
(1981) 07 KAR CK 0020
In the Karnataka High Court
Case No : WP 21018/80

Srt Institute of Commerce

APPELLANT

Vs

State of Karnataka Others

RESPONDENT

Date of Decision : 02-07-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Rules for Commercial Education, 1975 — Rule 3(A)(Ii)

Citation : (1981) 2 KarLJ 193

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This petition coming up for preliminary hearing after notice to respondents is disposed of by the following order after hearing the Counsel for parties.

2. The petitioner is a Commerce Institute in HAL. area of Bangalore (Hindustan Aeronautics Ltd., area). The Institute has been functioning from 1962. The Institute was recognised by the Government.

3. It is necessary to state that running of the institute is governed by what are called the Rules for Commerce Education (hereinafter referred to as the Rules) of the Government of Karnataka in the Department of Public Instructions. Part I of the Rules provides for the constitution and functions of the Board for Commerce Education in part II of the Rules provisions have been made for recognition of Commerce Institutes/ Schools, the conditions for recognition, renewal of temporary recognition and granting of permanent recognition. Rule 6 of Part II of the Rules provides for refusal of recognition. Rule 7 of Part II of the Rules provides for withdrawal of recognition. It is unnecessary to refer to the other Rules inasmuch as they have no direct bearing on the issue in this writ. It should also be noted here that the Rules are not stationary Rules, but Rules made by the Government, apparently in exercise of their executive power under Art. 162 of the Constitution. The Rules framed have been approved by the Government, vide its letter No ED 17 TCE 75, dated 3rd September 1975.

4. The 4th respondent Shanthi institute of Commerce applied and obtained

temporary sanction and recognition to start a Commerce Institute at Kodihalli in July, 1970. It is alleged that the 4th respondent Institute was shifted close to the Church School behind Jeevan Bhima Nagar in HAL., 11 stage and subsequently it was shifted to HAL. area on the Air port Road It is further alleged that the distance between the petitioner-Institute of Commerce and the 4th respondent is less than half a furlong When the 4th respondent shifted his Institute so close to the petitioner, the petitioner complained to the authorities, namely, the Director of Public Instructions in Karnataka, Bangalore. After due enquiry, the Director of Public Instructions passed an order dated 14-3-1974 withdrawing recognition to 4th respondent. That withdrawal was confirmed by the Government in appeal Aggrieved by the withdrawal of recognition, the 4th respondent had approached this Court in WP No. 5014/1975. That petition was rejected with an observation by the Court that if the 4th respondent shifted his Institute to the original building or to any other suitable building, the authorities may consider its request for grant of recognition. Not being satisfied with that, the 4th respondent filed WA No. 431/1977 and in that Writ Appeal, the petitioner in this writ petition i.e., Shri Institute of Commerce filed an application to implead itself, as its rights were being affected. A Division Bench of this Court disposed of the Writ Appeal on 7-9-1979, as the recognition accorded to the 4th respondent under the Rules was temporary in nature and the period of recognition had expired. However, the Division Bench set aside the order of the learned single Judge and observed that the authorities concerned should consider the application of the 4th respondent if made for fresh recognition. Thereafter the 4th respondent appears to have approached the Joint Director of Public Instructions. The Joint Director of Public Instructions made inspection of the premises where the 4th respondent institute was being run and found that the 4th respondent Institute was situated on the upstairs of the building and there was already another institute licensed and recognised close by. In the result, he recommended that, there was no need for one more Institute in the area, as it would lead to unhealthy competition. In the result, by his order contained in Memo No. A-15 Com. Rec. 209/1977-78 dated 24-11-1979 rejected the prayer of the 4th respondent for grant of fresh recognition, as the 4th respondent Institute did not satisfy the conditions laid down in Rule 3(A)(ii) of the Rules for Commerce Education to which reference has already been made Aggrieved by that order, the 4th respondent filed an appeal to the Director of Public Instructions as provided for in the Rules for Commerce Education. That appeal came to be allowed on 11-8-1980 which is produced at Annexure-F to the petition the operative portion of which reads as follows:

"Orders thereon: In view of the circumstances explained above and also the Court decision requesting the petitioner to approach the concerned authorities for grant of recognition etc., it is ordered that the recognition for the said Institute is granted.

The orders issued by this Joint Director of Public Instructions in Memo No. A-15 Com. REC. 209/ 77-78 dated 24-11-1979 are set aside.

Sd/-

Director of Public

Instructions (SPL)"

5. Aggrieved by this order, the petitioner Shri Institute of Commerce the original objector to the shifting of the 4th respondent's Institute close to it in violation of Rule 3(A)(ii) of the Rules has approached this Court under Arts. 226 and 227 of the Constitution for redress inter alia contending that its interests are totally affected and its right to run the Institute in accordance with the Rules has been set at naught by the appellate order of the Director of Public Instructions as per Annexure-F extracted above. The facts are not in dispute.

6. Shri H.B. Datar, learned Senior Counsel appearing for the petitioner, has pointed out that after the disposal of the Writ Appeal in which nothing in issue was decided but the Court had merely observed that the authorities concerned, should dispose of the application, if any, made by the 4th respondent for fresh recognition and that should not have been construed by the 2nd respondent appellate authority which passed the impugned order at Ex.-F, as a direction issued by the Court in utter disregard of the Rules in that behalf He has also urged that the impugned order is not a speaking order at all apart from being contrary to the Rules.

7. This is seriously disputed by the 4th respondent. But the stand taken by the 4th respondent is two fold. First that the petitioner being a rival Institute of Commerce has no locus standi to maintain this writ petition and next that the so-called Rules being not statutory Rules do not confer any enforceable right in the petitioner to move this Court for redress, as it is more in the nature of an administrative Code which only binds the Institutes concerned and the Department of Public Instructions.

8. The learned Counsel for the 4th respondent has relied upon the decision of the Supreme Court in the case of J.M. Desai v. Roshan Kumar, AIR 1976 SC 578, in which a Constitution Bench of five Judges after reviewing several earlier decisions of the Supreme Court on the question of locus standi to prosecute a writ petition under Art 226 of the Constitution, affirming the earlier decision of the Supreme Court in Nagar Rice and Flour Mills v. Teekappa Gowda, AIR 1971 SC 246, held that a rival cinema owner could not complain of any violation of his rights when another similar licence was granted to an operator even if it was in violation of the provisions to grant such licence. The learned Counsel for the 4th respondent also has brought to my notice the decision of a learned Judge of this Court in WP No. 9849/1980 (9-7-1980) in which an almost identical question of grant of licence to a Commerce Institute is dealt with. In the said decision, the learned Judge has opined that the aggrieved petitioner therein did not have the locus standi, as he was merely trying to enforce a commercial right and not a legal right.

9. In reply to this, Shri H.B. Datar learned Counsel, has stated relying on a number of later decisions of the Supreme Court to point out that in the facts and circumstances of the case of the petitioner, he. had a right which he could assert in proceedings under Art 226 of the Constitution before the High Court. He has first drawn my attention to the ruling of the Supreme Court (also of a Constitution Bench) in the case of Mohinder Singh Gill v. The Chief Election Commissioner, AIR 1978 SC 851, where Krishna Iyer, J., as he then was described as to what constitutes a good order and drew the attention to Justice Bose's judgment in Gordhandas Banji's case, AIR 1952 SC 16, 18 which is as follows: Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

10. It is on this passage, the learned Counsel for the petitioner relies upon to assert that this Court's jurisdiction under Art. 226 is not fettered by technicalities of the locus standi when injustice is writ large in the order made by a public authority like the Director of Public Instruction. He next drew my attention to the decision of another Constitution Bench in the case of P.S.R. Sadhanantham v. Arunachalam, AIR 1980 SC 855. In that case the Supreme Court was dealing with their jurisdiction under Art. 136 of the Constitution and decided that the Supreme Court had jurisdiction under Art. 136 of the Constitution to entertain appeals against judgments of acquittal by the High Court at the instance of private parties. The learned Counsel therefore argues, when that is the amplitude of jurisdiction of Courts to render justice, there should be no bar for this Court, in the instant case, to entertain the writ petition of the petitioner who is aggrieved by the impugned order. He has also drawn the attention of the Court to the decision of the Supreme Court in the case of Ramana Dayaram Shelly v. International Airport Authority, AIR 1979 SC. 1628, where-in it has been held that it was a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professed its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

11. Therefore, it is the learned Counsel's argument that whether the Rules in question are statutory or mere administrative code, the action of the 2nd respondent must be judged in the light of the Rules made and he cannot be permitted to disregard the Rule which he is required to observe, though it may not specifically confer any right. In so far as WP No. 9849/1980 is concerned, the learned Counsel has submitted that that judgment erroneously proceeded on the assumption that a Commerce Institute is a commercial venture, whereas it is obvious from the Regulatory Rules framed by the Government in exercise of executive power, that it is an educational matter and not a matter of commerce

or trade. Therefore in substance the arguments repelling the contentions of the 4th respondent have been that the petitioner is not enforcing any commercial right but protecting his rights which have been recognised under the Rules by the very act of granting recognition to him with the assurance that another Commerce Institute will not be allowed to function within a kilometre from the Institute so licenced. Rule 3(A)(ii) of the Rules is as follows:

"3(A)(ii) That there is no Commerce Institute/School within a radius of 2 kilometres from the proposed institute in case of rural areas, and 1 kilometre in the case of Cities and Municipal areas."

12. He also relied upon the fact that it was at the petitioner's instance that the temporary licence earlier granted to the 4th respondent had been cancelled and for that reason when the 2nd respondent while passing the impugned order ought to have heard the petitioner. Even this he pointed out does give locus standi to the petitioner to present the petition and further pointed out the error writ large in the appellate order which is bereft of reason and smacks of coffering favour without even the slightest discussion of the merits of the case.

13. I am inclined to accept the arguments advanced for the petitioner. I am satisfied that this is not a case of commercial fight being enforced by a rival rice mill owner or cinema owner. This is a matter of educational policy of the State Government, which has the authority to licence and recognise these commerce Institutes. Though Commerce Institutes may make profits and they by give income to those who run it, they cannot be equated with a commercial venture of the kind like running a rice mill or running a cinema house. If the Government wants to avoid unhealthy competition in the field of education, it is a governmental policy expressed through the Rules made and that policy must be given effect to by all officers, as it is their bounden duty to do so. If any person is aggrieved by the disregard of that policy, he has certainly the right to move this Court for an appropriate writ to see that such policy is given effect.

14. In the instant case, we have the bald order of the 2nd respondent which has been reproduced earlier Such an order which does not give reasons for its conclusion, cannot be sustained

15. In the result, the petitioner succeeds. Rule will accordingly issue and be made absolute. The impugned order at Exhibit-F is quashed. Liberty is still reserved to the authorities to consider the application of the 4th respondent for recognition, if he undertakes to run the Institute in accordance with Rule 3(A)(ii) of the Rules for Commerce Education,

16. In the circumstances of the case there will be no order as to costs.