
(2016) 07 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No. 35295 of 2016 (END-RES).

**Parimala Education Society, RPC Layout (Now Hampi Nagara),
Vijayanagar, Bangalore - Petitioner @HASH State of Karnataka and
another**

Date of Decision : 04-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Right of Children to Free and Compulsory Education Act, 2009 — Section 5

Citation : (2016) 6 KantLJ 206

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sri S. Basavaraju, Advocate, for the Petitioner; Smt. Pramodini Kishan, High Court Government Pleader, for the Respondents

Final Decision : Disposed Off

Judgement

Aravind Kumar, J. - Petitioner is a society registered under the Karnataka Societies Registration Act, 1960 and in the year 1982 permission was granted by respondents-authorities for establishing an educational institution as per Annexure-B. Subsequently, on 30-9-2005 recognition came to be granted as per Annexure-C. Petitioner-institution is said to be running nursery, primary and high school at the address indicated in the cause title of the writ petition. On introduction of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the RTE Act"), petitioner has admitted 274 students as on today, earmarked under the said enactment. On recommendation made by Block Education Officer, pursuant to his visit on 30-5-2015 and on his recommendation that additional class rooms are required, petitioner is said to have submitted a representation to the Education Minister for allotment of a civic amenity site vide Annexure-E and also sought permission thereunder to conduct classes in the adjacent building bearing No. 1619 (New No. 36), 6th Main, 4th Cross, Hampinagar (RPC Layout), Vijayanagara, II Stage, Bengaluru-560104, which was ordered on 1-6-2016 as per Annexure-F.

2. Pursuant to same, petitioner has obtained a premises on lease on monthly

rent of Rs. 3,00,000-00 and is said to have paid an advance of Rs. 50,00,000-00 as per Annexure-G. In the light of aforesaid facts, 2nd respondent granted permission to petitioner to run additional classes in the newly obtained premises, which is adjacent to the existing building on a temporary basis as per order/permission dated 6-6-2016 (Annexure-H). Based on such permission being accorded, petitioner is said to have commenced classes in the new building from 6th June, 2016.

3. On account of complaint said to have made by the residents of the locality, 2nd respondent by order dated 9-6-2016 (Annexure-M) has cancelled the permission granted to the petitioner on 6-6-2016, which is impugned in the present writ petition.

4. I have heard arguments of Sri S. Basavaraju, learned Counsel appearing for petitioner and Smt. Pramodini Kishan, learned High Court Government Pleader and perused the records.

5. It is contention of Sri S. Basavaraj, learned Counsel that impugned order has been passed without any notice to the petitioner and on account of permission having been granted, existing students had been shifted to the new building which premises had been taken on lease by the petitioner-society and now by virtue of withdrawal of permission granted, petitioner is unable to conduct classes since respondent-authorities are not permitting petitioner to conduct classes in the new premises and thereby it causing undue hardship to students studying in petitioner's school and particularly those students whose classes were being conducted in the new premises. Hence, he has prayed for quashing of the impugned order.

6. The learned Counsel for petitioner would also raise a contention that in view of affidavit of undertaking filed today, petitioner is ready and willing to abide by such conditions, which the Court may impose and petitioner would also undertake to shift to a new premises irrespective of whether a civil amenity site is allotted or not and petitioner would make all attempts to secure alternate premises and in either of the circumstances, petitioner would not continue to run classes in the new building for which permission has been accorded by 2nd respondent on 6-6-2016. Hence, he prays for suitable orders being passed by quashing the impugned Communication dated 9-6-2016 (Annexure-M).

7. Par contra, learned High Court Government Pleader, appearing for State would submit that on account of conditions stipulated under the existent notification not being adhered to by the petitioner's institution and there being no playground available to children, permission which was granted on 6-6-2016 has been rightly withdrawn by the impugned order and contends that there is no infirmity in the said order calling for interference and hence he prays for dismissal of the writ petition.

8. He would also contend that in the event of this Court permitting petitioner to conduct classes in the existing building, suitable direction be issued to the

petitioner in the interest and safety of children and as such she prays for stringent conditions being imposed in the event of permission being accorded to petitioner's institution to commence/continue classes in the new building.

9. Having heard the learned Counsel for the parties and on perusal of the records, it would indicate that petitioner is an existing institution running school for students in primary, higher primary and high school at premises bearing No. 2, 5th Main, 4th Cross, Hampinagar (R.P.C. Layout), Vijayanagar, Bengaluru-560104. On introduction of RTE Act and in compliance of mandate of the said Act, petitioner has admitted 274 students under RTE Act from the academic year 2009-10 till date. Thus, on account of such admission, strength in the petitioner's school has also increased and on account of space scarcity, petitioner had to approach the appropriate Government for grant of a civic amenity site and it is in furtherance of such requirement, a representation came to be submitted to the Education Minister by petitioner on 30-5-2016 as per Annexure-E. On perusal of said representation, it would indicate that on account of space constraint and also on account of jurisdictional Deputy Director having visited petitioner's school on 30-5-2016, had noticed there has been scarcity of accommodation and as such by his report dated 30-5-2016 (Annexure-D) had recommended that petitioner's school should procure additional accommodation and increase the number of class rooms, which necessitated petitioner to submit representation on 30-5-2016 (Annexure-E). Perusal of said representation would indicate that petitioner sought for permission to shift certain class rooms to the premises adjacent to its premises bearing No. 1619, 6th Cross, Hampinagara, Vijayanagara, Bengaluru-560104. It is pursuant to said representation, 2nd respondent by order dated 6-6-2016 granted permission to the petitioner to commence/shift few class rooms from the existing building to the adjacent building. On such permission being accorded by 2nd respondent, petitioner entered into a Rental Agreement with owner of the building as per Annexure-G, where under petitioner has agreed to pay rent of Rs. 3,00,000-00 p.m. to the owner of the building and has paid a sum of Rs. 50,00,000-00 as a security deposit as is evident from Rental Agreement (Annexure-G). It is on account of permission being accorded by respondent on 6-6-2016, petitioner had commenced classes in the new building lire photographs appended to the petition as per Annexures-J, K and Rs. would indicate that petitioner has taken all reasonable steps to commence the classes in the existing new building. That apart, petitioner has filed an affidavit of undertaking today before this Court undertaking thereunder that present arrangement has been made only as a temporary and transitory measure and till petitioner secures new premises and also undertaking thereunder that irrespective of whether petitioner is able to secure an alternate premises either by itself or through an allotment by the appropriate Government, it would cease to run the school in the new building/premises. Hence, this Court is of the considered view that to avoid undue hardship that would cause to the petitioner and the students studying in petitioner-school, permission is to be accorded by respondent-authorities

conditionally.

10. Since 2nd respondent-authority itself had accorded permission on 6-6-2016 and same would hold good subject to stringent condition being imposed on the petitioner and it would allay apprehensions expressed by learned High Court Government Pleader appearing for State and same would also be in the interest of students/children studying in the said school at the premises taken on lease by the petitioner. 2nd respondent-authority is directed to pass suitable orders in this regard. In that view of the matter, placing the affidavits of undertaking filed by petitioned institution on record, I proceed to pass the following:

ORDER

(a) Writ petition is allowed in part.

(b) Impugned communication dated 9-6-2016 as per Annexure-M is hereby quashed.

(c) Permission granted to petitioner by 2nd respondent on 6-6-2016 as per Annexure-H to run the school in the new premises would be subject to following conditions:

(i) Petitioner shall file an affidavit of undertaking before 2nd respondent undertaking not to run the school in premises bearing No. 1619 (New No. 36), 6th Main, 4th Cross, Hampinagar (R.P.C. Layout), Vijayanagara, If Stage, Bengaluru-560104 after end of the academic year 2016-17.

(ii) Petitioner shall ensure that all safety" measures are installed in the new building, where classes would be conducted.

(iii) Petitioner shall ensure that during school hours, no disturbance is caused to the adjacent building owners or occupiers.

(iv) Petitioner shall ensure that traffic flow in loads which is abutting to the existing building is not hampered during school hours by taking all reasonable steps.

(v) Petitioner shall comply the undertaking given in the affidavit filed today, expeditiously at any rate within an outer limit of three weeks from today.

(vi) In the light of aforesaid conditions, 2nd respondent is hereby directed to accord sanction/permission to petitioner keeping in mind the conditions stipu