

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal Nos.1043 and 1045 of 2017

And

Writ Petition No. 23825 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The appellants in W.A. No. 1043 of 2017 are the petitioners in W.P. No. 21482 of 2017 wherein they questioned the memo dated 29.5.2017 issued by the Chief Secretary, School Education Department, Government of Andhra Pradesh, according permission to transfer the Narayana Junior College, Dharmavaram, Andhra Pradesh from the management of Narayana Educational Society, Nellore to the 5th respondent under Rule 14(4) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 issued in G.O. Ms. No. 29 dated 5.2.1987 read with G.O. Ms. No.35 dated 25.4.2007 and G.O. Ms. No. 211 dated 8.11.2017, as arbitrary and illegal. During the pendency of W.P. No. 21482 of 2017, the State Government issued Memo dated 7.7.2017 withdrawing the earlier memo dated 29.5.2017.

The learned Single Judge, by order in W.P. No. 21482 of 2017 dated 7.7.2017, recorded that the earlier memo dated 29.5.2017 was withdrawn. The writ petition was closed giving liberty to the appellants-writ petitioners to challenge any fresh notification issued by the respondents. Aggrieved by the memo dated 7.7.2017, cancelling the earlier memo dated 29.5.2017, the 5th respondent herein filed W.P. No. 23825 of 2017 and, by order in W.P.M.P. No. 29483 of 2017 in W.P. No. 23825 of 2017 dated 19.7.2017, the learned Single Judge granted interim suspension holding that the memo dated 7.7.2017, withdrawing the earlier memo dated 29.5.2017, was without notice to the 5th respondent. Aggrieved by the said order, the appellants in W.A. No.1043 of 2017 have filed W.A. No. 1045 of 2017.

Section 100 of the Andhra Pradesh Education Act, 1982 (for short “the Act”) enables the Government, by notification and for reasons to be specified therein, to exempt any educational institution from the operation of all or any of the provisions of the 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.

The power of the Government to grant exemption under Section 100 is not unfettered, but is circumscribed by two conditions (1) reasons must be recorded for grant of exemption; (2) the exemption should be granted by way of a notification. In the present case, the memo dated 29.5.2017 does not satisfy either of these two requirements. Neither are reasons recorded therein nor has a notification been issued granting exemption. Instead, only a memo was issued by the State Government. It is evident, therefore, that the memo dated 29.5.2017 *ex-facie* violates Section 100 of the Act.

It is not even contended before us by Sri R. Raghunandan, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner in W.A. No. 1045 of 2017, that the memo dated 29.5.2017 is valid. Once it is accepted that the memo dated 29.5.2017 is illegal, as it was passed in contravention of Section 100 of the Act, the mere fact that the subsequent memo dated 7.7.2017, cancelling the earlier memo dated 29.5.2017, was passed without notice to the 1st respondent-writ petitioner in W.P. No. 23825 of 2017 is of no consequence. Principles of natural justice is not an empty ritual or a needless formality. It is only if the 1st respondent-writ petitioner is able to show that, if they had been put on notice, they would have been able to satisfy the Court that the earlier order, in Memo dated 29.05.2017, is valid, can they claim to have suffered prejudice as a result of non-compliance of principles of natural justice. As it is admitted before us that the earlier memo dated 29.5.2017 falls foul of Section 100 of the Act, the complaint of the 1st respondent-writ petitioner, of violation of principles of natural justice, is

only to be noted to be rejected. The State Government was justified in issuing memo dated 7.7.2017 cancelling the earlier memo dated 29.5.2017, as the earlier memo was issued in contravention of the mandate of Section 100 of the Act. W.A. No. 1045 of 2017 is, accordingly, allowed. The order in W.P.M.P. No. 29483 of 2017 in W.P. No. 23825 of 2017 dated 19.7.2017 is set aside. In view of the order now passed by us in W.A. No.1045 of 2017, W.A. No. 1043 of 2017 is dismissed as infructuous.

Both Sri R. Raghunandan, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, and Sri P.V. Krishnaiah, learned counsel for the appellants, would agree that, in the light of the order now passed by us, the cause in W.P. No. 23825 of 2017 does not survive, and the writ petition has become infructuous. W.P. No. 23825 of 2017 is also dismissed as infructuous. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

1st August, 2017

pnb

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI



Writ Appeal Nos.1043 and 1045 of 2017
And
Writ Petition No. 23825 of 2017

Date: 01.08.2017

pnb

