

(2004) 08 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 10422 of 2004

Nooli Channayya Smaraka

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Karnataka Education Act, 1983 — Section 39

Citation : (2004) ILR (Kar) 4133 : (2004) 6 KarLJ 132 : (2004) 4 KCCR 2609

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : I.R. Biradar and Chagashetty, for the Appellant; B. Manohar, AGA, for the Respondent

Final Decision : Allowed

Judgement

Abdul Nazeer, J.—Petitioner is a Society registered under the Societies Registration Act vide Registration No. 121/1992-93 dated 09.10.1992. It is contended that the Society is managed by the persons belonging to Scheduled Caste and Scheduled Tribe and that it has all the infrastructure such as School building on a rental basis, play ground, Library and well equipped Laboratory for running the Higher Secondary School. It made an application to the respondents for grant of recognition to start Higher Secondary School in the name and style of "Sri Bannimahankali Higher Secondary School" at Nargund Town in Gadag District. The 4th respondent forwarded the proposal to the State Government and the State Government by its order dated 25.09.1993 accorded recognition for opening Higher Secondary School at Nargund Town in Gadag District. The petitioner was conducting the course for the last ten years, without there being any grant from the State Government.

2. It is further contended that the 4th respondent issued a notice dated 28.02.2002 to the petitioner - Society directing the petitioner to show cause as to why the recognition granted earlier should not be cancelled as per Section 39 of the Education Act. The petitioner submitted its reply denying the charges

levelled against it. The 4th respondent cancelled the recognition by the order dated 16.07.2002. Feeling aggrieved by the said order, the petitioner filed a Revision in R.P.No. 1/2002 before the 2nd respondent and the 2nd respondent has also dismissed the Revision by the order dated 09.02.2004. Therefore, petitioner has filed this Writ Petition for quashing of the order passed by the 4th respondent dated 16.07.2002 (Annexure "D") and the order of the 2nd respondent dated 09.02.2004 (Annexure "G")

3. Respondents have filed objections contending that the State Government had granted recognition to the petitioner- Society to start High School for the academic year 1993-94 with certain conditions. Even after nine years of establishing the School, the petitioner has failed to provide necessary infrastructure to run the High School. It is contended that the petitioner does not have its own building and does not possess Laboratory, Library and Play Ground. Therefore, in exercise of power u/s 39 of the Education Act, they have withdrawn the recognition and initiated action for taking over the movable and immovable properties of the Institution.

4.1 have heard the Learned Counsel for the parties and perused the materials placed on record.

5. Sri. Chagashetty, Learned Counsel for the petitioner submits that the petitioner had to file Writ Petitions and; contempt of Court case against the respondents at various stages for different reasons. With a view to harass the petitioner the 4th Respondent has initiated action without any justifiable reason. It is argued that respondent No.4 has not issued a proper show-cause notice and that the reason assigned in the impugned order is different from the one stated in the show-cause notice. He submits that the impugned order is opposed to the principle of natural justice and fair play.

6. On the other hand, the Learned Additional Government Advocate has justified the impugned orders.

7. It is not in dispute that the Institution of the petitioner was granted recognition by the Government Order dated 25.09.1993 and it has been running the High School for the past ten years. The 4th Respondent in the show-cause notice dated 28.02.2002 has assigned two reasons for withdrawal of recognition granted to the College earlier,

1. When the Officials of the Department visited the Institution, the Management of the School misbehaved with them,

2. The Management of the School has violated the Rules relating to the S.S.L.C. Examination.

8. The Petitioner has sent a detailed reply as per Annexure "C", denying the allegations made in the notice. It is stated that the respondent No.4 is inimical towards the petitioner because the petitioner filed a contempt of Court Case against him. Therefore, the question for consideration is whether the order

impugned is opposed to the principles of natural justice and fair play.

9. Perusal of the order at Annexure "D" shows that the reason assigned for withdrawal of permission is different from the reason assigned in the show cause notice. The reasons assigned for cancellation of the recognition is on the basis of a report said to have been submitted by the officials who had visited the school on 17.08.2001. The contents of the report it is stated in the order as under:

1. When the Officials of the Department visited the petitioner -Institution on 17.08.2001 the Management and Staff ignored them and behaved in an irresponsible manner and misbehaved with them and did not show any courtesy.

2. That Institution committed irregularities seven in number while conducting S.S.L.C. Examination, and that they do not have a Building of their own and other required basic facilities

3. That the College has submitted false report relating to availability of infrastructure. Therefore, the Committee has recommended for cancellation of recognition.

10. It is to be noted here that the petitioners were not furnished with a copy of the report submitted by the officials to the 4th respondent. There is no reference to the report submitted by the officials in the show cause notice. In the order, the 3rd respondent has directed the 5th respondent to take steps to admit the students of the petitioner - Institution to the nearby schools and the original documents relating to admission, TC, etc., should also be transferred to the nearby Government School. A direction is issued to take steps for taking over the movable and immovable properties of the said School.

11. Learned Additional Government Advocate submits that the action is taken in terms of Sub-Clause (1) (e) and (f) of Section 39 of the Act. The said provision empowers the authorities under the Act to withdraw the recognition if the Educational Institutions fails to remedy the defects in the instruction or accommodation or deficiencies in the management or discipline or contravenes any of the provisions of the Act and Rules and orders made thereunder. The said section mandates the authorities to grant an opportunity of making its representation against such withdrawal or action. The said Section is as follows:

"39. (1) xxx xxx xxx

(a) xxx xxx xxx

(b) xxx xxx xxx xxx xxx xxx

(1)(e) fails to remedy the defects in the instruction or accommodation or deficiencies in the management or discipline within such time as may be specified therefore by the competent authority;

(f) contravenes any of the provisions or this Act the Rules and orders made thereunder; the competent authority may, for reasons to be recorded in writing,

withdraw the recognition of the institution or take such other action as is deemed necessary, after giving to the local authority or as the case may be. the Governing Council an opportunity of making its representation against such withdrawal or action".

12. It is clear that before withdrawal of recognition or taking any action, it must be preceded by a show-cause notice to enable the Institution to make a representation. This is in conformity with the Rule of audi alteram partem. The audi alteram partem Rule ensures that no one should be condemned unheard. It is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can adequately defend himself. The notice issued should be valid and adequate. The grounds given in the notice on which the action proposed to be taken should be clear, specific and unambiguous. If these conditions are not satisfied, the person cannot be said to have a reasonable opportunity of being heard. If the notice mentions one ground but the action is taken on some other ground or additional ground, such a notice is no notice. An order travelling beyond the bounds of the notice is impermissible and without jurisdiction to that extent.

13. In the case of Nasir Ahmad Vs. Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another, the Hon'ble Supreme Court has held that a valid notice is a foundation of a proceeding u/s 7 of the Administration of Evacuee Property Act and an enquiry which travels beyond the bounds of the notice is without jurisdiction to that extent. It is further held that it was essential to state the particulars in the notice to enable the appellant to answer the case against him.

14. It is true that a show cause notice was issued to the petitioner - Institution. However, order is passed not merely on the ground stated in the show cause notice but on additional grounds. The report relied on by the competent authority has not been furnished nor the contents of the report are stated in the show cause notice. There is no notice for taking over movable and immovable properties of the Institution. The order travels beyond the bounds of the notice which is impermissible in law. In my opinion, order at Annexure "D" is manifestly against the basic principles of natural justice.

15. At this stage, the Learned Counsel for the respondents submits that the petitioner had filed a Revision Petition against the order at Annexure "D" and that failure of natural justice if any at the original be-stage has been cured by giving a hearing at the appellate stage. It is to stated here that breach of natural justice at the original stage cannot be cured by sufficiency of natural justice at the appellate/revisional stage. When the Trial body did not observe natural justice the same cannot be remedied by an Appellate/Revisional body by giving a sufficient hearing to the party. The appeal/Revision is not a complete substitute

for a right of hearing before the original authority.

16. In the case of Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, the Hon'ble Supreme Court has held that a Tribunal or body, responsible to take first determinative decision which has grave adverse effects on the person against whom it is taken, should afford opportunity of hearing to the concerned person before taking decision. A Post- decisional hearing by way of appeal cannot afford an adequate remedy for procedural defect in the absence of pre-decisional hearing.

17. I am of the view that the impugned order at Annexure "D" and "G" are opposed to the principles of natural justice and are not sustainable in law.

18. In the light of the above discussion, I pass the following Order:

(i) Writ Petition is allowed and the order at Annexure "D" vide No. C.8(7).Sha.Shic.Aa/Writ- 8/1999-00 dated 16.07.2002 passed by the 3rd Respondent and the order at Annexure "G" vide Order in Revision Petition No. 1/2002 dated 09.02.2004 passed by the 2nd Respondent are hereby quashed.

(ii) Liberty is reserved to the respondents to take action against the petitioner in accordance with law and in the light of the observations made above.

(iii) No costs.