
(1994) 10 KAR CK 0010

In the Karnataka High Court

Case No : W.A. (FR) No"s. 3562 of 1994 and W.A. No. 2436 of 1994

State of Karnataka

APPELLANT

Vs

Pragathi T.T.I.

RESPONDENT

Date of Decision : 11-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
High Court of Karnataka Writ Proceedings Rules, 1977 — Rule 18
Karnataka High Court Act, 1961 — Section 10 (iv) (a)

Citation : (1994) ILR (Kar) 3234 : (1994) 4 KarLJ 581

Hon'ble Judges : Sreenivasa Reddy, J;Eshwara Prasad, J

Bench : Division Bench

Advocate : B.V. Acharya, General, for the Appellant; K.N. Subba Reddy and K.S. Savanur, for the Respondent

Judgement

Eshwara Prasad, J

I.A.I. for dispensation ordered.

2. A preliminary objection as to the maintainability of the Writ Appeals is raised by Sri K.N. Subba Reddy, learned Counsel for the respondents. He contends vehemently that in view of Rule 18 of the Writ Proceedings Rules 1977, it was open to the appellants to have moved the learned Single Judge for discharging or varying the order after giving notice to the respondents and that being so, it was not open to the appellants to file the Appeals.

3. It is pertinent to note that u/s 4 of the Karnataka High Court Act 1961 an Appeal lies from a Judgment, Decree, Order or Sentence passed by a learned Single Judge to the Division Bench. u/s 10(iv)(a), an appeal from any original Judgment, Order or Decree passed by a learned Single Judge in exercise of the powers under clause (1) of Articles 226 or 227 of the Constitution of India shall lie to the Division Bench of two Judges. This power of the Division Bench to entertain Writ Appeal against an Interim Order of a learned Single Judge is not controlled by Rule 18 of Writ Proceedings Rules which merely enable an

aggrieved party to move the Single Jgdge for rescinding or modifying an exparte Interim Order. Under given circumstances, depending upon the exigencies of the case, it is open to the Division Bench consisting of two Judges to entertain an Appeal against an exparte Interim Order passed by a learned Single Judge. The power of the Division Bench u/s 10(iv)(a) is not controlled by Rule 18. We, therefore, hold that the Writ Appeals are maintainable.

4. Admit.

5. The State seeks to set aside the Interim Order passed by the learned Single Judge permitting the respondents to appear for the ensuing examinations. The learned Advocate General submitted that the institutions where the students have studied are not recognised and that they cannot be permitted to appear for the examination under the directions of this Court in view of the Decision of the Supreme Court in St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.,

6. Sri K.N. Subba Reddy, learned Counsel appearing for the respondents submitted that the State has failed to pass any orders on the pending applications of the institutions for recognition, yet the institutions were permitted to admit students before making applications for recognition in accordance with Rule 37 of the Grant-in-Aid Code and therefore the students have completed the course and were rightly permitted to appear for the examinations subject to the conditions imposed by the Court and the order does not require to be set aside. It was also urged by Sri K.S. Savanur that in view of Rule 37 of Grant-in-Aid Code the Decision of the Supreme Court referred to above is not applicable to the facts of these cases.

7. It is not disputed that none of these institutions have recognition as required under law. Under the Karnataka Prohibition of Admission of Students to the Unrecognised and Unaffiliated Educations Act [SIC: Institutions] 1992, the admission of students to unrecognised and unaffiliated institutions is prohibited u/s 3 of the Act. The Writ Petitions filed by the respondents are pending disposal before the Division Bench and the question of recognition or non-disposal of the applications for recognition will be decided by the Division Bench.

8. In St. Johns Teachers Institute case supra, the Supreme Court has held thus:-

"20.the Courts should not issue fiat to allow the students

of unrecognised institutions to appear at different examinations pending the disposal of the of the writ applications. Such interim orders affect the careers of several students and cause unnecessary harassment and harassment to the authorities, who have to comply with such directions of the Court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examinations are filed only when the dates for examinations are notified. Many such institutions are not only "masked

Phantoms" but are established as business ventures for admitting sub-standard students without any competitive tests..... There is no occasion for the Courts to be liberal or generous, while passing interim orders when the main writ applications have been filed only when the dates for examination have been announced".

9. In view of the Decision of the Supreme Court inhibiting the Courts from allowing students of unrecognised students [SIC: Institutions] to appear for the public examinations pending disposal of the applications for recognition, there was no warrant for granting such directions by the termed Single Judge. The order of the learned Single Judge is accordingly suspended.

10. We make it clear that in the event of success of the respondents in the Writ Petitions which are now pending before the Division Bench, it is open to them to make a request for a direction to the concerned authorities to hold special examinations for them.

11. Furnish a carbon copy of the order to the Counsel for respondents.