

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21238 of 2014

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the proceedings Rc.No.2993/A3/2013-1, dated 21.07.2014, issued by the Regional Joint Director of School Education, Guntur Region, Guntur, Guntur District/third respondent herein and the action of the District Educational Officer, SPSR Nellore District/Fourth respondent herein in sealing the petitioner school as illegal, arbitrary, violative of principles of natural justice and Articles 14, 16 and 19 (1) (g) of the Constitution of India.

2. Briefly stated, the case of the petitioner herein, as per the pleadings available on record, is as under:

2.1. The District Educational Officer, SPSR Nellore District/fourth respondent herein, basing on the report of the Mandal Educational Officer, Naidupet Mandal, Naidupet, SPSR Nellore District/sixth respondent herein accorded permission to the petitioner herein to open classes from I to **VII** from the academic years 2005-06 without aid in the name of Vidthva Kendra English Medium Upper Primary School at Rajagopalapuram, Naidupet, vide proceedings Rc.No.8237-B5/04 dated 26.04.2005 in accordance with Rule 3 of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993 as notified under G.O.Ms.No.1, Education Department (P.S.2) dated 01.01.1994. The fourth respondent/District Educational Officer vide proceedings Dis.No.5922/C4/2007 dated 29.10.2008 granted provisional recognition for classes I to VII (EM). Subsequently, the Regional Joint Director of School Education, Guntur Region,

Guntur District/third respondent herein by virtue of the proceedings L.Dis.No.5007/A5/2009 dated 27.12.2010 accorded permission to the petitioner to open classes from VIII to X (EM) from the academic year 2010-11, consequent upon the reports obtained from the respondents 4 and 5 herein. Vide proceedings dated 07.06.2013, the fourth respondent/District Educational Officer extended temporary recognition for classes I to V (EM) from

2013-14 to 2019-20 and the third respondent herein/Regional Joint Director of School Education extended temporary recognition to classes VI and VII (EM) from 2013-14 to 2019-20 vide proceedings dated 11.11.2011. Vide proceedings dated 11.11.2011, the permission granted earlier on 27.12.2010 to open the classes from VIII to X (EM) was extended up to 2019-2020. As on date, the petitioner school is having 30 teaching and non-teaching staff and with the strength of 470 pupil for all the classes from I to X Class.

- 2.2. Petitioner received a show-cause notice dated 28.03.2014 from the Regional Joint Director of School Education, Guntur Region, Guntur/third respondent herein basing on the representation dated 09.07.2013 made by the residents of Gandivari Thota Street, L.A.Sagaram, Naidupeta and responding to the said notice, petitioner submitted explanation, bringing out all the facts to the notice of the third respondent while stating that the said complaint was made at the behest of the managements of other schools situated in the vicinity and while denying the correctness of the allegations made in the complaint. Subsequently, the third respondent/Regional Joint Director of School Education issued a final show-cause notice dated 24.06.2014, stating that the three men committee inspected the premises on 02.06.2014 and submitted a report, finding out certain violations. On receipt of the said show-cause notice, the petitioner submitted an explanation dated

01.07.2014, denying all the allegations.

2.3. The Deputy Educational Officer, Gudur, SPSR Nellore District/fifth respondent herein and his staff came to the school premises on 24.07.2014 and affixed the order of the third respondent/Regional Joint Director of School Education dated 21.07.2014. In the said order dated 21.07.2014 the third respondent had withdrawn the permission of recognition granted in favour of the petitioner on 27.12.2010 and 11.11.2011 to the Classes VI to X (EM) and also directed the District Educational Officer/fourth respondent herein to take immediate steps to withdraw the permission and recognition of the petitioner in respect of classes I to V and further directed to see that the students are accommodated in the nearby schools and to report compliance.

3. Calling in question, the validity and the legal sustainability of the said order dated 21.07.2014 passed by the Regional Joint Director of School Education, Guntur Region, Guntur District/the third respondent herein, the present writ petition came to be instituted.

4. This Court, on 28.07.2014, granted interim suspension of the proceedings dated 21.07.2014 issued by the third respondent/Regional Joint Director of School Education for a period of two weeks initially, and thereafter, the same was extended for a period of one week on 11.08.2014 and subsequently on 22.08.2014 and thereafter on 12.09.2014, 13.10.2014, 09.12.2014, 29.12.2014, 28.01.2015, 12.02.2015, 27.02.2015, 01.04.2015 and eventually on 30.04.2015 till 15.06.2015.

5. A vacate application vide WVMP.No.2375/2014, seeking vacation of the interim order, supported by a counter affidavit is filed by the respondents 1 to 7 herein, denying the averments and the allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

6. An application vide WPMP.No.28699/2014 supported by the affidavit has also been filed by one Sri Jampala Venkata Subba Rao, seeking permission of this Court to come on record as eighth respondent. The said application is allowed vide separate order.

7. Heard Sri J.Ugra Narasimha, learned counsel for the petitioner and the learned Government Pleader for Education for the respondents 1 to 7 and Sri Madirajau Srinivas Rao for the eighth respondent apart from perusing the material available before the Court.

8. Submissions/contentions of the learned counsel for the petitioner Sri Ugra Narasimha.

8.1. The order impugned passed by the Regional Joint Director of School Education/third respondent herein is highly illegal, arbitrary, null and void, without jurisdiction, violative of the principles of natural justice and violative of Articles 14, 16 and 19 of the Constitution of India.

8.2. The questioned order is contrary to the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993 as notified under G.O.Ms.No.1, Education (P.S.2) dated 01.01.1994.

8.3. The order under challenge suffers from inherent lack of jurisdiction as the Regional Joint Director of School Education/third respondent herein is not competent to issue the impugned order.

8.4. The facts and circumstances of the case do not warrant issuance of the impugned order of cancellation since in and around the subject vicinity there are a number of schools and the school of the petitioner alone is targeted, which is violative of Article 14 of the Constitution of India.

8.5. There is absolutely no justification on the part of the respondent

authorities in picking and choosing the petitioner school alone without taking any steps against the other schools in the locality.

8.6. The impugned action is obviously at the behest of the managements of certain other schools in the locality.

8.7. The eighth respondent herein has absolutely no locus to make any complaints against the petitioner herein as he recently came to the locality and the petitioner school has been in existence for the last so many years.

9. To bolster his contentions and submissions, the learned counsel for the petitioner places reliance on the judgments in the case of ***M.BUCHA REDDY v. BHAGYAMMA AND OTHERS***^[1] and the order of this Court dated 29.08.2012 in W.P.No.26869 of 2012.

10. Submissions/contentions of the learned Government Pleader.

10.1. The order under challenge is strictly inconformity with the Rules and there is absolutely no illegality nor any procedural infirmity in the order passed by the Regional Joint Director of School Education/third respondent herein, which is impugned in the writ petition.

10.2. Since the respondent authorities strictly adhered to the provisions of the relevant rules and the principles of natural justice and as complete opportunity was given to the petitioner herein before passing the impugned order, the present writ petition is not maintainable under Article 226 of the Constitution of India and the petitioner herein is not entitled for any indulgence of this Court by way of judicial review.

10.3. The impugned order was preceded by a show-cause notice and opportunity and a report of the committee, as such, the grievance of the petitioner herein is not amenable for any judicial review under Article 226 of the Constitution of India.

11. Submissions/contentions of the learned counsel for the eighth respondent herein.

11.1. Totally supporting the case of the official respondents, it is vehemently contended by the learned counsel for the eighth respondent that on the complaint made by the eighth respondent the official respondents herein initiated action and only after issuing show cause notice dated 28.03.2014 and after considering the explanation submitted by the petitioner herein and taking into consideration the gravity of the situation in the locality, the third respondent/Regional Joint Director of School Education passed the impugned order, withdrawing the recognition.

11.2. It is further submitted by the learned counsel that in the absence of any procedural irregularities, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be permitted to be invoked by the petitioner herein.

11.3. It is also submitted by the learned counsel that the allegation that the official respondents herein did not adhere to the Andhra Pradesh Education Act and the Rules framed thereunder, is incorrect and contrary to the material available on record. It is also the contention of the learned counsel that since the writ petitioners herein did not adhere to the statutory requirements as stipulated under the Act and the Rules, the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India.

12. In the above background, now the point that emerges for consideration of this Court is whether the questioned order dated 21.07.2014 passed by the Regional Joint Director of School Education/third respondent herein is in accordance with law and whether the petitioner herein is entitled for any relief from this Court

under Article 226 of the Constitution of India in the facts and circumstances of the case?

13. There is absolutely no dispute with regard to the fact that the official respondents herein granted recognition for running the petitioner school. The principal complaint of the petitioner in the present writ petition is that the Regional Joint Director of School Education/third respondent herein has absolutely no jurisdiction to issue the impugned proceedings. In order to consider and adjudicate the said issue, it may be appropriate and relevant to refer to the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993 as notified vide G.O.Ms.No.1, Education (P.S.2) dated 01.01.1994. Rule 2 of the said Rules categorises the schools into four categories viz., Pre-Primary Schools, Primary Schools, Upper Primary Schools and Secondary Schools (High Schools). The competent authorities are stipulated under Rule 3 of the Rules. According to the said rule the competent authority for Pre-Primary, Primary and Upper Primary, Oriental Schools, Hindi Patasalas, Hindi Vidyalayas, Sanskrit Patasalas and Special Schools, is the District Educational Officer. The category 2 of the said Rule deals with secondary schools. Initially the competent authority for the secondary schools was the Regional Joint Director of School Education.

Subsequently the competent authority for the secondary schools was substituted by the authority as Government in the place of Regional Joint Director by virtue of G.O.Ms.No.267, Education (SER.V) dated 17.08.1998. According to Rule 11 of the Rules only the competent authority can withdraw the permission/recognition of the schools after giving opportunity of making representation on the proposed action.

14. In the case of **M.BUCHA REDDY** (*supra*), this Court at paragraph 10, held as follows:

“10. In our view, even on other grounds also, the order of the 2nd respondent dated 20-3-1999 is unsustainable. Under Section [2\(12\)](#) of the Act read with the Rules issued in

G.O. Ms No.1 Education Department, dated 1-1-1994, known as A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, the competent authority is the Joint Director of School Education. The competent authority has got power to grant permission, recognition and regulate the administration of the schools. This power includes approving the actions of the management of the private educational institutions in posting a teacher to an added post. Section [89](#) of the Act provides for an appeal against any order passed by an authority to the Director and Commissioner of School Education. As narrated above, in this case, the 2nd respondent being the appellate authority under Section [89\(a\)](#) of the Act, himself initiated the inquiry and came to the conclusions which have serious consequences and repercussions with regard to the petitioner, and then directed the competent authority i.e. 3rd respondent herein to pass orders. Thereafter, in our view, everything was a formality devoid of fairness and divorced from principles of natural justice. Further, against the order of the 3rd respondent dated 20-3-1999, the 2nd respondent who had earlier ordered the 3rd respondent to pass orders, himself passed the appellate order, that is to say, virtually, the 2nd respondent became the appellate authority against his own order. This, in our view, grossly violates the principles of natural justice, both at the stage of the original authority as well as the appellate authority. Therefore, the order dated 3-9-1999 is Honest and void.”

15. In W.P.No.26869 of 2012, this Court by order dated 29.08.2012, held as under:

“At the hearing, it is not disputed that respondent No.2 is the appellate authority against the orders passed by respondent No.3. Therefore, he ought not to have interfered with the power and jurisdiction of respondent No.3 of passing appropriate orders under the provisions of the Act and the Rules made thereunder. Having issued the show-cause notice and received the explanation from the petitioner, it is respondent No.3, being the primary authority, which is under obligation to pass an order and if the petitioner feels aggrieved by such an order, it is entitled to file an appeal before respondent No.2. By interfering with the functioning of respondent No.3 as the primary authority, respondent No.2 has not only encroached upon the former’s powers, but also denied the petitioner the valuable right of appeal if respondent No.3 had passed an order adverse to the petitioner’s interests. There is another reason for this Court to set aside

the order of respondent No.2. Respondent No.3 instead of passing an order appeared to have submitted a report to respondent No.2. Respondent No.3 has thus abdicated his powers as the primary authority and respondent No.2 has usurped the powers of respondent No.3.”

16. The principal contention of the learned counsel for the petitioner is that the Regional Joint Director of School Education/third respondent herein is neither competent for the first category nor for the second category under Rule 3, as such, the very impugned order passed by the third respondent/Regional Joint Director of School Education is totally one without jurisdiction and cannot be sustained. This Court finds sufficient force in the said contention in view of the express provisions of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993.

17. In view of this legal infirmity, the other aspects as pointed out by the learned Government Pleader and the learned counsel for the eighth respondent, in the considered opinion of this Court need not be gone into. Another significant aspect which needs mention at this juncture is that while withdrawing the recognition for the classes VI to X (EM) by virtue of the impugned order, the Regional Joint Director also directed the District Educational Officer to withdraw the permission and recognition to the petitioner school for the classes I to V. This action of directing the District Educational Officer to withdraw the permission for I to V without being preceded by any independent enquiry by the competent authority undoubtedly tantamounts to usurping the powers of the statutory authority by a superior authority, which is impermissible according to the provisions of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993. It is a settled and well established proposition of law that when a particular provision of law mandates a particular action to be taken in a particular manner, it is incumbent and obligatory on the part of the authorities to adhere to the same and any deviation or breach of the

same would render the entire proceedings invalid.

18. For the aforesaid reasons and having regard to the facts and circumstances of the case, the writ petition is allowed, setting aside the proceedings Rc.No.2993/A3/2013-1, dated 21.07.2014 issued by the Regional Joint Director of School Education, Guntur Region, Guntur, Guntur District/third respondent herein and consequently the petitioner herein is at liberty to open the locks of the subject school. The respondents herein shall also take into consideration the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed therein. However, it is open for the respondent authorities to take appropriate action against the petitioner herein in accordance with law. As a sequel, Miscellaneous Petitions, if any, shall stand closed.

No order as to costs.

A.V.SESHA SAI,J

Date: 29-06-2015

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21238 of 2014

Dated 29th June, 2015

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21238 of 2014

Date: 29.06.2015

Between:

Vidhva Kendra High School (E/M),
Gindivari Thota, Rajagopalapuram,
Naidupet, SPSR Nellore District represented
by its Correspondent P.Srinivasulu Reddy.

...Petitioner

and

State of Andhra Pradesh,
Represented by its Principal Secretary,
School Education Department,
Secretariat Buildings at Hyderabad and
six others.

... Respondents

[\[1\]](#) 1999 (6) ALD 581