

(1999) 04 AP CK 0038
In the Andhra Pradesh High Court
Case No : WA No's. 485 and 486 of 1997

Y. Krishnaiah

APPELLANT

Vs

Commissioner of Collegiate Education and others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2, 2(12), 2(28), 24, 24(2)
Constitution of India, 1950 — Article 30

Citation : (1999) 3 ALD 565 : (1999) 3 ALT 455

Hon'ble Judges : V. Bhaskar Rao, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. M.R.K. Choudary, for the Appellant; Government Pleader for Higher Education and Mr. A. Giridhara Rao, for the Respondent

Judgement

N.Y. Hanumanthappa, J

1. Since both these appeals arise out of a common order of the learned single Judge dated 7-6-1997 and as they involve consideration of common questions of fact and law, they were heard together and we propose to dispose of the same by this common Judgment.

2. Writ Appeal No.485 of 1997 is filed against the order in WP No.2631 of 1997 while Writ Appeal No.486 of 1997 is filed against the order in WP No.3894 of 1997." One Sri I. Somasekhara Setty was the petitioner in both the writ petitions. For the purpose of convenience, the parties will be referred to as arrayed by the learned single Judge in the impugned order.

3. A few facts which are necessary for the purpose of disposal of these appeals are as follows: The petitioner is the Secretary and Correspondent of Sri Vasavi Kanyakaparameswari Arts, Science and Commerce College, Markapur, having been elected to the said post in the elections held to the Management Committee of the College on 21-10-1993. The institution is a private institution and admitted to grant-in-aid. Its affairs are governed by the Bye-laws, the institution having

been registered as a society under the Societies Registration Act. Respondents 4 and 5, namely, Sri Y. Krishnaiah and Sri Y. Balaratnam are the hereditary presidents and they are holding the post of President by rotation and this practice is adopted from the inception. The Bye-laws of the society provide for constitution of "General Body" and "Executive Committee". Bye-law No.7(a) provides that there will be a president, a Vice-President, a Secretary, a Joint Secretary and a Treasurer for the General body and they will be elected by the General Body in a special meeting and their term of office is three years or till the new body is elected. It also provides that they can function as the members of the Governing Body also. Bye-law No.8(e) says that the Executive Committee shall consist of sixteen members viz.. President, Vice-President, Secretary, Joint Secretary, Treasurer and eleven other members. Among the eleven members, the Principal of the College, one staff representative, two representatives of Sri Venkateswara University and the District Educational Officer shall be ex-officio members. Bye-law No.9 which deals with Constitution of the Executive Committee reads as follows:

"Constitution of the Executive Committee and its succession:

(a) The present elected members of the executive committee will hold office for three months only from the date of starting of the college. Afterwards again election will be held. The newly elected members will hold office for three years. Executive Committee will be formed after such elections. It is decided that the tenure of the office of the executive Committee is three years duration.

(b) The President of the Executive Committee is Sri Yekkali Bala Ratnam. Later on, Sri Yekkali Krishnaiah may becomes the president. The person who becomes the President should continue to be the president for three years. They must alternatively become the president of the executive committee. Sri Yekkali Balaratnam and Sri Yekkali Krishnaiah are given hereditary right of presidentship alternatively in consideration of contribution of Rs.25,000/-. They have got right to decide their successor. If they do not decide their legal heir will have right to function as president.

(c) The vacancies that arise in the executive committee on account of unavoidable reasons can be filled up by the remaining the members of the executive committee by co-opting persons from the General Body.

(d) The president of the executive committee should preside over the meeting of the executive committee. If the president is not present the Vice-President should preside over the meeting. If the Vice-President also is not present, the members present at the meeting can elect one among them as a President for that meeting."

4. Bye-law No.10 deals with the duties of the Secretary in convening the meeting of the executive committee, quorum for the meeting etc., Bye-law No.12 deals with the powers and duties of the executive committee. Bye-law No. 12 which deals with the powers of the Office bearers of the Executive Committee, which is

very relevant for the purpose of disposal of the present appeals, reads as follows:

"12. Powers of the Office bearers of the Executive Committee:

President: (a) The president shall be the present at the meeting of the General Body and the Executive Committee.

(b) The president shall have power to assemble for voting whenever he thinks;

(c) The president shall have power to appoint persons for temporary posts carrying not more than Rs.100/- salary per month for a period upto three months after consulting the Secretary, Such appointments should be ratified by the executive committee.

(d) The president and the Secretary together can spend not exceeding Rs.5,000/- if they feel that the expenditure is essential even though it is not provided in the budget. They must get such expenditure approved in the next immediate meeting of the Governing body;

(e) The President shall have power to supervise all affairs.

Vice-President: (a) In the absence of the President, the Vice-President will act as the president in the meeting of the committee or governing body. He will not have second vote even though he acts as President at the meeting.

(b) If the President delegates his duties to the Vice-President then the later can exercise the powers of the former.

Secretary; (a) The Secretary will have power to inspect account of the committee and the governing body.

(b) He will act as correspondent of the Committee or the Governing body.

(c) He shall convene the meetings of the committee and the governing body. He should explain the related documents and the correspondence at the meeting for consideration of the members;

(d) He should prepare the budget and profit and loss account with the help of the treasurer and place them before the annual meeting of the committee;

(e) He should implement the resolutions of the Committee or the governing body and place his report before the meetings;

(f) The Secretary must perform all the other matters decided by the committee and the governing body after consulting the President;

(g) All the important documents like sale-deeds and official documents should be kept in the custody of the secretary;

(h) He should kept all the properties in his custody and supervise them."

5. It appears that the General Body of the institution by its resolution dated 2-9-1990 introduced Bye-law No. 10(A) which has been questioned by the 4th

respondent and the same is the subject-matter of a civil suit- OS No.1 of 1995 on the file of Subordinate Judge's Court, Addanki. It appears that there were two groups in the institution aspiring for managing the affairs of the institution. One group in the general body meeting held on 20-10-1993 elected Y. Krishnaiah as the Hereditary President and Correspondent and one Sri P.Y.S. Rathnam as Secretary and the other group in their meeting held on 21-10-1993 elected one Dr. G. Raghuram Gupta as president and the petitioner as the Secretary and Correspondent. Sri Krishnaiah, the hereditary President (4th respondent) as well as the writ petitioner have made representations to the Commissioner of Collegiate Education to approve their election as Hereditary President and Correspondent and Secretary and Correspondent respectively. With regard to the controversy a series of writ petitions were filed in this Court, the facts of which, are not necessary for our present purpose. Ultimately, by the proceedings dated 31-1-1997, the Commissioner of Collegiate Education while rejecting the representation of the petitioner seeking to approve the body elected on 21-10-1993 and permitting him to act as Secretary and Correspondent, however, considered the elections conducted on 20-10-1993 as valid and accordingly approved the Correspondent ship in favour of the 4th respondent which was the subject-matter of issue in the present WP No.2631 of 1997. The relevant portion of the said impugned order reads as follows:

"..... Hence the elections conducted on 20-10-1993 as referred to at para 10 above by the Hereditary President group are considered as valid, therefore, in terms of the Section 7 of Grant-in-aid Code, the Commissioner of Collegiate Education, A.P., Hyderabad, is pleased to approve the Correspondent ship in favour of Sri Y. Krishnaiah, subject to condition that he should conduct elections to the Governing Body since its term expired by 19-10-1996. Sri Y. Krishnaiah, President and Correspondent, is directed to take further necessary steps to conduct elections to the Governing Body by convening general body meeting as per bye-laws of the College committee."

6. The term of Hereditary presidentship of the 4th respondent had expired on 26-5-1996 i.e. even prior to the issuance of the proceedings dated 31-1-1997 by the Commissioner of Collegiate Education. On 10-2-1997 the 4th respondent informed the Commissioner that as per rotation his brother Sri Y. Balaratnam has to continue as Hereditary President with effect from 27-5-1996. By proceedings dated 13-2-1997, the Commissioner of Collegiate Education passed the following order:

"In view of the circumstances stated above and in continuation of Commissioner's proceedings first read above, Sri Y. Balarainam, Hereditary President is directed to take necessary steps to conduct elections to the Governing body by convening General Body meetings as per Bye-laws of the College Committee."

7. Aggrieved by the same, the petitioner has filed the latter Writ Petition No.3894 of 1997. The contention of the petitioner is that by virtue of the order dated

13-2-1997, the 5th respondent who stepped into the shoes of the 4th respondent as hereditary president is trying to act as Correspondent of the College though the bye-laws do not permit him to act as such. The learned single Judge on a consideration of the material on record held that the impugned orders of the 1st respondent approving the respondents 4 and 5 as Correspondents of the College Committee on rotation basis are not sustainable and accordingly set aside the same. However, the learned single Judge held that the elections to the General Body shall be conducted in accordance with the bye-laws that are in force as per the directions issued by the 1st respondent. Aggrieved by the same, the present appeals are filed by the respondents 4 and 5.

The case of the petitioner before the learned single Judge was that as per Bye-law No.12(b) which deals with the powers of the Secretary, it is only the Secretary of "the Committee who can act as Correspondent of the Committee and not the President or the Vice-President and as such the order of the 1st respondent dated 13-2-1997 permitting Sri Y. Balaratnam to take necessary steps to conduct elections to the Governing body is incorrect and illegal.

8. Sri M.R.K. Chowdary, learned Senior Advocate appearing for the respondents 4 and 5 submitted that the order of the learned single Judge is quite incorrect and illegal. The learned single Judge erred in placing reliance on Bye-law No. 12(b) without noticing that the bye-laws cannot override the statutory provisions, namely, the provisions under A.P. Education Act, 1982 (hereinafter referred to as the Act), particularly, Section 24 of the Act. He also contended that when the word "manager" includes Secretary, Correspondent or by any other name as enumerated in sub-section (2) of Section 24 of the Act, there is no illegality in appointing the President as Correspondent as was done in the case of 4th respondent initially and thereafter in the case of 5th respondent. He further contended that the order of the learned single Judge is quite illegal as he gave more weightage to the bye-laws than to the overriding effect of the Act and thus prayed for reversal of the impugned order.

9. Sri Giridharreddy, learned Counsel appearing for the writ petitioner - respondent supported the order passed by the learned single Judge. According to him, the powers of the executive committee includes the powers to manage the affairs of the institution and the bye-laws provide such power. The bye-laws in no way contravene the provisions of Act, 1982. According to him, "manager" does not include President or Vice-President. The posts of President, Vice-President, Secretary are altogether different posts. President cannot be equated to Secretary or Correspondent. If the meaning as suggested by the Counsel for the appellant is given, it will run contrary to the bye-laws and the provisions of the Act, thus, defeats the very purpose of forming a society for the establishment of the institution, which constitutes General Body and various other committees. The learned single Judge has rightly held that the approving of respondents 4 and 5 as correspondents of the College Committee on rotation basis are contrary to the bye-laws and hence not sustainable. He, therefore, sought for dismissal of

the appeals.

10. For a proper appreciation of the arguments advanced by both the parties, Section 24 of the Act may be extracted below:

"24. Appointment and removal of manager of private institution:

(1) The management of every private institution shall be constituted in such manner and shall consist of such number of members as may be prescribed:

Provided that the Board of Trustees or Governing Body or Wakf Board, by whatever name called, constituted or appointed under any other law for the time being in force relating to the charitable and religious institutions and endowments and wakf, shall be deemed to be a management constituted under this subsection.

Provided further that the constitution of the management under this sub-section shall apply to a minority educational institution, insofar as it is not repugnant to Clause (1) of Article 30 of the Constitution of India.

(2) The Management shall, for the purposes of this Act, nominate a person to manage the affairs of the institution, whether called by the name of Secretary, Correspondent or by any other name, and intimate such nomination within thirty days thereof to the competent authority.

xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx"

Section 25 of the Act which deals with duties of manager of private institution reads as follows:

"25. Duties of manager of private institution:

(1) The manager nominated u/s 24 shall be responsible for managing and conducting the affairs of the private institution in accordance with the provisions of this Act and rules or orders made thereunder and for maintaining the properties thereof in proper and good condition.

(2) It shall be the duty of the manager to maintain such records and accounts of the institution and in such manner as may be prescribed.

(3) The manager shall afford all assistance and facilities as may be necessary or reasonably required for the inspection of the institution and its records and accounts by such officer as may be prescribed or authorised by the competent authority in this behalf.

(4) Before the end of April in each year, the manager of every private institution shall furnish to the competent authority a statement containing a list of all movable and immovable properties of the institution with such other particulars as may be prescribed."

11. In order to know the real controversy between the parties and what is the

source for their functioning as members or President or as Secretary or Correspondent, we have to go through the bye-laws of the institution (Registration No. 10/ 66), the relevant portions of which, have already been extracted above. The society is governed by a General Body as also by the Executive Committee, The General Body will consists of a President, Vice-President, Secretary, Joint Secretary and a Treasurer and they will be elected by the general body in a special meeting. The executive committee will consist of President, Vice-President, Secretary, Joint Secretary, Treasurer and 11 other members and the tenure of the office of the executive committee is three years. Bye-law No.12 deals with powers of the office bearers of the executive committee. Under this bye-law the powers and duties to be performed by the Secretary have also been mentioned. Bye-law 12(b) in regard to Secretary says that the Secretary will act as Correspondent of the Committee or the Governing body. From this, one could infer that the Secretary has also to act as Correspondent and therefore there cannot be any objection to call him as "Secretary and Correspondent". Such power or duty to act as Correspondent of the Committee or the Governing Body was not referred to in regard to the powers and duties of President or any other member under bylaw No. 12. At this stage, it is proper to refer to Section 24 of the Act, 1982. Section 24 deals with appointment and removal of manager of private institutions. Sub-section (2) of Section 24 says that the management shall nominate a person to manage the affairs of the institution whether called by the name of Secretary, Correspondent or by any other name and intimate such nomination within thirty days thereof to the competent authority. The words "manager", "management" and "competent authority" are defined in Section 2 of the Act. Section 2(12) defines "competent authority" as "any person, officer or authority authorised by the Government by notification to perform the functions of the competent authority under the Act for such area or for such purposes as may be specified in the notification". As per Section 2(27) "management" means the managing committee or the governing body, by whatever name called of a private institution to which the affairs of the said institution are entrusted, but does not include" a manager. As per Section 2(28) "manager" means.... "in relation to a private educational or special institution, the person nominated to manage the affairs of the institution under sub-section (2) of Section 24".

12. As per Section 24(2) of the Act, the management has to nominate a person to manage the affairs of the institution and the same has to be intimated to the competent authority within thirty days. No doubt Section 24(2) says that the management has to nominate a person to manage the affairs of the institution whether called by the name of Secretary, Correspondent or by any other name. The words "by any other name" have to be understood in the context it was referred to in the Section. Here we may mention that in some institution the person nominated to manage the affairs of the institution may be referred to as secretary and in some he may be referred to as correspondent and in some other institutions he may be called as Secretary and Correspondent. In the instant case

the bye-laws provide that the Secretary has to act as correspondent also. From a careful reading of Section 24(2), one could comprehend that the person nominated by the management to manage the affairs of the institution generally will be Secretary or correspondent or Secretary and Correspondent. At this stage we may also refer to Section 25 of the Act which deals with duties of manager of private institution. According to Section 25, the manager will be responsible for managing and conducting the affairs of the institution in accordance that the provisions of the Act, to maintain such records and accounts of the institution and in such manner as may be prescribed etc. A comparative reading of the duties of the manager as contained u/s 25 of the Act and bye-law 12(b) of the bye-laws, it is clear that the manager as contemplated u/s 25 of the Act, as far as the present case is concerned, can be referable to Secretary and Correspondent and not to any other posts of the Executive Committee. There is no nomenclature as President and Correspondent or Secretary and Correspondent. However, bye-law 12(b) empowers "the Secretary to act as Correspondent and as observed earlier, the secretary elected under the bye-laws can be termed as Secretary and correspondent. Further the bye-laws also do not provide for any post of correspondent. It appears that by practice and as per bye-law 12(b) Secretary is acting as Correspondent. No other bye-law provides any authority for the President or any other office bearer to act as correspondent of the Governing body. The order dated 31-1-1997 of the 1st respondent shows that in the general body meeting held under the leadership of Sri Y. Krishnaiah, he has been shown to have been elected as Hereditary President and Correspondent. The bye-laws do not provide such a nomenclature. The bye-laws only provide for the post of President and it empowers only the Secretary to act as correspondent and not the President. Further, as per the bye-laws the hereditaryship is only restricted to president and as such it cannot be extended to the post of Correspondent also. We are not in agreement with the contention of the learned Senior Advocate Sri M.R.K. Chowdary that the President is not precluded from acting as correspondent because when the bye-laws itself provide that the Secretary alone has to act as correspondent, the very nomination of the president to act as Correspondent by the General body is contrary to the bye-laws and unless there is a provision empowering the President also to act as correspondent, such nomination has no effect at all.

13. The main contention of Mr. Chowdary is that the bye-laws have no overriding effect over the provisions of Section 24(2) of the Act and since Section 24(2) enables any person to be nominated as "manager", the respondents 4 and 5 are entitled to be nominated as correspondents and the learned single Judge, has lost sight of the provisions of the Act. We are unable to comprehend how Section 24(2) of the Act could have any role to play in a matter where the election of a President or Secretary of a society is involved for which the bye-laws alone govern the field. It is not that the bye-laws were framed in exercise of any statutory provision under the Act, 1982 so that it can be argued that the bye-laws cannot override the statutory provisions of the Act. Act, 1982 has nothing to

do with the election of office bearers of the executive committee of the institution. Section 24(2) has only limited role to play in the sense that the management has the bounden duty to nominate a person to manage the affairs of the institution and the same has to be intimated to the competent authority within thirty days thereof. Further subsection (4) of Section 24 clearly says that any manager declared by the competent authority to be unfit to be the manager of the private institution shall be ceased to be the manager and thereafter the management of the institution has to nominate another person as manager in his place. This clearly shows that the competent authority has no role to play in the nomination or appointment of manager of the private institutions. If that is so, Section 24(2) has very limited role to play. If any power is given to the competent authority in the matter of election of executive committee, then it can be said that Section 24 has some role to play in the matter. The various provisions of 1982 Act i.e., Sections 24, 25, 27 and 29 only deals with the appointment and removal of manager, duties of manager, the liability of the manager to repay debts incurred etc., and nothing else. For these reasons, we are of the view that the question overriding effect of the Act over the bye-laws does not and cannot arise. If such an argument is accepted, there would be no sanctity for the formation of an association and to frame its own bye-laws for governance of the institution. The limited impose of the Act is only to see that the affairs of the private institution are properly managed and for that purpose the person nominated by the management of the college or society will be appointed as manager for the purpose of the Act and to discharge the statutory duties conferred upon such manager and he has to manage and conduct the affairs of the institution in accordance with the provisions of the Act and the rules thereunder and he has to comply with the instructions issued from time to time by the competent authority under the Act. The argument of overriding effect would have relevance in cases where a dispute arises with regard to discharging of statutory functions by the manager under the Act and the duties to be performed under the bye-laws. If any such dispute arises and if the manager takes up the plea that he has to act according to the bye-laws and not according to the Act, then the overriding effect will come into play and then it has to be held that the manager has necessarily to act and discharge the statutory obligations according to the provisions of the Act and not as per the bye-laws. Such is not the case here. The matter only relates to election of office bearers of a society and in that context the argument of overriding effect has no role to play. As already explained, the limited role of Section 24(2) of the Act is only to see that a person is nominated to manage the affairs of the institution for the discharge of the statutory duties under the Act.

14. The first respondent without adverting to the bye-laws 7, 9, 10, 11 and 12(b) and understanding the real meaning of sub-section 24(2) of the Act passed the orders permitting the respondents to act as correspondents. Respondents 4 and 5 who are the hereditary presidents want one of them to act as president and the other as Secretary by rotation so that both the posts are exclusively in their

hands at all times contrary to the bye-laws. The bye-laws do not permit the president to act as correspondent and such a power is given only to the Secretary.

15. Having given our careful consideration to the contentions raised and the provisions of the Act and the bye-laws of the institution, we are of the view that the finding given by the learned single Judge is quite correct and no illegality has been committed so that interference is warranted by us in these appeals. Both the appeals are therefore dismissed. Appellants to pay costs of Rs.2,000/- (Rupees two thousand) in each of the cases to the writ petitioner.