

(1991) 09 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petitions No's. 11719 and 11730 of 1991

Y. Srinivas and others

APPELLANT

Vs

Osmania University and others

RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 20
Constitution of India, 1950 — Article 226, 32

Citation : AIR 1992 AP 227

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Advocate : D.V. Sitharam Murthy, for the Appellant; H.S. Gururaja Rao and S.C., for the Respondent

Judgement

1. These two writ petitions give rise to a common question and therefore are disposed of by this common order.
2. In these two writ petitions, the petitioners-students who were trained in the 3rd respondent-minority institutes, seek for issue of a mandamus directing the Osmania University to permit them to appear for the B.Ed, Examinations for the academic year 1990-91.
3. The facts alleged in both the writ petitions are almost similar with the basic difference that the minority institutes in W.P. No. 11719/91 is of Christians while in the other writ petition it is of Muslims. The petitioners in both the writ petitions had their admissions into the B.Ed. Course pursuant to an understanding given by the institute that the Inspection Committee of the Osmania University had a visit during the 3rd week of August, 1989 to their institutes and submitted a feasibility report to the University recommending grant of necessary affiliation. Subsequent thereto also, number of letters were addressed by the institutes to the University authorities for grant of affiliation apprising them of the admission of the petitioners commencement of the training etc. However, the fact remains that so far no affiliation has been accorded by the

University. In as much as the petitioners have completed their course in the institutes, they have come up with these writ petitions seeking mandamus to the University as stated supra.

4. The learned counsel for the University, Sri H.S. Gururaja Rao, took notice and in response to a direction of this court to find out whether the petitioners could be accommodated in other affiliated colleges for being permitted to take their examinations, he submitted that it was not so possible.

5. Now, advertent to the merits of the writ petitions for their admission it is crucial to notice that nowhere in the affidavits, except stating that such correspondence was made with the University for purposes of affiliation, there is (no ?) a reference either to the making of an application to or obtaining of permission u/s 20 of the A. P. Education Act, 1982 from the Government for purposes of establishing the institutions. Even the learned counsel for the petitioners has not stated during the course of his submissions that any such permission was obtained from the Government. It, therefore, follows that there is neither affiliation accorded by the University nor permission granted under Section 20 of the A. P. Education Act, 1982 by the Government to these two institutions.

6. The important question, thus, arises in these two writ petitions, is, whether the petitioner-student's who took their training in institutions, which have neither affiliation nor permission u/s 20 of the A. P. Education Act, 1982, can successfully seek a direction from this court to the University to permit them to appear for the examination.

7. The Supreme Court in *N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another*, had the occasion to consider the case of an institution established without permission u/s 20 of the A. P. Education Act, 1982. Dealing with it, the Supreme Court held that students who have undergone training in private teacher training institutes established without permission cannot be permitted to appear at the examinations. The Supreme Court further cautioned:

"...If by a fiat of the court the Government is directed to permit them to appear at the examination court will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the court either under Art. 32 of the Constitution or Art. 226 should be frittered away for such a purpose."

8. There is yet another decision of the Supreme Court in *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, on the question on hand. In the State of Tamil Nadu certain unrecognised institutions admitted students to the Diploma Course in Teachers Training and sought for mandamus from the High Court directing the Government to accord them recognition. A Full Bench of that court having considered the question, whether the students of unrecognised educational institutions can be permitted to write the public examinations held by the Government, in the negative; yet on the so called

humanitarian grounds directed the Govt. to hold supplementary examinations for enabling the concerned students to appear at the examination. Following this decision of the Full Bench, another Division Bench of the same court issued a similar direction and that was assailed before the Supreme Court. The Supreme Court in paragraph-6 of its decision held "since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the rule of law." So holding the Supreme Court set aside the order under appeal made by the Division Bench. The Supreme Court also had adverted to the freedom of the minorities based on religion to establish educational institutions and held that minority institutions seeking recognition from the State have to comply with the prescribed conditions for granting recognition and conditions prescribed in that regard are necessary to be followed to ensure of efficiency and educational standard in minority institutions.

9. No doubt, Mr. Sitharama Murthy, the learned counsel for the petitioners invited my attention to a Division Bench decision of this court in *P. Venkateswara Rao and others Vs. Osmania University, Hyderabad and others*, , directing the Osmania University to permit the petitioners therein to appear for the examinations. But neither of the two decisions of the Supreme Court in *Nageswaramma's case* and *St. Joseph Teachers Training Institute* referred to (*supra*) have been brought to the notice of the Division Bench. Therefore, that decision of the Division Bench is of no help to the petitioners.

10. The other decision of the Supreme Court in *A.E.K. Society v. Director of School Education* (4) AIR 1989 SC 183 cited by Mr. Sitharama Murthy is one where one Chief Minister that lasted one month as such in this State accorded permission to the institute whereas the successor in office cancelled the same. Deciding the writ petition assailing the cancellation, this court opined that cancellation was as arbitrary as according permission and as a measure of *via media*, issued directions for grant of permission subject to compliance of certain conditions. In as much as the said conditions were not complied with, the Director issued an order declaring cessation of the institution. This declaration was again assailed in another writ petition and it is against orders of its dismissal, the matter was carried to the Supreme Court in appeal. Pending appeal, the Supreme Court issued interim orders favourable to the students and institute. It is in this background of facts, viz. according of permission by one of the Chief Ministers and the issue of interim orders, the Supreme Court issued directions to permit the students to appear for the examination. The facts involved therein are, thus, amply distinguishable.

11. The decision of a Division Bench of this court in *The Government of Andhra Pradesh and Another Vs. St. Anthony's Educational Society and Another*, is one wherein the conditions for grant of permission u/s 20 of the A. P. Education Act,

1982 as regards their compliance viz. before or after making of application u/s 20, is dealt with and that has no relevance to the issue on hand. That decision, therefore, is of no assistance to the petitioners.

12. Following the two decisions of the Supreme Court in Nageswaramma's case (1) (supra) and St. Joseph Teachers Training Institute case (2) (supra) I find no merit in these two writ petitions.

13. Before parting with this, I may point out that under S. 20-A of the Education Act there is a specific prohibition against individuals to establish private institutions and as such so u/s 20(4) any person who established the institution in contravention of the provisions of that section shall be liable for punishment in addition to an order of closure of the institution. The Secretary to the Government, Education Department, may have notice of the above provisions, more in the interests of the students community. However, it is open to the authorities to consider the case of the petitioners in case they complying with all the requirements under the Andhra Pradesh Education Act.

14. In the result; both the writ petitions are dismissed.

15. These writ petitions having been posted on for being mentioned on 19-9-1991 on the request made by the counsel for the petitioners, this court in pursuing the order of the court dated 18-9-1991 and upon hearing the arguments of the learned counsel on both sides made the following

Further Order

16. On a request made in the morning by the learned counsel, Sri D. V. Seetharama Murthy, this case is taken up in this afternoon for being mentioned. Learned counsel for both sides were heard.

17. In the circumstances submitted, if the petitioners and the 3rd respondent make any representation to the Government and the University the same may be considered according to law as indicated in the judgment.

Order accordingly.