

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.21739 of 2018

ORDER:

This Writ Petition is filed challenging the G.O.Rt.No.129 Higher Education (IE) Department, dated 14.06.2018, wherein and whereby permission was accorded by the 1st respondent for shifting of Triveni BCM Junior College, Bheemaram Village, Hasanparthy Mandal, Warangal Urban to H.No.12-2-54, behind RTC Bus Stand, Bhadrachalam, Bhadradri at Kothagudem District, run by respondents 4 & 5 (Society).

Heard learned counsel for the petitioner, learned Government Pleader for Higher Education appearing for 1st respondent and Sri D.L.Pandu, learned Standing Counsel for the respondents 2 and 3.

Learned counsel for the petitioner submits that the impugned G.O.Rt No.129 Higher Education (IE) Department, dated 14.06.2018 was issued by exercising the powers conferred under Section 100 of the Telangana Education Act, 1982 (for short 'the Act') without recording reasons; that there is no need for the Government to permit the respondents 4 and 5 for shifting of the college, as envisaged under Section 20 of the Act. In support of his contention, he relied on the judgments reported in **Gayathri Degree College v. Government of Andhra Pradesh, rep. by its Secretary to Government, Higher Education Department¹, Sadasiva Sri Educational Society, Sircilla, Karimnagar District v. Gayathri Degree College, Yellareddypet Mandal, Karimnagar**

¹ 2013 (3) ALT 759

District² and Sneha Degree College, rep. by its Secretary and Correspondent v. Government of Telangana, rep. by its Principal Secretary, Higher Education Department³

On the other hand, learned Government Pleader for higher Education submits that there was need for permitting the unofficial respondents for shifting of the college, as such, the impugned G.O was issued by the Government. She submits that when there is need, it is open for the Government to grant exemption under Section 100 of the Telangana Education Act, 1982. She further submits that in the judgments relied on by the learned counsel for the petitioner, it was held that there is no need, but in the present Government felt that there is need, as such, the competent authority stated that there is need for establishment of college, as such, same cannot be interfered with.

Learned Government Pleader for Higher Education further submits that, if this Court comes to conclusion that reasons are to be recorded, matter may be remanded to the 1st respondent.

Sri D.L.Pandu, learned Standing Counsel for respondents 2 and 3 submits that since there is need for establishment of college as per respondents 2 and 3, the Government issued the impugned G.O.

A perusal of the impugned G.O.Rt.No.129, dated 14.06.2018 goes to show that the same is issued without recording any reason as envisaged under Section 100 of the

² 2013 (1) ALT 477 (D.B)

³ 2015 (3) ALT 474

Telangana Education Act, 1982. In **Gayathri Degree College v. Government of Andhra Pradesh, rep. by its Secretary to Government, Higher Education Department (supra)**, this Court held as follows:

“A reading of Section 100 of the Act discloses that the *sine qua non* for exercising the power of exemption is that respondent No.1 has to assign reasons for granting exemption and the same should be notified. Under Section 2 (31) of the Act, notification means a notification published in A.P. Gazette and the word ‘notified’ shall be construed accordingly. A perusal of the impugned G.O., shows that the same is bereft of any reasons whatsoever. It is only in the counter affidavit of respondent No.1 that it has sought to justify its G.O by assigning reasons. As held by the Supreme Court in *Commissioner of Police, Bombay v. Gordhandas Bhanji* (1) AIR (39) 1952 SC 16 and *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others* (2) AIR 1978 SC 851, a statutory functionary cannot justify its decision by assigning reasons by way of affidavits which are not contained in the order. Therefore, none of the reasons which are mentioned in the counter affidavit can be taken into consideration while justifying the decision of respondent No1.. Even otherwise, as noted above, its plea that need exists, runs contrary to the stand taken by respondent No.2 and therefore, the same cannot be countenanced in law.”

The said decision of learned Single Judge was confirmed by Division Bench in **Sadasiva Sri Educational Society, Sircilla, Karimnagar District v. Gayathri Degree College, Yellareddypet Mandal, Karimnagar District (supra)**.

In view of above facts and circumstances and law laid down in the aforesaid decision, the impugned G.O.Rt No.129, dated 14.06.2018 is liable to be set aside as the same does not contain reasons and accordingly set aside. The matter is remitted back to the 1st respondent and the 1st respondent is directed to consider the issue afresh after considering objections raised by the petitioner, in accordance with law. It is open for the petitioner to file objections within a period of two weeks from today.

Accordingly, this Writ Petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY,J

02-07-2018
kvs



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kvs