
(2013) 06 KAR CK 0120

In the Karnataka High Court

Case No : Writ Petition No. 23317 of 2013 (EDN-REG-P)

Yashodamma Educational Trust

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Education Act, 1983 — Section 130

Citation : (2013) 06 KAR CK 0120

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : M.P. Srikanth, for the Appellant; R.B. Sathyanarayana Singh, HCGP, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—The petitioner has called into question the memorandum, dated 30.4.2013 (Annexure-V) passed by the fourth respondent turning down the petitioner's request for the grant of permission to the petitioner to start the primary school. Sri M.P. Srikanth, the learned counsel for the petitioner submits that the petitioner has been running the Lower Kinder Garten (LKG) and Upper Kinder Garten (UKG). He submits that as of now there are 32 students in LKG and 48 students in UKG. The petitioner has created the requisite infrastructure for running the primary school. He submits that the petitioner is not seeking any grant-in-aid from the Government.

2. Refusing to grant the permission only on the ground that the existing Government primary school would be affected, if a private school comes into existence, would entail in the monopolistic consequences. To stress that the private schools and the Government schools cannot be treated as rivals, he read out para 13 of this Court's decision in the case of Bidirambika Vidya Samsthe Vs. The Under Secretary, Department of Education (Primary and Higher Education) and Others, It reads as follows:

13. It is also observed that when the primary duty is cast on the State Government to provide educational facilities for the children and the youth, any

improvement or extension of such facilities cannot be found fault with. The State Government, on account of several constraints, has been depending upon private initiative for educational institutions to be commenced and continued so as to meet the ever increasing demand. If the State Government had the resources to cater to the needs of the citizens, it would not have been so necessary for the private institutions to have ventured into the field of education. Hence, in this context, the petitioner being a private educational institution cannot, in my view, challenge the commencement of an educational institution in the locality or the upgradation of the existing High School into a Pre-University College. Moreover, there cannot be rival claims between the State Government institutions and the private educational institutions as their object and purpose is one and the same viz., to cater to the educational demands of the citizens. Yet, they fall in different categories and any initiative/steps taken by the State Government for meeting the demands of education cannot have any adverse repercussion on a private educational institution and the petitioner cannot contend that there has been an arbitrary action or discrimination in the matter of upgradation of the existing High School into a Pre-University College. Hence, I find no merit in the writ petition.

3. The learned counsel submits that the impugned memorandum is based on the report submitted by the fifth respondent Block Education Officer ("BEO" for short). It is his grievance that a copy of the report was not made over to the petitioner. Thus, the petitioner was denied of the opportunity to dispute the veracity and authenticity of the information contained in the fifth respondent "BEO"s report. He would complain of the violation of principles of natural justice.

4. Sri R.B. Sathyanarayana Singh, the learned High Court Government Pleader appearing for the respondents has raised a threshold objection to the maintainability of this petition. He submits that the impugned memorandum is appealable before the respondent No. 3 invoking Section 130 of the Karnataka Education Act, 1983. He submits that the impugned memorandum is passed for just and tenable reasons. He submits that the location of the proposed school is within the radius of 50 meters from the existing Government school. He submits that for the academic year 2012-13, only 8 students are enrolled in the Government school. If one more school is permitted in the same locality, it would have the effect of reducing the enrollment of the students in the Government school further. He submits that the area in question is not thickly inhabited. He submits that the location chosen for starting a new school has to be atleast 1 kilometer away from the existing school, as per the circular, dated 4.1.2012.

5. The submissions of the learned advocates have received my thoughtful consideration. My perusal of the impugned memorandum reveals that the fourth respondent has not taken into account all the relevant factors into consideration. When the petitioner claims that 22 students were in UKG in the academic year 2012-13, the respondent No. 4 ought to have found out as to which school the said 22 students passing out of UKG have taken the admissions. Merely because

the location of the proposed school is within 50 meters" radius from the existing Government school, the permission cannot be refused. The survey for the purpose of ascertaining how many children are there in the age group between 6 and 11 in Hariharapura Village, how many schools are there in Hariharapura and other surrounding villages, what is the catchment area for the school/s in Hariharapura, whether the schools in Hariharapura can cater to the requirements of the children from other neighbouring villages, etc. have to weigh with the decision-maker.

6. Merely because the circular, dated 4.1.2012 specifies that the location of the proposed school has to be beyond the radius of 1 kilometer from the Government school, the permission cannot be refused. The circular certainly has the guidance value; the stipulation therein are like the guidelines. But mechanically applying the same and rejecting the permission does not subserve any useful purpose. The private and Government schools are co-equal partners in the educational sphere. If the two can peacefully co-exist, there is no reason why the permission should be refused. The existence of more than one school in a village may also ensure healthy competition and the imparting of quality education.

7. Even when the respondent No. 4 has not taken into pragmatic consideration the relevant factors, I am not inclined to direct the respondents to give the permission to the petitioner institution. In the academic or educational matters, the courts interference is with circumspection. I am also not inclined to quash the impugned memorandum and remand the matter to the original authority in view of the availability of the statutory remedy of filing the appeal.

8. The ends of justice would be met by my disposing of this petition with the liberty to the petitioner to file the appeal before the respondent No. 3. If the petitioner files the appeal before the respondent No. 3 within three days from today, the same shall be disposed of by the respondent No. 3 in accordance with law and as expeditiously as possible and in any case within an outer limit of 12 days from the date of its filing. The third respondent's consideration of the anticipated appeal shall be in the letter and spirit of this order. No order as to costs.