
(1995) 12 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 30713 of 1994

Sri Basaveshwara Pre-University College	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Citation : (1996) ILR (Kar) 227 : (1995) 6 KarLJ 352

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : A.V. Gangadharappa, for the Appellant; A.V. Srinivasa Reddy, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—In this Writ Petition, petitioners are aggrieved by the Government Order No. FD 127 MPE 93 dated 11.10.1994 (Annexure-J) whereunder sanction had been accorded for introduction of 208 vocational courses in the Institutions other than the petitioner-Institution under the Scheme sponsored by the Central Government in respect of vocational of secondary education for the year 1994-95, Their further prayer is to direct the respondents to allow the petitioner-Institution to continue the job-oriented course in Nursing and Physiotherapy from the academic year 1994-95 as per the Government decision dated 14.9.1994.

2. Before entering into the controversies raised in this Writ Petition, it will be better to have a glance of the nature, extent and purpose of vocational education.

3. The concept of vocational education has been conceived in order to prepare skilled personnel at lower levels of qualification for one or more groups of occupations, trades or jobs. The Central Government realising the need of providing such job oriented education at upper secondary levels made it a part of the National Education Policy. The programme of vocational of education has been accorded a very high priority in National Policy on Education 1986. The

policy inter alia states that the introduction of systematic, well planned and rigorously implemented programme of vocational education is crucial in the proposed educational organisations. The policy also envisages vocational education to prepare students for identifying the vocations, scanning several areas of activity. It was with that objective that the Central Government also provided a funding pattern of three components for each course to the following extent -

(a) Equipment grant - Rs. 1,00,000/- per course

(b) Building grant - Rs. 1,00,000/- per course

(c) Salary Grant (lumpsum) - 31,000/- per course

4. It appears that keeping in view the Education Policy of the Government of India, under its letter dated 29.11.1993 the State Government sent a proposal to the former for introduction of 300 vocational courses during the year 1994-95. But the Government of India in their letter dated 4.11.1994 sanctioned only 200 new vocational courses releasing a total amount of Rs. 6,45,70,000/- for meeting the expenses on the scheme of vocational of secondary education during 1994-95 for various components. It also appears that under his letter dated 16.7.1994 the Director of the Vocational Education had submitted a proposal for starting eight other vocational courses which could not be started earlier, which was also accepted by the State Government.

5. According to the first petitioner-Institution conducting pre-University level courses, having learnt about the Government Policy of starting the said 208 new vocational courses in the State, made applications for sanctioning two more vocational courses in the Institution. The case of the petitioners is that the respondent-authorities having satisfied about the eligibility of the Institution for conducting the said courses, and having found that it has sufficient infrastructure for running the same, by Government Order No. ED 127 MPE 93 dated 14.9.1994 (hereinafter referred to as "the First Government Order") accorded the requisite sanction.

6. It has been averred by the petitioners that the aforesaid First Government Order was despatched from the Education Department under ordinary post and the same was delivered to the petitioner Institution on 16.9.1994. It is their further case that immediately on learning that two additional courses namely Nursing and Physiotherapy had been sanctioned to the first petitioner, it admitted students including petitioners 2 and 3 herein to the said courses. In support of the communication of the First Order, petitioner-Institution has filed a photo copy of the envelope (Annexure-K) apart from producing the envelope in original. But, there is a serious dispute on the factum of despatching of the first Government Order to any of the Institutions referred to therein

7. It is an admitted fact that subsequent to passing of the First Order, the Government having felt that there was a need to review the First Government

Order for the reason that the decision therein was taken without adhering to the Guidelines laid down earlier for sanction of such courses and without making detailed enquiry about the availability of the infrastructure and/or eligibility of the institutions, immediately issued instructions under its letter No. ED 127 MPE 93 dated 16.9.1994 (hereinafter referred to as "the Second Government Order") to the respondent- Director of Vocational Education to stay the operation of the First Order. This Order, according to the respondents, had been communicated to all the concerned Institutions, in support whereof Despatch Register as maintained in the office of the Director of Vocational Education has been produced in original.

8. It has also been placed on record that the State Government had directed the Director to verify all the records carefully and submit a Report in regard to specific instances of violation of Guidelines while granting permission under the First Government Order. It seems that the respondent-Director in keeping with the said directions made verifications and submitted its Report dated 19.9.1994, a copy whereof has been produced with the Statement of Objections as Annexure-Z.

9. As per the said Report of the Director, Vocational Courses had been sanctioned under the First Government Order in violation of the Government Policy and the Guidelines laid under the Government Order dated 19.9.1994 in No. 105:93-94. According to him, the said order was not sustainable for the following reasons:

(1) The new courses had been sanctioned to some of the Colleges who had not completed the minimum two-year period;

(2) though the Scheme provided technical courses only for Polytechnic and Engineering Colleges, the courses like Dental, Nursing and Pharmacy which had been provided for the Pre-University Colleges, had been granted to the Polytechnic Colleges against the Rules. That too without there being any recommendations having been made by the Officers of the Department after due spot inspection;

(3) the courses which were not in the list of courses approved by the Government had also been granted to some of the Colleges;

(4) the courses had been granted to 43 Colleges even though (i) the names of some such colleges had not been recommended to the Government (ii) no application had been received from them (iii) to those about which there was no information regarding their infrastructure;

(5) grant of one course to minority educational institutions in each of the Districts, as per the order of the Hon'ble Chief Minister, has not been adhered to; and though applications from the minority educational institutions seeking for grant of courses were received, eligible applications have not been considered.

(6) the Divisional Deputy Director concerned had recommended for sanction of additional to 37 Colleges without making any inspection of the institutions which

did not have any necessary infrastructure for conducting such courses nor was there any necessity for starting such courses at such places;

(7) Sanction of courses has been accorded to those Colleges which already have got 3-4 and above courses, though there was no need to sanction new courses to such Colleges, and through there were several Colleges which have the necessity of grant of courses;

(8) though there were applications from all districts seeking grant of courses, having not considered the present courses conducted in the districts, courses have been granted to each of the districts which imbalances the proper distribution of the courses district-wise;

(9) Though 117 applications seeking sanction of courses had been received from the Government Pre-University Colleges, recommendations has been made in favour of 85 Colleges and out of which only 18 pre-University Colleges were granted the courses.

(10) that there were instances where grant of one course to 2-3 colleges in one village/taluka;

10. According to the respondents, after due and careful consideration to the aforesaid Report of the Director and taking into consideration the need of the locality, the Government passed the impugned order No. ED 127 MPE 93 dated 11.10.1993 (Annexure-F)(for convenience, hereinafter, the Third Government Order), sanctioning the vocational courses to various Institutions which were found eligible for the same. Since the petitioner-Institution was not found eligible for sanction of any further course, as applied for, no sanction was made in its favour.

11. The claim of the petitioner that the First Government Order was served on it on 16.9.1994 has been strongly refuted by the respondents specifically so stating in the additional Statement of Objections. Respondents have produced the Despatch Registers of both the Education Department as also of the Director's Office to show that the First Government Order had not been despatched to any of the Institutions referred to in the said Order. It has also been stated that the Government Order mentioned on the cover (Annexure-K) relates to the subject pertaining to the Audit Report on class project as per the entry in the original Register and the said file during that period shows no proceedings pertaining to vocational courses. It has further been stated that Annexure-K is affixed by a postal stamp. But at the material time, all the Government covers were being stamped by franking machine. Accordingly, respondents emphatically submit that Annexure-K is not genuine and, therefore the claim of the petitioners is not sustainable.

12. I have examined the original envelope produced by the petitioners under which, according to them, the First Government Order was communicated to them. In my opinion, mere production of such envelope is no evidence of the fact

of communication of the said Government Order as claimed. Moreover, at the instance of the learned Counsel for the petitioner-Institution I had directed by earlier orders to produce the original Despatch Registers; and from the original Despatch Registers so produced it is clear that the First Government Order has not been despatched to any of the Institutions. The Assistant Director of Vocational Courses has filed an affidavit specifically denying communication of the said Order. In law it has to be presumed that the official work had been done in a regular manner and the authenticity of the Government Records cannot be disputed.

13. Keeping in view all these aspects, in my opinion, it has to be held that the First Government Order was not communicated to any of the Institutions referred to therein.

14. The second question that needs be considered is that though, as held above, the First Government Order was not communicated to any of the Institutions mentioned therein, can any of such Institutions claim any benefit thereunder.

15. In the case of Bachhittar Singh Vs. The State of Punjab, the Supreme Court held that -

"It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore till its communication the order cannot be regarded as anything more than Provisional in character."

16. In the present case as well, as noticed above, since the First Government Order was not communicated to any of the Institutions, the same remained in the realm of a provisional order without in any way either binding the Government or conferring any right on the Institutions covered by the same. As held by the Supreme Court, before such Orders are communicated, it is always permissible for the Government to reframe the same in accordance with law as has been done in the present case. In my considered opinion, petitioners cannot justifiably take any objection to the Second Government Order staying the operation of the First or to the impugned Third Governmental Order passed on due consideration of the Report of the Director whereunder different vocational courses were sanctioned to the Institutions referred to therein.

17. It may further be noticed here that, as held above, since the First Government Order was only provisional in nature, its review did not require any prior notice to the petitioners thereby affording them any opportunity of hearing before passing the said Order.

18. For the aforesaid reasons, in my opinion, if the first petitioner had admitted the students like petitioners 2 and 3 to the courses which have not been sanctioned to it, it is done at their own risk and they have on their own to suffer

the consequences of the same, if any, at all. For their own laches the petitioners cannot be permitted to claim any estoppel or equity against the respondents.

19. I am therefore of the opinion that the petitioners are not entitled to any of the reliefs as claimed. Writ Petition is accordingly dismissed with costs assessed at Rs. 1,500/- payable by the first petitioner.