

(2015) 09 KAR CK 0258
In the Karnataka High Court
Case No : W.P. No. 102172/2015 (S-RES)

Shri Dharmasthala Manjunatheshwara Education Society and
Others

APPELLANT

Vs

Bharati

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Karnataka Education Act, 1983 — Section 1(3), 1(3)(da), 1(3)(iv), 1(3)(iv)(a), 1(3)(iv)(d)

Citation : (2015) 09 KAR CK 0258

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : F.V. Patil, Advocate, for the Appellant; Anant. P. Savadi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—Petitioner No. 1 represented by petitioner Nos. 2 and 3, a privation education society, called in question the order passed by the Principal District & Sessions Judge cum Educational Appellate Tribunal, Dharwad in M.A.E.A.T. No. 4/2012, with regard to its jurisdiction and holding that the Karnataka Education Act (for short "K.E.A. Act") is applicable to the case on hand and the Court has got jurisdiction to decide the lis between the parties.

2. I have heard arguments of the learned counsel Sri. F.V. Patil for petitioners and Sri Anant P. Savadi for respondents. I have carefully perused the factual matrix of the case and as well as the legal aspects raised before me.

3. The factual matrix that emanate from the records are that the respondent-Bharati was appointed as Assistant Librarian by the petitioner No. 1 in the year 1999 in the S.D.M. College of Engineering & Technology, Sattur and subsequently she was terminated by an order dated 21.02.2012. The said order of the management was called in question before the Principal District & Sessions Judge cum Educational Appellate Tribunal (for short "E.A.T."), Dharwad in M.A.E.A.T. No.

4/2012. The writ petitioners have taken the contention that the Educational Appellate Tribunal has no jurisdiction to try and dispose of the said appeal. After hearing the parties the E.A.T. has held that it has got jurisdiction.

4. Sri F.V. Patil, learned counsel for the petitioners raised three important points before this Court that, the E.A.T. has no jurisdiction to try and dispose of the appeal as the petitioners' institution is governed and administered by Karnataka Universities Act and as such it does not come under the private management as per Section 2(27)(b) of the K.E.A. Act and also under the relevant provisions under Section 1(3)(iv)(d) and 1(3)(iv)(da) and also under Section 2(16) , 2(20) of the K.E.A Act.

5. Learned counsel further submits that in view of introduction of All India Council for Technical Education Act (for short "AICTE Act"), powers of the private management to establish and administer the institution and also to deal with the matters pertaining to the Colleges and institutions have been taken away. Therefore, the K.E.A. Act is not applicable.

6. The learned counsel further argued that the trial Court has not at all in detail considered the above said aspects and the order is a cryptic order and not a speaking order. Therefore, the said order is liable to be set aside.

7. Per contra, learned counsel Sri Savadi, strenuously argued that this Court earlier had an occasion to deal with the similar facts and law and this Court has laid down the law in a case reported in , 2015 (1) KCCR 324 (Dakshin Bharath Hindi Prachar Sabha (Karnataka) , represented by its Secretary, Dharwad v. Dr. A.S. Gadag). Therefore, the said legal aspects are no more res integra. Hence, the trial Court rightly held though not after detail discussion, but the order is proper and correct which does not call for any interference.

8. On careful perusal of the above said two judgments as rightly contended by Sri Savadi that, similar facts have been involved and considered by this Court. Before advertng to some more important legal aspects first let me have a brief look at the judgments rendered by this Court in the above said two decisions. In , 2015 (1) KCCR 324 , the Court dealt with Sec. 1 (3) , Sec.2 , Sec. 2(14) and Sec. 2(27) of the K.E.A. Act and laid down the application of the said Act in the following manner.

"Educational institution is amenable to the provisions of K.E. Act and that the appeal filed by the respondent before the Karnataka Educational Appellate Tribunal is maintainable. Clause (b) of sub-section (27) of Section 2 of K.E. Act clearly states that private educational institution does not include an educational institution "established and administered by any University established by law". The appellant - educational institution is neither established nor administered by the University. It is only affiliated to the University. Similarly it is not under direct management of the university. The appellant, therefore, is a private educational institution imparting education referred to in Section 3 , not established and administered by any University or I.M.C. As a matter of fact it is not in dispute

that the University does not have any control over the management of the appellant - institution nor is it established or administered or maintained by the University and that it is only affiliated to the University. Clause (b) of sub-section (27) of Section 2 of K.E. Act clearly states that private educational institution does not include an educational institution "established and administered by any University established by law". The appellant - educational institution is neither established nor administered by the University. It is only affiliated to the University. Similarly it is not under direct management of the university. The appellant, therefore, is a private educational institution imparting education referred to in Section 3 , not established and administered by any University or I.M.C. As a matter of fact it is not in dispute that the University does not have any control over the management of the appellant -institution nor is it established or administered or maintained by the University and that it is only affiliated to the University. the I.M.C. Act providing a remedy for an employee of the private educational institutions such as the appellant against whom the action of termination is taken by the Management, in our opinion, the provisions of K.E. Act are applicable. The Tribunal has rightly observed in the order to hold that it has a jurisdiction to entertain the appeal filed by the appellant challenging his termination.

Section 3 - "Private Educational Institution"- The definition of "private educational institution" means any educational institution imparting education referred to in Section 3 , "established" and "administered" or "maintained" by any person or body of persons, but shall not include an educational institution -"established" and "administered" by any University established by law. The dictionary meaning of the word "administer" is "to attend to the running of affairs" or to "manage", and of the word "establish" is "to set-up on a system on permanent basis" (see DK illustrated Oxford Dictionary; reprinted 2008).

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9. The above said decision amply makes it clear that the wordings used in the provisions under Section 2(27) of the K.E.A. Act, definition of private educational institution is clarified by saying that if the Colleges are established by the educational institutions independent of the Universities then it can't be said that they are either being established or administered or managed by any other authority, such as University for that matter. The Court has dealt with Indian Medical Council Act which is on par with the A.I.C.T.E. and held that unless a College or an institution is established by the University or the Indian Medical Council, the question of administering or managing the affairs of such College or such institution by them would not arise.

10. In view of the above decision, there is no need for this Court to in detail go into the said provision because the Court has in detail dealt with the said provision and also application of those provisions to the private educational institutions though they are affiliated to universities.

11. The second point raised by the learned counsel Sri. F.V. Patil is also covered in the second decision cited by Sri Savadi. In the said case reported in Dr. B.N. Vadiraja Vs. Dr. Mumtaz Ahmed Khan and others, the Court has held in the following manner.

"Al Ameen Medical College, Bijapur, which is, established by a Private Management of Trust is governed by the Karnataka State Universities Act, 1976. According to the definition of private educational institution given in Section 2(27) of the Karnataka Education Act, 1983 any educational institution imparting education referred to in Section 3 established and administered or maintained by any person or body of persons falls within that definition, but it does not include an educational institution (a) established and administered or maintained by the Central Government or the State Government or any local authority or any other authority designated or sponsored by the Central Government or the State Government; (b) established and administered by any University established by law; (c) giving, providing or imparting only religious instruction but not any other instruction; or (d) imparting instruction for which there is no approved syllabi or course of studies or Government or University Examination. Since Al Ameen Medical College is a College established and maintained by the private management of the trust and is administered by the Rajiv Gandhi University it falls within the meaning of, the private educational institution. Even according to the definition of the private educational institution given under Section 2(d) of the Private Educational Institutions (Discipline and Control Act, 1975, all colleges affiliated to the University fall within the said definition and they are governed by the provisions of the said Act. Now, it is found from the definition of private educational institution given under Section 2(27) of the Karnataka Education Act, 1983, colleges imparting any type of education referred to in Section 3 of the Act viz., general education, professional education, medical education, technical education, commerce education and special education at all levels established and administered or maintained by any person or body of persons are to be considered as private educational institutions.

This Court has held in a decision in the case of Pushpa v Kittur Rani Channamma Memorial Committee, that "the colleges affiliated to the University are now governed under the said Act as they come within the definition of "private educational institution" under Section 2(d) , but the Act is not enforceable against minority institutions. Since it is found that there is no change in law, under the provisions of the Karnataka Education Act, 1983, the said provisions of the Act are applicable in respect of the employees of a private Medical College affiliated to Rajiv Gandhi University. Since, there is no specific provision either under the Indian Medical Council Act, 1956 or under the Karnataka State Universities Act, 1976 providing a remedy for an employee, against whom disciplinary action is taken by the management, in my view, the provisions of the Karnataka Education Act, 1983 are applicable to the employees of Al Ameen Private Medical College, Bijapur, which is a Private Medical College. So, the provisions of Section 1(3)(iv)(a) and (d) of the Act are not a bar for the

applicability of the provisions of the Act in respect of the disciplinary action taken against an employee of the said college by the Management. I, therefore, find that the view taken by the Appellate Tribunal that the provisions of the Act are not attracted to, the employees of the said College and that the appeal is not maintainable, is clearly erroneous."

12. On meaningful reading and understanding of the above said ruling it also clear out the doubt that the provisions under Section 1(3)(iv)(d) and (da) of the K.E.A. Act applies to all the educational institutions institution in the State except to Colleges and Institutions which are dealt within the Karnataka State Universities Act, 1976, or All India Council for Technical Education Act, 1987.

13. The Court has discussed the above said provision in detail coupled with Sec. 2(27) of the K.E.A Act and also with reference to Section 3 of K.E. Act and came to the conclusion that there is no provision made under the said enactment either under the Karnataka Universities Act or in the other enactment, particularly in this case the AICTE with regard to the discipline and control of the appointment of the employees. Therefore, the Court has held that mere affiliation and the private educational institutions to the Universities does not amount to taking over of the management's administration and as well as dealing with the matters of the institution. Therefore, the Court held that K.E.A. Act is applicable.

14. Learned counsel Sri F.V. Patil, strenuously argued that in the above said two cases the Court has not properly appreciated the provisions u/S. 3(1)(iv)(d) and (da) of the K.E.A. Act coupled with Sec. 3 of the K.E.A. Act. He tried to canvass before the Court that the AICTE Act takes away the powers of the management specifically introducing some of the provisions therein. He has further drawn my attention to some provisions under the AICTE Act. He submits that in Regulation, 1994, the power of management take away for grant for approval for starting new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes. He further drawn my attention that the Universities and Government has got power to issue guidelines for admission to Engineering Degrees, Engineering Diploma Programmes and also for fixing qualification and other things and conducting entrance test, fixing of seat matrix to the institution, etc. and those powers vested with the Universities or the Government. Therefore, the major portion of the powers of the management has been taken away by means of introduction of the AICTE Act and Regulations, 1994. Hence, virtually the management is no more having any absolute power of administration and further the establishment is also controlled by the management. Therefore, the above said two judgments have not attempted to consider this particular aspect. Therefore, he submits that the said two decisions required to be considered by the Larger Bench.

15. If I disagree with the law laid down by the above said two decisions then only

this Court has got power to refer the matter to the Larger Bench for consideration. On careful reading of the said two decisions, I am of the opinion the Court has meticulously considered the grievance of the management and application of the K.E.A. Act in detail and giving valid reasons held that the K.E.A. Act is applicable to the said private Educational Institutions though they are affiliated to Karnataka University and governed by Universities Act and also the other enactment like A.I.C.T.E. Act.

16. Apart from the above, the reading of the K.E.A. Act, particularly provisions under Section 92 with regard to dismissal and removal of the employees and also conducting of the enquiry and also passing of the orders and appeals being provided under the K.E.A. Act, is a complete code for the purpose of dealing with discipline and control vest in the management of private educational institutions of its employees. Therefore, the K.E.A. Act actually manages the matters pertaining to the Colleges and institutions pertaining to the discipline and control of the employees of management. It explains how the management has to deal with the said matters. Therefore, in this manner the wordings used in Section 1(3)(iv)(d)(da) of the K.E.A. Act has to be understood by the Court. The said provisions reads thus:

"1. Short title, extent, application and commencement -

(1) xxx

(2) xxxx

(3) It applies to all educational institutions and tutorial institutions in the State except.

(i) xxxx

(ii) xxxx

(iii) xxxx

(iii-a) xxxx

(iv) insofar as the matters pertaining to colleges and institutions are dealt within:

(a) xxxx

(b) xxxx

(c) xxxx

(d) the Karnataka State Universities Act, 1976 (Karnataka Act 28 of 1976)

(d-a) the All India Council for Technical Education Act, 1987 (Central Act 50 of 1985)."

17. Section 1(3)(iv) says that the Act is not applicable insofar as the matters

pertaining to the Colleges and Institutions are dealt within the Karnataka State Universities Act, 1976 (for short "Universities Act") or under Section 1(3)(da) of the K.E.A. Act, the A.I.C.T.E. Act, 1987 if it is meticulously understood, it disclose that the K.E.A. Act is not applicable only when the matter pertains to the Colleges and Institutions are dealt within the Universities Act or the A.I.C.T.E. Act. Therefore, it is incumbent upon the petitioner to show before this Court that the matter pertaining to the private educational Institutions particularly with reference to discipline and control of the employees should also find a place in the Universities Act or the A.I.C.T.E. Act. That means to say, by means of these two enactments, the discipline and control of the employees vested in the management also being taken away if that is not shown to the Court, then the K.E.A. Act can be held also applicable to the private educational institutions though they are affiliated to Universities Act or governed by the A.I.C.T.E. Act.

18. Learned counsel Sri F.V. Patil unable to show to this Court, even in the A.I.C.T.E. Act or the Regulations cited by him covers this particular aspect to show that discipline and control of the private educational institutions over its employees are also completely taken away and done away by the Universities Act or the A.I.C.T.E. Act or the Regulations. In the absence of such specific matters being dealt within the said enactments, then the K.E.A. Act is equally with all force applicable to the discipline and control of the employees by the private educational institutions. Therefore, the respondent being the employee, whose appointment tenure of service and removal, is controlled by the authority of the management of the private educational institutions and it is not controlled by the Universities Act or the A.I.C.T.E. Act. Therefore, the K.E.A Act with all force applicable.

19. It is also to be noted that provision u/S. 92 onwards in the K.E.A. Act is a self contained code which in detail discuss how an employee shall be dealt with by the employee. Such or similar provisions are conspicuously absent in the Universities Act as well as the A.I.C.T.E. Act, on which the Government or the University as required vested with the right to take any action against the employees. Therefore, it goes without saying that the appointment and control or discipline of its employees and such matters are exclusively dealt with by the management and are governed by the K.E.A. Act. Therefore, the said argument of the counsel Sri F.V. Patil is not tenable.

20. Apart from the above, the object of introducing A.I.C.T.E. Act, 1987 is also to be borne in mind by the Court. The object and reasons are that, in recent years a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines laid down by the A.I.C.T.E. Most of the institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards. Taking into account the growing erosion of standards, the Council to regulate and maintain standards of technical education in the Country the said Act came into

force. In pursuance of the said Act, the A.I.C.T.E. and the Universities will be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority, areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the coordinated and integrated development of technical and management education. Therefore, the Bill has been introduced to ensure:--

"(i) proper planning and co-ordinated development of the technical education system throughout the country;

(ii) promotion of qualitative improvement of technical education in relation to planned quantitative growth; and

(iii) regulation of the system and proper maintenance of norms and standards."

21. On plain understanding of the above said objections in introducing the separate enactment it is crystal clear that the power to appoint the staff, power to remove them and discipline and control for the employees by the private education institution management has not been sought to be done away with the above said enactment. Therefore, the power with the management with regard to the appointment of its qualified teachers and the staff and the discipline and control of the employees still vest with the private educational institution management. This also, in my opinion, play a dominant role in considering that the management though affiliated to University or AICTE Act, they are independent so far as their employees are concerned.

22. Last but not the least, learned counsel for the petitioner also relied upon a ruling reported in 1978 (1) Kar. L.J. 16 (Nanjunda Setty M.B. v. Land Tribunal, Somwarpet & Anr.). This ruling was relied upon only for the purpose to canvass that where the order of the Tribunal is not a speaking order it is void in law and it is not for the High Court to sit as an Appellate Tribunal to examine the records and justify the conclusion of the Tribunal. The said principle of course is applicable, where the Court is not satisfied with the orders of the trial Court. In this particular case though the order is cryptic in nature passed by the learned District Judge but he has referred to A.I.C.T.E. Act and shortly stated that the matters involved in the case are not governed under the said Act and also stated that, in view of the letter of the Deputy Director of A.I.C.T.E. dated 26.02.2014, the trial Court has come to the conclusion that it has got jurisdiction. Though meticulously in detail the trial Court did not go into the specific provisions of the Act but ultimately the result is proper and correct. This Court also should bare in mind, if the Court can avoid remanding of the case unnecessarily and in order to advance substantial and speedy justice under certain circumstances where this Court itself can pass appropriate orders, under such circumstances should avoid unnecessary delay in advancing the substantial justice to the parties. Therefore, I am of the opinion, when the subject matter argued before this Court is also covered by the decisions of this Court and further that the matter is pending before the trial Court since 2012 even at the threshold, as the case is not yet

proceeded on merits of the case, there is no need for this Court to remand the matter for reconsideration of the maintainability of the appeal.

Under the above circumstances, I do not find any strong reasons to interfere with the orders passed by the trial Court. Hence, the following order is passed.

Petition is dismissed. Order passed by the Principal District & Sessions Judge cum Educational Appellate Tribunal, Dharwad in M.A.E.A.T. No. 4/2012, dated 12.01.2015 is hereby confirmed.