

(1996) 03 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 920 of 1989

St. Marina's Social Welfare Association (Regd.)	APPELLANT
Vs	
Commissioner for Public Instruction	RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 226, 26, 30

Citation : (1996) ILR (Kar) 1932 : (1996) 3 KarLJ 488

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Shantha Kumar, for H.S. Jois, for the Appellant; L.Y. Premavathi, HCGP for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

1. By this Writ Petition, the petitioner has challenged the order bearing No. C8(8) 48/88-89 dated 23.11.1988 and No. B1/3413/ 116/88-89 dated Nil, and to set these letters aside so far as the same pertains to the petitioner as well as to declare the directions contained therein to be arbitrary and illegal and grant such further relief as this Court may deem just. While filing the Writ Petition, the petitioner has sought for an interim relief staying the operation and implementation and further proceedings in pursuance thereof of those letters referred to above which have been annexed as Annexure-A and B to the Writ Petition.

2. According to the petitioner the case of the petitioner is that the petitioner is a registered society catering the educational needs of vulnerable sections of people in particular and is running St. Marina's English Medium High School, Maratha Block, 65th Cross, N.R. Mohalla Extension, Mysore, as one of the institutions run by him. The petitioner's case is that the petitioner received letter Annexure-A bearing No. C8(8) 48/88-89 dated 23.11.1988 issued to the institution which do not have any sanction or recognition from the Directorate of Public Instruction and he directed such institutions which have not been sanctioned or recognised

by the Directorate of Public Instructions should be closed. In continuation of the said letter Annexure-A the petitioner's case is that respondent received another memo bearing No. B1/3413/ 116/88-89 bearing no date. The petitioner's case is that the afore-mentioned school has also been included in the said consequential memo, while the memo issued by the first respondent do not even mention the names of any institutions. Feeling aggrieved from these Annexure-A and B i.e., the circular and memo the petitioner has filed this petition under Article 226 challenging the circular dated 23.11.1988 Annexure "A" and the memo Annexure-B which had been issued in pursuance of letter dated 23.11.1988. The name of the petitioner-institution in this memo is mentioned at Sl.No. 6. The petitioner's further case is that the orders are bereft of jurisdiction and opposed the principles of natural justice and right to run educational institution conferred by Article 19(1)(g) and Article 26 of the Constitution. The petitioner's further case is that while issuing the memo, the opposite parties have illegally assumed and illegally raised presumption that the institution run by the petitioner is unrecognised without any basis. The petitioner's case is that as such the impugned circular and memo are illegal null and void. On behalf of the opposite parties no counter affidavit appears to have been filed in the present case by the respondents. Appearance have been put by the learned Government Counsel Smt. L.Y. Premavathi on their behalf.

3. I have heard Sri Shantha Kumar, learned Counsel for the petitioners and the learned Government Counsel Smt. L.Y. Premavathi. The learned Counsel for the petitioner Sri Kumar urged before me that the order impugned is illegal, null and void as it adversely affects the petitioner's fundamental right to establish the educational institution conferred under Article 19(1)(g) as well as under Article 26 of the Constitution. Later on the petitioner's counsel tried to raise the contention that their petitioner possessed the right i.e. fundamental right under Article 30 of the Constitution which is affected adversely by circular and memo and as such notice or the memo which has been issued to the petitioner to close the school without giving any opportunity to the petitioner to show cause against the same, the said orders impugned are illegal, null and void on account of being in violation of the principles of natural justice. This is what the argument is. The contention made by the learned Counsel for the petitioner is hotly contested by the learned Government counsel Smt. Premavathi, Smt. Premavathi urged that imparting education or establishing educational institution cannot be termed and said to be the fundamental right of any person under Article 19(1)(g) as imparting education or establishing educational institution is neither trade nor business nor industry nor it is practising of professional occupation. She submitted that it is in fact a supplementary activity or an activity supplementary to the principal activity carried on by the State for the matter of securing the right of education to the citizens, and when it is a supplementary activity and not an independent activity then it cannot be said to be something conferred by Article 19(1)(g). She further submitted that in Karnataka there is the Karnataka Education Act under which the educational institutions can be started. The

educational institution whether it be primary or secondary or higher, it can be established only with the permission of the State Government or authority under the State Government and that is subject to certain conditions or limitations provided therein. It is submitted that the petitioner has got no permission or sanction from the State to start the educational institution, so he was running the educational institution illegally. The learned Government Counsel further contended that the Article 26 is not applicable and reliance is wrongly placed thereon by the learned counsel for the petitioner and as regards Article 30 as nowhere in the petition as petitioner's case it is stated that the petitioner is a body representing Minority Community, Religious or Linguistic, and that this has not been taken as a case that the petitioner belongs to the Minority Community, Religious or linguistic and further that no case of claim of any right under Article 30 of the Constitution having been set-up nor facts relevant thereto have been asserted or alleged in the Writ Petition so no such claim made or set-up in course of arguments can be considered. Smt. Premavathi further submitted that the State authorities acted within their powers or jurisdiction in issuing the direction that all those who are running institutions without any authority or permission or recognition from the State should close down those institutions, in the best interest of the education and people. That as such the petitioner's Writ Petition deserves to be dismissed as the order impugned is neither illegal nor void. This is a matter of policy and implementation.

4. I have applied my mind to the contentions of the learned Counsel for the parties. The petitioner has nowhere made-out the case in the Writ Petition that the petitioner belongs to the Minority Community and the institution run by them has been established and administered by a body belonging to the members of the minority community. That being so, in my opinion it is not open to the petitioner to rely upon Article 30. As such the contention which has been raised on the basis of Article 30 is being rejected as not open to the petitioner as no case has been made in the petition. That as regards the contention of the learned Counsel for the petitioner is that the right to establish the educational institution is a fundamental right of the petitioner under Article 19(1)(g) of the Constitution, in my opinion education cannot and in no sense can be said to be trade or business nor can it be said to be practicing any professional occupation. Imparting education may be a mission. It may be said to be an avocation but not profession. Article 19(1)(g) confers fundamental right to practice any profession, or to carry on any occupation, trade or business. In the leading case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , it has been laid down by the laws of the Supreme Court that-

"We are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g),"

Agreeing with Justice Gajendragadkar, J. the Court further observed that education in its true aspect is more a mission and a vocation rather than a profession or trade or business. Their Lordships further observed that it is idle to

contend that imparting of education is a business like any other business or that it is an activity akin to any activity like completing of roads or bridges etc.... Their Lordships further observed that the private educational institution may supplement the efforts of the State in education, but it is not an independent activity, instead it is an activity supplemental to the principal activity carried on by the State. The expression "occupation" in ordinary sense means habitual employment, profession, craft or trade and it carries within itself the concept of activity which is akin to profession, trade or business, i.e., keeping on self occupied to make profit or earning therefrom is general theme of occupation. That considering in that sense in my opinion establishing of educational institution to impart education cannot be termed to be occupation. It may be said to be a *simpliciter*, a mission or vocation, in my opinion, therefore the act of establishing educational institution which is really an activity supplemental to the activity carried by the State to secure the right of education cannot be termed and be an act to amount to be a fundamental right under Article 19(1)(g). The activity of establishing educational institution may be said to be a legal right conferred under the law made by the State in its endeavour to provide for institutions Governmental or otherwise including the private educational institutions permitted and recognised by State of its authorities under the law and that may be subject to the conditions as may be imposed by or under the law enacted or made by the State including the one in the form of the subordinate legislation or delegated legislation ruling power.

5. This right of recognition is not a fundamental right as well and unless an educational institution has been permitted to be established and recognised the certificate or degrees issued by it have no real value. The State laws enacted do provide that no educational institution shall be established without permission of the State as is the case with the Karnataka Education Act. It was within the competence of the authorities to issue a general order requiring all the schools or institutions which are run in the State without seeking permission of the State or without seeking recognition from the State to be closed down. On enquiry being made with reference to the petitioner-institution if it is being run with permission of State Government or competent authority of the State the petitioner's counsel submitted that so far the institution has not got any such sanction or permission. The application seeking permission and recognition has already been made but no order so far has been passed thereon. This being the factual position the petitioner is or has been running the school unauthorisedly and without permission or recognition, in my opinion the opposite parties were implementing law that no school or educational institution will be established or run without the permission of State Government. That mere taking of an application for permission will be not tantamount to grant of permission. Even if as contended by petitioner that no show cause notice was issued to petitioner before issuance of memo to close the school, it does not improve the case as petitioner as no right to establish or run the school without prior permission from State or State Authorities nor did have such a right in view of provision of grants

in aid code as well as the provision of Section 6 of Karnataka Education Act. In the circumstances, if a memo had been issued to the petitioner-institution which according to the petitioner's counsel school was being run without any permission, the circular, or memo or order dated 23.11.1988 cannot be said to be unjustified or to be alleged bad in law and writ or order or direction could be issued. In this view of the matter the petition has got no substance and the petition needs be dismissed. However, it is clarified that if the petitioner has made any application for permission to start the school or in case the petitioner sought any recognition, let that matter be considered and disposed of within an early reasonable time i.e. within three months. Subject to the above observations, the Writ Petition is hereby dismissed as the petitioner cannot run the institution without necessary sanction, permission or recognition under the law.

Smt. Premavathi, learned Government Counsel is permitted to file her memo of appearance.