

|W
C.A.No. 7461 OF 1999
ITEM No.108

Court No.1

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.7461/1999

MANAGING TRUSTEES SUBHASHINI EDUCATION TRUST
THROUGH ITS CHAIRMAN K.J. KALEGOWDA Appellant(s)

VERSUS

R. VICKRAMADITIAN & ORS. Respondent (s)

(With Office Report)

Date :21/04/2004. This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE S.H.KAPADIA

For Petitioner (s)Mr.S.B. Sanyal,Sr.Adv.,
Mr.Naresh Kaushik,Adv.,
Ms.Shilpa Chohan,Adv.,
Ms. Lalita Kaushik,Adv.

For Respondent (s)
Mr.Rajesh Mahale,Adv.,
Mr.R.C. Kohli,Adv.

Mr.Anil K. Mishra,Adv.,
Mr.Sanjay R. Hegde,Adv.

Mr.N. Ganpathy,Adv. (N/P)
Mr.Randhir Singh Jain,Adv. (N/P)

UPON hearing counsel the Court made the following

O R D E R

Appeal is disposed of in terms of the signed order.

(Vijay Kumar Sharma) (Janki Bhatia)
AR cum PS to Hon.Judge Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7461/1999

MANAGING TRUSTEES SUBHASHINI EDUCATION TRUST
THROUGH ITS CHAIRMAN K.J. KALEGOWDA..Appellant

Versus

O R D E R

The appellant herein is a trust which is running a women college at Kolar Gold Fields (KGF). Subsequently, the institution was also granted affiliation for imparting B.Ed. course also by the Bangalore University. Subsequently, it was felt that there was not enough space in the college building for accommodating the entire students in the B.Ed. Course. Since, the area was the mining area, there was restriction in constructing building, the appellant applied to the university for shifting the B.Ed. Course to a place known as Bangarpet which is at a distance of 8 Kms. from KGF. Initially, the said application was rejected by the university on the ground that it is not expedient during the middle of the session. Subsequently, the appellant herein applied again to the State government for grant of permission for shifting the B.Ed. College from KGF to Bangarpet. On receipt of the said application the Government by Order dated 4.6.1995 granted permission to shift the college from KGF to Bangarpet. Acting upon the said sanction granted by the State government, the appellant has constructed a building at Bangarpet and started imparting education therein. Subsequently, a public interest litigation was filed challenging the ground of permission to shift the college from KGF to Bangarpet. The High Court of Karnataka by the impugned judgment set aside the order passed by the State Government on the ground that under Karnataka State University Act, 1976 (herein after referred to as 'the Act') has no power to permit the shifting of the college from a locality for which the recognition was granted to another locality. It is against the said judgment of the High Court the appellant has come up in appeal before this Court. Mr.S.B. Sanyal, the learned senior counsel appearing for the appellant urged that the power to shift the college from one locality to another locality is implicit in the power to grant affiliation. We find merit in the contention. Section 53 of the Act reads as under:-

"53. Affiliation of Colleges.--(1) Colleges within the University Area may, on satisfying the conditions specified in this section, be affiliated to the University as affiliated colleges by the State Government.

(2) A college applying for affiliation to the University shall send an application to the Registrar within the time limit fixed by Ordinances and shall satisfy the Syndicate and the Academic Council.--

(a) that it will supply a need in the locality, having regard to the type of education intended to be provided by the college, the existing provision for the same type of education made by other colleges in the neighbourhood and the suitability of the locality where the college is to be established;

(b) that it is to be under the management of a regularly constituted governing body;

(c) that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instructions, teaching or training to be undertaken by the college;

(d) that the buildings in which the college is to be located are suitable and that provision will be made in conformity with the Ordinances for the residence in the college of in lodgings approved by the college, for students not residing with their parents or guardians and for the supervision and welfare of students;

(e) that due provision has been made or will be made for a library;

(f) where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the Statutes, Ordinances and Regulations for imparting instruction in the branch of science in a properly equipped laboratory or museum;

(g) that due provision will, as far as circumstances may permit, be made for the residence of the Principal and members of the teaching staff in or near the college or the place provided for the residence of students;

(h) that the financial resources of the college are such as to make due provision for its cont

inued maintenance and efficient working; and

(i) that rules fixing the fees (if any) to be paid by the students have been framed or will be framed.

(3) The application shall further contain an assurance that after the college is affiliated, any transference of management and all changes in the teaching staff and all other changes which result in any of the aforesaid requirements not being fulfilled or continued to be fulfilled shall be forthwith reported to the Syndicate and to the State Government or such authority as the State Government may specify.

(4) On receipt of a letter of application under sub-section (2), the Syndicate shall--

(a) direct a local inquiry to be made by a competent person or persons authorised by the Syndicate in this behalf in respect of such matter as may be deemed necessary and relevant;

b) make such further inquiry as may appear to it be necessary; and

(c) record its opinion after consulting the Academic Council on the question whether the application should be granted or refused, either in whole or in part, stating the result of any inquiry under clauses (a) and (b).

(5) The Registrar shall, within such time as the Government may from time to time specify submit the application and all proceedings, if any, of the Academic Council and of the Syndicate relating thereto to the State Government which after such inquiry as may appear to it to be necessary shall make their recommendations for the grant of the application of any part thereof or of refuse the application or any part thereof and the University shall issue orders accordingly.

(6) Where the application or any part thereof is granted, the order of the University shall specify the courses of instruction in respect of which and the period for which the college is affiliated, and where the application or any part thereof is refused, by the State Government or the University the grounds of such refusal shall be stated :

Provided that on the recommendation of the State Government, permanent affiliation may be granted to a college which was affiliated continuously for a period not less than five years and fulfilled all the conditions of affiliation and attained the academic and administrative standards prescribed by the University from time to time.

(7) As soon as possible after the State Government or the University makes its order, the Registrar shall submit to the Senate a full report regarding the application, the action taken thereon under sub-sections (4) and (6) and of all proceedings connected therewith.

(8) An application under sub-section (1) may be withdrawn at any time before an order is made under sub-section (5).

(9) Where a college desires to add to the courses of instruction in respect of which it is affiliated, the procedure prescribed by sub-sections (2) to (8) shall, so far as may be, followed :

Provided however, that continuation of affiliation for existing courses of study and extension of affiliation for follow on courses may be granted by the Syndicate in consultation with the Academic Council.

(10)(a) No admission of students shall be made by a new college seeking affiliation to any University or by an existing college seeking affiliation to a new course of study to such course, unless, as the case may be, affiliation has been granted to such new college or to the existing college in respect of such course of study.

(b) The maximum number of students to be admitted to a course of study shall not exceed the intake by the University or the Government, as the case may be and any admission made after this section came into force in excess of the intake shall be invalid.

(c) No student whose admission has become invalid under clause (b) shall be eligible to appear nor shall he be presented by the college to appear at any examination conducted by the University."

A perusal of the aforesaid provision would show that a detailed procedure is laid down for the grant of affiliation. A power to grant affiliation would also empower the authorities to pass appropriate orders from time to time, which would include an order as regards location of the college. But such exercise must be done in the same manner as is required to be taken while granting the affiliation. However, we do not find that the State Government has any power to pass ultimate order shifting the institution. The State Government only could have made a recommendation to the university for grant of shifting of college from one locality for which the affiliation was granted to the another locality whereafter it is for the university to pass an appropriate order under sub-section (5) of Section 53 of the Act. We, therefore, treat the impugned order (government order dated 4.6.95) as a recommendation of the State under Section 53 of the Act. The said recommendation shall now be placed before the university for its consideration and passing of an appropriate order in accordance with law.

In aforesaid view of the matter, the judgment under challenge stands modified. University is directed to consider the aforesaid recommendation in terms of Section 53 of the Act. The appeal stands disposed of accordingly.

.....CJI

.....J
(S.B SINHA)

.....J
(S.H. KAPADIA)

New Delhi,
April 21, 2004