
(1991) 09 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 130 of 1990

Vidyaprasarak Samaj and Another	APPELLANT
Vs	
State of Goa and Others	RESPONDENT

Date of Decision : 10-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 BomCR 705 : (1991) 93 BOMLR 971

Hon'ble Judges : K. Sukumaran, J;E.S. Da Silva, J

Bench : Division Bench

Advocate : V.B. Nadkarni, S.A. and A.C. Navelkar, for the Appellant; J. Dias, A.G. and S. Albuquerque, Addl. Government for respondent Nos. 1 to 3 and J.P. D" Souza, for the Respondent

Judgement

K. Sukumaran, J.—This writ petition challenges the order dated 4-6-1990 (Exhibit `B") passed by the second respondent Director of Education permitting the fourth respondent to open a new Standard VIII Class from 1990 onwards. Incidental reliefs also have been sought for. On 14-6-1990 rule was issued, with a direction for expedition. Ultimately it came up for final arguments on 22-8-1991. In the light of the arguments advanced at the Bar, we had our reservations about the supportive materials justifying the impugned order. A further affidavit was directed, by our order dated 22-8-1991, to assist the Court to advert to and evaluate the materials so called for. The affidavit has accordingly been filed. The petitioners filed a rejoinder. Arguments were continued on 9-9-1991.

2. It is unnecessary to refer to the details of the contentions in view of the course we propose to adopt. We may, however, indicate even for that purpose, an earlier order (Exhibit `A") dated 9-7-1986 passed by the Director, which declined the request for opening a new school as made by the very same fourth respondent herein. The first paragraph can be usefully extracted:---

"With reference to the above cited letters. I am directed to inform you that the

case was re-examined by the Government from all angles and it is decided by the Government that there is no need of one more secondary school starting with Std. VIII in Morjim village, as the existing full-fledged secondary school namely Vidyaprasarak High School within a distance of 1 km. is capable of absorbing any number of students in any class for the past 5 years at least on account of sufficient physical facilities which the school possess. Therefore, it is regretted that the permission sought to open Std. VIII during 1986-87 is hereby refused so as to avoid unhealthy competition".

There are naturally areas of controversy in relation to the facts existing or detected subsequently, in justification of the impugned order (Exhibit "B")

3. We noticed two disturbing features in the issue of the order. One is the fact that it is issued in a cyclostyled form. This can be evidence of non-application of mind in given circumstances. Employment of such cyclostyled forms have been critically commented upon by judicial decisions as for example in Travancore-Rayon's case.

4. The second, and perhaps more important, feature is about the denial of an opportunity to the petitioners to put forward its contentions before the impugned order was passed. Doubtless, under Exhibit 'A', the petitioners had earned a substantive right which barred the entry of another school within a 5 km. distance, on the basis of the findings contained therein. The order is certainly amenable to variation the strong expressions contained in Exhibit 'A' notwithstanding. However, such a variation, would involve adverse consequences as well as the petitioners are concerned. It is now trite law that before such an order is passed, the party affected is afforded an opportunity to explain his stand. That is the mandate of law read into the statutory provisions empowering a statutory authority to act, and thereby affect, the rights of parties. This has admittedly not been done. For these reasons the impugned order is liable to be quashed. We do so.

5. The quashing of the impugned order, has necessarily to be followed by a fresh order passed after hearing of the affected parties, and considering the contentions of those parties. It requires no emphasis to state that such an order should be a speaking order and not a laconic and casual one. The findings supported by material and data should be the foundation for the fresh order to be passed by the second respondent. We issue a direction to pass such an order within an outer period of time of three months. The aggrieved party will certainly have the liberty resort to appropriate proceedings for the vindication of its grievances.

6. We have refrained from making any observations on the merits of the case. This includes the claim of the fourth respondent that in this case, it is not a matter where a new school is set up by that respondent. The factual details particularly in relation to the concept of over crowding also remains to be evaluated. The parties will have a full and fair opportunity to present every

argument, and to buttress, every contention which they seek to establish, in the fresh proceedings before the second respondent.

7. The learned Advocate General as also the Counsel for the respondents submitted that the quashing of the order shall not dislocate the studies of the studies of the students already admitted. We find the request supremely reasonable. The pursuit of the studies of the students during the academic year could continue unhampered by the quashing of Exhibit `B" Order. The further continuance of the Standards in the school, and consequently the studies of the students would depend upon the further order to be passed by the second respondent in the light of the directions given by us above.

8. The writ petition is disposed of with the above observations and directions. We direct the parties to bear their respective costs.