

(1996) 03 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 4458 of 1996

Wuna Amrutha Rao and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Grant-In-Aid Code for Pre-University Education, 1969 — Rule 12A

Citation : (1997) 1 KarLJ 595

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. This is a very hotly contested writ petition and on a conservative estimate of the pleadings referred to by the learned Advocates filed before me, there have been at least one dozen occasions when a considerable amount of judicial time of this Court has been taken up in respect of these very skirmishes. The petitioners are a society running a Pre-University College. Briefly stated, the R-4 is a body which represents the parents/teachers. The 4th respondent contends that the petitioner is guilty of various acts of misconduct, the most important of them being that the members of the teaching staff are alleged to have been harassed in various forms. It is true that on the one hand, there were various acts of mismanagement and on the other hand these aggressive tactics were adopted in order to harass and blackmail the teachers. There are counter allegations against the teachers wherein it is contended that the misconduct is on the part of certain members of the staff against whom action was required to be taken and that having no other ground to defend themselves that they have levelled various allegations. The unfortunate fall out of these incidents is that the institution has obviously suffered and from having five divisions, it appears to have come down to only one. There are also several litigations pending in respect of which I do not propose to make any observations because the forum before which those proceedings are pending will pass appropriate orders.

2. As far as the present proceeding is concerned, pursuant to directions issued by this Court in the last writ petition, the Director was required to hold an

enquiry with regard to the allegations/charges against the petitioners. According to the petitioners, the Director sent them a questionnaire and the petitioners are supposed to have asked him for certain documents, as also a report of the Deputy Director who had visited the institution. They had also asked for copies of the complaint of the petitions that were filed against the petitioners in so far as it was their case that the department on its own accord has nothing against the petitioners but that the department is being pressurised and biased on the basis of a series of complaints levelled against the petitioners. The Director is alleged to have once again called the petitioners for purposes of holding an enquiry on 17-1-1996 and on that occasion, according to the petitioners they gave a detailed reply stating that they inter alia should be furnished with the copies of the documents asked for. According to them, the Director informed them that there are about 20 other heads which he requires to examine in the course of the enquiry and they were informed that there is a questionnaire in respect of these different heads. The petitioners contend that this ought to have been made available to them and that they could not be orally subjected to an enquiry without their knowing precisely what the contents of those precise charges were. It is the petitioners case that despite having asked for the documents that the Director did not furnish them to the petitioners and further more that the Director thereafter passed an order appointing a special officer. They contend therefore that the order has been passed without giving them a fair and reasonable opportunity of meeting the charges made out against them.

3. On behalf of the Director, it has been pointed out to the Court that in the earlier proceeding this Court directed that the enquiry should be completed on a time-bound basis namely by 5-2-1996. The Director apparently found himself placed in a dilemma because the petitioners were indulging in all sorts of correspondence obviously with the object of dilating the proceeding and in the process time was running out and having regard to the number of litigations which the Department had faced earlier, including contempt proceedings etc., the Director wrote to the learned Government Advocate, High Court, briefly setting out the situation and asked for guidance. Undoubtedly this was an unusual procedure and the petitioners' learned Advocate has very seriously attacked this particular act on the part of the Director. Subsequently, when the copy of the enquiry report was made available to the petitioners, the letter from the Director to the learned Government Advocate, High Court and the reply sent by him were both annexed to that report. Those documents are before the Court and I have perused them.

4. The petitioners' learned Advocate has submitted that the Director is a quasi-judicial authority insofar as he could pass orders in respect of a dispute of some consequence and the learned Advocate submits that it is a requirement of law that the Director has to act independently and not on the basis of instructions from anybody else. It is his contention that in these circumstances if the Director has written to the learned Government Advocate and the learned Government Advocate has in the course of a detailed reply indicated to the Director what is

the course of action that he should follow, that it is very clear that the Director has abdicated his responsibilities and that he has merely acted on the basis of whatever the learned Government Advocate has asked him to do. To this extent, the procedure that has been adopted has been attacked and found fault with and insofar as the petitioners' learned Advocate submits that it is totally uncalled for when the authority concerned is required to consider the material before him and decide the dispute independently, has sought to ask for instructions from the learned Government Advocate. The order is attacked on this ground and it is submitted that this itself would vitiate the order. I need to briefly record here that the correspondence in question namely the two letters are before the Court. Normally, documents of this type are totally privileged communications and under these circumstances even if a party comes into possession of this material, they should not produce them in any judicial proceeding. The Director is a highly placed officer of the department and in an appropriate situation particularly in an atmosphere that was super charged with almost a dozen litigations, if he decided to obtain guidance from the learned Government Advocate, though in other words his own legal adviser, who had handled the litigation, he was perfectly well within his limits.

I have perused the type of reference made and all that the Director has pointed out is that a virtual deadlock has arisen insofar as he was to complete the enquiry by 5-2-1996. The enquiry had to proceed despite the stalling tactics by the petitioner and also had to be concluded. Under these circumstances, the Director sought legal advice with regard to the correct course of action that he had to follow. The learned Government Advocate has sent a reply to the Director in which he has clearly set out the procedure the Director should follow. All that he has instructed the Director to do is to record everything that has happened, the sequence of events and make a note of whatever has transferred, namely the fact that the petitioners were not participating in the enquiry and to thereafter pass appropriate orders according to law. To my mind, all that the learned Government Advocate had clarified was with regard to the procedure that the Director was required to follow. To this extent, the learned Government Advocate has indicated the course of action which the officer should follow and has stopped short there without indicating to him anything beyond that. It was for the officer in the background of the material before him to arrive at a conclusion as to whether in the circumstances of the case the appointment of a special officer was justified or not. The Director has come to the conclusion that having regard to the overall background and nature of the dispute and the various charges that have been made against the petitioners, that the appointment of a special officer was in the interest of the institution and he had accordingly passed an order to that effect. The wording of the order indicates that it is well within the four corners of Rule 12-A of the Rules prescribed by the Grant-in-Aid Code. Under these circumstances, the objection canvassed by the petitioners' learned Advocate with regard to the reference made to the learned Government Advocate is liable to be overruled.

5. The respondent 4 has also seriously contested this proceeding. Not only has a detailed reply been filed in which various charges have been levelled against the petitioners but it has also been contended that the teachers have been at the receiving end. I do not propose to comment about that aspect of the case because various proceedings are pending before the authorities and those forums will adjudicate on those aspects. They have however submitted that the order passed by the Director is valid and the learned Government Advocate emphasises that this is the third round of litigation and they contend that in this background, the appointment of the special officer was not only justified but that it should be continued.

6. I have heard the learned Advocate at considerable length and I have also had occasion to peruse the material produced by them as also the various orders passed by this Court from time to time. The fact of the matter is that for the last several years these disputes have virtually been ragging and that apart from the present litigation they have also reached the Criminal Court. This is a highly unsatisfactory state of affairs as far as an educational institution is concerned, and irrespective of who the party was who is responsible for this, the fact remains that it would bring about a collapse of the institution apart from the interest of the teachers as also the students which are of paramount consideration. I do concede that in a given situation the rights of the management or the persons who are running an institution is also a matter of equal consequence but in a situation where the parties are virtually at loggerheads and where an absolute state of war has been going on, the authorities are left with no option except to insist that at least for an interim period of time some other competent person should be put incharge of the affairs. I have enquired from the Government Advocate and he informs me that the special officer is not a Government Officer in that sense but happens to be the principal of that college. He is to my mind, a right choice insofar as this is an educational institution and the special officer is a person who is running one such institution. Undoubtedly it would be an additional load on him but the limited aspect of the matter is with regard to the right choice of the special officer concerned. Even under the rules, the appointment of a special officer is a stopgap arrangement for a certain period of time and to this extent, having regard to the matter, bad record of the case it would not be possible to find fault with the conclusion of the Director appointing the special officer.

7. The petitioners' learned Advocate has submitted that the petitioners have not had an opportunity of meeting the charges that are levelled against them. I have dealt with the grounds on the basis of which he has advanced these contentions and I need to briefly record here that an opportunity as contemplated by the rules of natural justice presupposes one opportunity and not multiple opportunities. Where a party is afforded an opportunity and where a party does not avail of it, the person or party concerned is precluded from making any grievance of that fact. In this case, the Director was concerned with completing a rather heavy enquiry on a time-bound basis under High Court order. He has

given the petitioners more than one opportunity of filing their say. I have hardly considered it relevant for the petitioners to have asked for the material which they did because that had nothing to do with the enquiry. As far as the report of the Deputy Director is concerned, the petitioners wanted, according to them to rely on this particular report and there is nothing secret about it. If the petitioners had asked for it, the Director could have furnished a copy of that report to the petitioners but on this ground the petitioners were not absolved from having filed their reply to the questionnaire, I see precious little ground in their defence that there was a further questionnaire which according to them was also required to be dealt with. The only limited ground on which I am inclined to uphold the grievance of the petitioners is with regard to their request that they be furnished with the copies of the complaint or petitions or at least the latest ones or the substance thereof, that has been addressed by the respondent 4 against the petitioners. Essentially, the whole trouble had started because of those incidents and to this extent the Director could have either furnished copies of those complaints or on the other hand he could have briefly summarised them. To this limited extent therefore I propose to give the petitioners one more opportunity of putting forward whatever defence they have.

8. The Director shall within two weeks from today furnish to the petitioners a xerox copy of the report of the Deputy Director as also either copies or the substance of the complaints lodged against the petitioners and such other heads of charges on which he desires explanations from them. The petitioners shall be given 3 weeks time from the date of receipt of these documents by them to file their replies if they so desire. The Director shall thereafter communicate to the petitioners the date on which he proposes to hear them. The petitioners shall be entitled to put forward whatever clarifications they desire and if the Director desires any explanation or clarifications, he may elicit the same in the course of that hearing. It is however made clear that if the petitioners do not attend the hearing and if for any reason they attempt to stall the proceedings the Director shall make a note of this fact and shall proceed to pass orders. It shall not be necessary for the Director to fix thereafter any further hearing in the matter.

9. The petitioners' learned Advocate submitted that there have been several legal proceedings in the course of which the petitioners were required to make various allegations against the Director and they contend that having regard to this background, that the Director is personally hostile to the petitioners. Learned Advocate therefore submits that in this background there is every possibility that the Director will be carried away by a sense of bias against the petitioners and that therefore they will not receive a fair order. Making allegations in the course of judicial proceedings has now become the order of the day and whosoever is responsible whether a Government Officer or a special officer is invariable at the receiving end. I do not believe that this would be the basis of any bias or hostility because I have carefully gone through the earlier order passed by the Director and I do not see any reflection of this hostility. Further more, it is a requirement of law that the matter will have to be heard by the Director and under these

circumstances the request that some other officer should reconsider the matter cannot be acceded to. However, I need to make a special note of this allegation that is being made and the Director shall, while reconsidering the case take into account the fact that he shall go strictly on the basis of the material before him and that he shall proceed in an absolutely fair and impartial manner without being influenced by any background or any earlier proceedings. In my considered opinion, this should be a sufficient assurance to the petitioners.

10. The last question that arises is as to whether the order in question requires to be set aside. In the view that I have taken, I am not prepared to hold that the petitioners were denied of any reasonable opportunity of defending themselves. In fact, they have themselves to thank for the situation in which they are placed. It was perfectly open to them to have dealt with whatever material they were confronted with but I notice that they have abruptly refused to do so. Under these circumstances, there is really no need to interfere with that order except to the extent that the Director while reconsidering the case shall do so without making any reference to the previous order or to any observations or findings that have been recorded in it.

11. The reason for following this procedure is because this is an educational institution which has had an uninterrupted history of conflict over the last several years. As of now the authorities have placed it under the administration temporarily of the principal of another college. He is a party who has nothing to do with the present dispute and to my mind the right person to have been appointed as a special officer. The examinations are also approaching and in this situation, it would not be in the interest of anybody to create any upheavels in the working of the institution. It is for this reason that I do not propose to interfere with the order appointing the special officer. More so, since he has taken over charge, but it is clarified that this order will hold good until the Director reconsiders the matter and passes a fresh order. He shall, as far as possible complete this process within a period of three months from the date on which the reply is filed. If the process can be completed earlier, the Director shall endeavour to do so considering the fact that this is an educational institution. It is made clear that if the Director on considering the material placed before him comes to the conclusion that after taking into account everything which the petitioners have pointed out that the appointment of a special officer is unjustified or that it is no longer, necessary he shall revoke that order but if he comes to the conclusion that the special officer is required to continue for some time, he shall be entitled to pass orders accordingly.

12. With these directions, the writ petition which partially succeeds, to stand disposed of. No order as to costs.