

**(1986) 05 KAR CK 0003**  
**In the Karnataka High Court**  
**Case No : W.A. No. 2676 of 1982**

Sri Satyanarayanawamy Education Society  
Vs

APPELLANT

State of Karnataka

RESPONDENT

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**Date of Decision :** 28-05-1986

**Acts Referred:**

Constitution of India, 1950 — Article 162

**Citation :** (1986) ILR (Kar) 2161 : (1986) 2 KarLJ 72

**Hon'ble Judges :** Ramakrishna, J; Rama Jois, J

**Bench :** Division Bench

**Advocate :** M. Raghavendrachar, for the Appellant; Chandrasekharaiah, HCGP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rama Jois, J.—This Writ Appeal is presented against the order of the learned Single Judge dismissing the Writ Petition of the appellant against the order of the Deputy Director of Public Instructions, Chitradurga, by which the appellant was directed to close down the school started by it without securing the recognition from the Department.

2. The facts of the case, in brief, are as follows; The appellant-society started anew private high school at Syagale in Davanagere taluk during the academic year 19.81 - 82 without securing the requisite permission/recognition under the Grant-in-Aid Code. This was brought to the notice of the Deputy Director of Public Instructions by the representation of the villagers dated 6-12-1981. Immediately thereafter the Deputy Director of Public Instructions visited the place and came to know that the appellant had started a high school without the sanction of the Government. In the circumstances, the Deputy Director of Public Instructions addressed a letter dated 23-12-1981 to the appellant, copy of which was produced as Annexure-E along with the Writ Petition, It reads.

"Office of the Deputy Director of Public Instruction, Chitradurga District. No. PL1.

ONN. GHSS. 56/80-81. Dt : 23-12-1981.

To :

The Secretary", Sri Satyanarayana Swamy Education Society, Jogimatti Road, Chitradurga.

Sir,

Sub : Opening of new non-Govt. High School at Syagale, Davanagere Taluk during 1981-82.

Ref : Your letter No. NHS1/81-82 dt. 30-10-81 addressed to the Hon. Minister for Primary and Secondary Education, Bangalore, and copy to this office.

2. Representation dated 6-12-1981 from the villagers of Syagale requesting that the management under reference has opened a new non-Govt. High School, Syagale on 30-11-1981 unauthorisedly etc.

During my surprise visit on 14-12-1981 it has come to my notice that new non-Government High School has been opened on 30-10-81 at Syagale, Davanagere Taluk under your management without sanction from the Government. The opening of the New High School without departmental sanction is unauthorised and the school will not be eligible for recognition. Therefore, you are requested to close down the school forth-with and report the fact to this office immediately, otherwise further action will be taken as per rules. Once again I request you to take immediate action to close your unauthorised school at Syagale.

Yours faithfully, Sd. Deputy Director, Chitradurga."

Questioning the legality of the said communication, the appellant presented the Writ Petition. In the Writ Petition, the contention of the appellant was that it had secured sanction from the Hon"ble Minister for Education and such sanction was made on a representation given by the appellant to the Hon"ble Minister for Education in person.

3. The Learned Single Judge has stated in his order that the appellant was unable to prove the existence of any such sanction given by the Hon"ble Education Minister on the representation of the Appellant. Apart from this the Learned Single Judge also held that the permission/recognition to start a high-school could be granted by the Government only after following the procedure prescribed under the Grant-in-Aid Code for the secondary schools and the order of the Minister could be made only in accordance with the rules of business and therefore even, if any such sanction was secured on a representation, it would be no permission/recognition in accordance with the Grant-in-Aid Code and therefore the Deputy Director of Public Instructions was right in calling upon the appellant to close down the institution.

4. We are in entire agreement with the view expressed by the Learned Judge. The Grant-in-Aid Code issued by the State Government in exercise of its

executive power under Article 162 of the Constitution of India, in the absence of legislation on the said topic, governs the grant of permission/ recognition to the starting of secondary schools. The Rules contained in the Grant-in-Aid Code prescribes the procedure to be followed in seeking permission/recognition for starting high-schools, the conditions to be fulfilled for starting a high-school, the last date before the concerned academic year before which an application has to be made, the procedure for processing the application and for the passing of the final order by the competent authority after satisfying itself that the institution fulfils all the conditions necessary for the starting of a high-school. Without following such a procedure, no person can start a secondary school and send the students who have studied in the said institution to the examination conducted by the Secondary Education Examination Board. In the present case, the appellant has started a high-school without any such permission. As pointed out by the Learned Single Judge, no order of the Minister granting permission to start the institution by way of an endorsement made on the representation of the appellant, was placed before the Court. Even assuming that as a matter of fact such an order of the Minister existed, it would be no permission/recognition in terms of the Grant-in-Aid Code and such an order does not confer the privilege of a recognised institution on an institution started only with such permission.

5. It is now well settled that the executive must conform to the standards laid down by it in the exercise of its executive power for observance by it as held by the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . Therefore, when in the absence of law the Government in exercise of its power under Article 162 of the Constitution, which is co-extensive with that of the legislative power, has laid down rules for granting permission/recognition to start secondary schools, no permission to start an institution can be granted by the Government except by following the procedure prescribed under the Grant-in-Aid Code. We should also make it clear that to start an educational institution of the choice of the appellant is entirely different from the starting of an educational institution which has the privilege of sending its students to the examination conducted by the Secondary Educational Examination Board. If a person were to start a school without any recognition and there are students who are willing to join such an institution, nothing prevents such a person from starting an educational institution, and the students joining such an institution. But in such a case, the students who have studied in such a school would not be eligible for appearing for the examination conducted by the State through its Department or agency. In the present case, the high-school started by the appellant was by giving an impression to the students that it was a recognised institution and that the students who have studied in the said institution would be eligible for appearing for the S.S.L.C. examination conducted by the Secondary Education Examination Board. This could not have been done by the appellant except after securing permission/recognition by the competent authority in accordance with the provisions of the Grant-in-Aid Code. As the appellant has done so without any such permission/recognition, the Deputy

Director of Public Instruction was right in asking the appellant to close down the institution started by the appellant so that the students might not suffer, as even after studying in the said institution they would be ineligible for appearing for the S. S. L C. examination conducted by the Board.

6. Before concluding, we consider it expedient to protect the interests of the students who have secured admission to the institution, as there was also an interim order granted by this Court staying the impugned order of Deputy Director of Public Instruction, by issuing a direction to the respondents to admit the students who have been studying in the high-school started by the appellant to any other recognised educational institution.

7. In the result, we make the following order :

(i) The Writ Appeal is dismissed.

(ii) Respondents 1 and 2, however, are directed to provide admission to the students who have studied in the high-school started by the appellant to any other Government or Government recognised educational institution of the choice of the concerned students.

(iii) The appellant shall issue Transfer Certificate to all the students who apply for the Transfer Certificates.

(iv) The respondents are also directed to announce the results of the students who have appeared for the S.S.L.C. examination through the high-school started by the appellant.

(v) No Costs.