

(2017) 04 KAR CK 0103
In the Karnataka High Court
Case No : 55648 and 58296-58304 of 2016

Rajeshwari Vidya Samsthe (R) and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Karnataka Education Act, 1983](#), [Section 145](#), [Section 30](#), [Section 41\(5\)](#) - Power to make rules - Educational institutions to be registered - Management of recognised Educationa

Citation : (2017) 04 KAR CK 0103

Hon'ble Judges : S. Sujatha

Bench : SINGLE BENCH

Advocate : M.S. Parthasarathi, H.T. Narendra Prasad

Judgement

1. The Petitioners have challenged the Constitutional validity of Rules 4(4) and 5(5) of the Karnataka Educational Institutions (Change in the Governing Council or Change in the location of Private Educational Institutions) Rules, 2006 ("Rules 2006" , for short) inter alia, challenging the Circular dated 20.10.2010 [Annexure-T to the writ petitions] issued by the Respondent No. 1 etc.,.

2. The first petitioner is the Management and the Petitioners 2 to 10 are the employees of the Management. That the representations submitted by the Management for extension of salary grants in respect of petitioners 2 to 10 who are working in the institution run by the petitioner No. 1 was refused by the Authorities issuing endorsement dated 4.10.2016 placing reliance on the circular dated 20.10.2010 and the Rules 2006. Hence, these petitions challenging the vires of the Rules 4(4) and 5(5) of the Rules 2006, inter alia, challenging the circular and endorsement at Annexures-T and U to the writ petitions.

3. The Delhi Education Society was accorded permission to start private High School in Kannada Medium on 28.6.1983 from the academic year 1983-84. The said school was changed over to Sri. Krishna High School, Basaveshwaranagar,

Bengaluru as per the endorsement dated 30.5.1992 issued by the Joint Director of Public Instructions. It is contended that the Institution was continuously being run and its recognition was renewed regularly. A proposal was mooted for change of Management of the Institution and on the same, the Respondent No. 2 passed an order permitting the change of Management and also the change of location of the Institution. Accordingly, the Institution which was earlier being run on West of Chord Road, Basaveswaranagar, was shifted to No. 214, 7th Cross, Lakshmidevinagar, Bengaluru. The first petitioner/Management submitted a proposal for grant-in-aid and the same was recommended by the Respondent No. 5 to the Respondent No. 4 after holding necessary inspection of the Institution. The Respondent No. 4, thereafter approved the petitioners 2 to 10 without aid after the proposals were cleared by the District Screening Committee constituted for the purpose.

4. It was contended that the proposal for admission to grant-in-aid in respect of petitioners 2 to 10 was favourably considered by the Government. However, the Respondent No. 1 took a decision that the Institution will have to be treated as a new Institution in view of the Circular dated 20.10.2010.

5. The learned Counsel appearing for the petitioners contended that the issuance of Circular dated 20.10.2010 was unwarranted as the field is covered by the Rules 2006 which prescribes the requirements and conditions for change of Governing Council and change of location. Placing reliance on Section 41(5) of the Karnataka Education Act, 1983 ("the Act" , for short), the learned Counsel submitted that once there is change in the Governing Council of the Institution or change in the location of the institution, a fresh application for recognition shall be made as if it was newly started institution. The Act deals with registration and recognition which are two different aspects. As per Section 41(5) of the Act, it is necessary for obtaining a fresh recognition for the Institution but not the fresh registration. In respect of granting of recognition is concerned, it is governed by the Karnataka Educational Institution (Recognition of Primary and Secondary Schools), Rules, 1999 ("Rules 1999" , for short). According to the learned Counsel, it is not necessary to get the fresh registration, as it is no way provided under the provisions of the Act or the Rules made there under to have a new registration for the Institution. Section 30 of the Act was referred to which deals with the procedure for registration and contended that the provision deals with the Institution and not the Management. The change of Management has no bearing in respect of registration of the Institution. However, Rules 4(4) and 5(5) of the Rules 2006 contemplates for registration and recognition of the Institution which is per se unfair. Rule making powers as conferred under Section 145 of the Act should be in conformity with the Act, imposing the condition of registration and recognition for change of Governing Council and location, is illegal. It was argued that delegation of power conferred on the Rule making authority inasmuch as framing the Rules for fresh registration is concerned is arbitrary, excessive and unconstitutional. It was contended that for the very same Management, the respondents have extended grant-in-aid as regards the

primary school is concerned, but denying the grant-in-aid for the High School goes contrary to the view taken earlier by the respondents, especially among the schools run by the same Management.

6. Learned AGA submitted that Rules 4 and 5 of Rules 2006 are in conformity with Section 145 of the Act, which enables the State Government to make Rules to carry out the purposes of the Act. Section 145(2)(xiv) specifies the grant of registration or recognition to educational institutions and the conditions therefor, for which the Rules may provide for. To achieve the object of the Act these rules are framed. No ground is made out by the petitioner to declare the Rules 4 and 5 of the Rules 2006 as illegal. The learned counsel placed reliance on the judgment of this Court in the case of *Bharathambe Vidya Samsthe [Regd.] and another v. The State of Karnataka Rep. by its Principal Secretary and others*, reported in ILR 2008 Kar 4406 : (2008 (6) AIR Kar R 258) to contend that the validity of Rule 5 of Rules 2006 was considered and upheld by this Court. Rule 3 of the Karnataka Educational Institutions (Grant in-aid for Primary, Secondary and pre-University Education Institutions) Rules, 1998 provides that all private educational institutions established or permitted to be established prior to the 1st day of June, 1987, but started functioning from the year 1987-88 and onwards for imparting primary education, secondary education or pre-University education shall be permanently ineligible for grant-in-aid. Conditions to grant recognition to an educational institution is governed by Karnataka Education Institutions (Recognition of Primary and Secondary Education) Rules, 1999. The competent authority is required to ensure and satisfy itself after verification that every educational institution seeking recognition has to comply the conditions stipulated in Rule 4 thereof. To ensure the safety, facility, required staff, the fresh registration is necessary on change in the governing council or the location of private educational institution. Thus, he seeks for dismissal of the writ petition.

7. Heard the learned counsel appearing for the parties and perused the material on record.

8. Section 41(5) of the Act reads thus: "41. Management of recognised educational institutions.

(1) to (4) xxxxx

(5) If there is a change in the Governing Council of the institution or change in the location of the institution a fresh application for recognition shall be made as if it were a newly started institution.

Section 30 of the Act runs thus:

"30. Educational institutions to be registered.-

(1) Save as otherwise provided in this Act, every local authority institution and every private educational institution established on or before the date of commencement of this Act or intended to be established thereafter, shall notwithstanding anything contained in any other law for the time being in force,

be registered in accordance with this Act and the rules made thereunder;

(2) No person or local authority shall establish or as the case may be, run or maintain an educational institution requiring registration under this section, unless such institution is so registered."

Section 36 of the Act runs thus:

"36. Recognition.-

(1) xxxxx

(2) The granting of recognition shall be subject to fulfilment of the following conditions, namely :-

(a) security deposit of the prescribed amount shall be made within the time specified;

(b) the Governing Council shall possess or be assured of adequate funds to run the institution on a stable footing; and

(c) such other general or special conditions as may be prescribed in regard to accommodation, appointment of teaching and other staff, the code of conduct to be accepted and observed by the Governing Council, furniture and equipment, syllabi, text-books and such other matters relating thereto."

Rules 4(4) and 5(5) of Rules, 2006 reads as under:

4. Conditions for change in the governing Council of private educational institutions:

(4). If the Competent Authority permits change in the governing Council, a fresh application for registration and recognition shall be made as if it were a newly started institution.

(5) Conditions for change in the location of the private educational institutions:

(5) If the Competent Authority permits change in the location, a fresh application for registration and recognition shall be made as if it were a newly started institution.

Section 145 of the Act reads thus:

"145. Power to make rules.-

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for,

(xiv). The period and the manner for applying for registration of institutions; (xv) the form of the....."

The validity of Rule 5 of the Rules, 2006 was considered by this Court in Bharathambe Vidya Samsthe (2008 (6) AIR Kar R 258) (supra) wherein, it is

observed as under:

"9. A perusal of Rule 5(1) makes it clear that there is an embargo for effecting change in the location of private educational institution which is located within the limits of an urban agglomeration, city corporation, city Municipal council, town Municipal council and town panchayat beyond the limits of such urban agglomeration or city corporation or city Municipal council or town Municipal council or town panchayat. The rule further makes it clear that if a change is sought for relocating the private educational institutions from a place in one grama panchayat area to another place either within the same grama panchayat area or some other grama panchayat area and which does not fall within the limits of urban agglomeration, the same can be permitted upon satisfaction of certain conditions. No exception is provided in the rule for changing the location of a school from one urban agglomeration to another place beyond the limits of such urban agglomeration. The intention of the rule making authority is to permit for certain reasons the change of location of the schools in rural areas coming within the limits of panchayats but not to extend the similar benefits to schools in one urban agglomeration to another."

9. It is the contention of the petitioner that the said order was pronounced in the context of the petitioner therein, not acquiring the required infrastructure to run the educational institution. It is to prevent such institutions from making an attempt to carry on their desire to survive by adopting such methods to relocate their institutions, the Rule 5 was upheld but in the present case the challenge is on the ground of excessive delegation vis-a-vis Section 41(5) of the Act. As such, the said judgment is not applicable to the present case. The arguments of the learned counsel for the petitioner hardly requires to be countenanced for the reason that the effect of change in governing council/change in location was also considered, validity of a provision considered and upheld, cannot be reagitated on a further new ground. As aforesaid, the State Government is conferred with the power of enacting the Rules under Section 145 of the Act. Registration and recognition though are different aspects, they are complimentary to each other. Recognition is of the educational institution registered under the Act.

10. It is well settled legal position that validity of subordinate legislation may be questioned on the ground that: (i) it is ultra vires the Constitution;

(ii) it is ultra vires the parent Act;

(iii) law-making power has been exercised in bad faith;

(iv) it is not reasonable; and

(v) it goes against legislative policy, and does not fulfil the object and purpose of the enabling Act."

None of these parameters are made good to challenge the validity of the Rules.

11. The main argument of the petitioner is that the Rules 4(4) and 5(5) are

beyond the statutory provision 41(5) of the Act i.e., it would be an excessive delegation which is not permitted. However, it is imperative to address the arguments as regards the excessive delegation of legislative function. It is apt to refer to the statement of objects and reasons for enacting the Act. The same reads thus: "An Act to provide for better organisation, development, discipline and control of the educational institutions in the State.

Whereas it is considered necessary to provide for the planned development of educational institutions inculcation of healthy educational practise, maintenance and improvement in the standards of education and better organisation, discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education."

12. To achieve the purpose and objects of the Act certain powers are conferred on the State Government in conformity with the Act. The Act itself envisages registration and recognition of the schools. As the power to make Rules is entrusted by the legislature to the State Government, it cannot be held that such power is unbridled or unfettered so as to consider the same as excessive delegation. Sufficient care is taken to frame the Rules by the subordinate legislation which is to fructify the purpose of the Act.

13. Section 41(5) of the Act specifically provides that, if there is a change in the governing council of the institution or change in the location of the institution, a fresh application for recognition to be made as in the case of newly started institution. The language employed therein, in particular, as if it were a newly started institution is the basis on which Rules 4(4) and 5(5) are framed. At this juncture, it is beneficial to refer to the judgment of this Court in *Sri. Ramanjaneyaswami Vidya Saunthe, Kumbaloor, Hobbali Taluk, Shimoga District*, reported in 2000(2) KLJ 508, wherein this Court has observed that no educational institution can claim grant-in-aid as a matter of right. This Court while considering denial of grant-in-aid to educational institutions which started functioning from academic year 1987-88, declaring such institutions permanently ineligible for grant-in-aid by the State held that, grant or refusal of grant-in-aid is a matter that falls in the realm of state policy. The institution has no fundamental right to claim aid from the Government. It is in order to have the benefit of the grant-in-aid, irrespective of the change of governing council and change in the location of the educational institution, the attempts are made by the petitioner to challenge the Rules as unconstitutional which runs counter to the objects of the Act and Rules.

14. The Hon'ble Apex Court in the case of *Consumer Action Group v. State of Tamil Nadu*, reported in (2000) 7 SCC 425 : (AIR 2000 SC 3060) held that there is clear distinction between a provision to be ultra vires and the exercise of power by such delegate to be arbitrary or illegal. Section 145 of the Act empowers the State Govt. to frame rules regarding registration or recognition to educational institutions and the conditions therefor. This Court while upholding

Rule 5 of the Rules has observed that the wisdom of the rule making authority cannot be challenged unless it is shown manifestly arbitrary and illegal and has no purpose or object to achieve consistent with the legislative intent. The object of framing the rules is to prevent and discourage such institutions from seeking change of location for commercial interests or in order to somehow continue to exist, though they are not in a position to meet the standards prescribed in the regulations and rules regarding infrastructure and other resources. This Court having upheld the said Rule, reconsideration of the same is not warranted. Once the law has been laid down it would not be permitted to reconsider the constitutional validity of the same on some new grounds being discovered by the petitioners unless this Court takes a different view. I have no reason to differ from the law laid down by this Court in *Bharatambe Vidya Samsthe* case (2006 (6) AIR Kar R 258) (supra) which is holding the field since 2008. Rule 4(4) of the Rules stand on the same footing as of Rule 5(5). Indeed, it is to discourage commercialisation of education, these Rules are framed which cannot be held to be unconstitutional.

15. The Circular dated 20.10.2010 (Annexure-T), withdrawing the power conferred on the Commissioner for Public Instructions of respective jurisdictions of Primary and Secondary Education, authorizes the Government to approve the change of location/change in the governing council of primary and high schools and prescribes certain conditions to be scrupulously complied with. Condition No. 3 of change in Governing council/change in location stipulates for registration of the school in terms of the Rules framed under the Karnataka Education Act, 1983. Condition No. 8 of change of location of schools further makes it clear that such school (with change of location) shall be treated as a new school from the date of school functioning from the new location and the earlier period shall not be considered for grant, financial or any other benefits extended by the Government. In pursuance to which, the first respondent has issued the endorsement dated 4.10.2016 (Annexure-U) relying on Rules 4(4) and 5(5) of the Rules and the Circular dated 20.10. 2010 since the petitioner's school was registered and recognised under the Rules during the academic year 2010 and the same is in accordance with the Rules. The validity of the Rules having been upheld, the challenge to these Annexures do not merit any consideration.

16. For the foregoing reasons, it cannot be held that Rules 4(4) and 5(5) are vitiated on the ground of excessive delegation as contended by the petitioner. Hence, the same is rejected. The circular dated 20.10.2010 (Annexure-T) and the endorsement dated 04.10.2016 (Annexure-U) issued by the 1st respondent are in conformity with the Act and Rules. Accordingly, the writ petitions are dismissed. Petition dismissed.