

(1989) 10 KAR CK 0020

In the Karnataka High Court

Case No : W. Ps. No's. 13833, 14731, 13842 and 13869 of 1989

Sri Jagadguru Murugarajendra Polytechnic and others

APPELLANT

Vs

State of Karnataka and anothers

RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Citation : AIR 1990 Kar 231 : (1990) ILR (Kar) 1004 : (1989) 3 KarLJ 626

Hon'ble Judges : N. Venkatachala, J

Bench : Single Bench

Advocate : H.B. Dattar for Jayanth M. Pattanashetti, N. Subramanya Jois and R.N. Narasimha Murthy for A.M. Farooq, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Judgement

1. Petitioners are unaided private Polytechnics. They have impugned in these writ petitions Government Order dated 22/24th July 1989 (Annexure-T in Writ Petition No. 13833 of 1989) in so far as it directs their closure.

2. Admitted events, which have preceded issuance of the impugned Government Order, warrant a brief mention before considering the question of its sustainability-

Petitioners Polytechnics had been established pursuant to the Government's common letter of intent dated 26th June 1985 (Ann.-RI in Writ Petition No. 13833 of 1989) issued to them. Annexure-1 to that Annexure-R1 refers to certain conditions, subject to which the petitioners Polytechnics were permitted to be established. The Government, by its Order No. ED 56 TPE 86 dated 5th May 1987, constituted a committee of three members headed by Prof. K. A. Krishna Murthy to go into the working of the private unaided Polytechnics in the State and make a report to it (Government) on the question whether any of them warrants closure or continuance. That Committee made a report of the Government on the working of all the private unaided Polytechnics in the State including the petitioners-Polytechnics. On the basis of the said report, show cause notices were issued to the petitioners as well, calling upon them to have

their say as regards the report of that Committee. On receipt of the explanations offered by the Managements of the petitioners-Polytechnics disputing the correctness of the report, on the basis of which show cause notices were issued, and calling upon the Government to withdraw those show cause notices, the Government, by its Order No. ED 56 TP 87 (Part I) dated 11-8-1988, constituted four Zonal Committees to inspect the Polytechnics coming in their respective zones, and make a report as to whether closure or continuance of any of such Polytechnics, has to be ordered. The Zonal Committees so constituted having inspected the Polytechnics, gave their respective reports to the Government, however, making a suggestion in so far as the petitioners-Polytechnics are concerned, for their continuance during the academic year 1988-89 and for making a fresh inspection respecting their continuance for the year 1989-90. The Government accepted the reports of the Zonal Committees. However, by its Order No. ED 195 TP 88 dated 29-12-1988, it constituted another Committee of four members headed by Prof. H. Puttaiah to inspect all the private unaided Polytechnics in the State including the petitioners-Polytechnics, and make a report on matters, such as, buildings, laboratories, workshops, equipment, teaching staff, finances of those Polytechnics. That Committee is said to have made a report in the matter on 18-8-1989 to the Government. Thereupon, a notice dated 25-5-1989 of similar content has come to be issued to each of the petitioners-Polytechnics, calling upon them to show cause why closure of each of them should not be ordered on account of unsatisfactory conditions prevailing in them. Replies being given to such notice by each of the petitioners-Polytechnics, the Government, by its Order No. 74 TPE 89 dated 8-6-1989, constituted a committee of three members headed by Sri C. A. Manje Gowda to examine the replies so given by the petitioners-Polytechnics after necessary inspection of the Polytechnics. That Committee having inspected the unaided private Polytechnics including the petitioners-Polytechnics, gave a report on 4-7-1989 to the Government. On the basis of that report, the Government, by its Order No. ED 74 TPE 89 dated 22/24th July 1989, ordered the closure of ten private Polytechnics including the petitioners-Polytechnics. It is that Government order which has been impugned in these writ petitions, as stated at the outset.

3. The contention urged for the petitioners-Polytechnics was that the impugned order directing their closure or withdrawing the recognition of private unaided Polytechnics, could not have been made by the Government without complying with the procedural safeguards provided for under conditions 25 and 26 in Annexure-1 to Anne.-RI as conditions precedent for making such order of closure or withdrawal of recognition and the impugned Government order having been made respecting the petitioners-Polytechnics without observing such procedural safeguards calls to be nullified in so far as the petitioners-Polytechnics are concerned.

4. On the other hand, the learned Government Advocate, though did not dispute the contention urged for the petitioners that there was need to observe the procedural safeguards contained in conditions 25 and 26 before the Polytechnics

could be ordered to be closed or their recognition could be withdrawn, submitted that before the impugned order was made by the Government directing their closure withdrawing their recognition, the procedural safeguards in conditions 25 and 26 had, in fact, been observed as conditions precedent.

5. In the light of the contest arising from the submissions made on either side, what needs to be decided in these writ petitions, is whether there is compliance with conditions 25 and 26 in Annexure-1 to Annexure-R1 by the Government as conditions precedent before issuing the imputed Government order.

6. With a view to find whether or not procedural safeguards contained in conditions 25 and 26 in Annexure-1 to Annexure-R1 are observed as condition precedents for issuance of the impugned Government order, it would be advantageous to know what precisely are those procedural safeguards envisaged in conditions 25 and 26 before-examining the contest whether or not such procedural safeguards have been really satisfied.

7. Conditions 25 and 26 in Annexure-1 to Annexure-R1, which are of materiality, read thus:

"25. Facilities shall be provided by the Management for Annual Inspection both on Academic as well as Financial side by the Department of Technical Education and the Management shall adhere to the instructions issued by the Director of Technical Education on such Inspection within the time limit fixed.

26. In case the Management fails to run the Institution in accordance with the conditions laid down from time to time by the Department of Technical Education, Board of Technical Examinations, State Government or Central Government, the recognition granted to the Institution would be withdrawn after giving a reasonable opportunity to the Management to be heard."

Procedural safeguards required to be observed by the Government before making an order directing closure of a Polytechnic or withdrawing recognition granted to it, as seen from the above conditions, are that (i) deficiencies or short-falls in the running of the Polytechnics, which have given scope for ordering their closure or withdrawal of recognition, should be intimated to the Managements of such Polytechnics and such Managements should be called upon to make good the deficiencies or short-falls within a time limit to be fixed; and (ii) if the pointed out deficiencies or short-falls in the running of the Polytechnics are not made good by the concerned Managements within the time limit fixed, a reasonable opportunity to them of being heard should be provided in the matter.

8. What requires examination now is, whether the said procedural safeguards have been satisfied or observed by the Government before making the impugned order directing closure of the petitioners-Polytechnics, which has the effect of withdrawing the recognition granted to them earlier.

9. Out of the events preceding the making of the impugned Government order, which are adverted to earlier, the events taken place up to the stage of the

appointment of the committee headed by Prof. H. Puttaiah on 29-12-1988, cannot be of any assistance in deciding the point of contest, that is, non-observance of the procedural safeguards by the Government before making the impugned order, in that, as stated in Para 8 of the statements of objections filed on behalf of the respondents (filed in W.P. No. 13833 of 1989), the Government itself had no objection for the running of the petitioners-Polytechnics during the year 1988-89. Therefore, it is the events which have taken place subsequent to the appointment of the Committee headed by Prof. H. Puttaiah on 29-12-1988, which require an examination for finding whether there was observance of the procedural safeguards referred to above. The said committee, which inspected the Polytechnics including the petitioners-Polytechnics made a report to the Government recommending the closure of the petitioners-Polytechnics among others on the basis of the deficiencies found in their running, as admitted in Para 9 of the Government's statement of objections, instead of pointing out to the Managements of those Polytechnics the deficiencies in their running and calling upon them to make good those deficiencies by fixing a time limit therefore conforming to the procedural safeguard envisaged in condition 25 in Annexure-1 to Annexure-R1. Having regard to the said report, even the Government did not choose to point out to the Managements of the petitioners-Polytechnics the deficiencies found by the Committee in the running of the Polytechnics much less did it call upon them to make good such deficiencies by fixing a time limit therefore, so as to conform to the procedural safeguard envisaged in condition 25. What the Government, on the other hand, did was to merely call upon the Managements of the Polytechnics including those of the petitioners-Polytechnics by issuance of the show cause notices dated 25-5-1989 to tender their explanations in writing within 15 days from the date of receipt of such notices as to why the recognition granted to them should not be withdrawn (Annexure-D to Writ Petition No. 13833 of 1989). However, when, in pursuance of the said notices, written explanations were submitted by the Managements of the Polytechnics including those of the petitioners-Polytechnics, the Government, as pointed out earlier, appointed a Committee headed by Prof. C. A. Manje Gowda on 9-6-1989 to examine the explanations furnished by the Polytechnics and make a report regarding the facilities found in the Polytechnics after their inspection. It is this committee which is said to have visited as many as 13 Polytechnics including those of the petitioners-Polytechnics between 19-6-1989 and 1-7-1989 and made a report to the Government recommending closure of certain Polytechnics including the petitioners-Polytechnics, stating the reasons for such recommendation thus:

"During the visit of the committee to the Polytechnics the facilities available for the Polytechnics, such as, land and buildings, equipment, furniture, library, staff and financial resources of the management were looked into and discussions were held with the representatives of the management. Due to vacation, many of the staff members were not available for discussion. The records available in the institution were also perused. The observations made by Prof. H. Puttaiah

Committee on these Polytechnics were also taken into consideration. The improvements made in the infrastructural facilities after the visit of Prof. H. Puttaiah Committee and period taken by the Institution to develop infrastructure were taken note of, to arrive at final conclusions. Due consideration is given for the Institutions which have their own land and put up permanent buildings."

Admittedly, it is the said report which formed the basis for the Government to straightway proceed to issue the impugned order directing the closure (withdrawing recognition) of the Polytechnics including those of the petitioners-Polytechnics. The said events, if anything, make it obvious that the Government did not conform to the procedural safeguards envisaged in conditions 25 and 26 before issuing the impugned Government order directing closure of the petitioners-Polytechnics.

10. The submission of the learned Government Advocate was that the show cause notices issued by the Government to the Managements of the Polytechnics including those of the petitioners-Polytechnics on the basis of the report of the Committee headed by Prof. H. Puttaiah should be regarded as those conforming to the procedural safeguards, adverted to above. I am unable to accede to this submission of the learned Government Advocate since it (Government) has not, as seen earlier, conformed to the procedural safeguard of affording an opportunity to the Managements of the Polytechnics of making good the pointed out deficiencies within the time fixed, as envisaged in condition 25 either on receipt of the report of Prof. H. Puttaiah's Committee or on receipt of the report of Prof. C. A. Manje Gowda's Committee and further after the receipt of Mange Gowda's Committee report by the Government recommending closure of the petitioners-Polytechnics, even the, procedural safeguard envisaged in condition 26 requiring affording to an opportunity of being heard to the managements of the petitioners-Polytechnics has not been observed.

11-12. As to why the said procedural safeguards are required to be observed by the Authorities before ordering closure of the Polytechnics -- the unaided private educational institutions established in the State, is not far to see. Undisputedly, it is the State Government which granted permission for the establishment of private unaided Polytechnics and accorded recognition for their running. Establishment of a Polytechnics -- a technical educational institution and its running necessarily require finding of suitable accommodation, creation of infrastructural facilities, like workshops, laboratories, libraries, furniture and equipments, appointment of staff-teaching as well as non-teaching. When these Polytechnics are Government recognised institutions, students join these institutions obviously at great expense and in the fond hope of attaining technical qualifications in various branches of study available there. But, when it comes to the Government or other Authorities ordering all of a sudden closure of such Polytechnics or withdrawal of their recognition, it would inevitably result in grave and irremediable civil consequences, in that, the Polytechnics get annihilated and the future of their students get doomed. It is the awareness of the said

consequences arising from sudden ordering of closure of Polytechnics or withdrawing of their recognition, which has obviously been responsible for devising adequate safeguards against such ordering, conforming to the requirements of natural justice of fair play in action warranted to meet the particular situation. Thus, what are embodied in conditions 25 and 26 adverted to above, being the said procedural safeguards, their strict compliance as conditions, precedent for ordering closure of Polytechnics or withdrawal of their recognition, cannot be regarded as anything but a must.

13. Show cause notices issued by the Government to the petitioners-Polytechnics on the basis of the report of the committee headed by Prof. H. Puttaiah cannot therefore, be regarded as those issued in compliance with the said procedural safeguards, as pointed out already. Hence, the impugned order to the extent it orders the closure of the petitioners-Polytechnics has to be regarded as null and void.

14. In the result, I allow these writ petitions and declare Government -Order No. ED 74 TPE 89 dated 22/ 24th July 1989 in so far as it relates to the petitioners-Polytechnics, as null and void.

15. However, in the circumstances of these cases, I make no order as to costs.

16. Order accordingly.