

(1996) 01 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 30258 of 1992

Srikanteshwara Vidhya Samste (R)

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Karnataka General Clauses Act, 1899 — Section 21

Citation : AIR 1997 Kar 82 : (1996) ILR (Kar) 2366 : (1996) 5 KarLJ 629

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K.R. Ramesh, for D.L. Jagadeesh, for the Appellant; A.V. Srinivasa Reddy, AGA, for the Respondent

Judgement

1. This petition under An. 226 of the Constitution of India for issuance of a writ of certiorari or any other writ or direction, quashing or setting aside the order bearing No. ED/SECY/T-166/92 dated 25-8-1992 as well as for issuance of writ of mandamus or any other writ or direction, in the nature of writ of mandamus directing the respondents not to interfere with the smooth running of the institution by the petitioner under order Annexure-B dated 30-7-1992.

2. The case of the petitioner is that, the petitioner-institution is run by a Trust for the purpose of promoting education to the girls upto secondary classes in Kannada Medium. According to petitioner's case, petitioner applied for the sanction of Girls High School in Kannada Medium in rural region and exclusively meant for girls. This application was made in the year 1991 and the second respondent by its resolution dated 29-5-1991 and 25-6-1991 sanctioned the Girls School to be run by the petitioner's Society the petitioner on the basis of the order of sanction issued by respondent No. 2 started Girls High School and admitted the students. Petitioner's further case is that, the State Government granted its approval to the order dated 29-5-1991 passed by second respondent, vide State Government's order bearing No. ED;646:SES:92, dated 30-7-1992 copy of which the petitioner annexed at Annexure-B. According to petitioner,

petitioner thus continued to run the school from 1991 and admitted the students. The petitioner's contention is that, the main object of the petitioner-institution is to provide better educational facilities to rural students particularly to female students the girls and with this object in view, petitioner made investment of huge sums for the improvement and development of the institution. The petitioner has further alleged that when the school was running and going on he all of a sudden received an order dated 25-8-1992 from first respondent staying the operation of the order dated 30-7-1992. Having felt aggrieved from the impugned order i.e. 25-8-1992 Annex. C to the writ petition, the petitioner filed this present petition under Art. 226 of the Constitution of India on the ground that the order impugned is illegal, null and void" as it is without jurisdiction and secondly on the ground that this order has been passed without giving any opportunity of having the say in the matter.

3. Appearance have been put by Sri A.V. Srinivasa Reddy, learned Addl. Government Advocate on behalf of the opposite parties. As regards the facts of the case are concerned, they appear to have been admitted ones and no counter-affidavit of statement of objections has been filed by the respondents controverting, their allegations made in the writ petition. So, those allegations have been taken as un-contravened ones.

4. I have heard Sri K.R. Ramesh, holding in brief for Sri D.L. Jagadeesh, Counsel for the petitioner. Sri. Ramesh submitted that the order impugned is illegal, null and void and is without jurisdiction. Elaborating his contention Sri. Ramesh submitted that, once sanction had been granted, the sanction will remain in operation unless and until it had been cancelled or withdrawn after having duly followed the provisions of law contained in Rule 15 of the Grants-in-Aid Code for Secondary Schools. Sri. Ramesh submitted that, there is no provision for staying the operation of recognition or approval granted to the schools. In other words, his submission is that, once recognition has been granted, the authorities competent may at a subsequent stage cancel it, revoke it or withdrawn it in accordance with law and satisfying the conditions of the relevant provision i.e. Rule 15. But, as there is no provision either in the Act or in Code for staying the operation of the sanction or recognition once granted and it has never been open to the respondents to pass such order. Sri. Ramesh further submitted that power to stay the act and when conferred exercisable only where some proceedings is taken or is to be taken for cancellation. Then that may be said to be ancillary. But, there is no proceeding for withdrawal or cancellation of recognition pending, untried or taken. He further submitted that the opposite parties have not granted opportunity to the petitioner to have his say and the present impugned order is nothing but an action not in aid of ancillary to proceeding for withdrawal instead appears to be in breach of the requirements of Rule 15 as well as in one beyond the scope of powers and jurisdiction or authority as such as illegal, null and void and deserves to be quashed.

5. On behalf of the opposite parties, the learned Addl. Government Advocate

submitted that, if there is power to cancel or withdraw the recognition applying the Doctrine of Ancillary powers necessary for fulfilment of the functioning, it can well be said that the Government could stay its operation and it cannot be said that there is no power to stay even if not expressly provided. Learned Government Advocate Sri. A.V. Srinivasa Reddy made a reference to provision of Section 21 of the Karnataka General Clauses Act in order to support the impugned order.

6. I have applied my mind to the contentions made by the learned Counsel for the parties. Chapter-III of the Grants-in-Aid Code for secondary schools provides for Granting of recognition of schools. Rule 15 of the Code provides the conditions and circumstances subject to which the power to withdraw recognition may be exercised. Rule 15 of the Code reads as under:--

"Rule 15: If, in the opinion of the Department, a recognised institution ceases to fulfil at any time, the conditions of recognition, the defects shall be pointed out to the Management with the direction within the specified period that it shall be incumbent on the Management to remedy the defects, on the lines pointed out by the Department and to report the action taken within the specified time. If the action taken is, in the opinion of the Department, satisfactory, the recognition may be continued subject to such conditions as may be imposed by it. If, the action taken by the Management is in the opinion of the Department unsatisfactory, the Management shall be asked to show cause why recognition should not be withdrawn. If, within a month of the receipt of the show cause notice action is directed by the Department is not taken, or if the explanation offered is not acceptable to the Department, the Department may withdraw the recognition. The authority which accords recognition to the aided and unaided secondary schools will also be the authority competent to withdraw recognition."

7. A reading of this rule no doubt reveals that there is power vested in the Department concerned to withdraw the recognition provided it is of the opinion that recognised institution is ceased to fulfil or ceases to fulfil at any time the conditions of recognition. But before arriving at a decision to withdraw the recognition, the law requires the Department concerned that it shall point out the defects which amounts to unfulfilment of the conditions to the Management with a direction that it shall within the period specified by the Department remedy or remove those defects on the lines pointed out by the Department and thereafter shall report its compliancy of the directions to remedy the defects within the specified period provided in the order. The second condition is that, in case in the opinion of the Department the action taken by the Management in order to remedy the defects is unsatisfactory, the Management will by a notice be required to show cause, within one month, why recognition be not withdrawn and if within that period of one month no action is taken to do the needful to satisfy the requirements of the Department to remedy the defects or if alternatively no reply or cause is shown or the explanation is offered or if explanation is offered and the same is found not to be acceptable to the

Department, then Department may withdraw the recognition. This is the process to be followed satisfied before passing from the order of withdrawal of recognition as per Rule 15, the remedy against order of withdrawal did lay by way of appeal to the Director of Public Instructions within a period of one months from the date of receipt of the order for withdrawing the recognition. No provision has been brought to my notice which may be said to confer power on the Department or the opposite parties to stay the, operation of the recognition. Learned Government Advocate submitted that, in view of the provisions of Section 21 of General Clauses Act it is within the powers of the State or the respondents who have stayed the operation of the recognition. In my opinion, there is no substance in this contention of the learned Government Advocate. Section 21 of the Karnataka General Clauses Act reads as under:--

"Section 21 : Power to make to include power to add, to amend, vary or rescind notifications orders, rules or bye-laws:--

Where, by any enactment, a power to issue notifications, orders rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws, so issued."

8-9. Without going into the question, if this provision is only confined to legislative orders even for a moment it be taken to deal with the orders of the nature as the present one, Section 21 of the Karnataka General Clauses Act renders no assistance to the respondents case.

10. A reading of this section very clearly reveals and indicates that power to issue the order includes the power to add, power to amend, to vary or rescind that order. There is no such power u/s 21 of the Act as power to stay the operation of that order without its revocation, cancellation or withdrawal. This section cannot be read as conferring power to stay the operation of that order, in other words, keeping that recognition order alive but staying the operation thereof. In my opinion, if I take that this expression used in Section 21 also include power to stay, I will be travelling beyond the scope of interpretation and it will be nothing but adding some words and expression in the provisions of Section 21 which is not the function of this Court while interpreting the provisions of law. It is well settled principle of law that the Court may interpret the provision but has got no power to add something in the section. That being the position in my opinion, Section 21 is of no assistance to the learned Government Advocate. Keeping in view the provisions of Rule 15 of the Granting Aid Code for secondary schools and the provisions thereof contained in Chapter-III thereof, as well as Section 21 of the Karnataka General Clauses Act, in my opinion there is no power to stay the operation of recognition granted to an institution. The State authorities can only withdraw the same or cancel the same, by following this procedure specifically provided and by fulfilling the requisite conditions before exercise of power to cancel. That being the position of law, in my opinion, there is no power vested in the State to stay the operation of the

order granting recognition. Even for a moment it be taken that there is ancillary power though for the present I am unable to accept that contention not even for the argument sake if it be taken, that there is ancillary power in the sense of preserving and protecting the real object of the proceedings, then unless the main action has been commenced, the interim order of stay could not be passed. But the scheme of Rule 15 indicates that there could be no such ancillary power to stay in such a case. Rule 15 very clearly provides that before power to withdraw recognition be exercised the authority concerned has to give an opportunity to the institution to rectify the defects. It means neither recognition will be cancelled nor operation of recognition is to be stayed instead opportunity will be given to the institution or its management to rectify the defects within the period specified in the order. In case of non-compliance or unsatisfactory compliance with the order, a show cause notice has to be issued as mentioned earlier to the institution concerned before withdrawing the recognition and the period for show cause notice has to be one month. It is open to the institution concerned within one month to make effort to rectify the defects to the satisfaction of the authority or to furnish explanation why it could not be remedied. Thereafter if authority finds the explanation to be unacceptable then withdrawn order has to be made. The scheme of rule indicates till this process is going on the running of the institution should not be interfered with. If otherwise would have been the legislative intent there would have been indication thereof and the specific provision in regard thereto. There is no doubt that when Rule 15 has been very specifically provided for other aspects of the matter, it would have well been provided that when the notice is issued it is for the authorities to stay the operation of recognition. This has not been done by the legislating authority. In my opinion it is not open to this Court to add something to Rule 15; The stay of operation of the recognition would have had the same effect of withdrawal -- that institution had to be closed and if the institution has to be closed by the interim order, -- then all other purposes of the process would have been nullified. In my opinion, there is no power to grant to stay to the operation of recognition once it has been granted and no such power can be taken to be vested in the authority by necessary implication nor it can be so read by the implication in the provision. That being the position, in my opinion the order contained in Annexure-C bearing No. ED SFCY.T.166/92 dated 25-8-1992 is to be held to be illegal, null, void and without jurisdiction and its of no effect. It has hereby to be cancelled and set aside.

11. That as regards the second relief, it can be granted only in part that until and unless the opposite parties take proceeding under and in accordance with the provisions of Rule 15 of Grants-in-Aid Code for withdrawal or cancellation of recognition after having followed the procedure prescribed and in keeping pace with the principle of natural justice as well pass an order of withdrawal of recognition, the opposite party shall not interfere with the smooth running of the institution run by petitioner. But, it is clarified that under law, whatever powers are vested authorities to inspect the institution or to take proceedings it will also

be remained open to them.

The writ petition as such is allowed in above mentioned terms with cost in favour of the petitioner be released from the respondents.

12. Petition allowed.