

(2003) 08 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition No's. 1302 of 2000 c/w 1889-1892/99 (Edn) & Writ
Petition No. 1302 of 2000 connected with Writ Petition No's. 1889 to
1892 of 1999

Vidyavardhaka Sangha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Karnataka Education Act, 1983 — Section 2 (6), 3 (1), 3 (1) (2) (j)
Karnataka Educational Institutions (Classification, and Prescription of Curricula, etc.)
Rules, 1995 — Rule 12, 14, 15

Citation : (2003) 5 KarLJ 493 : (2005) 3 KCCR 2017

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : S. Basavaraj, for the Appellant; B. Manohar, A.G.A., for the
Respondent

Final Decision : Dismissed

Judgement

H. Rangavittalachar, J.—Since in all these writ petitions the challenge is made to the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 ("Rules" for brevity), all these petitions are disposed of by this common order.

2. W.P. Nos. 1889 to 1892 of 1999 is filed by the Associated Management of (Government Recognised Unaided English Medium) Primary and Secondary Schools in Karnataka and three other educational institutions while W.P. No. 1302 of 2000 is filed by Vidyavardhaka Sangha, another educational institution.

3. The petitioners contend that they have established educational institutions including pre-primary courses comprising of "kindergartens", "play homes" and "nurseries" or "caring centres" for tender children primarily meant to guide and organise the natural playing tendency of children and also to facilitate working couples who cannot take care of the young ones at their homes and admit these

children in the kindergartens for what is called as baby sittings. It is a part of domestic service to the children. The State of Karnataka purporting to exercise its power u/s 145 of the Karnataka Education Act, 1983, has framed what is known as the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 and enforce these Rules in respect of kindergartens, play homes and nurseries run by the petitioners' institutions. The Rules are not meant to apply to such institutions. Apart from that, the Rules are unconstitutional being arbitrary and in excess of rule making power of the State. They have challenged therefore, the vires of the Rules in these petitions.

4. The State has filed statement of objections defending the validity of the Rules. According to the State, it is in the interest of the children/students, these Rules have been framed with the intention of preventing unscrupulous persons from exploiting the helpless parents and commercializing education besides to provide a healthy atmosphere for the children to grow.

5. Sri Basavaraj, counsel for the petitioners while arguing the matter restricted the challenge to only Rules 12, 14 and 15 of the Rules. He contended that the said Rules has to be declared as not applying to "pre-primary nursery courses" and in the alternative to declare as made beyond the rule making power of the State Government and secondly, that they are arbitrary in nature and therefore, liable to be struck down.

6. In support of the contention learned Counsel read Rule 12 providing for the establishment of a "Parent-Teacher Committee". Rule 14 which regulates the admission of students and Rule 15 which invests the authorities with the power for taking action for violation of the said Rules; and the definition clauses occurring under the Karnataka Education Act, viz., Section 2(6) which defines a child; Section 2(14) an "educational institution" and Section 2(25) "primary education". He also read Section 3(2)(j) of the Karnataka Education Act providing for establishing and regulating pre-primary education and submitted that, by a conjoined reading of the definition clauses the Rules and section, it is clear that the intention of the legislature is only to regulate the educational institutions which are not "pre-primary" in nature as pleaded, and no educational activity will be conducted while a student is admitted to pre-primary course and the only activity that is undertaken is the care of these tender children by guiding and developing the instinct of playfulness and no more. It is a part of domestic service to the parents and the tender ones.

7. On the other hand, Sri Manohar, Government Advocate defended that the State has all the power to frame the Rules under challenge, in view of Sections 145 and 3(2)(j) of the Karnataka Education Act.

8. In order to appreciate the rival contentions, briefly the purpose of the Karnataka Education Act and the relevant Rules under challenge are herein referred. The Karnataka Education Act, 1983 was passed by the State Legislature having felt the necessity for providing planned development of educational

institutions, inculcation of healthy education practice; maintenance and improvement in the standard of education, and for better organisation and discipline and control over educational institutions with a view to fostering a harmonious development of mental and physical faculties of students. The constitutional validity of this Act came up for consideration before a Division Bench of this Court in the case of Associated Managements of Primary and Secondary Schools and Others Vs. State of Karnataka and Another, . The Division Bench upheld the validity of the Act.

9. Section 3 of the Act confers on the State Government the power to regulate education of various subjects and matters. One such power is to establish either by itself or permit private educational institutions to establish institutions or centres for "pre-primary" education, adult education and non-formal education. Section 3 with the said relevant Clause (j) is extracted herein by omitting other clauses of the said section as being not relevant for the present discussion:

"Section 3. Regulation of Education.--(1) The State Government may, subject to Sub-section (3) of Section 1, regulate general education, professional education, medical education, technical education, commerce education and special education at all levels in accordance with the provisions of this Act.

(2) The State Government may towards that end-

(a) to (i).....

(j) permit and establish institutions or centres for pre-primary education, adult education and non-formal education".

10. Section 145 confers power on the State Government to make Rules to carry out the purpose of the Act. Section 145(1) reads as under:

"Section 145(1).--The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act".

11. In exercise of the powers u/s 145, State Government has framed Rules called as Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995. Rule 2(b) defines pre-primary education as:

" "Pre-primary education" means informal education below first standard for children between the ages three and five years by whatever name it is called, like play home, kindergarten, nursery, etc.".

Rules 12, 14 and 15, the validity of which has been challenged reads as under:

"12. Parent-Teacher Committee.--(1) It shall be the duty of the head of every recognised educational institution, to constitute a Parent-Teacher Committee within thirty days of the commencement of each academic year.

(2) Till a Committee is constituted under Sub-rule (1) the Committee constituted in the preceding academic year shall continue to function.

(3) The Parent-Teacher Committee for each educational institution shall consist of the following:

(a) Three representatives of the parents of the students who have studied upto S.S.L.C. or above of whom one shall be a woman and they shall be selected from among the willing parents;

(b) The head of the institution;

(c) Three class teachers in the institution selected by rotation;

(d) The Secretary of the Governing Council of the educational institution.

(4) Whereas, the members of the Parent-Teacher Committee specified by Clauses (b) and (d) of Sub-rule (3) shall be ex officio, the members selected under Clauses (a) and (c) of Sub-rule (3) shall hold office, for the period till the next committee is constituted under Sub-rule (1).

(5) The functions of the Parent-Teacher Committee shall be as follows.-

(a) to redress the grievances of the students and their parents, if any;

(b) to devise such action programmes as could be conducive for a healthy student-teacher, parent-teacher, teacher-management, parent-management relations;

(c) any other activity conducive to the welfare of the students.

(6) The Secretary of the Governing Council shall be the Chairman of the Parent-Teacher Committee".

"14. Procedure for admission.--(1) The procedure for admission for any class of institution shall be open and transparent.

(2) Admissions shall commence after a notification is issued and displayed prominently in the premises of the educational institution, inviting applications for admission and specifying the number of seats available for admission. Application forms shall be made available to the parents for at least five working days of not less than four working hours each. The parents shall be given a minimum of three working days of not less than four working hours each for registering the application form. The dates and working hours shall be clearly notified on the Notice Board. The application fee prescribed if any shall not exceed five rupees. In addition a brochure containing all the details may be made available to the parents at their option, the cost of which shall not exceed twenty rupees.

(3) Every recognised educational institution imparting education from pre-primary upto degree level and situated within a larger urban area or smaller urban area shall admit in each year such number of students not exceeding twenty-five per cent of its total intake in each class as may be specified by the State Government from time to time.

Explanation.--"Larger Urban Area" and "Smaller Urban Area" means the area specified as such under the Karnataka Municipal Corporations Act, 1976 and the Karnataka Municipalities Act, 1963:

Provided that if sufficient number of such students are not available within the specified area, the educational institution may admit students from other areas.

(4) The State Government while specifying the percentage of students and the distance under Sub-rule (3), shall have regard to:

(i) the density of population in the vicinity of the educational institutions;

(ii) the location of the educational institution;

(iii) the availability of transport facility to school going children residing in the locality where educational institution is situated;

(iv) the existence or other similar educational institutions in the same area.

The State Government may specify different percentage of students and different distances for different urban areas or for different classes of recognised educational institutions situate in the same urban area.

(5) Every recognised educational institution from pre-primary upto degree level which is established, maintained or aided by the State Government shall make provision for reservation of seats for candidates belonging to Scheduled Castes and Scheduled Tribes and other Backward Classes as per Government Orders in force from time to time.

(6) Every process of admission from pre-primary upto degree classes in educational institutions allowing co-education, shall ensure that fifty per cent of the total available seats in each institution in each category and reservation group shall be reserved for girl students. If no sufficient number of girl students are available for admission against such reservation the unfilled seats may be treated as unreserved:

Provided that provisions of Sub-rules (5) and (6) shall not apply to minority educational institutions to the extent of admissions made by these institutions from among their own community students.

(7) During the month of April of every year the head of the educational institution shall display on the notice board the details regarding the calendar of events detailing the various stages involved in the admission process like date of issue of applications, last date fixed for receipt of applications, mode and place of issue of application forms, date of announcement of list of selected candidates, last date for admission, etc. The process of admission shall be conducted accordingly.

(8) The head of the educational institution shall along with the calendar of events also display on the notice board the details regarding the number of seats available for each class, the fee structure specified and the criteria specified for

selection of candidates.

(9) The parent/guardian shall tender the application in person and get proper acknowledgement from the institution. The head of the educational institution shall enter particulars of every such application in the "Register of Applications" maintained for that purpose, in the order of their receipt.

(10) The head of the educational institution shall prepare a list of all eligible candidates who have registered for admission in the institution. Separate sub-lists shall also be prepared in respect of candidates of the Scheduled Castes and Scheduled Tribes and other Backward Classes as the case may be. Every candidate shall be allotted a registration number.

(11) The lists of eligible and rejected candidates containing the name and registration number shall be published on the Notice Board of the institution, inviting objections from any aggrieved party within a date to be specified in the notice so however that a minimum of five working days shall be allowed for filing objections. The objections received shall be registered and proper acknowledgements shall be issued. After considering the objections a final list shall be prepared and published on the Notice Board.

(12) (a) The Managing Committee shall from among the list of eligible candidates as published in Sub-rule (11) and according to provisions made in Sub-rules (2) to (7) shall prepare a list of selected candidates. Separate sub-lists shall also be prepared for each reservation groups in each category as per provision.

(b) In case of admissions to secondary, pre-university and degree courses the head of the educational institution shall after taking into consideration the total number of seats available for admission in the institution shall allocate eighty per cent of such seats for admission through merit and allocate remaining twenty per cent for admission by the management.

(c) The procedure for selection shall be as follows:

(i) The head of the educational institution, shall from among the list of eligible candidates published under Sub-rule (11) and according to provisions made in Sub-rules (2) to (7) and further taking into consideration the marks secured by the student in the qualifying examination prepare a list of selected candidates in the order of merit. Separate lists shall be prepared for each reservation group;

(ii) The Managing Committee shall from among the list of eligible candidates published under Sub-rule (11) prepare a list of selected candidates on the basis of merit.

(d) Admissions to all classes shall be made on the basis of selection lists so published. If any of the seats remain unfilled even after the exhaustion of the list, the procedure as specified above shall be repeated till after all admissions are completed.

(13) Educational institutions which are composite in nature shall make

admissions to higher classes run by the same educational institution upto and inclusive of secondary level only to the extent the seats in such higher classes are rendered vacant by the students or their parents voluntarily refusing admission for higher classes. A student admitted of lower kindergarten course or any other course which forms the initial course in that educational institution shall have a right to continue his studentship in the same educational institution upto and inclusive of secondary level provided he passes the terminal or the public examinations. In case of composite educational institutions involving pre-university and degree courses admission to pre-university course shall be completed in accordance with Clauses (b) and (c) of Sub-rule (12) provided that a provision of fifteen per cent concession in the cut off percentage shall be allowed to the students of that institution and students of sister institutions run by the same management. The admission to degree courses shall be automatic, subject to the student passing the terminal or public examination. The institution authorities shall have no right to ask the students to quit the educational institution on any ground including his poor performance in examination, provided he has secured a pass in the examination.

(14) These rules shall apply to all admissions made by an educational institution not only to the initial course or standard appeared in that institution but also to admissions made to additional sections in any standard or course whether existing or newly opened.

(15) Notwithstanding anything contained in these rules, the practice of institutions conducting interviews or tests or both to students or to parents or both for admissions upto primary level is expressly prohibited.

(16) The head of the educational institution shall be responsible for the strict compliance of provisions of this rules. He shall maintain all records concerning admissions and shall produce them for verification before the inspecting authority during visits and inspections. Any deviation or violation of rules noticed by the inspecting authority shall be referred to District Level Education Regulating Authority.

15. Violation of rules regarding admission fees, of any provisions in the Act or Rules by the Institution.--(1) Any parent who is aggrieved by.-

(a) violation of any of the provisions of these rules with respect to admissions by the institutions;

(b) violation of any of provisions of these rules with respect to collection of fees;

may file a petition in writing to the District Level Education Regulating Authority constituted under Rule 16.

(2) The District Regulating Authority may also suo motu or on complaint made by any person interested orally or otherwise make an enquiry to satisfy themselves as to the correctness of the complaint and may pass as if may consider fit, after giving an opportunity to the party adversely affected by it an opportunity of

making representation".

12. One of the purposes u/s 3(1) and (2)(j) extracted above of the Karnataka Education Act is to confer on the State Government the authority to establish either by itself or permit private institutions to establish pre-primary education (pre-primary education has been defined by Rule 2(b) to include kindergartens, play homes, nurseries, etc.) and also to regulate the running of the said pre-primary educational institutions. The procedure for its establishment, admission of students, the manner of regulating in the matter of its working, requirement of infrastructure, etc., are matters to be left to the rule making authority. To ascertain who is the rule making authority and to locate its powers, one has to look into the provisions of the Karnataka Education Act. Section 145 is the section which provides for it. Under it, the State Government has been empowered to make the Rules to carry out the purpose of the Act and one of the purposes u/s 3(1) and (2)(j) of the Act being to establish pre-primary courses, Rules 12, 14 and 15 of the Rules as applicable to "pre-primary courses" cannot be said to be not related to regulation of "pre-primary" courses. Hence, the contention that Rules 12, 14 and 15 are beyond the rule making power lacks merit.

13. However, Sri Basavaraj in the same context submitted, that the Act is mainly meant to regulate educational institutions imparting education for children between the age group of 6 and 14 and not to tender children below the said age group. The regulation of kindergarten, play homes, etc., was not in the contemplation of the legislature when it enacted the Karnataka Education Act. Section 145 in the context must be read to confer power to make Rules only regarding educational institutions other than kindergarten, play homes, etc. No doubt, such an argument could have carried some weight in the absence of Section 3(2)(j). But, in presence of Section 3(2)(j), the intention of the legislature is very clear that State also wants to regulate establishment of "pre-primary schools". It is relevant to state that though no formal education as "commonly understood" from the stage of teaching alphabets may be undertaken at the pre-primary level, certainly the tender children are made to congregate in one place where they learn together, the companionship, and social habits including developing the instincts of play, etc., which also can be classified as part of education. In this sense, it cannot be said that there is no educational training involved in the pre-primary education level.

14. On the contention that Rules 12, 14 and 15 are arbitrary in nature is concerned, the plea in this regard is to be found at para 4.10 where according to petitioners, the Rules are "Arbitrary for the reason that the children who receive no formal education are subjected to strict regulations severely damaging the fragile atmosphere in the institution". Except contending so during arguments it was not argued in what sense the rules are arbitrary like conferring an unguided power or authority in favour of any person which will affect either the students or the institution. Since the plea of arbitrariness is raised, let me analyze Rules 12

and 14 and deal with it also.

15. Rule 12 deals with the constitution of a committee called as "Parent-Teacher Committee" with its members being parents of the wards, teachers and the head of the institution (See Rule 12(1), (2), (3)(a), (b), (c) and (d)). The functions are stated in Rule 12(5)(a), (b), (c) and (6) which are for redressal of the grievances of students and parents; bring about a healthy student-teacher relationship and do all such activity which promotes the welfare of the students. The clauses and sub-clauses of this rule by no stretch of imagination can be said to confer any arbitrary power on any authority nor subject children to any kind of compulsion or even trouble them. Per contra, it is beneficial to the wards inasmuch as, parents of the wards by this Rule will get an opportunity to periodically interact with the teachers and will have the benefit of the judgment of an independent person like a teacher who will be involved with the child's development and will be able to guide, advice and help the child to develop its innate ability, talent and the habit of social living, which would otherwise he will be deprived of.

16. So far as Rule 14 is concerned, it deals with the procedure of admission of students. The rule regulates the admission of students providing for reservation in aided institutions, in accordance with the policy of the Government [see Rule 14(5)]. Preserving the right of minority institutions [see proviso to Rule 14(1)], conferring a right to a child admitted to kindergarten course in a composite educational institution to continue his or her study up to secondary level which is meant to remove the uncertainties, the disturbances the child may have to undergo if it is made to study in pre-primary course in one institution and primary and secondary courses in another institution and the anxiety of parents to run from one institution to another in search of seats for their wards, etc. This Rule 14 is beneficial to the wards and reasonable and devoid of any traces of arbitrariness.

17. Rule 15 is only meant to enforce Rules 12 and 14 under the threat of punishment. It is well-known that normal human tendency being what it is, either to be indifferent or ignore or violate deliberately any rule unless an element of compulsion is present. Rule 15 has only done that. No exception can be taken.

18. For the reasons stated above, I do not find any merit in these petitions. Petitions are dismissed. No costs.