

(1992) 07 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No. 1288 of 1992

State of Karnataka

APPELLANT

Vs

Tarur Education Society

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Citation : (1992) ILR (Kar) 2415

Hon'ble Judges : K.A. Swami, Acting C.J.; A.B. Murgod, J

Bench : Division Bench

Advocate : N.K. Gupta, for the Appellant; Amaresh A. Angadi, for the Respondent

Judgement

K.A. Swami, Ag. C.J.

1. This Writ Appeal is preferred against the Order dated 6th August 1991 passed in Writ Petition No. 26362 of 1990. The Writ Petition has been allowed and a direction has been issued to the State Government to grant permission to shift the petitioner- Institution from Tumkur District to Belgaum District.

2. Petitioner in the Writ Petition is the respondent in this Writ Appeal. It was running a Physical Education Training College at Tarur in Tumkur District. It sought for permission to shift the said Institution to Harugeri in Belgaum District. The application was not considered by the State Government. Therefore, the respondent approached this Court in Writ Petition No. 7614 of 1990. This Court by the order dated 10th July 1990 directed the State Government to consider the application of the respondent for shifting the College from Tarur in Tumkur District to Harugeri in Belgaum District as expeditiously as possible and not later than one month from the date of the order. Pursuant to the said direction the State Government considered the application and rejected it by an order dated 11-9-1991. Relevant portion of the order reads thus:

"Shifting of an Institution from one place to another (District to District) constitute establishment of a new Institution at the place of shifting. Further

Government had imposed a ban on the establishment of any such Institution till the end of Eighth Five Year Plan period. The order of Hon"ble High Court of Kanataka dated 10-7-1990 directs for consideration of the application made by the petitioner for shifting the college from Tarur to Harugeri. As the contents of the application of the petitioner dated 4-10-1968 had been considered in the past and rejected, the request of the petitioner for shifting the college from Tarur, Sira Taluk, Tumkur-District to Harugeri in Raibagh Taluk, Belgaum District is once again examined, considered in pursuance of the order of High Court of Karnataka and rejected."

3. Aggrieved by the aforesaid order, respondent again approached this Court in Writ Petition No. 26362 of 1990. The learned Single Judge by the order dated 6th August 1991 allowed the Writ Petition and directed the State Government to grant permission to shift the petitioner - Institution from Tarur in Tumkur District to Harugeri in Belgaum District. Pursuant to the said directions the State Government granted permission on 26-9-1991.

4. However, the State Government has preferred this Writ Appeal against the aforesaid order after complying with it on the ground that the learned Single Judge is of the view that without any criteria permission should be granted for shifting the institutions. The learned Single Judge during the course of his order has observed thus:

"The petitioner alleges that Government has given permission to other institutions to relocate their colleges. I do not want to say anything about it. Relocation or shifting of a College is permitted by the Grant-in-Aid Code and if the Grant-in-Aid Code does permit shifting of the College from Tumkur District to Belgaum District, I do not see why permission to shift the petitioner-institution from Tumkur District to Belgaum District should not have been granted."

5. The contention put forth on behalf of the State before the learned Single Judge was that shifting of the old college from one place to another would result in starting a new college in the place to which it is shifted. Therefore, all the norms that are required to be complied with for starting a new college shall have to be complied with by the applicant desiring to shift an Institution from one place to another place. This contention was based upon Rule 9 of the Grant-in-Aid Code for Secondary Schools in Karnataka State.

5.1. The college in question is not required to be affiliated to any University because it is regulated by the Department of Education. It imparts training leading to a certificate in Physical Education, therefore, it is governed by the Grant-in-Aid Code for Secondary Schools in Karnataka State. There is no specific provision contained in the Code for shifting an educational institution governed by the Code from one place to another place. Rule 9 of the Code occurring in Chapter-III relating to "General Conditions for Starting and Recognition of Schools", lays down general conditions for starting Institutions; and those conditions are as follows:

"9. General Conditions for Starting:-

(i) The Institution shall be open to all communities without any distinction of caste, creed or religion.

(ii) The Department should be satisfied that there is a need for the institution in the locality that it does not create an unhealthy competition with an existing Institution of the same category in the neighbourhood, if any,

(iii) The Department should be satisfied in regard to -

(a) the premises and the location;

(b) the accommodation;

(c) the equipment;

(d) the financial resources of the management;

(e) the number of teachers to be appointed and their qualification;

(f) the course of studies to be taught;

(g) the rules and regulations to be followed;

(h) urinals and latrines, and

(i) any other conditions prescribed by the Department.

(a) The premises and the location:- The premises should be satisfactory from the view points of health, sanitation and the extent of space and playground required for the full development of the institution. The location should be convenient for the children. The normal size of the play-ground is 5 acres.

(b) Accommodation:- For 1 Section of Standard VIII. Class room - 1 room (size 18 feet by 24 feet) or as per type design for each room. Staff Room 1. Office-cum-Head Master's Room - 1. Craft Room - 1. Girls Waiting Room (if there are girls) - 1. Library-cum- reading Room-1.

A new building consisting of the above should be ready before the school is opened. If it is not possible, a suitable rented building may be permitted for one year. If the building is not ready within the year, opening of the next class or sanction of an additional section may not be considered.

Laboratory - 1 (30 feet by 25 feet size)

For standard X (one Section). Class Room-1. Games Room-1. Multi-purpose Hall-1 (25 feet by 60 feet size).

For Standard XI. Class Room-1 (30 feet by 25 feet). Additional laboratory (for Science Section)-1 (30 feet by 25 feet). Library Books (including Texts), worth Rs. 500. (The Library-cum-Reading Room provided for Standard VIII may be converted into a Boys Study Room).

(c) Equipment and Furniture for Standard VIII.

Rs.

Library Book (including Texts), worth

...

500

Maps and Charts

...

500

Science equipments

...

500

Furniture

...

1,500

(The furniture should consist of adequate number of Chairs, tables, dual desks, almirahs, etc,)

For Standard IX

Rs.

Library

...

500

Laboratory Equipment

...

2,000

Furniture

...

2,000

For Standard X

Library

...

500

Laboratory Equipment

...

2,000

Furniture

...

2,000

For Standard XI

Library

...

2,000

Laboratory Equipment

...

5,000

Furniture

...

2,000

(d) Financial resources:- A stability fund of Rs. 50,000 is necessary to start with. The stability fund should be deposited in the Joint name of the Director of Public Instruction and the Chairman of the Managing Committee in a scheduled bank or Treasury or any other recognised Bank as permitted by the Department, and it is to be operated upon only in the case of an emergency with the approval of the Director. The Management, may however, be given option, if they so desire, to deposit the amount in five equal annual instalments. In case the amount of stability fund is less than Rs. 50,000 the Management should not be permitted to utilise it without obtaining specific approval of xxx Government, (e) Staff:- It should be duly qualified and as per prescribed pattern (vide Appendix IV). (f) Courses of study - As prescribed or approved by the Department, (g) Rules and regulations should be got approved by the Department, (h) Urinals and latrines - Urinals-5 compartments for boys (2) compartments- Separately and at a separate place for girls. Latrines-3 septic type latrines. Urinals and Latrine (for staff)-1 compartment for urinal and for latrine."

6. The point for consideration is whether it is necessary for an applicant seeking permission to shift of an Institution from A place to B place to satisfy at B place all the conditions laid down in Rule 9 of the Code.

7. The contention of the learned Government Advocate is that even though the applicant may be shifting an old college from A place to B place, but as far as place B is concerned it will be establishing a new college, therefore, all the norms laid down in Rule 9 of the Code have to be complied with. On the contrary, it is contended by Sri Angadi, learned Counsel for the respondent that the Government itself has granted such permission in several cases without applying Rule 9 of the Code, therefore, it is not open to contend that in the matter of shifting of an existing Institution from A place to B place requirements of Rule 9 are to be complied with.

8. It is not possible to accept the contention of Sri Angadi, learned Counsel for the respondent. Under what circumstances the Government has accorded permission to others for shifting existing institutions from one place to another place is not known and those circumstances are not placed before us. In the absence of a specific provision contained in the Code for shifting an existing institution to another place, we have no hesitation in holding that shifting of an existing institution from "A" place to "B" place would amount to and would result in establishment of a new College or institution at "B" place, therefore, all the conditions laid down in Rule 9 of the Code are required to be complied with *mutatis mutandis*.

9. It is not necessary to set aside the order of the learned Single Judge because it is submitted by the learned Government Advocate that the order under challenge has been complied with and the Appeal has been filed only to have a Decision on the aforesaid question as formulated in para 6 above for future guidance.

10. The reasons given by the learned Single Judge as stated above are set aside. It is held that in the case of shifting an existing institution covered by Grant-in-Aid Code for Secondary Schools from one place to another, Rule 9 of the said Code *mutatis mutandis* is required to be satisfied.

11. Writ Appeal is disposed of accordingly.

12. However, we make it clear that the Decision we have rendered does not enable the State Government to recall the order dated 26-9-1991 passed by it according permission to shift the institution of the respondent from Tarur in Tumkur District to Harugeri in Belgaum District, as that is not the purpose for which the appeal is filed.