

**M. Radhakrishna Moorthy and Others Vs. District Educational Officer, Ongole and Others**

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**Court :** Andhra Pradesh

**Decided On :** Jul-19-2000

**Reported in :** 2000(5)ALD64; 2000(4)ALT660

**Judge :** V.V.S. Rao, J.

**Acts :** Andhra Pradesh Education Act, 1982 - Sections 2(17), 20, 21(3), 26, 27, 28(1), 29, 51 and 53; Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control) Rules, 1993 - Rules 6 to 9, 10(17, 22, 23 and 24)

**Appeal No. :** WP Nos. 34050 of 1998, 9047 and 21146 of 1999

**Appellant :** M. Radhakrishna Moorthy and Others

**Respondent :** District Educational Officer, Ongole and Others

**Advocate for Def. :** Govt. Pleader for School Education and Mr. P. Venkateswarlu, Adv.

**Advocate for Pet/Ap. :** Mr. K. Jaganmohan Reddy,;Mr. C.V. Nagarjuna Reddy and;D.V. Sitharama Murthy, Adv.

**Judgement :**

ORDER

1. In all these writ petitions the dispute is regarding the transfer of Parasara Bharathi Oriental Elementary School, Kandukur. Hence these writ petitions are being disposed of by a common order.

2. WP No.9047 of 1999 and WP No.34050 of 1998 are filed by the teachers of the said school whose posts were admitted to grant-in-aid. WP No.2t 146 of 1999 is filed pro bono publico by four petitioners who are parents of the children studying in Parasara Bharathi School (PBS). In the two writ petitions filed by the teachers, they impugn the validity of the proceedings issued by the District Educational Officer, Ongole (hereafter called 'the DEO') in RCNo.2124/B3/98, dated 27-8-1998. In the other writ petition, the petitioners pray for a declaration that the action of the DEO and the Director of School Education in seeking to close down the PBS as illegal and contrary to the provisions of the A.P. Education Act, 1982 ('the Act' for brevity).

3. The admitted facts relevant for the purpose of deciding the issue in these writ petitions may be noticed briefly.

At or about 1972, an educational society by name Bharathi Vidya Parishad (BVP) started PBS and the same was admitted to grant-in-aid and there were five posts of secondary grade teachers in the said school which are held by the petitioner in WPNo.9047 of 1999 and the petitioners in WP No.34040 of 1998 and another. Till 1987, the school was run effectively with a student strength of about 200. Though, allegedly, BVP was owing Ac.0.86 cents of land, no permanent building was constructed and the school was being run in rented buildings. In 1996, the strength of the school came down to 36 and therefore running the school became uneconomic. The DEO got an inspection done and found that as on 19-12-1996 there were only 37 students and therefore a show-cause notice was issued by the DEO in RC No.9250-B3/96, dated 26-5-1997 as to why the school should not be ordered to be closed down and as to why salaries to the teachers should not be stopped. The Correspondent, in his reply dated 5-6-1997 informed that he had no objection if the DEO takes action in accordance with the provisions of law. Therefore, as an alternative, the DEO requested the Correspondent to transfer the school to one Chenna Veera Raghavulu and requested the Correspondent to give

willingness who gave consent to surrender the teachers to any other needy aided school or local body which is permissible as per the guidelines issued by the Government in G.O. Ms. No.49, Education Dept, dated 26-2-1998. Be that as it may, the teachers were called for counselling on 15-7-1998 and during the counselling the teachers expressed their willingness gave option for shifting their posts to the needy schools as well as schools run by Panchayat Raj Department. In the meanwhile, the first respondent in the proceedings dated 27-8-1998 accepted the transfer of the school by PBS to one Keshav Memorial Education Society (KMS), Kandukur, which is contrary to the Act and the AP Educational Institutions (Establishment, Recognition, Administration and Control) Rules, 1993 (hereafter called 'the Rules'). Pursuant to the impugned order, the Secretary and Correspondent of KMS issued orders on 2-9-1998 directing the teachers to join the duties in PBS which was transferred to KMS functioning at 24th ward of the said town. The teachers challenge the proceedings of the DEO dated 27-8-1998 and the consequential orders inter alia on the ground that the proceedings of the DEO is in violation of Sections 20 and 53 of the Act and Rules 6 to 9 and Rule 10 of the Rules.

4. A common counter affidavit is filed in all these writ petitions by the DEO. The averments of the counter affidavit are as follows. The school started by BVP is a recognised school with four -aided posts of secondary grade teachers and one aided post of Sanskrit Pandit. During the years 1997-98, the school was conducted under the trees and the student strength came down to 9. The 6th respondent Society (KMS) started a school in Janardana Colony at a distance of 2 km. from PBS and the said school has no recognition. Keshav Memorial Society (KMS) was registered in 1998 with a view to take over PBS. The petitioners in WP No 21146 of 1999 had admitted their children in PBS which was taken over by KMS. Except the name of the school, the children who were hitherto studying in PBS at different localities are not studying in the 6th respondent school at Kola Reddy Nagar. Only one teacher is working in the school which is under the new management. The other teachers obtained interim orders from this Court. In view of the interim orders, the DEO sent proposals to the Commissioner of School Education, who, in proceedings Mo.356/D2.4/ 99, dated 16-9-1999 permitted the DEO to transfer the teachers who approached the High Court along with the posts

to other schools. In the meanwhile, the High Court passed orders of status quo in Writ Petition No.21146 of 1999 filed by the parents. It is also alleged that the writ petition by parents is filed at the behest of the Correspondent of the school under the management of 6th respondent (KMS) with mala fide intention.

5. The 6th respondent (KMS) filed a counter affidavit supporting the proceedings of the DEO dated 27-8-1998. It is also averred that the provisions of the Act as well as the Rules do not prohibit the transfer of management of recognised private school by one educational agency to another educational agency. While ordering transfer of management, it is not necessary to take the consent of the teachers working in the transferor school and, therefore, the impugned order is legally valid. It is also stated that KMS was constituted for imparting education by providing suitable accommodation. The said Society on 25-6-1998 requested the DEO to transfer the management of PBS from BVP. The new society also took suitable accommodation and therefore considering all these aspects the DEO issued the impugned proceedings handing over the management of the said school with all the teaching staff to KMS.

6. The learned Counsel for the petitioners/teachers contend that the impugned order passed by the DEO ordering transfer of the school to the new Society is not permissible as per the provisions of the Act and the Rules. As and when the school is closed down, there is an obligation on the part of the DEO to transfer the teachers holding aided posts to the needy schools and therefore transferring the teachers to the management of KMS without their consent is contrary to the rules. They rely on sub-rule (17) of Rule 10 of the Rules as well as the guidelines issued by the Government in G.O. Ms. No.49, dated 26-2-1998. The learned Counsel for the petitioner in WP No.21146 of 1999, Sri D.V. Sitarama Murthy submits that the petitioners only interest is that a school should be run for the benefit of the students and that it is not the concern of the petitioners whether the school is run privately either by BVP or KMS.

7. The learned Government Pleader relies on the provisions of Sections 2(17), 26, 27 and 28 and various Rules especially sub-rules (17), (22), (23) and (24) of Rule 10 of the Rules and submits that the concept of 'transfer of a recognised school to

another management' is conspicuous by its absence either in the provisions of the Act or the Rules. Therefore, the order passed by the DEO on 27-8-1998 is ex facie illegal. The Commissioner of School Education on a clarification being sought by the DEO himself has now clarified the position in his proceedings Rc.No.356/D2-4/99, dated 16-9-1999 inter alia ordering re-deployment of four teachers to needy Mandal Parishad and Zilla Parishad Schools and also holding that transfer of a recognised aided private school to a new society is prohibited under the Rules. The learned Counsel for 6th respondent (KMS) submits that the proceedings of the Commissioner dated 16-9-1999 was issued only pending further on these writ petitions and therefore the same cannot be treated as nullifying the proceedings of the DEO dated 27-8-1998.

8. Having regard to the pleadings and the various submissions, the point that arises for consideration is whether the order passed by the DEO on 27-8-1998 is legal and valid and whether the same is still in force in view of the subsequent proceedings of the Commissioner of School Education dated 16-9-1999.

9. The impugned proceedings discloses the following factual situation which is not denied by the contesting parties.

(i) PBS established by BVP became uneconomical and therefore the management of the school decided to close down the school.

(ii) The members of BVP came forward, registered KMS society and approached the DEO requesting to issue orders for handing over the management of PBS.

(iii) The members of KMS also requested the District Collector and Chairman of rationalisation committee to hand over PBS to KMS.

(iv) During the rationalisation of the staff strength, the rationalisation committee to shift the teachers working in PBS to needy schools duly closing the said institution as the same is without any accommodation and the owner of the building requested the teachers to vacate the school.

(v) The correspondent of PBS under the management of BVP agreed to hand over the school to the new management of KMS and gave willingness in writing along

with other members of BVP who unanimously decided to hand over the school to the new management.

(vi) In furtherance of the willingness given by all the members of BVP the school was handed over to the Correspondent of KMS by the Correspondent of BVP on 24-6-1998.

(vii) In view of Nos.(v) and (vi) above, the DEO issued orders 'approving the handing over and taking over of PBS from the academic year 1998-99 onwards' without any financial burden to the Government or to the Education Department.'

The above factual matrix shows that the members of BVP unanimously decided to close down the PBS and hand over the said school to KMS. This action of the members of a BVP was approved by the impugned proceedings. The proceedings is silent as to the status of the teachers working in aided posts after such approval being given by the DEO for handing over the school by BVP to KMS. Therefore, the teachers who are earlier working in aided posts in the school run by BVP have locus standi to question the transfer especially when the staff rationalisation committee in the counselling held on 15-7-1998 sought for the willingness of the teachers for the purpose of adjusting them in other needy schools under the management of Mandal Parishad/Zilla Parishad. Therefore, the submission of the KMS that the teachers have no locus standi to question the proceedings of the DEO is without any substance.

11. The next question is whether the action of the DEO in approving the handing over the management of PBS by BVP to KMS is in accordance with law. The learned Counsel for KMS places reliance on Section 28 of the Act and Rule 10(24) of the Rules in support of his contention that the school is not closed down, that the school is being run in the same name as PBS and that the management of the school which was earlier with BVP has now been entrusted to KMS. This, according to the learned Counsel, is permissible under Section 28 of the Act, Section 28 of the Act reads as under :

'28. Restriction of alienation of property of private institution :--(1) Notwithstanding anything in any law for the time being in force, no sale, mortgage, lease, pledge,

charge or transfer of possession in respect of any property of a private institution other than a recognised school shall be made or created except with the previous permission in writing of the competent authority on an application made in this behalf,'

12. Section 28 of the Act cannot be read in isolation. Sections 26 to 29 form one group of provisions in the Act dealing with closure of the school, handing over of the properties of the school and adjustment of assets and liabilities of a closed school as well as prohibition of alienation of property by private institutions. As per Section 2(35) of the Act, private institution means an institution imparting education or training established and administered or maintained by a body of persons and 'recognised as educational institution by the Government'. In the light of this definition, it should be concluded that Section 28 prohibits a recognised private educational institution from alienating its property without previous permission from the competent authority. A recognised private educational institution in the course of its existence might acquire huge properties and if absolute power of alienation is conceded to an educational agency managing such private educational institution, it would defeat the purpose of establishing a private school. Therefore, the law requires prior permission from the competent authority for alienation of the property of such private institution and subsection (4) of Section 28 declares any sale, mortgage, lease, pledge, charge or transfer of possession in contravention of the provisions of sub-section (1) as null and void.

13. The learned Counsel for KMS tries to draw a distinction between the provisions of Section 28 and Section 53 of the Act which also prohibits transfer of land and buildings by educational institution without permission from the Government in certain cases and would contend that the words 'transfer of possession' in Section 28 gives sufficient indication that the transfer of management of the school is permissible under Section 28(1) of the Act. This submission ignores the non-obstinate clause in Section 28(1) which is an apparent distinction between Section 28 and Section 53. Therefore, though Section 28 and Section 53 ordinarily operate in similar circumstances, in the event of conflict, Section 28 alone should prevail. From a reading of all sub-sections in Section 28 together, it is not possible to accept the contention that the words 'transfer

of possession' in Section 28(1) permit transfer of management by one educational agency to another educational agency. Further, a reading of Section 2(17) also supports the view of the learned Government Pleader for Education that the transfer of management of a school established and managed by one educational agency to the management of another educational agency is prohibited under the provisions of the Act.

14. The DEO in his proceedings dated 27-8-1998 places too much of emphasis on the unanimous willingness given by the members of BVP to hand over the management of the school to KMS. In view of my holding in the above paragraph that transfer of the management of a recognised private educational institution to the management of a private educational agency is prohibited, the proceedings of the DEO should be held to be illegal and without application of mind. This view is further supported by a reference to the other relevant provisions of the Act and the Rules.

15. Section 26 of the Act lays down that a private institution shall not close down without sufficient notice. The provision reads as under :

'Section 26 : Private institution not to be closed down, etc., without sufficient notice :--(1) Save as otherwise provided in this Act, no private institution shall be closed down or discontinued, unless a notice of not less than one academic year expiring with the end of any academic year and indicating the intention to do so, has been given by the manager to the officer authorised by the competent authority in this behalf.'

16. Section 27 postulates that in the event of a private institution being closed down or discontinued or its recognition is being withdrawn under Section 21(3) of the Act, the manager shall hand over the institution to the competent authority along with all the properties, records and accounts of the institution. Therefore, when a private educational institution closes down after issuing of notice of not less than one academic year, it is under obligation to hand over the school with the property to the competent authority. The provisions of law do not permit the authority to approve the transfer of management of a closed school to another management of a different educational agency.

17. In this context, a reference to sub-rules (17), (22), (23) and (24) of Rule 10 is necessary, which may usefully be extracted as under:

'(17) that when private aided schools are forced to be closed down for any reason or whenever the management of the school goes out of the way to remove any of its staff members or whenever there is fall in strength in a private aided School for two subsequent academic years, the competent authority may transfer the staff along with the posts to any other needy Private or Local Body School within the district.

(22) that the institutions are permitted to be established (or upgraded) to meet the educational needs of the respective localities, shifting of the institutions from one locality to another will not be permitted under ordinary circumstances, as a matter of routine. However, shifting of the institution from one building to another within the same locality or with the same town/municipal limits, may be permitted when the intention is to provide better accommodation or shifting into own building is proposed. Prior permission of the competent authority is required for any such shifting.

(23) that the educational agency for which permission to establish an institution has been accorded shall not transfer the institution to any other educational agency;

(24) that any institution which has been closed down without prior permission of the competent authority or any institution which has been closed down with the prior permission of the competent authority and has remained so for more than five years, shall be treated as defunct institution. If the defunct institution is proposed to be reopened, it should be treated as a fresh proposal and all the conditions prescribed for establishing the new institution shall be applicable to it.'

18. Placing reliance on these rules, the learned Government Pleader for Education contends that an educational agency which was given permission to establish an institution is not entitled to transfer the institution to any other educational agency and that in such an event if a defunct institution is proposed to be reopened either by the same educational agency which established the school or a different

educational agency, the proposal shall have to be treated as a fresh proposal. The learned Counsel for KMS, however, would submit that a reading of sub-rule (24) of Rule 10 of the Rules shows that transfer of a closed institution or a defunct institution to another management is permissible under the rules. Sub-rule (24) deals with three types of institutions : (i) an institution which has been closed down without prior permission of the competent authority; (ii) an institution which has been closed down with prior permission but remains defunct by virtue of its being remaining closed for more than five years; and (iii) an institution which has remained closed with permission or without permission for a period of five years which is treated as a defunct institution. A reading of sub-rules (23) and (24) of Rule 10 together belies the contention of the learned Counsel for KMS. In fact, if the rule making authority intended to do so, there would not have been an occasion to have sub-rule (17) of Rule 10, which says that in the event of the school being closed down the competent authority may transfer staff along with the posts to any other needy private aided school or local body within the district. In view of this, the submission of the learned Counsel for KMS that the DEO acted within his powers under Section 28 read with Rule 10(23) and (24) is liable to be rejected.

19. As noticed earlier, after the teachers approached this Court questioning the order dated 27-8-1998 and obtained orders of suspension, the DEO addressed the Commissioner of School Education, who by proceedings dated 16-9-1999 clarified the position ordering shifting of all the teachers in PBS to the schools run by Mandal Parishads/Zilla Parishad. It is submitted by the learned Government Pleader that in view of the orders of the Commissioner, the proceedings of the DEO are no more in force and therefore the writ petitions be disposed of accordingly. This is seriously disputed by the learned Counsel for KMS.

20. It is submitted by the learned Counsel for KMS that the proceedings of the Commissioner came to be issued during the pendency of the writ petition and therefore they should be viewed as subject to the final orders in these writ petitions. The Commissioner's proceedings refers to the communications of the DEO dated 29-5-1999 and 5-8-1999. In the first communication, while tracing the history of PBS till its closure due to uneconomical strength and also bringing to the

notice of the Commissioner about the interlocutory orders passed by this Court, the DEO sought clarification as follows:

'Hence the District Educational Officer, Prakasam has sought for clarification whether the following (4) petitioners along with the posts held by them may be redeployed to the Mandal Parishad/ Zilla Parishad schools in Kandukur division identified during 1999 under Rationalisation, without prejudice to the outcome of the writ petitions in the references 5th and 6th read above.'

21. In the other communication, the DEO sought for similar clarification. The orders passed by the Commissioner require to be considered in the light of the letter of the DEO seeking clarification. It cannot be doubted that the DEO requested for necessary orders whether the four teachers who filed writ petitions be redeployed to the needy Mandal Parishad/Zilla Parishad schools subject to finalisation of the writ petitions since the teachers have attended the counselling. However, the Commissioner, while issuing orders in the proceedings dated 16-9-1999 considered the entire matter on its own merits with reference to Rule 10 of the Rules and recorded a finding that under the provisions of the Act and the Rules, the transfer of management of the school to another management is prohibited. Insofar as this conclusion is concerned, this is not subject to any further orders by this Court. If any party was aggrieved, it was always open to challenge it. Be that as it may, the other part of the order directs the DEO to redeploy and shift four teachers who filed writ petitions to the needy Panchayat schools. Reading the communication of the DEO and the proceedings of the Commissioner together, it has to be held that insofar as the redeployment of teachers to other needy schools is concerned, the same was subject to the result of the writ petition; insofar as the conclusion that the transfer of management is prohibited under the Rules is concerned, it is final. Indeed, in their writ petition before me, the teachers are aggrieved only by their transfer to the school to be run by KMS and not transfer of the school as such. In view of the conclusion recorded that DEO's proceedings are illegal, the point is answered accordingly.

22. For the above reasons, WP No.34050 of 1998 and WP No.9047 of 1999 are disposed of directing the DEO to implement the orders of the Commissioner in

Proceedings No.356/D2-4/99, dated 16-9-1999 immediately. The teachers shall be entitled to treat the entire period of absence from Parasara Bharathi Oriental Elementary School as in service. They shall not, however, be entitled to any wages for the period during which they did not work as teachers either from Parasara Bharathi School through DEO or Zilla Parishad School. The other writ petition, WP No.21146 of 1999 filed by the parents is disposed of directing them to make a representation to the competent authority for starting a school in their locality if there is no school already as the school allegedly being run in Janardana Colony by KMS cannot be treated as a recognised private educational institution as per the provisions of the A.P. Education Act, 1982 and the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993.

23. The writ petitions are accordingly disposed of, but in the circumstances there shall be no order as to costs.

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