
(2005) 03 KAR CK 0055
In the Karnataka High Court
Case No : Writ Appeal No. 6963 of 2003

Vidyavardhaka Sangha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21A, 39 (f), 41
Karnataka Education Act, 1983 — Section 1 (3), 145, 2 (26), 2 (27), 2 (6)
Karnataka Educational Institutions (Classification, and Prescription of Curricula, etc.)
Rules, 1995 — Rule 12, 14, 15

Citation : (2005) ILR (Kar) 4907 : (2006) 3 KarLJ 554 : (2003) 4 KCCR 339 SN

Hon'ble Judges : P. Vishwanatha Shetty, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : S. Basavaraj, for the Appellant; Shivakumar AGA, for the Respondent

Final Decision : Dismissed

Judgement

Vishwanatha Shetty, J.—The appellant in this appeal was the petitioner in writ petition No. 1302 of 2000. In this appeal, the appellant has called in question the correctness of the Order dated 14th August 2003 made by the learned single Judge dismissing the writ petition of the appellant. In the writ petition the appellant had called in question the constitutional validity of Rules 12,14 and 15 of the Karnataka Educational Institutions (Classifications, Regulation and Prescription of Curricula etc.) Rules, 1995 (hereinafter referred to as "the Rules"). The learned single Judge, on consideration of the contentions advanced on behalf of the appellant challenging the correctness of the Rules referred to above, took the view that the Rules were framed by the State in exercise of the power conferred on it u/s 145 of the Karnataka Education Act, 1983 (hereinafter referred to as "the Act"). He also took the view that one of the purpose of the Act u/s 3(2)(j) of the Act being to establish pre-primary schools, Rules 12,14 and 15 of the Rules as applicable to the primary courses, cannot be said to be not related to regulation of primary courses. He also negated the contention of the petitioners that the said Rules are liable to be struck down on the ground that

they are either arbitrary or unreasonable or violative of the rights guaranteed to the appellant under Article 14 of the Constitution of India. Aggrieved by the said order, as noticed by us earlier, this appeal is filed.

2. Sri Basavaraj, learned Counsel appearing for the appellant challenging the correctness of the impugned order, made two submissions. Firstly, he submitted that the Rules in question being ultra vires of the provisions of the Act, the learned single Judge ought to have struck down by the impugned Rules. Elaborating this submission, the learned Counsel pointed out that the provisions of the Act are not made applicable to the play-homes, kindergartens and pre-primary institutions. In this connection he drew our attention to Section 2(6), 2(26) and 2(27) of the Act wherein "child", "primary school", "private educational institution" have been respectively defined. It is his submission that the view taken by the learned single Judge that Section 3 of the Act which provides for framing of the Regulations by the State empowers the State to promote and establish institutions or centres of primary education, adult education and non-formal education, cannot be construed to reserving power on the State to frame the Rules in question. Therefore, he submits that the conclusion reached by the learned single Judge that the Rules in question are ultra-vires of the Act, is unsustainable in law. Secondly, he submitted that arbitrary and uncontrollable powers are given under Rules 12, 14 and 15 of the Act and it empowers the State to interfere with the management of play-homes, kindergartens and nurseries and therefore, the said Rules are required to be struck down as being highly arbitrary, unreasonable, discriminatory and violative of the rights guaranteed to the appellant.

3. However, Sri Shivakumar, learned Additional Government Advocate while strongly supporting the order passed by the learned single Judge, pointed out that the impugned Rules were framed keeping in mind the interest of the tiny children who attend the play-homes, kindergartens and nurseries, etc. In this connection, he brought to our notice the decision of the Supreme Court in the case of Vikram Deo Singh Tomar Vs. State of Bihar, wherein the Supreme Court has emphasised the care that is required to be taken by the care-homes where the children and women are housed. Therefore, he submitted that this appeal is liable to be dismissed as one devoid of any merit.

4. In the light of the rival submissions made by the learned Counsel appearing for the parties, the only question that would arise for our consideration in this appeal is, whether the order impugned passed by the learned single Judge calls for interference in this appeal?

5. Before we proceed to consider the submissions by the learned Counsel appearing for the parties, we are of the view, it is useful to refer to the provisions of the Act and the Rules. Section 2(6) of the Act reads as follows:

"2(6) "child" means a boy or girl within such age group not being less than six years or more than fourteen years at the beginning of the academic year as the

State Government may specify for the purposes of this Act either generally or with respect to any specified area.

Section 3 of the Act confers power on the State to regulate general education, professional education, medical education, technical education, commerce education and special education at all level in accordance with the provisions of the Act. It is useful to refer to sub-section (1) of Section 3 of the Act, which reads as follows:

"3(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 level in accordance with the provisions of this Act."

Rule 12,14 and 15 of the Rules read as follows:

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

(2) Till a Committee is constituted under Sub-Rule (i) the Committee constituted in the preceding academic year shall continue in 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 studies upto SSLC 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 Clause (a) and (b) of Sub-rule (3) shall hold office, for the period till the next committee is constituted under Sub-rule (i).

(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 programme as could be conducive for a health 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.

(7) The Head of the Institution shall be the Member Secretary of the Parent-Teacher Committee. He shall call for all the meetings of the committee, draw up proceedings of the Board and give effect to the decisions of the committee under the orders of the Chairman of the committee. All the proceedings of the committee shall be authenticated by the Chairman. The correspondence and other secretarial activities shall be carried on by the Member Secretary.

(8) Every decision of the Parent-Teacher Committee shall be taken by an ordinary majority of the elected members present and voting. In case of equality of votes, the Chairman shall have a casting vote.

(9) The Parent-Teacher Committee shall meet at least once in three months in the premises of the educational institution. If the Chairman is unable to attend such quarterly meeting, he shall authorise some other member to chair such meeting.

(10) Meeting notice shall be despatched to the members of the Parent-Teacher Committee at least ten days in advance. The quorum for the meeting shall be one-third of the total members of whom atleast one shall be a parent member.

(11) The first meeting of every newly constituted Parent-Teacher Committee shall be held on the day of its constitution. An order constituting the committee shall be issued by the Head of the Institution.

(12) Meetings of the Parent-Teacher Committee shall be held during working hours of the school within the premises of the Institution.

13: xxx xxx xxx

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 percent 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 up to 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 percent 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 un-reserved.

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 purposes, 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 prepare 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 percent of such seats for admission through merit land allocate remaining twenty percent 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) prepared 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 of 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 Clause (b) and (c) of Sub-rule (12) provided that a provision of fifteen percent 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, or any provisions in the Act or Rules by the institutions.

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 suomotu 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.

6. First, we will proceed to consider the contention of Sri Basavaraj that Rule 12,14 and 15 of the Rules are required to be struck down as ultra-virus of the provisions of the Act. No doubt, the definition of child" provided u/s 2(6) of the Act does not apply to a child who is admitted to play-homes, kindergartens, nurseries, etc. Similarly, the said educational institutions also cannot be treated as either a "primary school" or "private educational institution".

However, while Sub-section (1) of Section 3 of the Act confers power on the State Government to regulate general education, professional education, medical education, technical education, commerce education and special education at all levels in accordance with the provisions of the Act, Clause (i) of Sub-section (2) of the said Section permits the establishment of institutions or centres for pre-primary education, adult education and non-formal education. It is not in dispute that the establishment of play-homes, kindergartens and nurseries fall within the purview of institutions or centres for pre-primary education, adult education and non-formal education." According to Oxford Advanced Learners Dictionary "Education" means: systematic training and Instruction, knowledge and abilities, development of character, mental powers, resulting from such training; as per Chamber 20th Century Dictionary, "Education" means: bringing up or training, as of a child; instruction; strengthening of the powers of body of mind, culture. Therefore, there cannot by any doubt or dispute that the children, though they are below the age of six who are admitted either to play-homes or kindergartens or nurseries, are given training or education in the said institutions. Section 145 of the Act confers power on the State Government to make Rules. Clause (xL) of Sub-section (2) of Section 145 provides for framing of the Rules in respect of all matters expressly required or allowed by the Act to be prescribed or in respect of which the Act does not make no provision or makes insufficient provision and a pro vision is, in the opinion of the State Government, necessary for the proper implementation of the Act. It is useful to refer to the said provision, which reads as follows:

"Section 145(2)(xL) all matters expressly required or allowed by this Act to be prescribed or in respect of which this Act makes no provision or makes insufficient provision and a provision is, in the opinion of the State Government, necessary for the proper implementation of this Act."

7. Therefore, from the reading of the Section 145(2)(XL) referred to above, it is clear that the State Government is conferred with the power of framing appropriate Rules for the purpose of the implementation of the Act. As noticed by us earlier, Section 3(2)(j) of the Act confers power on the State Government to permit and establish institutions or centers for pre-primary education and non-formal education. When the power is reserved to the State Government to permit

the establishment of pre-primary or non-formal educational institutions, u/s 145(2)(xL) of the Act, in our considered view, the State Government has the power to frame appropriate Rules to implement the provisions of the Act, viz., to provide for the procedure or regulate the functioning of the pre-primary and non-formal educational institutions or the procedure required to be followed for establishment of such educational institutions. Therefore, we are unable to accede to the submission of Sri Basavaraj that the Rules which are challenged are beyond the provisions of the Act.

8. The only other contention that remains to be considered is, whether Rule 12, 14 and 15 of the Rules are liable to be struck down as being either arbitrary or unreasonable or violative of the rights guaranteed to the appellant under Article 14 of the Constitution of India? In our considered view, the answer should be in the negative. Rule 12 of the Rules compels the head of every recognised educational institution to constitute a Parent-Teacher Committee within 30 days of the commencement of each academic year. Sub-rule (3) of the said Rule provides for the composition of the Parent-Teacher Committee; Sub-rule 5 provides for functioning of the Parent-Teacher committee; Sub-rule 6 provides that the Secretary of the Governing Council shall be the chairman of the Parent-Teacher Committee; Sub-rule 7 provides that the Head of the Institution shall be the Member-Secretary of the Parent-Teacher Committee. The said Rule further provides that it is the duty of the Member Secretary of the Parent-Teacher Committee to call meetings of the Committee, draw up proceedings of the Board and give effect to the decisions of the Committee under the orders of the Chairman of the Committee; Sub-rule 8 provides that every decision of the Parent-teacher Committee shall be taken by an ordinary majority of the elected members present and voting, etc.; Sub-rule 9 provides that the Parent-Teacher Committee shall meet at least once in three months in the premises of the educational institution; Sub-rule 10 provides for the issue of meeting Notice to the members; Sub-rule 11 provides that the first meeting of every newly constituted Parent-Teacher Committee shall be held on the day of its constitution etc.; Sub-rule 12 provides that the Meeting of the Parent-Teacher Committee shall be held during the working hours of the school within the premises of the institution. As noticed by us earlier, the Secretary of the Governing Council of the educational institution is made as the Chairman of the Parent-Teacher Committee. We are not able to appreciate the contention of Sri Basavaraj that Rule 12 of the Rules is either arbitrary, unreasonable or violative of the rights guaranteed to the appellant under Articles 14 of the Constitution of India. Rule 12 of the Rules, in our considered view, has been framed keeping in mind the interest of the children who are of tender age. The involvement of the parents in the Parent-Teacher Committee, in our considered view, is in the interest of the Children who are of tender age. While the children are admitted to the play-homes, kindergartens and nurseries, the parents of the children who are primarily interested in the welfare of their children who are below the age of six, must have a say in the day-to-day activities and functioning of the play-homes,

kindergartens and nurseries and also they must have the power to visit the said play-homes, kindergartens and nurseries to find out as to how the same are functioning and whether they are functioning in a manner which is conducive for the proper growth and development of the children who are of tender age. It is needless to point out that any deficiency or default on the part of the persons in charge of the tender aged children would have a serious adverse effect on the growth and development of the children. In this situation, if the parents are made as members of the Parent-Teacher Committee and allowed to have their say, we do not find anything wrong in such a provision. In our view, a well meaning person, who is generally interested in bringing up and proper growth and development of children who are of tender age, cannot have any grievance with regard to the order impugned. In a matter like this, commercial motive cannot be allowed to over take the interest of children of tender age. Therefore, the challenge made to Rule 12 of the Rules on the ground set out above is liable to be rejected. Accordingly it is rejected.

9. Rule 14 of the Rules provides for "procedure for admission." The grievance of Sri Basavaraj with regard to the procedure provided under Sub-rules (3) to (16) of the said Rule, is cumbersome. From the perusal of the said Rules, we do not find any merit in the said submission. Sub-rule (3) of Rule 14 mandates the recognised educational institutions to admit not exceeding 25 per cent of its total intake in each class as may be specified by the State Government from time to time. Sri Basavaraj pointed out that since the appellant is the unaided private institution, it cannot be compelled to admit the students as may be specified by the State Government. We are unable to accede to this submission. Under Sub-rule (3) of Rule 14 of the Rules, an obligation is imposed on the educational institutions to admit students not exceeding 25 per cent of its total intake in each class as may be specified by the State Government from time to time. The educational institution like the play-homes, kindergartens and nurseries cannot be compared to any other commercial institutions or undertakings. Imparting education is a part of State functioning. The preamble to the Constitution provides that the People of India have resolved to constitute India into a sovereign socialist secular democratic republic and to secure all its citizens justice-social, economic and political; equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. Article 21-A of the Constitution of India provides that a State should provide free and compulsory education to all children of the age of 6 to 14, as the State may by law determine. Part-IV of the Constitution makes it clear that ours is a welfare State and Article 39(f) of the Constitution provides that the State shall, in particular, direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 41 of the Constitution provides that State shall, within the limits of its economic capacity and development, make effective provision for

securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want. Keeping these principles and obligations imposed on the State under the Constitution, if the State frames a Rule casting an obligation on an institution, which establishes with the permission of the State, play-homes, kindergartens and nurseries that they should admit not exceeding 25 per cent of its total intake in each class as may be specified by the State Government from time to time, it is not possible to take the view that the said power reserved to the State is either arbitrary or unreasonable or violative of rights guaranteed to the appellant under Article 14 of the Constitution. It is needless to point out that when the State is empowered to regulate the establishment of the educational institution, the power should be reserved to the State in a larger public interest to provide for a small percentage of admission to the students, as may be specified by the State. In the instant case, as noticed by us earlier, not exceeding 25 per cent of the admissions are required to be made by the institution as may be prescribed by the State. It is unfortunate that the appellant, without realising its obligation as an educational institution to the Society and more particularly to the children of tender age who are entitled to get themselves trained or provided with an opportunity to develop their personality so that they may pursue their further education from the age of six, has thought of challenging the validity of Rule 14 of the Rules. As noticed by us earlier, establishment of play-homes, kindergartens and nurseries cannot be equated to any other commercial activity. These institutions are dealing with the children of tender age. May be that, by casting an obligation on the institution to admit the students not more than 25 per cent, the State intends to provide for an opportunity for the children belonging to Scheduled Castes/Scheduled Tribes, minorities and other weaker sections of the Society, to be admitted to such educational institutions. In a society with full of inequalities, if the constitutional mandate with an object to have a welfare State, if such percentage is reserved under Rules, we find, it is not possible to strike down the said Rule on the ground that it is either arbitrary or unreasonable, it interferes with the right of the educational institution to manage its affairs. In our view, the non-receipt of grant from the State by the appellant-institution will not make any difference. Even if some of the educational institutions are not receiving financial aid or grant from the State, still the fact remains, that such educational institutions will have to depend upon various types of assistance by the State and its authorities. The examinations are conducted by the authorities of the State; the necessary qualifying certificates are issued by the authorities of the State; syllabus is set by the authorities of the State; recognition of such educational institutions are given by the State; the law and order is maintained by the authorities of the State; the service conditions of the teachers and staff in such institutions are governed by the regulations framed by the State. Imparting of education is one of the functions of the State. The management of an educational institution, even if it is an unaided educational institution, it cannot have absolute power of admission to its educational institution. It is open to the State to regulate such admissions,

keeping in mind the public interest and academic excellence in an educational institution and with a view to provide for an opportunity to the children of a section of the Society, who are deprived of educational opportunities all these years on account of social, cultural and adverse economic conditions. Under these circumstances, permission to establish an educational institution, we must take the view, obliges such an institution to reserve certain percentage of seats in the institution, in the light of the prescription to be made by the State.

10. We are also unable to accede to the submission of Sri Basavaraj that since Sub-rule (6) of Rule 14 of the Rules which provides to reserve 50 per cent of the total available seats to girl students, the same is unconstitutional. Article 15(3) of the Constitution enables the State to make law in favour of the women and children. It cannot be disputed that the literacy percentage among the ladies is much less than the men. In this background, if the Rules in question are framed making it obligatory on the part of the educational institutions to admit 50 per cent of the students among girls, we find it difficult to nullify the Rule on the ground that it is either discriminatory or arbitrary in nature and violative of the right guaranteed to the petitioner under Article 14 of the constitution of India. Further, it is also necessary to point out that there is no specific grievance made in the pleading. On this ground also the challenge made to Sub-rule (6) of Rule 14 of the Rules, is liable to be rejected. We are also unable to accept the submission of Sri Basavaraj that sub-rule (7) of Rule 16 which provides for a procedure that in case of equality of votes the Chairman shall have the right to exercise a second or casting vote is liable to be struck down as the same is cumbersome. There is no merit in this submission. Procedure that in case of equality of votes, the Chairman shall have the right to exercise a second or casting vote, has been prescribed keeping in mind a larger public interest. Therefore, we do not find any merit in the second submission made by Sri Basavaraj.

11. The observation made by the Supreme Court in the case of *Vikram Deo Singh Tomar Vs. State of Bihar*, supports the view we had taken above. At paragraph 2 of the judgment, the Supreme Court has observed as follows:

"2. India is a welfare State governed by a Constitution which holds the pride of place in the hearts of its citizens. It lays special emphasis on the protection and well-being of the weaker sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for women and children, and notwithstanding the pervasive ethos of the doctrine of equality it contemplates special provision being made for them by law. This is only to be expected when an enlightened constitutional system takes charge of the political and socio-economic governance of a society, which has for centuries witnesses the relegation of women to a place far below their due. We live in an age when this Court has demonstrated, while interpreting Article 21 of the constitution, that every person is entitled to a quality of life consistent with his human dignity is

the fundamental right of every Indian citizen. And so, in the discharge of its responsibilities to the people, the State recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore, of necessity provision must be made for their protection and welfare. Both common humanity and considerations of law and order require the State to do so. To abide by the constitutional standards recognised by well-accepted principle, it is incumbent upon the State when assigning women and children to these establishments, euphemistically described as "Care Homes", to provide at least the minimum conditions ensuring human dignity. What we see before us in the instant case is a crowded hovel, in which a large number of human beings have been thrown together, compelled to subsist in conditions of animal survival, conditions which blatantly deny their basic humanity. How else shall we describe an establishment where women are detained in miserable conditions, compelling most of them to sleep on broken floors, in damp and dank conditions, with no covering whatever to protect them from the chill wind and near freezing temperature of the north Indian winter, who are fed a wretched health-denying diet, are denied the basic amenities of convenient toilets and a private bathing place, who, if they complain, are beaten up, and although attacked by disease and illness are unable to find timely medical relief. It is clear that the welfare Department of the State Government of Bihar views its responsibilities in regard to these women with a lightness which will befits its existence and the public funds appropriate to it. The name of "Care Home" given to these establishments is an ironic misnomer. The primitive conditions in which the inmates are compelled to live shock the conscience."

12. In the light of the discussion made above this appeal is liable to be rejected. Accordingly it is rejected. However, no order is made as to costs.