

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.20594 of 2011

Between:

M/s.Vizianagar Educational Society

....Petitioner

and

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

....Respondents

JUDGMENT PRONOUNCED ON : 21.04.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.20594 of 2011

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ORDER:

The petitioner is an Educational Society, which intended to establish a Degree College in Vizianagaram Mandal. The college can be established only when the second respondent issues a notification under Section 20 of the Andhra Pradesh Education Act, 1982. The petitioner states that, though a notification was issued on 05.02.2010 for the academic year 2010-2011, the Vizianagaram Mandal was not included for establishment of a Decree College and thus, the petitioner was prevented from establishing a college. However, the petitioner came to

know during the last week of June that the first respondent issued G.O.Rt.No.76, Higher Education (CE.II-1) Department, dated 08.02.2011, permitting the third respondent to shift its college from S.Kota Mandal to Vizianagaram Mandal at Srinagar Colony, Gajularega, Vizianagaram District. A perusal of the Government Order shows that it was issued in relaxation of sub-rule (3) of Rule 14 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987, issued in G.O.Ms.No.29, Education, dated 05.02.1987. Challenging the said Government Order, the present Writ Petition was filed.

At the time of admission of the Writ Petition, no interim order was granted, as a result of which the third respondent might have shifted the Degree College from S.Kota Mandal to Vizianagaram Mandal.

The second respondent filed a counter affidavit stating that the shifting of College from one Mandal to another Mandal within the District is governed by the Rules framed in G.O.Ms.No.29, dated 05.02.1987. But, the counter further states that the issue of notification for establishment of college has nothing to do with the shifting of college contemplated under Rule 14(3) of the said Government Order. The first respondent has been following the procedure for shifting of college in coordination with the second respondent and the concerned University. When an application for shifting is made, an inspection would be conducted by the concerned University with regard to the availability of infrastructural facilities and a report would be submitted to the second respondent. Based on the report and on the recommendation of the second respondent, necessary orders would be passed by the first respondent. The first respondent has got power under Section 100 of the Andhra Pradesh Education Act either to exempt or relax any Rule made pursuant to the said Act. It was further stated in the counter affidavit that in and around Vizianagaram Mandal there are about 18 Junior Colleges including that of the petitioner with pass outs of 3646 as against

15 Degree Colleges including the third respondent, which is shifted, and there is intake availability of 5170 seats. Therefore, the third respondent college, which was an existing college at S.Kota Mandal made an application to the Dean, CDC, Andhra University, for shifting the College from S.Kota to Vizianagaram Mandal on 29.04.2010 and the report was submitted by the Dean recommending the shifting of the third respondent college to the second respondent on 04.06.2010. Based on the said report, the second respondent forwarded the same to the Government on 09.07.2010. Accordingly, the first respondent issued the impugned G.O.Rt.No.76, dated 08.02.2011. The whole process initiated by the third respondent to shift its college from S.Kota to Vizianagaram started much before the survey conducted by the second respondent to notify the Mandals to establish new private un-aided degree colleges in the State of Andhra Pradesh. Thus, Section 20(1) of the Andhra Pradesh Education Act is distinct and different, and the same cannot be equated for shifting of already existing college from one locality to another as contemplated under Rule 14 of G.O.Ms.No.29, dated 05.02.1987. The counter further states that there was absolutely no need to notify Vizianagaram Mandal for the year 2011-2012 as per the survey report dated 06.12.2010.

Learned Counsel for the petitioner submits that there is no power for relaxation vested in the first respondent to permit shifting of the Degree College from one Mandal to another Mandal under Rule 14 issued in G.O.Ms.No.29, dated 05.02.1987. Learned Counsel for respondent Nos.1 to 3 relied on the general power of relaxation available under Section 100 of the Andhra Pradesh Education Act.

In view of the shifting of the college pursuant to the impugned Government Order, this Court is not inclined to examine the point of availability of the power of relaxation with the first respondent and whether he can exercise the general power of relaxation under Section 100 of the Andhra Pradesh Education Act in the absence of power of

relaxation under Rule 14(3) of the Rules, which are applicable for shifting of the colleges.

However, this Writ Petition is disposed of giving liberty to the petitioner to submit a representation to the first respondent seeking review of the order and on receipt of the same, the first respondent shall issue appropriate notice to the petitioner and the third respondent and pass appropriate orders in accordance with law.

The Writ Petition is, accordingly, disposed of in the interest of the students, who are likely to be affected if any adverse order is passed, by examining the issue academically. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

21.04.2016

vs