
(1999) 04 KAR CK 0036

In the Karnataka High Court

Case No : Civil Revision Petition No. 3461 of 1998

Sri Siddartha Education Society (Registered) and Another

APPELLANT

Vs

Miss Susheela

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 226, 227

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 2 (d)

Citation : (1999) 4 KarLJ 707

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri R.U. Goulay, for the Appellant; Sri T.S. Anantharam, for the Respondent

Judgement

1. A preliminary objection has been raised on the maintainability of the revision. This revision was originally filed as writ petition and it bears No. 29411 of 1998. Later on it appears to have been converted into civil revision u/s 115, it so appears under some direction of the Court. This Court had already taken the view in the case of Hungund Taluka Banjara Vidyavardhaka Sangha v Rachappa Chanamallappa and Others , and after detailed consideration has opined that civil revision u/s 115 of the CPC is not maintainable from the order of the Tribunal as Education Appellate Tribunal is not Civil Court. Later on another Single Judge Hon"ble R.V. Raveendran, J., in Panchaxari Shidramappa Yeligar v Shiggaon Taluka Shikshana Samithi and Others, has opined that in view of the unreported decision of the Full Bench in the case of Excellent Education Society v Shahida Begum, the civil revision is maintainable. The matter has no doubt been referred by me in some other civil revision petitions to the Hon"ble Chief Justice for being laid before larger bench to sort out the controversy. The matter is yet to be decided. But, there is no doubt that even if civil revision is not maintainable, this Court has got supervisory powers under Article 227 of the Constitution and those

powers can be exercised by this Court if the order of the Tribunal appears to suffer from jurisdictional error. In the case of *Baby v Travancore Devaswom Board and Others*, their Lordships of the Supreme Court have laid down the following principle of law when considering the question of maintainability of revision u/s 103 of the Kerala Land Reforms Act and it will be appropriate to quote the following observations of their Lordships as are contained in paragraphs 5 and 6 of the report at page 520.

"5. We find sufficient force in the contention of the learned Senior Counsel for the appellant in regard to the meaning of the words "has either decided erroneously or failed to decide any question of law". On the facts of the present case learned Senior Counsel is justified in submitting that the lower Tribunals had neither decided any question of law erroneously nor failed to decide any question of law. Mere non-consideration of relevant documents including the relevance of certain Judicial Proceedings would not strictly fall within Section 103 of the Act.

6. But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision u/s 103 of the Act".

2. The above observations of their Lordships of the Supreme Court very clearly lay down that if in a case because of some technicalities or some other reason the power of revision u/s 115 of the CPC may not be exercisable by this Court, but there appears to be a case which requires interference with the order and the case is one in which powers under Article 227 need be exercised, it is open to the Court to dispose of the matter exercising power under Article 227. In view of this principle of law as laid down in *Baby's* case, *supra*, I propose to proceed to consider the matter under exercise of my powers under Article 227. Both the learned Counsel namely Sri R.U. Goulay, learned Counsel for the petitioners and Sri T.S. Anantharam, learned Counsel for the respondent, desired the matter to be disposed of finally and I have heard them at length. So I propose to dispose of this case in exercise of my powers under Article 227 even if for a moment it be taken that there is some substantive force in the preliminary objection raised about the maintainability of the revision.

3. The facts of the case in the nutshell are that the present respondent Miss Susheela claimed to have been appointed as Clerk-cum-Typist in the Institution of which petitioner 2 is the Director and which Institution namely Sri Siddhartha Medical College is being run by petitioner 1. The case of the present respondent who had filed the appeal u/s 8 of Act of 1975 is that she was appointed on permanent basis in clear vacancy of Clerk-cum-Typist on 1-11-1990 and her services were terminated according to the respondent, illegally by order dated 21-5-1991. The present respondent Ms. Susheela approached the Education Appellate Tribunal, Tumkur, by filing an appeal u/s 8(1) of the Karnataka Private

Educational Institutions (Discipline and Control) Act, 1975, challenging the order dated 21-5-1991 passed by the present petitioner 2 who was respondent 2 before the Tribunal. Before the Tribunal it was stated by the present petitioner that respondent herein was a trainee and that she was being discharged from her duty as she was working as a trainee Typist. The Tribunal considered the matter and opined that the stand of respondent before it i.e., the present revision petitioner that the appellant before the Tribunal i.e., present respondent was a trainee cannot be accepted and it set aside the order of termination or discharge and directed for reinstatement of the present respondent (namely appellant before it) to the post of Clerk-cum-Typist, the post which she was alleged to have been holding at the time of her termination and also directed the respondents before it i.e., present revision petitioners to pay all consequential benefits to Ms. Susheela including the back-wages. Feeling aggrieved from that order, as mentioned earlier, the Society and the Director of Sri Siddhartha Medical College have come up before this Court by way of revision u/s 115 of the CPC though originally they had approached this Court by way of writ petition. As I have mentioned earlier, in the light of the Supreme Court's decision referred to above in Baby's case, it is open to this Court to exercise its power under Article 227 even if revision technically be taken to be not maintainable and from that angle I am proceeding with the case.

4. On behalf of the petitioners it has been contended by Sri R.U. Goulay that the order in question is per se without jurisdiction and nullity. It suffers from inherent lack of jurisdiction on the part of the Tribunal. Sri Goulay elaborated his contentions and invited my attention to Section 1, sub-section (3) of the Karnataka Education Act, 1983 which received assent of the President of India on 27-10-1993 and was published in the Karnataka Gazette on 20-1-1995 as Karnataka Act No. 1 of 1995. He in particular referred to clause (iv) of sub-section (3) of Section 1 of the Act and on this basis he contended that the Karnataka Education Act, 1983 did not apply to the Institution i.e., the Medical College, petitioner 2 before this Court as it is an institution dealt within the Indian Medical Council Act, 1956 and primarily controlled by the Indian Medical Council. The learned Counsel further pointed out that this Medical College is affiliated to the Bangalore University. The learned Counsel further invited my attention that Section 146 of the Act has clearly repealed Act of 1975 namely the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975. The learned Counsel contended when neither of the two Acts did not apply, the provisions dealing with the Karnataka Education Tribunal Act could not apply and the Karnataka Education Tribunal could not examine the matter and issue direction. As such, the order impugned is per se without jurisdiction, null and void.

5. The contentions of Sri R.U. Goulay were hotly contested by Sri T.S. Anantharam, learned Counsel for the respondent. Sri T.S. Anantharam contended that the appeal had been filed before the Appellate Tribunal in the year 1991 i.e., long before coming into force of the Karnataka Education Act, 1983 in 1995. The

learned Counsel for the respondent contended that those proceedings which have been taken under the Act of 1975 will not come to an end and will not become null and void because of the Repeal Act of 1975. Sri T.S. Anantharam contended that saving clause provided that actions taken or things done under the Act of 1975 will be deemed to have been done under this Act and could be continued and completed under the provisions of the new Act. Sri Anantharam further contended that this plea of jurisdiction was not raised before the Tribunal that the Tribunal had no jurisdiction. So, this should not be permitted to be raised. He further submitted that in very many cases this Court has rejected the writ petition filed by other employees of this very Institution on the ground that their remedy is to go before the Tribunal. He has placed before me certain electrostatic copies of Single Judge's decisions whereby the matter was kept open to approach the proper forum.

6. In rejoinder, while dealing with the contentions of the learned Counsel for the respondent, Sri Goulay contended that even under the old Act of 1975, the Tribunal had no jurisdiction to entertain the claim as Sri Siddartha Medical College, which is controlled by the Indian Medical Council and which is affiliated to the Bangalore University did not come within the purview of the private educational institutions as defined u/s 2(d) of Act of 1975. Sri Goulay contended that the Institution Sri Siddartha Medical College could not be termed to be as private educational institution for the purpose of Act 10 of 1975.

7. I have applied my mind to the contentions raised by the learned Counsel for the parties.

No doubt appeal had been filed u/s 8 of the Act of 1975 in 1991. The Act applied to private educational institutions and in their matters the Karnataka Education Appellate Tribunal could entertain appeals. But, so far as Medical Colleges are concerned, it is well-settled that Medical Colleges are controlled and governed by the directions issued under the Indian Medical Council Act, 1956 by the Indian Medical Council.

8. Section 2(d) of Act No. 10 of 1975 defines private educational institutions.

"Section 2.--In this Act unless the context otherwise requires-

(d) "Private educational institution" means an educational institution which is not owned by the State Government or the Central Government, a local authority or, any other authority designated or sponsored by the State Government or the Central Government or a local authority but which is recognised by the State Government and includes a college affiliated to the Karnataka University or the Mysore University and a constituent college of the Bangalore University not similarly owned but does not include a University College".

9. Sri Siddartha Medical College is a Medical College affiliated to the Bangalore University. The Medical Colleges are recognised, controlled and governed by the Indian Medical Council Act, 1956 and by the directions and order of the Medical

Council of India and the Union Government and neither the State Government nor the University has got power to determine the matters of their administration etc. It will be appropriate at this stage to refer to the case decided by the Supreme Court in the case of Medical Council of India v State of Karnataka . It will be appropriate to refer to observations of their Lordships in paras 10, 28 and 30 of the decision in the above case. In paras 10, their Lordships observe.-

"Under Section 11 of the Medical Council Act, qualifications granted by any University or Medical Institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Medical Council Act. Any University or Medical Institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Medical Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein. u/s 16 every University or Medical Institution in India which grants a recognised medical qualification shall furnish such information as the Medical Council may, from time to time, require as to the courses of study and examinations to be undergone for the purpose of attaining qualification and other details requisite for obtaining such qualification. u/s 17 of the Medical Council Act, the Executive Committee of the Medical Council shall appoint medical inspectors to inspect any Medical Institution, college, hospital or other institution where medical education is given or to attend any examination held by any University or Medical Institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University or Medical Institution. Similarly, the Medical Council is authorised to appoint visitors for the same purpose. The Inspectors and the visitors are required to report on the adequacy of the standards of medical education including staff, equipment, accommodation, training and other facilities prescribed for giving medical education or on the sufficiency of every examination which they attend. Then come Sections 19 and 19A and which have been set out above providing for laying down minimum standards of medical education and withdrawal of recognition".

Further in paras 28 and 30, their Lordships lay it down as under.-

"(28) We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations u/s 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals".

"(30) Any Medical College or Institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities) has to apply to the Central Government for the permission along with the permission of the State Government and that of the University with which it is affiliated and in conformity with the regulations framed by the Medical Council.

Only the Medical College or Institution which is recognised by the Medical Council can so apply".

This being the position, this institution cannot be taken to be an institution covered by the expression "private educational institution" as it also does not include Medical Colleges affiliated to Bangalore University. Had the intention of the legislature been to include the Medical Colleges affiliated to Bangalore University to be deemed to be private educational institution for the purpose of Act of 1975, the legislation would have so provided. Section 1(3) of Act 1995 reads as under:-

"1(3) It applies to all educational institutions and tutorial institutions in the State except.-

(i) institutions for scientific or technical education financed by the Central Government, and declared by Parliament by law to be institutions of national importance;

(ii) institutions of higher education which shall be deemed to be University as declared by the Central Government by a notification, u/s 3 of the University Grants Commission Act, 1956 (Central Act III of 1956);

(iii) institutions established or maintained and administered by or affiliated to or recognised by the University of Agricultural Sciences insofar as the matter pertaining to them are dealt within the University of Agricultural Sciences Act, 1963 (Karnataka Act 22 of 1963);

(iiia) educational institutions affiliated to or recognised by the Council of Indian School Certificate Examination or Central Board of Secondary Education respectively;

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

(a) the Indian Medical Council Act, 1956 (Central Act C11 of 1956);

(b) the Dentists Act, 1948 (Central Act XVI of 1948);

(c) the Pharmacy Act, 1948 (Central Act VIII of 1948);

(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 52 of 1987);

(d-b) the Indira Gandhi National Open University Act, 1985 (Central Act 50 of 1985);

(d-c) the National Council for Teacher Education Act, 1993 (Central Act 73 of 1993);

(e) the Karnataka Ayurvedic and Unani Practitioners" Miscellaneous Provisions Act, 1961 (Karnataka Act 9 of 1961); and

(f) the Karnataka Homoeopathic Practitioners Act, 1961 (Karnataka Act 35 of 1961)".

10. As mentioned earlier, Medical Colleges are controlled by the Indian Medical Council Act, 1956. This Act 1 of 1995 per se reveals that it does not apply to educational institutions insofar as matters pertaining to colleges and institutions that are dealt with under the Indian Medical Council Act. The colleges and institutions governed by the Indian Medical Council Act have been excluded from the operation and scope of provisions of the Karnataka Education Act and do not appear to have been covered by the Karnataka Private Educational Institutions (Discipline and Control) Act.

11. In view of the above, the institution in question where the present respondent was employed did not come within the purview of the Act and as such the appeal before the Tribunal was not maintainable and the Tribunal had no jurisdiction to entertain the appeal. I do not want to express any opinion about the right of the employee to approach the proper Tribunal or this Court, but so far as the Educational Appellate Tribunal is concerned as the Karnataka Education Act did not apply, and as the Tribunal had no jurisdiction to pass the order impugned. The order being without jurisdiction deserves to be quashed with liberty to the respondent to avail any remedy under law. No doubt, she will be entitled to the benefit of genuinely pursuing remedy before wrong forum in the matter of condonation of delay. But the order impugned by itself being without jurisdiction has got to be quashed. Those cases which have been raised by the learned Counsel for the respondent that writ petition was dismissed on the ground of alternative remedy which is being argued really was not argued on the question of application of Act nor was this point raised before me was considered at all.

12. Thus considered in my opinion, the order of the Tribunal appears to be without jurisdiction, as Medical College do not come to be covered by Act 10 of 1975 or by Karnataka Education Act whereunder Educational Appellate Tribunals have been constituted. It being the well-settled principle of law that the plea of jurisdiction based purely on law and not on facts, going to root of matter, has not only to be allowed to be raised but should also be decided even though raised late. The order of Educational Appellate Tribunal being per se without jurisdiction, this petition has to be allowed exercising powers under Article 227 of the Constitution and the order impugned dated 23-6-1998 passed by the Educational Appellate Tribunal, Tumkur, in EAT No. 5 of 1991 has to be quashed and is hereby quashed. The respondent is giving liberty to challenge the order of termination of his/her service before proper forum by taking one legal course either before the Civil Court or under Article 226 of the Constitution if no other equally efficacious alternative remedy is available. Benefits, if any, have been availed by respondent under the orders passed by the Tribunal, shall not be withdrawn, if respondent takes suitable legal action challenging the termination order in question dated 21-5-1991 within a period of four months, pending the

decision thereof.

Subject to the above observations, the order of Educational Appellate Tribunal dated 23-6-1998 is hereby quashed and the petition is allowed.