

(2001) 09 AP CK 0013

Andhra Pradesh High Court

Case No: Writ Petition No. 3803 of 1995

Sri Veerabrahmendra Junior
College Committee and Others

APPELLANT

Vs

The Hon"ble Minister for Higher
Education, Govt. of Andhra
Pradesh, Secretariat and Others

RESPONDENT

Date of Decision: Sept. 28, 2001

Acts Referred:

- Andhra Pradesh Education Act, 1982 - Section 2, 2(12), 24, 24(2), 24(3)

Citation: (2001) 3 APLJ 137

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: D. Sudharsana Reddy, for the Appellant; Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G. Rohini, J.

This writ petition is filed aggrieved by the proceedings of the Director of Intermediate Education-second respondent herein, dated 7.2.1995 under which the 3rd respondent was permitted to act as Correspondent of Sri Veerabrahmendra Junior College, Brahmamgari muttam, Cuddapah district. The petitioners, who are six in number, claim that they are founder members of Sri Veerabrahmendra Junior College committee, which was registered on 17.4.1980.

2. The case of the petitioners is that in pursuance of the permission granted by the government vide G.O.Ms. No. 608 dated 14.8.1980 Sri Veerabrahmendra Junior College committee started a Junior College at Brahmamgari muttam, Cuddapah district in the year 1980. The said College was also admitted to Grant-in-aid with effect from 16.4.1990 vide G.O.Ms. No. 82 dated 20.3.1992. The petitioners further stated that the third respondent was appointed as Secretary and correspondent of

the said College. However, subsequently he indulged in several irregularities in managing the affairs of the college by playing fraud and also indulged in misappropriation of College funds by styling his wife as Treasurer of the College. In the circumstances, the managing committee in its meeting held on 7.6.1993 resolved to remove the 3rd respondent as Correspondent and appointed one L. Muni Reddy in his place as Correspondent. Immediately on 16.7.1993 the President of the Committee forwarded a copy of the said resolution to the Director of Intermediate Education, the 2nd respondent herein seeking necessary approval. In pursuance thereof, the 2nd respondent vide proceedings dated 31.7.1993 authorised the Regional Joint Director of Higher Education, Cuddapah to pay salaries to the staff of Sri Veerabrahmendra Junior college, Brahmamgari Mattam based on the approved fly leaves with the signatures of the Principal of the college until further orders. That apart, the 2nd respondent also directed the Regional Joint Director of Higher Education to visit the college and to enquire into the matter and to submit the remarks thereon immediately. In pursuance thereof, the Regional Joint Director of Higher Education visited the College on 17.8.1993 and conducted enquiry and submitted a report to the 2nd respondent. On the basis of the said report, the 2nd respondent vide proceedings dated 19.10.1993 instructed the 3rd respondent to submit the accounts, but he failed to do so. In the circumstances, while constituting the selection committee for the purpose of selection of certain posts of Junior Lecturers in the college, the 3rd respondent was not included in the selection committee. Aggrieved by the same, the 3rd respondent filed Writ Petition No. 9279 of 1994 without making the petitioners herein, as parties to the said writ petition. Though initially on 17.5.1994 interim orders were granted not to publish the results of selections, subsequently on a petition to vacate moved by the petitioners herein, the said interim stay was vacated by this Court by order dated 22.7.1994. While the matters stood thus and while disciplinary enquiry against the 3rd respondent was pending, the 2nd respondent issued proceedings in Rc. No. 1778/JC8-1/94 dated 7.2.1995 permitting the 3rd respondent to act as Correspondent of Sri Veerabrahmendra Junior College, Brahmamgari muttam, Cuddapah district with immediate effect. From the contents of the said proceedings, it is found that the 3rd respondent approached the Minister for Higher Education by a letter dated 30.12.1994 and on the basis of the said letter the Minister for Higher Education issued certain directions to the 2nd respondent and accordingly, the 3rd respondent issued the proceedings dated 7.2.1995 permitting the 3rd respondent to act as Correspondent of the College. In the circumstances, the petitioners filed the present writ petition challenging the said proceedings of the 2nd respondent dated 7.2.1995. The petitioners alleged that the Minister for Higher Education at the instance of the local political leaders belonging to the party in power directed the 2nd respondent to permit the 3rd respondent to act as Correspondent of the college and the action of the 2nd respondent in issuing the impugned proceedings solely on the basis of the said directions of the 1st respondent without application of mind to the allegations against the 3rd respondent and the disciplinary enquiry

contemplated against him is arbitrary and illegal.

3. For proper appreciation of the aforesaid contentions raised by both the parties, it is necessary to examine the relevant provisions under the A.P. Education Act, 1982.

4. Chapter-VI of the A.P. Education Act, 1982 deals with Establishment of Educational Institutions, the Administration and Control. Section 24 of the said Act specifically provides for appointment and removal of manager of a private institution. Sub-sections (3) and (4) of Section 24 which are relevant for determination of the issues raised in the case on hand are as follows:

"(3) (a) Where the competent authority is satisfied that the management is responsible for the lapses or irregularities of the institution, the competent authority may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing, suspend the management and appoint a special officer till the reconstitution of the management."

Provided that in relation to a private institution, under the management of a charitable or religious institution, charitable or religious endowment and a Wakf, the competent authority shall be the Government or an authority or officer authorised by the Government in this behalf;

.....

(b) Where the competent authority is satisfied that the manager alone is responsible for the lapses or irregularities of the institution, action shall be taken against him by the management, as recommended by the competent authority.

(4) The competent authority may, for reasons to be recorded in writing, declare a person to be unfit to be the manager of a private institution after giving to such person an opportunity of making his representation against such declaration and under intimation to the management and on such declaration, the person aforesaid shall cease to be the manager of the private institution and the management of such institution shall nominate another person as a manager in his place in accordance with the provisions of sub-section (2):

....."

5. As can be seen from Clause (b) of Sub-section (3) of Section 24, the power to recommend taking action against the manager is conferred on the competent authority on its satisfaction that the manager alone is responsible for the lapses or irregularities of the institution. Sub-section (4) of Section 24 further empowers the competent authority to declare a person to be unfit to be the manager of a private institution after giving to such person an opportunity of making his representation against such declaration and under intimation to the management.

6. "Competent Authority" has been defined under Sub-section (12) of Section 2 of the Act "as any person, officer or authority authorised by the Government by

notification to perform the functions of the competent authority for such area or for such purpose as may be specified in the notification."

7. In exercise of the powers so conferred by Clause 12 of Section 2 of the A.P. Education Act, G.O.Ms. No. 74, Education (Rules) dated 237.2.1989 has been issued authorizing certain officers to perform the functions of the competent authority u/s 24 of the Act throughout the State in respect of education institutions as detailed there under. As per the said notification so far as Junior colleges are concerned, the Director of Intermediate Education is the competent authority to perform the functions u/s 24 of the Act throughout the State.

8. Thus it is clear that the Director of Intermediate Education, who is the 2nd respondent in the writ petition alone is competent to exercise the powers u/s 24 (3) or (4) of the A.P. Education Act to take action against the manager of a private institution on being satisfied that the manager alone is responsible for the lapses or irregularities of the institution.

9. In the instant case it is noticed that the Managing Committee passed a resolution on 7.6.1993 to remove the 3rd respondent as Correspondent and forwarded the said resolution to the Director of Intermediate Education seeking necessary approval. In pursuance thereof, the 2nd respondent while initiating necessary enquiry against the 3rd respondent as an interim measure authorised the Regional Director of Higher Education by proceedings dated 31.7.1993 to pay salaries to the staff with the approved fly leaves with the signature of the Principal of the College until further orders. It is admitted by both the parties that the said orders were not challenged by the 3rd respondent and the said proceedings were already implemented. It is also on record that the enquiry initiated against the 3rd respondent into the lapses and irregularities alleged against him in managing the institution had already been initiated and the same is in progress. While so, the Director of Intermediate Education issued impugned proceedings dated 7.2.1995 permitting the 3rd respondent to act as Correspondent of the College with immediate effect. On a plain reading of the impugned proceedings dated 7.2.1995 it is apparent that the said order was issued on the directions of the Minister for Higher Education.

10. The main contention of the writ petitioner is that the impugned proceedings issued by the 2nd respondent at the instance of the Minister for Higher Education are arbitrary and illegal and cannot be sustained. The Minister for Higher Education was made respondent No. 1 to the writ petition. In the circumstances for proper appreciation of the allegations made by the petitioner, I directed the learned Government Pleader to produce entire connected record, and accordingly, the record has been placed before me.

11. On a perusal of the record, it is found that the 3rd respondent made an undated representation to the Minister for Higher Education alleging that some of the staff

members of the College in collusion with the sitting MLA approached the Director of Intermediate Education and obtained orders authorizing the Regional Joint Director of Higher Education, Cuddapah to pay salaries to the staff with the signature of the Principal instead of the signatures of the 3rd respondent as Correspondent of the College and requesting the Minister for Higher Education to issue necessary directions to the concerned officers to pay salaries to the staff of the College with his signature since he is the Founder Secretary and Correspondent of the college. It is found that on the said representation the Minister for Higher Education made an endorsement dated 30.12.1994 directing the Director of Intermediate Education to examine the matter and with a further direction to issue orders restoring the power to the 3rd respondent to sign salary bills. It is also found from the record that the Minister for Higher Education addressed letter dated 19.1.1995 to the Director of Intermediate Education directing him to restore the powers to draw and pay salaries etc., through the Founder Correspondent, 3rd respondent herein, and to submit a detailed report.

12. As can be seen from Sub-sections (3) and (4) of Section 24 of the A.P. Education Act, read with Section 2 (12) and G.O.Ms. No. 74 dated 27.2.1989, the Director of Intermediate Education is the competent authority to exercise the powers conferred there under to take action against the manager of a private institution where he is satisfied that the manager alone is responsible for the lapses or irregularities of the institution. In the present case, in pursuance of the resolution passed by the managing committee and on the basis of the complaints received the competent authority i.e., 2nd respondent had already initiated enquiry against the 3rd respondent in exercise of the powers conferred u/s 24. He also passed orders dated 31.7.1993, in pursuance of which the 3rd respondent is not permitted to sign salary bills of the College staff. That being so and while the enquiry against the 3rd respondent is still pending, I see no reason for the 2nd respondent to issue the impugned proceedings permitting the 3rd respondent as Correspondent without assigning any reasons therefor. It is also pertinent to note that in the Writ petition No. 9279 of 1994 filed by the 3rd respondent herein, a detailed counter-affidavit has been filed on behalf of the Director of Intermediate Education categorically stating that the 3rd respondent is not being continued as Correspondent of the College and that the allegations against him are proved in the enquiry conducted by the Regional Joint director of Higher Education. I am not able to accept the contention of the learned Government Pleader that since the enquiry is not concluded it cannot be said that the 3rd respondent is not continuing as Correspondent. In the circumstances, I am of the opinion that the impugned order, which was issued without any reference to the enquiry pending against the 3rd respondent, cannot be justified.

13. Further from a plain reading of the impugned proceedings as well as on a perusal of the record, I find force in the contention of the learned counsel for the petitioner that the impugned proceedings were issued merely at the instance of the

Minister for Higher Education.

14. It is therefore necessary to consider whether the impugned order, which was found to be issued at the instance of the Minister for Higher Education, is sustainable. From the wording under Sub-sections (3) and (4) of Section 24 of the Act, it is clear that the competent authority is vested with discretionary power, which has to be exercised on being satisfied that the manager alone is responsible for the lapses or irregularities of the institution.

15. The discretionary power has to be exercised by the same authority to whom the said discretion is conferred by the statute. The authority to whom such discretion has been entrusted must himself exercise the said discretionary power after considering the facts and circumstances of the case before he comes to his own decision thereon. The very concept of discretion involves a right to choose the courses of action available in a given situation. When a discretionary power is conferred on an authority under a statute, the exercise of such power requires a measure of personal judgment of the very same authority as to the course of action preferable. The authority has to apply his own mind to the relevant material and arrive at a conclusion while discharging the power vested on him, but cannot act in obedience to the directions of an extraneous body or even a superior authority. If the authority on whom the discretion is conferred under a statute divests himself of the power vested in him and acts under the dictation of some other authority or extraneous body, it would amount to failure to exercise the discretionary power conferred on him and the decision taken by him would be invalid.

16. In this regard, it is relevant to refer to the following decisions where the apex Court emphasized that the authority on whom the discretionary power is conferred cannot permit its decision to be influenced by the dictation of others.

17. In State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, the Supreme Court held:

It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires"". Such interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority.

18. In Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, the Supreme Court held:

"The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the central Vigilance Commission or of the central Government. No third party like the central Vigilance Commission or the Central government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith"s Judicial Review of Administrative Action, 4th edn., p. 309. The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."

19. In The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others , the Supreme Court held.

"...It is clear from the documents before us that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the 5th respondent. In pursuance of that direction, the Cane Commissioner prepared two lists "Ka" and "Kha". Under the orders of the Chief Minister, the villages contained in list "ka" were allotted to the appellant and in list "Kha" to the 5th respondent. The Cane Commissioner merely carried out the orders of the Chief Minister. It is true that the impugned orders were issued in the name of the Cane Commissioner. He merely obeyed the directions issued to him by the Chief Minister. We are unable to agree with the contention of Shri Chagla that though the Cane Commissioner was initially of the view that the reservation made in favour of the appellant should not be disturbed, he changed his opinion after discussion with the Chief Minister. From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under cl. 6 (1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone - not even in favour of the State government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by cl. (6) read with cl. (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior."

20. In the light of the aforesaid principles laid down by the Supreme Court, it must be held that the 2nd respondent had failed to exercise the discretion conferred on him u/s 24 of the A.P. Education Act, and as such, the impugned order issued at the instance of the 1st respondent is liable to be declared as invalid.

21. However, the learned Government Pleader contended that the directions issued by the Minister for Higher Education can be traced to the power of the Government u/s 92 of the A.P. Education Act, and therefore, the impugned order issued by the 2nd respondent cannot be said to be vitiated on the ground of failure to exercise the discretionary power conferred u/s 24 of the A.P. Education Act.

22. Section 92 of the A.P. Education Act relied upon by the learned Government Pleader reads as follows.

"Section 92. Powers of Government to give directions:- (1) The Government may, subject to other provisions of this Act, by order, direct the Director or any other officer not below the rank of a District Educational Officer, to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order; and the Director or the other officer, as the case may be, shall report to the government in due course the result of the enquiry made or the proceeding taken by him.

(2) The government may give directions to any education institution or tutorial institution as to the giving effect to any of the provisions contained in this Act or of any rules or orders made thereunder and the manager or owner, as the case may be, of such institution shall comply with every such direction."

23. It can be seen that Section 92 of the A.P. Education Act empowers the Government to direct the Director or any other officer not below the rank of a District Educational Officer to make enquiry or to take appropriate proceedings in respect of any matter as specified in his order. However, it is relevant to note that Section 92 itself provides that the said power can be exercised by the Government subject to other provisions of the Act. As can be seen from Section 24 of the Act, a detailed procedure has been prescribed for taking action against the manager of a private institution by the competent authority. Further, u/s 92 of the Act the power conferred on the Government to give directions is confined only to direct enquiry or to take appropriate proceedings. In my opinion the power conferred u/s 92 of the Act cannot be extended to issue positive directions with regard to a matter which is the subject matter of enquiry by the competent authority and virtually setting aside the order issued by the competent authority, pending enquiry u/s 24 of the Act. The 2nd respondent having initiated the enquiry against the 3rd respondent in exercise of power u/s 24 of the Act and having passed order dated 31.7.1993 withdrawing the power of the 3rd respondent to sign salary bills, without reference to any one of the aforesaid proceedings and without assigning any reasons issued the impugned order permitting the 3rd respondent to act as Correspondent. As expressed above,

the impugned orders were issued by the 2nd respondent only in obedience to the directions given by the 1st respondent without application of his mind to the material on record with regard to the enquiry pending against the 3rd respondent. Therefore, I am unable to agree with the contention of the learned Government Pleader that the directions issued by the 1st respondent, in pursuance of which the impugned proceedings were issued, can be traced to the power conferred u/s 92 of the A.P. Education Act.

24. For the aforesaid reasons, the impugned order is liable to be declared as invalid on the ground of failure to exercise the discretionary power conferred on the 2nd respondent u/s 24 of the A.P. Education Act. The writ petition is accordingly allowed and the impugned proceedings are set aside. There shall be no order as to costs.

25. It is found from the record that by virtue of the interim orders granted by this Court, the impugned proceedings have been suspended, pending the writ petition. It is also brought to my notice by the learned Government Pleader that the enquiry initiated against the 3rd respondent is still pending. Therefore, it is made clear that it is open to the 2nd respondent to proceed with the enquiry pending against the 3rd respondent. However, in view of the fact that the enquiry is pending from the year 1993, the 2nd respondent is directed to complete the enquiry expeditiously, preferably within two months from the date of receipt of a copy of this order.