

(1996) 01 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 317 of 1994

Samatha Vidya Samsthe, Bangalore

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Citation : (1996) 2 KarLJ 77

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. I have heard the petitioners' learned Advocate and also the learned Advocate who represents the 3rd respondent-school. The dispute in this case is that the petitioners were running a small school at Mariyappanapalya within the suburbs of Bangalore and they contend that the 3rd respondent-institution has shifted its institution within the immediate proximity of the petitioners school. According to them, the authorities should not have permitted this because they were the earlier institution and secondly because the newly shifted institution has the direct result of attracting a greater number of students there as a result of which the petitioners are finding it difficult to survive. The learned Advocate submits that despite the representations that were made to the authorities that they have granted the permission and that even if the permission holds good for the High School, that the same should be revoked as far as the Primary School is concerned.

2. Learned Advocate who represents respondent 3 points out that his clients have not bypassed any of the requirements and that the Government in recognition of the fact that they are running several other institutions granted them the required land and he further submits that it is wrong to state that they are within the immediate proximity of the petitioners and that there is sufficient distance between the two. More importantly, the learned Advocate demonstrates from the record that if the respondent 3 has complied with all the requirements, that it is also implicit that the authorities have considered the aspect of competition between the institutions and that therefore no interference is called

for from this Court.

3. The fact remains that the petitioners are the smaller of the two and they had opened the School in that area prior to the respondent 3. It is also very clear to me that irrespective of the actual distance between the two, that if the respondent 3 runs a primary school closeby, that the first preference of the students would be for that school and that there is every possibility that the petitioners may not be able to attract enough of students. Undoubtedly, the authorities should have taken this aspect of the matter into consideration before permitting the respondent 3 to commence a Primary School there. However today, since both the institutions are running, this Court will have to balance the equities and do justice to both the contesting parties. On a due consideration of the facts, a fair order would require that a solution be found which would balance the grievance of the petitioners on the one side with the corresponding interests of the respondents on the other.

4. The respondents are accordingly directed to reconsider the matter within a period of one month from today. The petitioners and the respondent 3 shall submit a representation indicating precisely the nature of the aspects which they desire to be taken into consideration. The respondents shall ensure that as far as the primary classes are concerned in order to see to it that sufficient number of students are available to the petitioner-institution, that the respondents shall curtail the number of new admissions to these classes to that extent which appears reasonable so that the balance number of students will automatically go to the petitioner-institution. While passing orders in this regard, the authorities shall take into account the fact that respondent 3 is in any case basically running the High School and that therefore it will not be in any way adversely affected by placing a ceiling on the admissions to the lower classes and at the same time through such a formula it can be ensured that the petitioners do get enough of students for their school also.

5. Since the new academic year will be commencing within the next few months, the respondents are directed to pass appropriate orders and communicate them to the petitioners and respondent 3 before 31-3-1996. The learned Advocates and the learned Government Advocate shall convey the decision of this Court to the authorities concerned.

6. The petition partially succeeds to this extent. No order as to costs. Learned Government Advocate is permitted to file his memo of appearance within 3 weeks. Copy of this order to be furnished to learned Advocates immediately.