State Government could consider the case of the petitioners for affiliation, issuing of letter dated 15-4-1991 -Annexure-E without placing the papers before the State Government is in clear violation of the Scheme and the provisions contained in Section 53 of the Act. As such, the impugned letter dated 15-4-1991 Annexure-E cannot be sustained.

5. In opposition, Sri N.B. Bhat, learned Counsel for respondent No. 2, would urge:

(1) The Local Inquiry Committee having visited the College made a report recommending not to grant affiliation to the second petitioner-College to have B.H.M.S. Course for the academic year 1991-92; the Academic Council and the Syndicate did accept the said recommendation and the University accordingly issued the impugned letter dated 15-4-1991 - Annexure-E which is perfectly valid.

(2) Under proviso to Sub-section (9) of Section 53 of the Act, University is competent to reject affiliation without referring or placing the matter before the State Government. Under the said proviso the power to continue affiliation includes the power to refuse affiliation. As such he justifies the action of the University.

6. I have carefully considered the submissions made by the learned Counsel appearing for the parties. The second petitioner-College is one of the oldest Homeopathic Colleges. It is undisputed that it was established in 1968. The respondents 1 and 2 granted affiliation to the said College for the year 1989-90 based on the Local Inquiry Committee report. The petitioners have appointed full time Teachers, have made efforts to get 1 acre 34 guntas of land allotted for the purpose of construction of necessary building for the College, even they have provided for development fund and further a need for such a College that too in Homeopathic medicine, are the matters for consideration of respondents 1 and 2. As rightly contended by Sri U.K. Vasudeva Reddy, learned Counsel for the petitioners, if at all respondent No. 2 was to refuse affiliation for want of compliance with certain conditions laid down by it or some deficiencies pointed

out to be made up, they should have been pointed out, giving certain time to the petitioners to take necessary steps. Refusing affiliation without doing so, at once resulted in serious civil consequence. I find considerable force in the submission of the learned Counsel for the petitioners that respondent No. 2 was not justified in issuing the impugned letter dated 15-4-1991 - Annexure-E without referring the matter to the State Government and without placing the papers in the matter of grant or refusal of affiliation to the second petitioner-College for the academic year 1991-92 to have the said Course. I am inclined to hold that proviso to Sub-section (9) of Section 53 of the Act does not give power to the University to refuse affiliation by itself without submitting the application and all proceedings, if any, of the Academic Council and of the Syndicate relating thereto to the State Government u/s 53(5) of the Act. I find difficulty in agreeing with Sri N.B. Bhat, the learned Counsel for respondent No. 2, to place construction on the proviso to Sub-section (9) of Section 53 of the Act to the effect that the power of continuation of affiliation given to the Syndicate in consultation with the Academic Council includes the power to refuse affiliation, for various reasons set out below:

(1) This Court in the case of Indian Medical Association Vs. State of Karnataka, has stated thus in para-17 of the said Decision:

"Having regard to the requirements of Clauses (a) to (i) of Section 53, it appears to me that the construction placed on Section 53 by the Counsel for the Karnataka University is sound. The Section covers not only the cases of colleges proposed to be established in respect of which affiliation is sought for the first time, but also colleges in respect of which affiliation had already been granted for a period, but are seeking affiliation for a further period and also in respect of colleges which are already affiliated but are seeking affiliation in respect of new courses."

Incidentally, it may be mentioned here that the contention of the petitioners in the case on hand was the stand of the University in the aforesaid Decision in stating that Section 53 covers the cases of affiliation for a further period also.

On an earlier occasion when affiliation was granted to the second petitioner-College as per the direction of the State Government the second respondent could not have refused the continuation of affiliation on its own without complying with Section 53(5) of the Act which reads thus:

"The Registrar shall (within such time as the Government may from time to time specify) submit application and all proceedings, if any, of the Academic Council and of the Syndicate thereto to the State Government which after such inquiry as may appear to it to be necessary (shall make their recommendations for the grant of the application or any part thereof or refuse the application or any part thereof and the University shall issue orders accordingly."

(2) Section 53 deals with affiliation of Colleges which is a self-contained Section. The affiliation contemplated may be for the first time, may be in respect of which

affiliation had already been granted for a period, but are seeking affiliation for a further period and also in respect of Colleges which are already affiliated but are seeking affiliation in respect of new Courses. Section 53 does not provide different procedure for different types of affiliation. u/s 53(J) Colleges within the University area, on satisfying the specified conditions could be affiliated to the University on the recommendations made by the State Government. The State Government u/s 53(5) is conferred with power in respect of all types of affiliations to hold such inquiry as may appear to it to be necessary and to make recommendation for the grant or refusal of the application in full or in part and the University has to issue orders accordingly. This being the position, if the University were to refuse affiliation, it results in taking away the power of the State Government given u/s 53(5) of the Act and even it renders, part of Sub-section (5) of Section 53 ineffective.

(3) Proviso to Sub-section (9) of Section 53 is in the nature of an exception, which is confined to the cases of continuation of affiliation for existing courses of study and extension of affiliation for follow-on courses. Section 53(5) deals with grant or refusal of application for affiliation. The proviso to Sub-section (9) of Section 53 takes in its fold only the cases of continuation of affiliation for existing courses of study and extension of affiliation for follow-on courses. If the legislature had intended to confer the power on the Syndicate to refuse affiliation under the said proviso it would have been expressly stated so as is being done in Section 53(5) in respect of both grant or refusal of affiliation. Further continuation of affiliation in respect of the cases provided under the said proviso does not affect the rights of the. Colleges, but the refusal does and it certainly results in civil consequences. It appears, in cases of continuation of affiliation under the proviso it was thought unnecessary to submit the application and the "proceedings of the Academic Council and the Syndicate to the State Government. It is not uncommon that in various enactments, particularly in cases of grant of licences, provisions are made stating that licences could be granted or renewed, but in cases where licences are to be rejected or not to be renewed recording of reasons in writing are made mandatory.

7. Sri N.B. Bhat, learned Counsel for respondent No. 2, relies on Section 4(xix) and (xxiii) of the Act. Section 4 states about the powers of the University Section 4(xix) reads thus:

"Admit educational institutions not maintained by the University to the privileges of the University as affiliated colleges and suspend or withdraw such affiliation."

The learned Counsel states that the University has power to suspend or withdraw affiliation and u/s 4(xxiii) the University has incidental powers to do all such other acts and things to further the objects of the University. The opening words of Section 4 clearly show that the powers of the University under the said Section are subject to the provisions of the Act and such conditions as may be prescribed by the Statutes or Ordinances; When Section 53 is a self-contained Section in the matter of dealing with affiliations Section 4(xix) which states about the

powers of the University in the matter of suspension or withdrawal of affiliation of a College is of no assistance to respondent No. 2. Withdrawal of affiliation is dealt with u/s 56 of the Act. Even if the University has the power u/s 4(xix), as stated already the said power is subject to the provisions of the Act. In the matter of grant of affiliation/refusal of affiliation it is subject to Section 53 and particularly Section 53(5) of the Act in the instant case. Section 4(xxiii) deals with the incidental powers. In view of the express provision contained in Section 53 dealing with matters of affiliation it also does not help respondent No. 2.

8. Sri. N.B. Bhat, learned Counsel for respondent No. 2, relied on the Decision of the Supreme Court in the case of Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others, for the proposition that conferment of general statutory power carry with it incidental or consequential powers and in particular he drew my attention to para-4 of the said Judgment. That was a case where the Panchayat Samiti was vested with the power to grant a licence for the holding of a hat or fair u/s 117 of the West Bengal Panchayat Act, 1973. The High Court of Calcutta had taken the view that Panchayat Samiti had no consequential or incidental power to specify a day for holding of such hat or fair. The Supreme Court found that the view of the High Court in this regard was erroneous observing that under the Act the power of general administration of the local area vested in the Panchayat Samiti only to grant a licence to hold a hat or fair u/s 117 of the Act, but such power of general administration necessarily carried with it the power to supervise, control and manage such hat or fair within its territorial jurisdiction. Under the circumstances it was held that the power to grant a licence included the power to make incidental or consequential orders for specification of a day on which such hat or fair shall be held. In the case on hand refusal to grant affiliation cannot be said to be either incidental or consequential. Hence, the Decision cited has no application to the facts of the case.

The Decision in V.T. KHANZODE AND ORS. v. RESERVE BANK OF INDIA AND ANR. 1987(2) SCC 7 cited by the learned Counsel Sri Bhat again does not help him as it dealt with the incidental powers namely to provide for service conditions of the staff to carry out the purposes for which the Bank was constituted. It is held that the Central Board of Directors of the Bank had the power to make service regulations u/s 58(1) of the Reserve Bank of India Act, 1934.

The learned Counsel for respondent No. 2 cited the Decision in the case of Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, and inviting my attention to para-9 of the said Decision, which reads thus:

"In considering the rival submissions of the learned Counsel and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and

Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again while the words of an enactment are important, the context is no less important. For instance, "the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of any Act may well indicate that wide or general words should be given a restrictive meaning" (See Halsbury, 4th Edition, Vol.44 para 874)."

I respectfully agree with the principles stated. Applying the same I hold that this Decision also does not advance the case of respondent No. 2 any further.

9. Sri H.K. Vasudeva Reddy, learned Counsel for the petitioners, cited the Decision in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, in support of his submission as to the interpretation of Section 53(1) and (5) and proviso to Section 53(9) of the Act. He specifically drew my attention to paragraph 33 of the said Decision, which reads thus:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A Statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and

designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Price Chit" in Srinivasa and we find no reason to depart from the Court's construction."

The learned Counsel for the petitioners based on what is stated by the Supreme Court urged that when Section 53(1) and (5) make it very clear that the State Government has an effective role and say in the matter dealing with the grant of affiliation to Colleges, the proviso to Sub-section (9) of Section 53 cannot be construed as giving the power to the University to refuse affiliation by itself.

10. Normally the function of a proviso is to except something out of the enactment. The natural presumption in regard to a proviso to a Section is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso as observed by Hidayatullah J. in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*,

A provision in an enactment must be construed to make it effective and operation on the principle expressed in the maxim *ut res magis valeat quam pereat* (Principles of Statutory Interpretation by G.P. Singh - 3rd Edition at page 31).

As a general Rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general Rule. It is well settled principle of interpretation that a proviso cannot be extended to deal with cases other than dealt with by it. It cannot exclude something by implication which is expressed by clear words in the enactment. When on a fair construction the principal provision is clear a proviso cannot expand or limit it. Hence, I am inclined to accept the submission of the learned Counsel for the petitioners in this regard.

11. In view of what is stated above, I have no hesitation to hold that the impugned letter dated 15-4-1991 (Annexure-E) cannot be sustained. The respondent No. 2 was obliged to submit u/s 53(5) of the Act the application made by the petitioners seeking affiliation and all proceedings of the Academic Council and the Syndicate relating thereto to the State Government. In that event the State Government ought to have held such inquiry as deemed necessary and make recommendations for the grant or refusal of the application for affiliation to the University. In my opinion, impugned letter dated 15-4-1991 (Annexure-E) issued is in violation of Section 53(5) of the Act.

12. In the result and for the reasons stated above I proceed to pass the following:

ORDER

(1) Writ Petition is allowed.

(2) The impugned letter dated 15-4-1991 (Annexure-E) issued by the second respondent is quashed.

(3) The respondent No. 2 is directed to submit the application filed by the petitioners seeking affiliation for the academic year 1991 -92 along with the proceedings of the Academic Council and Syndicate relating thereto to the State Government-respondent No. 1 u/s 53(5) of the Act for necessary action within a period of two weeks from the date of receipt of a copy of this order and thereafter the State Government to take action as required u/s 53(5) of the Act within a period of 45 days.

(4) No costs.