

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION Nos.6308 and 9441 of 2014

WP.No.6308 of 2014:

BETWEEN

S.V. Arts & Science College, West Gudur, SPSR Nellore District and others.

... PETITIONERS

AND

The A.P. State council of Higher Education, Masab Tank, Hyderabad, Rep.
by its Secretary and another.

...RESPONDENTS

WP.No.9441 of 2014:

BETWEEN

Archana Degree College, Rayachoty, YSR Kadapa District and othes.

... PETITIONER

AND

The Government of Andhra Pradesh, Rep. by its Principal Secretary, Higher
Education Department, Secretariat, Hyderabad and others.

...RESPONDENTS

**Counsel for the Petitioners: MR. M.V.S SURESH KUMAR
MR. P. PANDU RANGA REDDY**

**Counsel for the Respondents: MR. C. SUDESH ANAND
(STANDING COUNSEL FOR APSCHE)
MR. M.S.N. PRASAD
For MR. VENKAT REDDY THIPPARTHI**

The Court made the following:

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COMMON ORDER:

WP.No.6308 of 2014 is filed by four degree colleges located at Gudur, SPSR Nellore District challenging the notification issued by the first respondent dated 19.02.2014 whereby Gudur Mandal was notified as identified Mandal for establishment of new private unaided degree colleges for the academic year 2014-2015. WP.No.9441 of 2014 is similarly filed by six degree colleges located at Rayachoty, YSR Kadapa District, challenging the notification of second respondent dated 19.02.2014 inviting applications for starting new private degree colleges in Rayachoty. Respondent No.5 herein is an educational society, which proposes to establish a new degree college at Rayachoty in pursuance of the impugned notification. Accordingly, it was permitted to be impleaded in WP.No.9441 of 2014, as respondent No.5, vide orders in WPMP.No.20863 of 2014 dated 26.09.2014.

2. Both the aforesaid writ petitions challenge the notification, primarily, on the ground that the notification is contrary to Section 20 of the A.P. Education Act (for short 'the Act') read with Rule 5 of the Educational Institutions (Establishment, Recognition, Administration and Control of Higher Education) Rules, 1987 (for short 'the Rules').

3. By order dated 06.03.2014, WP.No.6308 of 2014 was admitted and interim direction was issued viz. '*The process of consideration of the applications for establishment of new degree colleges may go on but, however, the same may not be finalized.*' Similarly, by order dated 27.03.2014, WP.No.9441 of 2014 was admitted and similar interim direction was issued. Respondent No.5 in WP.No.9441 of 2014 has filed WVMP.No.2828 of 2014 seeking vacation of the interim direction and second respondent has filed a common counter affidavit in five similar matters,

which include the present writ petitions.

Since both these writ petition question similar notification, they were heard together.

4. Learned counsel for the petitioners placed strong reliance on Section 20 of the Act to contend that permission for establishment of an educational institution can be considered by the competent authority, from time to time, only after conducting a survey so as to identify the educational needs of the locality. Rule 5 of the Rules is also relied upon, which stipulates that in pursuance of the notification, applications can be filed before the competent authority in Form – I in triplicate not later than 31st January of the year preceding the academic year in which the institution is proposed to be opened. Learned counsel contends that already sufficient number of colleges exist at Gudur and Rayachoty, which are subject matter of these two writ petitions. Learned counsel state that initial notification, which was issued by the second respondent for the academic year 2014-2015 dated 22.01.2014 did not include Gudur Mandal and only by subsequent notification, impugned herein, dated 19.02.2014,

Gudur and Kaluvai Mandals were notified as identified mandals.

It is specifically stated that while issuing the subsequent impugned notification, no survey whatsoever was conducted nor the drastic fall in intake of sanctioned strength in existing colleges in Gudur Mandal is taken into consideration. It is also contended that the existing colleges itself are showing substantial fall in the sanctioned strength, hence, opening of new degree colleges in Gudur and Rayachoty mandals respectively would result in unhealthy competition and would lead to closure of existing colleges also. It is stated that the mandatory requirement of Section 20 of the Act read with Rule 5 of the Rules having not been fulfilled, the impugned notification inviting applications for Gudur and Rayachoty Mandals respectively is wholly illogical and impermissible. Learned counsel have also appended along with the writ petitions, the statistics to show the sanctioned strength year wise

and the vacancy position in the existing colleges.

5. Counter affidavit filed on behalf of the second respondent opposed the writ petitions on the ground that the petitioners intend to monopolize the degree level education and that based on the criteria fixed, the identification of mandals is being followed by the respondents. It is stated that based on the said criteria even if one or more degree colleges exist in a Mandal, the total number of intermediate pass outs, as compared to the total sanctioned strength, is taken into consideration and based on comparative data, the applications are invited. It is also stated that the second respondent would also look into the performance of the existing colleges in the last four consecutive academic years. It is stated that after the initial notification, the respondents received several representations from public, NGO's and peoples representatives and based on the demand, a committee was appointed to review further identification of mandals in addition to those invited on 22.01.2014. Accordingly, the committee comprising of The Dean, College Development Council, Osmania University, Hyderabad; The Dean, College Development Council, Kakatiya University, Warangal; The Dean, College Development Council, Andhra University, Visakhapatnam and The Dean, College Development Council, Acharya Nagarjuna University, Guntur, have examined the matter and recommended 16 Mandals under 13 Districts, which were notified in second notification dated 19.02.2014. It is stated that out of 16 Mandals notified for establishing new private unaided degree colleges; existing colleges in 5 Mandals, which include Rayachoty and Gudur, have filed writ petitions before this Court including the present writ petitions. Reference is also made to a decision of this Court considering similar notification in WP.No.1832 of 2013 and batch dated 12.11.2013.

6. Respondent No.5 in WP.No.9441 of 2014 also has filed a separate counter affidavit, *inter alia*, stating that existence of notification is not essential for complying with establishment of new private unaided degree

college and in support of the said proposition, reliance is placed upon a Full Bench decision of this Court in **SOCIETY OF ST. ANN'S v. SECRETARY TO GOVERNMENT (EDN.)**^[1].

In the vacate petition filed by a proposed new college at Rayachoty, it is stated that there are 7 degree colleges and 13 junior colleges with sanctioned strength of 1980 and 3560 respectively.

7. I have considered the rival contentions. It is, no doubt, true that initial notification excluded Gudur as well as Rayachoty Mandals and it is only in the subsequent notification impugned herein that the said two Mandals were included. So far as these writ petitions are concerned, learned counsel for the petitioners are also technically right in contending that there was no survey conducted before issuance of second notification. However, as per the averments in the counter affidavit of the second respondent, a Committee, as mentioned above, was constituted to consider the inclusion of other mandals and as per the recommendations of the committee, the impugned notification was issued identifying additional mandals.

8. Section 20 of the Act read with Rule 5 of the Rules is, undoubtedly, envisage the criteria required to be followed by the competent authority. However, the power of the Government to establish a college at a location based upon the need is not subject to satisfaction of the competent authority. The decision of the Full Bench in **SOCIETY OF ST. ANN'S's** case (1 supra) has already considered the very same issue and it would be appropriate to extract paras 49 and 50 of said decision, as under:

“49. If the State Government takes a policy decision in the exercise of the statutory power vested in it under Section 18 as regards the establishment of educational institutions in the State on the basis of relevant considerations referred to above, and such a policy decision is not opposed to either fundamental rights or principles of natural justice and it is not found to be otherwise unreasonable or arbitrary, such a policy decision shall not generally be interfered with by the Courts. It will not be possible to lay down precise principles for testing the validity of a policy decision taken by the State Government. It depends upon the facts and circumstances of the

case subject to the general principles referred to by us supra.

50. The need for providing educational facilities to the people in the locality, contemplated under Section 20 (3) (a) (i) has to be understood in the context of the educational needs of the locality identified by the competent authority under Sub-section (1) of Section 20. Even in a case where the educational needs of a locality have been identified by a competent authority, the need for providing educational facilities to the people in the locality shall be subject to the policy decision, if any, taken by the State Government in that regard in exercise of its power under Section 18 of the Act. If a competent authority has either not been appointed or after appointment it has not issued any notification calling for applications for establishing educational institutions as contemplated under Sub-section (1) of Section 20, even then, it is open to any educational agency to apply to the State Government for the grant of permission for establishing an educational institution. In such a case, it is for the State Government to pass appropriate orders on the application submitted to it, on the basis of the principles underlying Sub-section (3) of Section 20 and the policy decision, if any, taken by it as regards the need. But, the State Government has to take appropriate decision having regard to the relevant criteria, whether the educational needs of the locality or of the area or of the entire State shall be taken into account.”

9. As per the ratio of the aforesaid decision, therefore, irrespective of there being a notification issued, the power of the State Government to consider any applicant, who desires to establish an educational institution at a particular location, cannot be considered to be vitiated merely because the competent authority has not notified the location. Though the learned counsel for the petitioners tried to distinguish the Full Bench decision in **SOCIETY OF ST. ANN’S** case (1 supra), in my view, the question which fell for consideration before the Full Bench under question No.1 was precisely this, as is extracted below:

“(1) Whether it is open to an educational agency to apply for permission to establish an institution in the absence of the competent authority under Section 20 (1) of the Act, notifying in the prescribed manner, calling for applications from the educational agencies desirous of establishing educational institutions?”

The answer to the said question, in the conclusion, in paras 65(1) and (2) is also extracted hereunder:

“65. Therefore, questions 1, 2, 3, and 4 are answered as follows:

(1) Even in the absence of a notification issued by a competent authority under Sub-section (1) of Section 20 of Andhra Pradesh Education Act, 1982 calling for applications from the educational agencies desirous of establishing educational institutions, it is open to any educational agency including a religious or linguistic minority, to make an application to the State Government for the grant of permission for establishing an educational institution.

(2) It is for the State Government to decide whether the educational needs of a locality or area or of the entire State shall be taken into account in considering the applications. Even in a case where the educational needs of a locality have been identified by a competent authority under Sub-section (1) of Section 20 of the Act, the need for providing educational facilities to the people in the locality contemplated under

Sub-clause (i) of Clause (a) of Sub-section (3) of Section 20 of the Act, shall be subject to the policy decision, if any, taken by the State Government in that regard in exercise of its power under Section 18 of the Act."

In view of the aforesaid authoritative pronouncement, therefore, I am unable to see any substance in the challenge by the petitioners in these writ petitions.

The writ petitions are, therefore, dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

February 10, 2015
DSK

[\[1\]](#) 1993 (2) ALT 610 (FB)