

(1999) 08 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 25188 of 1998 connected with Writ Petition No. 11519 of 1996

Smt. Prathiba Prasad

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Education Institutions (Registration and Recognition of Commerce Institutes) Rules, 1999 — Rule 3 (A) (ii)

Citation : (2000) ILR (Kar) 447 : (2001) 3 KarLJ 302 : (2000) 4 KCCR 141 SN

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri V. Srinivasa Raghavan and Sri S.G. Hegde, for the Appellant; Kumar and Kumar and M/s. Sri N.B. Vishwanath, High Court Government Pleader, for the Respondent

Judgement

1. The issues that arise for consideration in these two writ petitions are interrelated. The same shall therefore stand disposed of by this common order.

2, Petitioner in W.P. No. 11519 of 1996 offers a training course in shorthand and Typewriting at Nagavarapalya, K.R. Puram in Bangalore. Recognition granted to the institute has been renewed from time to time as is evident from one such order produced by the petitioner. The petitioner in that petition has questioned the validity of an order dated 21st April, 1995 issued by the Commissioner of Public Instructions permitting the 4th respondent to establish a similar institute in the D.R.D.O. Complex, C.V. Raman Nagar, Bangalore. The challenge is primarily founded on the plea that the new institute permitted by the said order is within the prohibited distance of 1 km. from the petitioner-institute. While the matter was still pending in this Court, the Government appears to have issued instructions to the Commissioner of Public Instructions asking him to cancel the order earlier made in favour of the 4th respondent. A notice was accordingly issued to the 4th respondent to show cause why the permission granted should

not be recalled. The proceedings culminated in an order dated 24th April, 1998 whereby the permission was withdrawn with immediate effect. Aggrieved, the fourth respondent has filed Writ Petition No. 25188 of 1998 challenging the validity of the said order, and for a declaration that Rule 3(A)(ii) of the Rules regulating recognition of Commerce Institutes is unconstitutional.

3. Mr. Hegde, Counsel appearing for the petitioner in W.P. No. 11519 of 1996 has filed a memo seeking permission to retire, as the petitioner had not turned up to give further instructions in the matter despite the issue of a notice for retirement. The memo states that for want of instructions, learned Counsel is not in a position to prosecute the matter any further and may therefore be allowed to retire. The retirement memo is accompanied by a postal acknowledgment of the notice sent to the petitioner by Mr. Hegde. In the ordinary course, Mr. Hegde could have been permitted to retire and in the absence of any alternate arrangement the writ petition dismissed for non-prosecution, But, having regard to the fact that arguments in part were heard by me on the previous date of hearing, I am not inclined to accede to the request at this stage. Mr. Hegde when requested to continue has made his submissions in support of the petition and lent whatever assistance was possible from his end.

4. The controversy as noticed earlier turns round the validity of the order made by the Commissioner permitting a second institution within a distance of 1 km. from an existing one. The only ground which the respondents have invoked for withdrawing the recognition granted to the second institute is that the same is located within the prohibited distance from a pre-existing institute. That view was questioned on a twofold submission before me. Firstly, it was contended that the existing institute had no locus standi to challenge an order permitting or recognising a new institution only on the ground that such an institution is within a distance of 1 km. Alternatively it was contended that the rule prescribing that two institutions should not be allowed within a distance of 1 km. is directory in nature and even if the second institution was allowed to come up within the said distance, it would not by itself invalidate the permission or recognition granted by the authorities. I find merit in both these submissions. The rules in question do not have any Statutory flavour. They are in the nature of administrative instructions meant to provide broad guidelines for regulating the setting up and recognition of such institutes. Rule 3(A)(ii) of the Rules with which we are reads as follows:

"Any commerce school/institute seeking recognition shall fulfill the following conditions.-

xxx xxx xxx

(ii) That there is no commerce institute/school within a radius of 2 kilometres from the proposed institute in case of rural areas. And 1 kilometre in the case of cities and municipal areas".

It is evident from the above that the distance between the commerce schools/

institutes is prescribed as a condition for recognition. It is not as though the setting up of an institute within the stipulated distance is itself forbidden by any law. All that the rule envisages is that the Competent Authority shall while according recognition keep the prescribed conditions in view. Now it is one thing to prescribe a condition for the guidance of the authorities and another to claim that the condition creates a legally enforceable right in favour of a neighbouring institute. The Competent Authority may as a practice and with the object of dispersal of such institutes over a larger area, insist that a new institute should maintain the prescribed distance from a pre-existing one. But should there be any room for relaxation of that requirement in the facts and circumstances of a given case it is not open for the existing institution to enforce the norm prescribing the distance by resort to legal proceedings. That is because, the object underlying the prescription of distance is not to benefit an existing institution by creating some kind of territorial monopoly in its favour. The object is that instead of such institutes concentrating in a certain area or locality should for the benefit of the trainees be spread over to be conveniently accessible to them. It is also incorrect to say that the rule is aimed at preventing competition nor could competition be termed unhealthy to call for regulatory control by the State. The rules are framed to advance the broader objective of promoting excellence of the training imparted to the trainees. That object is advanced if the institutions compete with each other in providing better facilities, and generally more purposeful and intensive training to those admitted to them. Market forces need not be curbed in such situations nor State control introduced in the name of preventing what is perceived as unhealthy competition.

5. In *Shanthi Institute of Commerce Vs. The State of Karnataka and Others*, , one of the questions that arose for consideration was whether an existing institution had any locus standi to file a petition challenging the recognition granted to a rival institution. Relying upon the decisions of the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , this Court held that the rules being regulatory, a third party did not acquire the right to question the action of the authority permitting or recognising a new institution in proceeding under Article 226 of the Constitution.

In *Smt. B.S. Gowramma Vs. Joint Director of Public Instructions and Others*, , while upholding the constitutional validity of rule this Court observed:

". . . .It is in these circumstances, that this Court is required to uphold the validity of rule and also direct that while applying this rule even though the authorities shall as far as possible ensure that there is a separation distance of 1 km. between similarly situated institutes that in given cases, it would be permissible to water down that rule, if the other circumstances so justify".

The above decision was upheld by the Division Bench in *W.A. No. 5606 of 1996* disposed of on 23rd July, 1996.

6. In *D.R. Sadashiva Murthy and Others v State of Karnataka and Others*, a Single Bench of this Court was dealing with the question, whether Government guidelines for opening of new high schools according to which a new school could not be allowed within a distance of 5 kms. from an existing school could be enforced. Repelling the contentions that a new school could not be established within the prohibited distance of 5 kms. from an existing institution, the Court observed:

" . . . The distance may be one of the factors to be taken into consideration but is not the sole determinating factor in such cases. Basic criteria while exercising power to do open or permit to open a school is the consideration of the need of the school in that area which has to be examined in the context of existing schools and the local population particularly the population of the children needing education. There can be cases where more than one institution may be needed and can be established within the radius of 5 kms. and there can be cases where only one school can be established. The best judge of the matters is the State and the authorities in this regard. The criteria contained in Annexure-K is only a guideline. It is open to the Government to change or to take a decision to open a school keeping in view the need of the school in the locality".

The impugned order has withdrawn the recognition granted earlier only on the ground that the new institution is within one km. from existing institute. The order proceeds on the assumption that the rule prescribing the condition as regards distance between two institutes is mandatory and inviolable. That assumption as noticed above is not correct. The requirement of the rule is no more than a broad parameter which is neither sacrosanct nor enforceable at the instance of an existing institute. The fact that the second institution has been established within the D.R.D.O. Complex and is primarily for the benefit of the Central Government officials working in the defence related organisations cannot be ignored. Petitioner in W.P. No. 25188 of 1998 who is running the new institute for nearly four years now is a resident of the complex duly permitted by the defence authorities to do so. This is evident from a letter dated 23rd of January, 1993 issued by the Management of the D.R.D.O. Township a copy whereof has been placed on record. In the circumstances, the two institutes are functioning in two distinctly different locations no matter separated from each other by only 3/4th of a km. as against 1 km. prescribed by the rule. They could therefore live and let live.

7. In the result, Writ Petition No. 11519 of 1996 fails and is dismissed while W.P. No. 25188 of 1998 is allowed.

8. Order dated 4th May, 1998 issued by the Commissioner of Public Instructions shall stand quashed leaving the parties to bear their own costs .