

SUPREME COURT OF INDIA

Shivagangagiri Vidyabiruddi Samste

Vs.

State of Karnataka

C.A.No.27 of 2011

(R.V.Raveendharan and A.K.Patnaik,JJ.,)

04.01.2011

ORDER

1. Leave granted.

2. The appellant gave a representation to the State Government for permission to establish a Junior college. The State Government, by order dated 3.8.1985, permitted the appellant to establish a Junior college from the academic year 1985-86.

3. Appellant claims that in pursuance of the said order, it has established and been running a Junior college. When the appellant applied for grant-in-aid, on the basis of an inspection made, the Government came to the conclusion that the appellant had not established the junior college prior to 1.6.1987. As a consequence, by order dated 7.10.1999, it held that as the Junior college was not started prior to 1.6.1987, the permission granted on 3.8.1985 lapsed.

4. However, on a subsequent inspection report dated 24.8.2000, the State Government made an order dated 1.1.2002 by which the cancellation order dated 7.10.1999 was withdrawn and the earlier order dated 3.8.1985 granting permission was revived. Administrative and educational approval to the said college was also granted from 1985-86.

5. Thereafter, the Government by order dated 21.9.2002 cancelled the order dated 1.1.2002 with immediate effect and sanction was accorded to the appellant's Pre-University college only from the academic year 2002-03. The said order was passed without giving any opportunity to show cause to the appellant. In the circumstances, the appellant made several representations to the Government. The matter was under consideration by the Government and there was a direction by the Chief Minister to re-validate the order dated 1.1.2002. In fact the Director, Pre-University Education, by communication dated 14.12.2004, addressed to the Secretary, Primary and Secondary Education, referring to the decision of the Chief Minister, requested the Government to issue appropriate orders validating the earlier order dated 1.1.2002. The appellant therefore waited for a reasonable period hoping that appropriate orders will be passed. Ultimately, as no order was issued, the appellant filed a

writ petition in the year 2007 for 3 quashing the order dated 21.9.2002 and seeking implementation of the order dated 1.1.2002. The said writ petition was dismissed on 6.6.2007. The writ appeal filed by the appellant was dismissed by the impugned order dated 15.6.2010, on the ground that the writ petition was filed belatedly.

6. Firstly, it has to be noticed that there was no delay or laches on the part of the appellant in filing the writ petition. The order dated 21.9.2002 was not passed after giving an opportunity to the appellant. Secondly, when the appellant came to know about it, he gave representations and the matter was under consideration and in fact a communication was addressed on 14.12.2004 by the Director, Pre University Education for revalidation of the order dated 1.1.2002. It was evident that the appellant was waiting issuance of appropriate orders in pursuance of it. Only when the Government order dated 1.1.2002 was not revalidated in spite of the communication dated 14.12.2004, it filed the writ petition. Hence, dismissal on the ground of delay and laches cannot be sustained.

7. Valuable rights had accrued to the appellant by reason of the order dated 1.1.2002 which revived the earlier order dated 3.8.1985 thereby granting permission to the appellant to establish the Junior college from 1985-86. Such an order, obviously, could not be withdrawn without any show cause notice or giving an opportunity to the appellant to show cause. In fact, having regard to the provisions of the Karnataka Education Act, 1983, an opportunity to show cause is required before withdrawal of any permission. In the circumstances, the order dated 21.9.2002 being opposed the principles of natural justice cannot be sustained. The appellant has to succeed on this limited ground.

8. We, therefore, allow this appeal, set aside the order dated 15.6.2010 of the Division Bench and the order dated 6.6.2007 of the learned Single Judge and allow the writ petition filed by the appellant before the High Court and quash the order dated 21.9.2002. As a consequence, the order dated 1.1.2002 will continue to be in force. We make it clear that the State Government, if it still wants to take any action with reference to the order dated 1.1.2002, may do so after giving due opportunity to the appellant to show cause in the matter. We have not expressed any opinion on the merits of the matter and this order is made only on the ground that principles of natural justice were violated in issuing the order dated 21.9.2002.