



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 12<sup>TH</sup> DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR.JUSTICE P.KRISHNA BHAT

**WRIT PETITION NO. 1682/2022(EDN-RES)**

**BETWEEN:**

WE CARE CHARITABLE TRUST

..PETITIONER

(BY SRI.SRIKANTH M.P., ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
PRIMARY & SECONDARY EDUCATION  
M.S. BUILDING  
DR. AMBEDKAR VEEDHI  
BANGALORE – 560 001  
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. THE COMMISSIONER FOR PUBLIC INSTRUCTIONS  
PRIMARY & SECONDARY EDUCATION  
NEW PUBLIC OFFICES  
NRUPATHUNGA ROAD  
K.R. CIRCLE, BANGALORE – 560 001.
3. THE DIRECTOR OF PUBLIC INSTRUCTIONS  
SECONDARY EDUCATION

NEW PUBLIC OFFICES  
NRUPATHUNGA ROAD  
K.R. CIRCLE  
BANGALORE – 560 001.

4. THE DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS  
KALASIPALYA, BENGALURU SOUTH DISTRICT  
BENGALURU – 560 002.
5. THE BLOCK EDUCATION OFFICER  
SOUTH RANGE – 1  
SHANKARPURAM  
BENGALURU – 560 053.

..RESPONDENTS

(BY SRI. B.V. KRISHNA, AGA FOR R-1 TO R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO QUASH THE IMPUGNED ORDER DATED 28.09.2019 BEARING NO.C8(3)56 SHA.SHI.AA.HO.PROU.SHA. NOM.AA.NU./2019-20 ISSUED BY THE 2<sup>ND</sup> RESPONDENT VIDE ANNEXURE-K; QUASH THE IMPUGNED ORDER DATED 23.09.2021 BEARING NO.C8(3) SHA.SHI.AA. HIMBARAHA/1/2020-21 ISSUED BY 3<sup>RD</sup> RESPONDENT VIDE ANNEXURE-P AND FURTHER DIRECT THE RESPONDENTS TO CONSIDER THE APPLICATION VIDE ANNEXURE-G.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This writ petition is filed seeking the following reliefs:

- (i) *Quash the impugned order dated 28.09.2019 bearing No.C8 (3) 56 Sha.Shi.aa.Ho.Prou.sha. Nom.Aa.Nu./2019-20 issued by the 2<sup>nd</sup> Respondent vide Annexure-K.*
- (ii) *Quash the impugned order dated 23.09.2021 bearing No.C8 (3) Sha.Shi.Aa.Himbaraha/ 1/2020-21 issued by the 3<sup>rd</sup> Respondent vide Annexure-P.*
- (iii) *Further direct the Respondents to consider the application produced vide Annexure-G.*
- (iv) *Pass any order of consequential relief or any other appropriate order or direction as this Hon'ble Court deems fit in the facts and circumstances of the case in the ends of justice and equity.*

2. The petitioner wants to upgrade its existing school by opening classes for Standards 9<sup>th</sup> and 10<sup>th</sup>. The grievance of the petitioner is that its applications have not been properly considered by the respondents and they were rejected.

3. After making his submission for sometime, learned counsel Sri M.P.Srikanth stated that the petitioner has already filed a fresh application seeking permission

from the respondents to upgrade the school by starting classes for 9<sup>th</sup> and 10<sup>th</sup> standard for the academic year 2022-2023 and suitable direction may be issued by this court to consider the same and dispose it of within a reasonable time.

4. Learned Additional Government Advocate has no objection for the same and he submits that if the petitioner has filed an application, respondents are bound to consider the same in accordance with law and pass appropriate orders thereon.

5. Large number of litigations are coming up before this Court alleging failure on the part of respondents to consider the applications seeking approval for upgradation of the schools advancing two contentions; namely, such applications are not disposed of within a time bound manner and such applications are disposed of without giving proper and intelligible reasons. Disposal of the applications in a time bound manner is extremely essential as the applications are filed for specific academic year and if the decision making authorities take too long a

time for disposing of the applications, the academic year itself would have been over rendering the applications irrelevant or infructuous. It is necessary for the respondents to bear in mind the fact that the applications are filed by paying considerably high amount of fees and if the applications are not considered by them and disposed of within a reasonable time, it will entail great hardship to the petitioner. It is also necessary for the respondents to keep in mind that they are bound to give reasons for granting or refusing to grant permission. The applicants like petitioner are entitled to know the reasons as to why a particular decision has been taken on the application either granting or refusing to grant permission<sup>1</sup> (**KRANTI ASSOCIATES (P) LTD. V. MASOOD AHMED KHAN – PARA 47**). Assigning reasons for refusal of permission would help the petitioner to fulfill the deficiencies so that when they make a fresh application, they could do so in a proper manner in order to be successful during the next time. Even otherwise, the public authorities vested with public powers are expected to exercise such powers in a reasonable manner which includes taking decisions within

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<sup>1</sup> (2010) 9 SCC 496

a reasonable time and also the concomitant duty demand that the authorities give proper reasons for their decisions.

6. Learned counsel for the petitioner submitted with considerable anguish that the petitioner has been making efforts to secure approval for upgrading its existing school by opening classes for Standards 9<sup>th</sup> and 10<sup>th</sup> and towards this end it had made application for the academic year 2019-20 by paying a large amount of application fee of Rs.1 Lakh. He submitted that the application was processed by the respondents in such a manner that the report of the Three Member Committee pointing out the deficiency in the Institution were not made known to the petitioner so as to provide an opportunity to rectify the same and instead the respondents proceeded with the processing of the application finally rejecting the same.

7. The Institutions which want to upgrade their schools make necessary applications by paying the requisite fee to the respondents. The decision making power on such applications is with the respondents. Such

power is a public power and it is vested with the respondents for effectuating a public purpose. Article 21A of the Constitution reads as follows:

**"[21A. Right to education.--** *The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]*

8. It is therefore a fundamental right of every child born in this country to have free and compulsory education upto the age of fourteen and therefore, a corresponding duty is enjoined upon the State through the respondents to ensure the creation of large number of schools for providing universal education to children upto the age of fourteen. This is a public duty commanded by the Constitution on the State and its subordinate officials. Due to lack of sufficient resources State itself is not in a position to open sufficient number of schools for universalising primary and secondary education. It is therefore necessary that private players should be permitted to open schools to cater to large number of students through out the State. It is further necessary that regulatory mechanism is put in place to ensure that the private players do not misuse such opportunities either

by lowering the standard of education or by charging unreasonably high fees. It is also necessary to ensure that minimum reasonable infrastructural facilities in terms of classrooms, lavatories and bathrooms, libraries, playgrounds, teaching staffs and other auxiliary staff with proper service conditions are afforded by the private managements. Once the application is made by the managements the respondents are required to make an inspection as per the Rules and give opportunity to the managements to rectify any defects found during such inspection and thereafter, the application should be finalised. In the entire process of consideration of the application respondents are required to act in a reasonable, just and fair manner. The petitioner is not satisfied that the respondents have given a fair deal while disposing of its earlier application for the academic year 2019-20. It therefore seeks for issue of writ of mandamus directing the respondents to consider its application for the year 2022-2023. The question now is, what is the proper relief that is required to be granted by this Court in a case of this nature? There is no doubt about the fact that the



power vesting with the respondents to consider and dispose of an application seeking upgradation of the school is coupled with a duty. Such a duty should be discharged by the respondents in a transparent and reasonable manner. Transparency is achieved by giving reasons for the final decision taken by the respondents. Reasonableness is assured by the respondents by affording opportunities to applicants to rectify the deficiencies if any noticed during the inspection of the Institution as per the Rules.

9. It is necessary to make a reference to the two passages in de Smith's Judicial Review of Administrative Action, Fourth Edn., pp.283 and 285 which read as follows:

*"An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers are frequently coupled with duties. A Minister may be empowered to confirm or refuse to confirm a compulsory purchase order. In making his decision he is entitled to exercise a very wide discretion, but he is under a legal duty to determine the application for confirmation one way or the other. Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that*

condition the manner in which its discretion may be exercised.

*The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."*

10. In **COMPTROLLER AND AUDITOR-GENERAL OF INDIA, GIAN PRAKASH, NEW DELHI AND ANOTHER vs. K.S.JAGANNATHAN AND ANOTHER**<sup>2</sup> the power of a writ Court to issue mandamus has been elaborated as follows:

*"19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago Martin, B., in Mayor of Rochester v. Regina said :*

*But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court*

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<sup>2</sup> (1986) 2 SCC 679

of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A) . . . . Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *King v. Revising Barrister for the Borough of Hanley*. In *Hocntief Gammon's Case* this Court pointed out (at p.675 of Reports : SCC p.656) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield and Others v. Minister of Agriculture, Fisheries and Food* the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus

*"is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."*

**20.** *There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."*

Accordingly, this writ petition is **disposed of** with the following directions:

#### ORDER

- (i) The application filed by the petitioner seeking upgradation of the school by

starting classes for Standards 9<sup>th</sup> and 10<sup>th</sup> for the academic year 2022-2023 shall be considered and disposed of by the respondents within a total period of six weeks from today.

- (ii) The Three Member Committee while making its visit for the purpose of inspection shall point out the deficiencies noted to the petitioner during the inspection itself in writing.
- (iii) The respondents while examining the case of the petitioner for upgradation of the school on the basis of report of Three Members Committee or on their own notice any deficiencies in the institution for the purpose of upgradation shall inform the petitioner in writing about the same.

- (iv) A week's time may be given to the petitioner to offer its explanation on the said application.
- (v) Within two weeks of receiving such explanation from the petitioner, respondents shall take a decision on the application filed for seeking upgradation of the school for the academic year 2022-2023 and communicate such decision immediately thereafter to the petitioner.
- (vi) Reasons shall be given by the respondents for the decision taken by them either granting or refusing to grant permission for upgradation of the school.

**Sd/-  
JUDGE**

Dkb\*