

(1996) 03 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 16516 of 1989

Vidya Jagruthi Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Constitution of India, 1950 — Article 45
Grant-in-Aid Code Rules — Rule 10 (3), 10 (4), 11B

Citation : (1996) ILR (Kar) 1937 : (1996) 3 KarLJ 203

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Umesh R. Malimath, for the Appellant; L.Y. Premavathi, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Harinath Tilhari, J

1. By this petition under Articles 226 & 227 of the Constitution of India, Petitioner has sought three reliefs (a) issuance of a writ of certiorari or other writ or order or direction in the nature of Writ of certiorari quashing the endorsement dated 1/2 September, 1989, bearing No. ED. 392 PGC 89, passed by the 1st respondent, that is, the State by its Secretary, Education Department as well as (b) for issuance of a writ, order or direction or writ in the nature of mandamus directing the respondents to give the permission to the petitioner to start a English medium Primary School at Main Road, Doddaballapur, in the name and style of M.A. Beemaiah Lakshmi Devamma English Nursery and Primary School in accordance with the application of the Petitioner as well as to grant recognition.

2. The petitioner which is a Trust established in 1987, with the object to start the school for primary education moved an application seeking permission to start the School. That according to the Petitioner, the Petitioner invested a lot of amount or sums to establish that school, as there was lot of demand for running the School, the School was started from the academic year 1988-89, in

expectation of permission being granted. Further, the Petitioner's case has been that representations to that effect were made by 200 persons of the locality in writing for starting English Medium Primary School. That the parents of the children also requested the Petitioner to start the Primary English Medium School. That the respondents did not consider the Petitioner's application for grant of permission or recognition to start Primary (English Medium) School, as such the Petitioner was compelled to file W.P.No. 6471/89, in the Court and this Hon'ble Court allowed the said Writ Petition vide the Judgment dated 11.4.1989, directing the opposite parties to consider Petitioner's application for grant of permission and recognition for starting its Primary School in English Medium at M.A. Complex, Kuchappapet, Doddaballapur and to accord permission from the academic year 88-89, if the Petitioner had satisfied all the conditions of Grant-in-aid Code Rules (except the medium of instruction). That the respondents were also directed to comply with the order within four weeks from the date of its receipt. Thereafter, according to the Petitioner, Respondent No. 4, inspected the School premises and submitted that there were 100 students in Nursery Section which was also English Medium and there were another 100 English medium students studying in the Primary School. The respondent No. 4, gave a satisfactory report and recommended for permission for starting English Medium Primary School being granted in favour of the Petitioner. With these recommendations, the respondents 2 and 3 expressed their approval and respondents 2 and 3 also made their recommendations. But, inspite of all those recommendations made, the 1st respondent rejected the Petitioner's application for grant of permission to start the English Medium Primary School by its order dated 1/2 September, 1989, copy of which Annexure-B to this Writ Petition.

Having felt aggrieved from that order dated September 1, 1989, the Petitioner filed this Writ Petition under Article 226 of the Constitution of India.

3. Notice had been issued to respondents. No counter affidavit has been filed on behalf of the opposite parties. Rule was issued on 19.9.1989 and four weeks was granted for filing the statement of objections in 1989. Interim relief sought was not granted in this case by this Court. Therefore, now the learned High Court Government Pleader sought permission to file the counter affidavit. But, it is too late now to grant further time, because this is a matter of 1989. The Department itself should have been careful to file the statement of objections and the counter affidavit within the time granted by the Court vide order dated 19.9.1989 and if it could not file that in time, efforts should have been made to file the same earlier with the permission of the Court. Nothing has been done during the period of almost 7 years and it is now too late to allow any further time,

4. This Petition as on its face value has been argued on behalf of the Petitioner by Sri Umesh R. Malimath and it has hotly been contested by the learned High Court Government Pleader Smt. L.Y. Premavathi. On behalf of the Petitioner, it is contended that the conditions for grant of permission or recognition do not specifically provide that if there are two institutions or schools in a locality, the

permission should not be given. Further, the learned Counsel for the Petitioner submitted that if we look to the Grants-in-Aid Code Rules regarding commerce Institutions, it is no doubt provided in respect of commerce institutions only that while granting permission or recognition, one of the special conditions to be considered is that there should be no more than one institution within the radius of 1 k.m. in the Towns, City Municipalities. With reference to imparting of education in commerce in rural areas, the distance between the two institutions, that is, one institution existing and the institution proposed to be established, there must be distance of 2 Kms, but there is no such condition prescribed under the rules of Grants-in-Aid code relating to many educational institutions. That the authorities acted illegally in refusing the permission on the ground that there exists two English Medium Primary Schools in the locality, where the Petitioner sought to start its English Medium Primary School or institution.

That on behalf of the Petitioner, a reference to the Single Judge decision of this Court has been made in Deccan Model Education Society, Bangalore Vs. State of Karnataka and Another, by petitioner's Counsel who invited my attention to Paragraph-17, thereof which I may refer later on and that on that basis or the criteria on the basis of which the permission has been refused or rejected is illegal. The learned Counsel urged that when all other conditions had been fulfilled, the permission to start English Medium School and recognition to that should have been granted to the. Petitioner irrespective of the fact that two institutions did exist in the locality. That in the event of rejection, the opposite parties are expected to indicate in the order of rejection the reasons for refusal to grant permission and recognition, to the management of the institution. Lastly, the learned Counsel for the Petitioner submitted that it is because of the inaction on the part of the opposite parties in disposing of the application within the prescribed period and on account of onerous demand from the locality, the Petitioner was compelled to start and run the School in expectation that his application would be disposed of granting of the permission with effect from the date of the application was made, but the State Authorities did not dispose it of. So, this Court directed them to dispose it of and the Petitioner cannot be blamed and that the rejection of the permission under the ground of Rule 10(IV) is per se illegal as there was inaction on the part of respondents in disposing off the application. Smt. Premavathi, the learned Government Pleader, appearing on behalf of the opposite parties, submitted that a perusal of Rule 11(b) and Rule 13(1) makes it incumbent on the Department and the State Authorities concerned to consider question of the need of an educational institution, in the locality that is, the need of the private School in the locality. That when that need had to be considered, the question of number of Schools situate in the locality has got to be considered to determine the question of need of a private or otherwise of the educational institutions of primary nature, as such, the authorities when they took into consideration the fact of existence of two Schools in the area, they did not commit any jurisdictional error. Further, she submitted that the case cited by the learned Counsel for the Petitioner is not exactly on the

point as it does not relate to interpretation of Rules 10, 11(B) or 13(A) of the Grants-in-Aid Code. The Government Counsel urged that rules do provide that no educational institutions shall be started without previous permission of the Department and as per Rule 10(IV), when rule provide that recognition shall not be granted to an institution which has been started without previous permission, the authorities did not commit any error in rejecting the permission, particularly when the Petitioner had been running institutions unauthorisedly without permission and therefore, they rightly refused the permission to him.

5. I have applied my mind to the contentions made by the learned Counsels for both the sides. That as regards the last contention of the learned High Court Government Pleader - Smt. L.Y. Premavathi that the recognition or permission could be refused on the ground that institution had been started without previous permission, the Rule 10(4) had to be read along with Rule 10(3) of the Grants-in-Aid Code.

When an application has been made for starting the educational institutions by the private party and the application has been presented to the authority concerned, then rule provides that the Officer concerned shall dispose of the application within three months period from the date of receipt of that application and send a communication of the order granting or refusing the permission. It is also provided under aforesaid Rules that in case of refusal, the authority has to communicate along with the order of refusal, the reasons for refusal to the management. If within three months of moving the application for permission to start or establish the School, party starts the Primary School, the authority may be said to be at fault and recognition may be refused, but if authorities fail to consider the application for permission with prescribed time and keeps the application pending for months or years without disposing of the same and applicant or person concerned starts running the school, then blame cannot be fastened on his forehead. The State or the State Authorities, who are expected to do justice to the people and to ensure justice, social, economic and political are required to act expeditiously, otherwise if they sit down with hands folded and they do not discharge the functions and duties in accordance with law, then any such situation like the present one, fault or blame cannot be put on applicant, who had already applied for permission. Really, there is a contribution in that fault, that is, the contributory fault of the State in not disposing off the application within the time prescribed and at times, when the State does not discharge their duties, the poor man if he is completely law abiding, he has to run to the Courts and the Courts are compelled to exercise their jurisdiction to see executive performs its jobs and duties as prescribed. Therefore, it is expected of the concerned authority that it must perform its job and to discharge its duties in accordance with law within the time prescribed. So, in the present case in my opinion, the authorities were at fault in not disposing of the application for long time. In this case when the application for grant of permission has not been disposed of till September, 1989, if the Petitioner had started Primary School for teaching the students, then it cannot be said that it

was started without requisite permission and for fault in such circumstances, where the State was also contributory, the recognition or permission should not be rejected, because State cannot take the benefits of its own fault as it would amount to punish a person for the fault of the State Authorities.

6. As regards the second question that whether the number of Schools should be taken into consideration is an essential criterion. The number of existing Schools in the locality may be material consideration, but question is in what context?

No doubt in the case relied by the learned Counsel for the Petitioner, it has been laid down that if the Petitioner satisfies other requirements or conditions-precedents for recognition, then notwithstanding that other High Schools do exists in the Area, the Department is bound to grant recognition. In that case, they were considering the grant of question of recognition to Secondary Schools or High Schools. This case is not exactly on Rules 10, 11 & 13(1) of the Grants-in-Aid Code relating to Primary School.

7. A perusal of Rule 11 (b) will reveal that it is one of the factors to be kept in view while disposing of the application for permission to start institution that there is a need for an institution in a locality without involving unhealthy competition with existing institutions of same category in the neighbourhood. Sub Rule (b) further says that the main criteria for starting a institution shall be educational requirement of the locality. Rule 13 provides that educational institution may be admitted for the purpose of recognition by Department provided they satisfy the Department with regard to need for private school in the locality. How the need of an educational institution or a private school in the locality is to be adjudged as whether an institution or primary school is required or needed in the locality in the existing circumstances at the relevant time without involving in unhealthy competition. These factors needed or required to be taken into consideration in the context of requirement for an institution in the locality without involving in unhealthy competition.

To examine and to Judge that aspect or for taking a decision of that matter, what has to be taken into consideration is no doubt, the number of existing Primary Schools in the locality, but that is not the only factor to be taken into consideration. Apart from that, the number of institutions have to be looked in the context of the child population in that local area and who are atleast below the age of 14 years keeping in view the basic theme and scheme of the Constitution, particularly Article 45. That makes a provision for imparting compulsory education to the children below the age of 14 years, so the number of institutions existing in the local area in the context children population needing to be imparted education may be one of the relevant factors There may be cases where two institutions may not suffice the need of the population of an area, the Department may set up enquiry in the local area and keep a permanent report of population of the peoples and children population which is required to be taught and whom, the education is to be given and then, keeping in view the existence of the Schools including the Schools provided by Government if any and the

requirement of Schools in the locality, the authorities have to Judge whether really, there is any need or not of the School in the locality concerned, where the Petitioner or any person wants to establish or start an educational institution. Without considering these aspects of the matter, if the authorities reject the application for permission to start educational institution simply on the ground that there are two Schools and therefore, there is no need of another new School, without examining that in the context of the local population and the population of the children needing education, then that finding can be said to be suffering from error of law apparent on the face of it. Thus considered in my opinion, it cannot be said that consideration of the number of Schools is altogether irrelevant. Its relevancy in the context as explained above and in that light, the question is required to be considered by the authorities, - who are to grant permission, as to the need for a School in the locality in the context of the educational requirement of the locality without involving unhealthy competitions and also should consider the question not of possibility of the competition, but the question whether there is possibility of an unhealthy competition, then they may refuse the permission on the basis of its finding. That if authority finds there is no need for education institution in that context, it is then and then only it can reject the permission or recognition sought, when power or discretionary power is given with certain conditions prescribed, then the authority has to exercise the powers in the light of those provisions either allowing the claim of a person, such as, recognition or permission to start the School or to reject it. When this has not been done in accordance with the law in my opinion, the order of refusal to grant the permission in the present case as per Annexure-B to this Writ Petition, appears to be illegal and suffers from error of law.

8. The learned High Court Government Pleader Smt. Premavathi, submitted that the authority has recorded its grounds for refusal as that there already exist two English Medium Schools in the neighbourhood of the Petitioner's unauthorised school and there is no need for English Medium School in the locality proposed by the Petitioner, as the same is not justified under the provisions or rules and the existing English Medium Schools are sufficient for the needs of the students and that in this view of matter, there is no illegality. In my opinion, there is no substance in the submission of the learned Government Pleader Smt. L.H. Premavathi and she is mistaken in making the submissions. That the finding and the reasons have to be recorded on material facts as to what are the quantum of poor and needy students on the basis of the population of children below 14 years of age in the area, but this has not been done in the order impugned, Therefore, in my opinion, the authorities committed error of law apparent on the face of record when they did not apply their mind in the context of correct and legal yardstick, to matter. That as such, this Writ Petition is allowed with costs. The impugned order is quashed.

The opposite parties are directed to consider the question afresh in the light of the principles laid down above and to pass necessary orders in the matter of grant of permission or recognition, so that the Petitioner may start and run the

English Medium Primary School on grant of permission. The petitioner may be given opportunity to furnish necessary material as well if the petitioner so desires.

9. It is directed that authorities should consider and dispose of the application within a period of three months from the date of communication of the order of this Court. The Petitioners are expected to await the orders from the authorities for aforesaid three months and the opposite parties as directed above are expected to dispose of the matter afresh.

Let the directions to the above effect be issued to the institutions. Smt. Premavathi, learned High Court Government Pleader is permitted to file memo of appearance.