
Gayathri Degree College Vs Government of Andhra Pradesh and Others

Writ Petition No. 19016 of 2012

Court: Andhra Pradesh High Court

Date of Decision: Sept. 3, 2012

Acts Referred:

Andhra Pradesh Education Act, 1982 " Section 100, 2(31), 20, 20(1), 21

Citation: (2013) 3 ALD 129 : (2013) 3 ALT 759

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: M. Ravindranath Reddy, for the Appellant; C. Sudesh Anand for Respondent No. 2, Deepak Bhattacharjee for Respondent No. 3 and E. Manohar for M. Ramamohan Reddy for Respondent Nos. 4 and 5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

At the interlocutory stage, the writ petition is taken up for hearing and disposal with the consent of the learned

Counsel for the parties. This writ petition is filed for a mandamus to declare the action of respondent No. 1 in issuing G.O. Rt. No. 336, Higher

Education (C.E.II.2) Department, dated 16.6.2012, as illegal and arbitrary.

2. The petitioner is an existing Degree College at Yellareddypet Mandal, Karimnagar District. Respondent No. 2 issued notification, dated

15.4.2011, inviting applications for establishment of new Degree Colleges in Karimnagar District for the year 2011-2012. Even though

Yellareddypet Mandal was not notified, respondent No. 4 has made its application for establishment of a Degree College for the said Mandal. By

order, dated 13.6.2011, respondent No. 2 rejected the application of respondent No. 4. Questioning the said rejection order, respondent No. 4

filed WP No. 21122 of 2011. Though the petitioner was not made a party to the said writ petition, it filed an application for its impleadment and

also a counter-affidavit. The plea on which the said writ petition was filed by respondent No. 4 was that even though there is need for

establishment of another Degree College in Yellareddypet Mandal, respondent No. 2 did not notify the said Mandal.

3. Respondent No. 2 filed a counter-affidavit in the said writ petition, wherein it has specifically pleaded that as per the survey conducted by it in

the month of December, 2010, it was satisfied that there was no need for establishment of a Degree College in Yellareddypet Mandal, Karimnagar

District and that therefore, based on the said survey report conducted u/s 21 of the Andhra Pradesh Education Act, 1982 (for short "the Act") and

Rule 4(2) of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education)

Rules, 1987 (for short "the Rules"), respondent No. 2 did not include Yellareddypet Mandal in its notification, dated 15.4.2011, for establishment

of new Private Unaided Degree Colleges. On that premise, respondent No. 2 has opposed the writ petition filed by respondent No. 4. The

petitioner also raised a similar plea of absence of need in its counter-affidavit

4. The said writ petition was dismissed by this Court by order, dated 28.2.2012, wherein it has accepted the plea of respondent No. 2 that there

was no need and has accordingly justified non-inclusion of Yellareddypet Mandal in the notification issued by respondent No. 2. This order has

attained finality.

5. For the academic year 2012-2013, respondent No. 4 has issued notification, dated 29.12.2011, in which Yellareddypet Mandal was once

again not included. Respondent No. 4 has once again made an application for establishment of a Degree College in Yellareddypet Mandal. The

petitioner has pleaded that as per the information given by respondent No. 2 vide letter, dated 4.5.2012, the said application of respondent No. 4

was rejected. This assertion is not denied by any of the respondents.

6. Having failed in its attempt to establish a Degree College in Yellareddypet Mandal, respondent No. 4 appeared to have invented an indirect

method of running a Degree College in Yellareddypet Mandal by taking over the Degree College run by respondent No. 5 at Raikal Mandal.

Respondent No. 4 has approached respondent No. 1 with an application for permission to shift the Degree College from Raikal Mandal to

Yellareddypet Mandal. On coming to know about this, the petitioner has submitted its objections on 21.3.2012 to respondent No. 1. However,

by the impugned G.O., respondent No. 1 has permitted respondent No. 4 to shift the college from Raikal Mandal to Yellareddypet Mandal

purporting to relax the provisions of sub-rule (3) of Rule 14 of the Rules. Feeling aggrieved by this, the petitioner filed this writ petition.

7. I have heard Sri M. Ravindranath Reddy, learned Counsel for the petitioner, the learned Assistant Government Pleader for Higher Education

representing respondent No. 1; Sri C. Sudesh Anand, learned Standing Counsel representing respondent No. 2; Sri Deepak Bhattacharjee,

learned Counsel representing respondent No. 3 and Sri E. Manohar, learned Senior Counsel appearing for respondent No. 4.

8. The learned Counsel for the petitioner submitted that the impugned order is liable to be set aside for the following reasons, namely, (1) that

having failed to obtain permission to establish a Degree College at Yellareddypet Mandal, respondent No. 4 has approached respondent No. 1 for

shifting of the Degree College at Raikal Mandal, that the permission granted by respondent No. 1 for shifting the said college to Yellareddypet

Mandal despite absence of need is in violation of provisions of Section 21 of the Act and the Rules made thereunder and that therefore, the

impugned order is patently arbitrary; (2) that Rule 14(3) of the Rules completely prohibits shifting of a college from one locality to another and that

the exemption granted by respondent No. 1 for the said rule is not supported by reasons which are mandatory u/s 100 of the Act and (3) that u/s

100 of the Act, an order of exemption can be made only by notification and u/s 2(31), a notification is the one published in A.P. Gazette and

admittedly, no such publication has been made.

9. Opposing the above submissions, Sri E. Manohar, learned Senior Counsel appearing for respondent No. 4, submitted that the equitable

jurisdiction of this Court cannot be exercised in favour of the petitioner, who is not an aggrieved party; that every infraction of a statute need not be

corrected at the instance of a person who is not an aggrieved party and that though Section 100 of the Act mandates that exemption shall be

granted only by notification and for reasons to be specified therein, as the petitioner is aware of issuance of grant of exemption and has challenged

the same in this Court, the impugned G.O., cannot be invalidated on the ground of procedural violation. The learned Senior Counsel has placed

reliance on the details relating to the number of pass outs during the year 2011-2012 in four Junior Colleges in Yellareddypet Mandal and

submitted that as against the total number of 810 seats sanctioned to the four colleges in Yellareddypet Mandal, the petitioner's sanctioned intake

is only 289 and that therefore, many surplus students are available for starting another Degree College at Yellareddypet Mandal.

10. The learned Assistant Government Pleader and the learned Standing Counsel have supported the submissions of the learned Senior Counsel.

11. I have carefully considered the respective submissions of the learned Counsel and perused the record.

12. u/s 20(1) of the Act, the competent authority shall from time to time conduct a survey as to identify the educational needs of the locality under

its jurisdiction and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of

establishing educational institutions. Under sub-section (3) thereof, any educational agency applying for permission, before the permission is

granted shall inter alia satisfy that there is need for providing educational facilities to the people in the locality.

13. Indubitably, Yellareddypet Mandal was not included in the two notifications issued by respondent No. 2 in the years 2011-12 and 2012-13.

Respondent No. 2 has not only included Yellareddypet Mandal in the two notifications, it has vociferously contested the claim of respondent No. 4

in WP No. 21122 of 2011 by pleading that the survey conducted by it in December, 2010 revealed that there was no need for another Degree

College in Yellareddypet Mandal. This Court has accepted the said plea and dismissed the said writ petition. Respondent No. 4 has not carried

the matter further and thereby allowed the order in the writ petition to become final. The fact that respondent No. 2 has not included Yellareddypet

Mandal in 2012-2013 notification also further indicates that even for that year, it was convinced that there was no need for a new Degree College

in Yellareddypet Mandal.

14. Having failed in its attempt to establish a new college, respondent No. 4 has invented a new method by achieving indirectly what it failed to

achieve directly by approaching respondent No. 1 with an application to permit shifting of existing Degree College at Raikal Mandal to

Yellareddypet Mandal. In this context, it is relevant to refer to sub-rules (3) and (4) of Rule 14 of the Rules which read as under:

Rule 14(3): No institution for which permission to establish has been granted to meet the educational needs of a particular locality shall be

permitted to be shifted to another locality. However, shifting institution from one building to another within the same locality shall be permitted when

the intention is to provide better accommodation of shifting into own building, with the prior permission of the Government. Any unauthorised

shifting of the institution shall render lapse of permission/recognition/affiliation granted to the institution automatically without any further notice or

orders.

Rule 14(4): Educational agency for which permission to establish an institution has been accorded shall not transfer the institution to another

educational agency under any circumstances. In case educational agency which has been permitted to establish institution is unable to manage it, it

may approach the Government to consider its request for taking over of the institution provided it has completed at least 10 years of existence.

15. From the above re-produced Rules, it is clear that shifting of an educational institution from one locality to another locality is strictly prohibited

under sub-rule (3). Under sub-rule (4), transfer of an institution by one educational agency to another agency is also strictly prohibited. Under the

said sub-rule, in case the educational agency which has been permitted to establish an institution is unable to manage it, it can approach the

Government to take over the institution provided it has completed at least 10 years of existence.

16. In the instant case, there is a brazen violation of both the above-mentioned sub-rules. Not only that respondent No. 4 was permitted to shift

the Degree College from Raikal Mandal to Yellareddypet Mandal which without any doubt constitute different localities, respondent No. 1 has

permitted respondent No. 4 to take over the educational institution being run by respondent No. 5-educational agency.

17. No doubt, Section 100 of the Act vests power of exemption in respondent No. 1. But, in the considered opinion of this Court, exercise of

power of exemption cannot be made to frustrate the object of the Act and such power shall be exercised only in exceptional circumstances. As

noted above, Section 20 of the Act prohibits establishment of a new college unless there is need. Where a new college is established in the locality

or an existing college has been shifted to such locality, the end result would be the same. Since the object of Section 20 of the Act is obviously to

prevent unhealthy competition among the educational institutions, the same parameters which are applicable to establishment of a new educational

institution must equally apply to shifting of an institution even if the Government thought fit to exempt an educational institution from the rigor of Rule

14(3) and (4) of the Rules. Surprisingly, respondent No. 1 has sought to justify the permission granted by it for shifting of the college on the ground

that there is need. Respondent No. 2 which is the authority entrusted with the function to assess the need having already stated in no uncertain

terms that there is no need for establishment of a new college in Yellareddypet Mandal, respondent No. 1 cannot take a contrary stand in its

counter-affidavit. Even assuming that respondent No. 1 has satisfied that there was need, it can only instruct respondent No. 2 to assess the need

and come out with a notification for establishment of another new Degree College. Even while forwarding the report to respondent No. 1 on the

application of respondent No. 4, respondent No. 2 has not opined that there is need for establishment of a new Degree College or for shifting of

Degree College from Raikal Mandal to Yellareddypet Mandal.

18. In view of these facts, I am in agreement with the submission of the learned Counsel for the petitioner that the decision of respondent No. 1 in

permitting respondent No. 4 to shift the college from Raikal Mandal to Yellareddypet Mandal is wholly arbitrary.

19. With respect to the submission relating to failure of respondent No. 1 to follow the procedure u/s 100 of the Act, it is instructive to refer to

Section 100 which reads as under:

100. Exemption.--The Government may, by notification and for reasons to be specified therein, exempt any educational institution from the

operation of all or any of the provisions of this Act or the rules made thereunder, subject to such conditions as they may deem fit to impose and

may likewise vary or cancel such exemption.

20. A reading of Section 100 of the Act discloses that the sine qua non for exercising the power of exemption is that respondent No. 1 has to

assign reasons for granting exemption and the same should be notified. u/s 2(31) of the Act, notification means a notification published in A.P.

Gazette and the word "notified" shall be construed accordingly. A perusal of the impugned G.O., shows that the same is bereft of any reasons

whatsoever. It is only in the counter-affidavit of respondent No. 1 that it has sought to justify its G.O., by assigning reasons. As held by the

Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and Mohinder Singh Gill and Another Vs. The Chief Election

Commissioner, New Delhi and Others, a statutory functionary cannot justify its decision by assigning reasons by way of affidavits which are not

contained in the order. Therefore, none of the reasons which are mentioned in the counter-affidavit can be taken into consideration while justifying

the decision of respondent No. 1. Even otherwise, as noted above, its plea that need exists, runs contrary to the stand taken by respondent No. 2

and therefore, the same cannot be countenanced in law.

21. The impugned order also suffers from non-compliance with another equally important requirement, namely, that publication of notification in the

Gazette. Admittedly, the notification has not been published. The submission of the learned Senior Counsel for respondent No. 4 that the petitioner

does not have locus to question the decision of respondent No. 1 can be referred only to be rejected. The petitioner is the existing Degree College

and all through it is objecting to the attempt of respondent No. 4 to establish a new Degree College. It cannot be said that the interests of the

petitioner will not be affected if respondent No. 4 is permitted to establish a Degree College in Yellareddypet Mandal. Therefore, the petitioner has

a right to assail the arbitrary action of respondent No. 1 in permitting respondent No. 4 to shift the college in brazen violation of the statutory

provisions.

22. The further submission of the learned Senior Counsel that since the petitioner is aware of issuance of notification by respondent No. 1 and as

he has already filed the present writ petition, the failure of respondent No. 1 notifying the impugned order in the Gazette will not invalidate the same

also is without any merit. The law is well settled that when an official act is prescribed to be performed in a particular way, such an action should

be performed as prescribed or not at all (Se Gujarat Electricity Board Vs. Girdharlal Motilal and Another, Asst. Collector CE v. NTCO, AIR

1972 SC 2563 and Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others,

23. Section 100 of the Act is couched in mandatory terms. Unless both the requirements of the provision, namely, specifying reasons and

publication of the notification in the Gazette, are satisfied, such decision cannot be sustained in law. As the impugned decision suffers from

noncompliance with both these requirements, the same cannot be allowed to stand.

24. For the above mentioned reasons, the impugned G.O., is quashed. The writ petition is accordingly allowed. As a sequel to disposal of the writ

petition, interlocutory applications, if any pending, shall stand disposed of as infructuous.