

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.398 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.29946 of 2016 dated 19.01.2017. The appellants herein are respondents 6 and 7 in W.P.No.29946 of 2016. Respondents 1 to 3 herein filed W.P.No.29946 of 2016 to declare G.O.Rt.No.201 dated 30.08.2016 issued by the 1st respondent therein, and all consequential proceedings, as violative of Articles 14, 19(1)(g) and 21 of the Constitution of India besides being contrary to Section 100 of the A.P. Education Act, 1982 (for short "the Act"). Parties shall, hereinafter, be referred to as they are arrayed in this appeal.

G.O.Rt.No.201 dated 30.08.2016 was issued by the Government, in exercise of the powers conferred under Section 100 of the Act, according permission to the Management of the appellants herein to shift their College from Venkatagiri to Naidupet. Section 100 confers power on the State Government 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. This power, conferred by Section 100 of the Act, is required to be exercised by the Government by way of a notification and for reasons to be specified therein.

As the power of the Government to exempt an educational institution, from the rigour of the Act and the Rules, was not in issue before the Learned Single Judge, and the only contention urged before him was that the reasons furnished in the impugned G.O were not germane to the exercise of power conferred under Section 100 of the Act,

it would suffice for us to note the reasons, which weighed with the Government for granting the appellants herein exemption under Section 100 of the Act, bearing in mind that the power to grant exemption, from the application of the provisions of the Act and the Rules made thereunder, is to be exercised more as an exception than as a Rule.

The reasons which weighed with the Government, for granting the appellants exemption under Section 100 of the Act, and as recorded in G.O.Rt.No.201 dated 30.08.2016, are (i) the appellants were not able to get the minimum number of admissions during the academic years 2014-15 and 2015-16; (ii) inconvenience should be avoided to students who had already joined the college; and (iii) the appellants had spent large amounts to establish the college, and to shift it from Venkatagiri to Naidupet.

In the order under appeal the Learned Single Judge, after referring to Section 20 of the Act and Rules 4 and 14 of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (fort short “the 1987 Rules”), observed that power was vested with the Commissioner of Higher Education to establish a Degree College, and to withdraw the recognition/affiliation granted earlier; Rules 4 and 14 of the 1987 Rules gave effect to the scheme of Section 20 of the Act; Rule 4(2) of the 1987 Rules prohibited permission being granted, if the educational needs of the locality were adequately served and, in the opinion of the competent authority, the opening of a new institution was likely to create unhealthy and undesirable competition in the area; Rule 14(3) of the 1987 Rules prohibited shifting of an institution established in a particular locality, having regard to the educational needs of that locality, to another locality; the primary requirement, to establish an educational institution in a particular locality, was that the existing institutions were not

adequately serving the educational needs of that locality, and it required more educational institutions; the A.P.State Council of Higher Education (for short “the Council”) undertakes the exercise of identifying the educational needs of a locality, and issues notifications calling for applications; after following the prescribed procedure, permission is granted in accordance with Sections 20 of the Act, and the 1987 Rules; the object of prohibiting shifting of a college from one locality to another is two fold; firstly an educational institution is established in a locality based on the educational needs of that locality and, if that institution is allowed to be shifted to any other locality, it would result in inadequate service of the educational needs of that locality; secondly, on a review of the educational needs of a locality, if it is found that the present educational institutions do not adequately meet the educational needs of that locality, a detailed procedure is envisaged before identifying a person to establish a new college; if transfer is allowed, based on an individual request, to a locality without an assessment of its educational needs, it may have a two fold adverse impact; (1) it would result in more colleges than required being established in a locality, leading to creation of unhealthy and undesirable competition vis-à-vis the existing institutions in that locality, whereas the object of the scheme of the Act and the 1987 Rules is to prevent unhealthy and undesirable competition, compromising on the quality of education; and (2) it would deprive other societies/institutions/persons to establish/relocate at that place, assuming the locality has the capacity to absorb one or more such institutions, and can lead to more such requests.

The Learned Single Judge considered the larger public interest served by Section 20 of the Act, and Rules 4(2) and 14(3) of the 1987 Rules, and then observed that, if the existing educational institutions were not adequately meeting the educational needs of Naidupet, then

Naidupet should have been added in the notification issued during the academic year 2015-16; and, if that be so, more such institutions could have responded to the notification, seeking to establish another Degree College in Naidupet.

While dealing with the facts in issue, the Learned Single Judge observed that the 1st appellant herein had, on his own, offered to establish a Degree College in Venkatagiri; once it was established in Venkatagiri, having regard to the educational needs of Venkatagiri, if the 2nd appellant herein shifted the degree college to Naidupet, it would result in inadequate service of the educational needs of Venkatagiri town, as assessed in the year 2014-15; though various other Mandals were notified, the Council did not include Naidupet; it was clear, therefore, that the Council was of the opinion that the educational needs of Naidupet were adequately served; even for the academic year 2016-17 no notification was issued calling for expressions of interest; the appellants herein did not assail the decision of the Council not to notify Naidupet for the years 2014-15, 2015-16 and 2016-17; the entire premise of the appellants herein was that, as per their assessment, Naidupet needed more Degree Colleges, since a large number of students were passing out, from Intermediate Courses, from various colleges thereat; the assertion that many students were migrating to other towns, since the standard of education provided by the existing colleges in Naidupet was not of good quality, was again a self assessment; and such an assessment by private educational societies/institutions, if permitted, would destroy the entire mechanism created under the Act, and the 1987 Rules, rendering them redundant.

The Learned Single Judge further observed that power under Section 100 of the Act was extra-ordinary in nature; such an extra-ordinary reserve power could be invoked only in special/extraordinary

circumstances; the reasons assigned, in support of the grant of exemption, fell foul of the very scheme of the Act and the 1987 Rules; accepting the justification, for grant of exemption, would result in nullifying the entire scheme under the Act, and the 1987 Rules, enabling the Government to call upon anybody to establish an educational institution, without having regard to the educational needs of the locality; the power, under Section 100 of the Act, is an extraordinary power and is subject to fulfilment of the parameters for establishing an educational institution i.e an institution serving the educational needs of the locality; and it is only within these parameters, can the power of relaxation be exercised to mitigate the hardship caused to a person, by a rule, in the larger public interest.

The Learned Single Judge, after referring to the judgments of the Supreme Court in ***Premium Granites vs. State of Tamil Nadu***¹ and ***Ramana Dayaram Shetty vs. International Airport Authority of India***², observed that the reasons assigned in the impugned order were not germane to a valid decision making process in exercise of such an extra-ordinary power; there was no material to show that the 2nd appellant could not secure admission of students in a particular locality; that could not be a ground to shift the college to another locality; merely because the society had shifted the college to Naidupet, and had admitted students thereat, could not be a ground to exercise power under Section 100 of the Act, and grant relaxation holding that inconvenience would be caused to the students already admitted by them; the Council had, in its proceedings dated 07.06.2016, advised the Government not to accept the appellants request; and the note file was silent regarding the reasons for exercise of such power, despite the recommendations to the contrary by the Council.

¹ (1994) 2 SCC 691

² AIR 1979 SC 1628

The learned Judge further observed that there was no discussion on the merits of the request made, or the reasons for overruling the advise of the Council, or on the overall impact of such a decision on the policy of ensuring that the educational needs of Venkatagiri and Naidupet towns were adequately served; the record also did not disclose that an assessment was made on the requirement of another Degree college in Naidupet or that there were more number of Degree Colleges, established in Venkatagiri, than required; and the decision to grant relaxation of the relevant provisions must be supported by a detailed discussion of the justification for such request, and assessment of the requirement of the educational needs of the locality. The impugned order of the Government was set aside, and the Commissioner of Higher Education was directed to ensure that the students, admitted in the 2nd appellant-College, should not lose their academic year; and all measures should be taken to protect their academic interests.

Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of the appellants, would submit that none of the factors, required to be considered for grant of exemption under Section 100 of the Act, were considered by the Council; the Council mechanically recommended that the request for grant of exemption not be accepted; it was always open to the State Government to exercise power under Section 100 of the Act, notwithstanding the recommendation to the contrary by the Council; the Council had, itself, issued a notification inviting applications for establishing a degree college in surrounding mandals of Naidupet; these mandals were Chittamuru, Doravarisatram, Ojili and Pellakur; the very fact that no applications were received for establishing degree colleges in these mandals showed that, despite their being a need for such degree colleges in these mandals, no person had come forward to establish a degree college in these Mandals; the Governmnet was, therefore, justified

in permitting the appellants herein to shift their degree college from Venkatagiri to Naidupet; the Government took into consideration the fact that the appellants had made huge investment, and had employed several persons as its employees; the Government had also considered the fact that students were already admitted to the degree college; and, therefore, the Learned Single Judge had erred in exercising his discretion to interfere with the exemption granted to the appellants by the State Government.

The Learned Senior Counsel would further submit that, as neither the Act nor the 1987 Rules define a “locality”, there was no justification in treating a mandal as a locality; as Venkatagiri and Naidupet towns formed part of one locality, it was unnecessary for the appellants to request the Government to grant exemption; all that the Government was required to consider was whether or not permission should be granted the appellants to shift their degree college from one building to another; and in any event, even if the order of the Learned Single Judge were to be upheld, nothing prevented the Government from considering the appellants’ request for grant of exemption on grounds, other than those which weighed with the Government earlier in granting the petitioners exemption under Section 100 of the Act.

As has been held by the Learned Single Judge in the order under appeal, in our opinion rightly so, the permission to establish a degree college, in a particular locality, is granted by the competent authority after an assessment of the need of that particular locality. A detailed procedure is prescribed for inviting applications to establish a degree college in a particular locality. It is pursuant to the assessment by the authority, of the need to establish a degree college at Venkatagiri town, that the appellants were permitted to establish a degree college thereat. If there was a need to establish another degree college at Naidupet, then

the assessment made by the Council should have reflected such a need and, even then, applications ought to have been invited from all those who were desirous of establishing a degree college at Naidupet. Admittedly, no such exercise was undertaken either by the Council or the Government.

The submission that, since no person came forward to establish a degree college in the mandals surrounding Naidupet, the Government was justified in granting the appellants exemption is only to be noted to be rejected. Nothing prevented the appellants from expressing their willingness to establish a degree college in any of the mandals notified by the Government, and which are said to be adjacent to Naidupet Mandal. Having failed to apply, pursuant to the notification issued by the Government to establish a degree college in the mandals surrounding Naidupet, the appellants cannot now be heard to contend that the very fact that the mandals, surrounding Naidupet, were notified showed that there was a demand for establishing a degree college at Naidupet. Even if that be so, the requirement under the Act and the 1987 Rules is for applications to be invited to establish a degree college in any locality which would include Naidupet also, and if applications were invited several others may have submitted their applications to establish a degree college thereat. The scheme of the Act and the 1987 Rules is to grant permission to establish a degree college in a particular locality based on the needs of the locality, and not the needs of any individual institution. The difficulty which an institution may face, on being granted permission to run a degree college in a particular locality, would not justify permission being granted to them to shift to another locality without an assessment of the need of the locality to which the degree college is sought to be shifted, as that may well result in unhealthy competition violating Rules 4(2) and 14(3) of the 1987 Rules.

The submission that both Venkatagiri and Naidupet towns are part of one locality has been urged for the first time before us, and no such ground was raised before the Learned Single Judge. Even if such a contention is presumed to have some basis, it was then wholly unnecessary for the appellants to have requested the Government to grant them exemption under Section 100 of the Act, for no such exemption was required, in the first place, if both Venkatagiri and Naidupet towns are presumed to form part of one locality; and, even in terms of Rules 4(2) and 14(3) of the 1987 Rules, permission would have been required only for shifting the appellant's degree college from one building to another.

The appellants have sought exemption under Section 100 of the Act, and not permission under Rule 4(2) of the Rules for their degree college to be shifted from one building to another. In any event, since this contention has not even been raised either in the writ petition during the course of hearing before the Learned Single Judge, we see no reason to examine this contention, for the first time in an intra-court appeal under Clause 15 of the Letters Patent.

The submission that the interests of students would be jeopardised by the order of the Learned Single Judge does not also merit acceptance. The Learned Single Judge has, in the order under appeal, directed the Commissioner of Higher Education to ensure that the students, admitted in the 2nd appellant's college, do not lose their academic year; and all measures are taken to protect their academic interests. Sri P.V. Krishnaiah, learned counsel for the 1st respondent, would submit that the direction of the Learned Single Judge in this regard, would require the Commissioner to adjust the students in the degree colleges in Naidupet itself, and not force them to seek admission in degree colleges elsewhere. Learned Government Pleader for Higher Education would

submit that this direction of the Learned Single Judge would obligate the Commissioner to ensure that students are admitted either in Naidupet or in Venkatagiri, wherever they choose.

As it is evident that the Learned Single Judge has protected the interests of students hitherto studying in the appellant's degree college, while setting aside the order impugned in the writ petition, it is unnecessary for us to issue any further directions, in the exercise of the jurisdiction under Clause 15 of the Letters Patent, to safeguard the interests of the students hither to studying in the appellant's degree college.

The submission of Sri C.V.Mohan Reddy, learned Senior Counsel, is that the Government should atleast be directed to re-consider the appellants' application for grant of exemption, on grounds other than those which weighed with it in passing the order impugned in the Writ Petition. It must be borne in mind that exercise of the power, under Section 100 of the Act to grant exemption, is more an exception than a Rule. As the reasons, which weighed with the Government in granting exemption, have been found not to be germane by the Learned Single Judge, and in our opinion rightly so, the order under appeal, whereby the impugned G.O was quashed, does not necessitate interference. We see no reason, therefore, to now direct the Government to re-consider the appellants' application for grant of exemption. The submission of the learned Senior Counsel that the Government can always re-consider the matter, for grounds other than those which weighed with it in passing the impugned order, is a matter which is extraneous to these proceedings, under Clause 15 of the Letters Patent, as our jurisdiction has been invoked with respect to the validity of the order of the Learned Single Judge in setting aside the order of the Government granting the appellants exemption under Section 100 of the Act. We see no reason,

therefore, to interfere with the order under appeal or to direct the Government to re-consider the matter.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

12th April, 2017
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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Writ Appeal No.398 of 2017

Date: 12.04.2017

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