

CASE NO.:
Appeal (civil) 7706 of 1997

PETITIONER:
ANJUMAN-E-ISLAM

...

Vs.

RESPONDENT:
THE STATE OF KARNATAKA & ANR.

DATE OF JUDGMENT: 04/09/2001

BENCH:
R.Babu, Doraiswamy Raju

JUDGMENT:

J U D G M E N T

Raju, J.

This appeal has been filed by the writ petitioner before the High Court against the order of the Division Bench of the Karnataka High Court, dismissing the appeal of the petitioner filed against the order of the learned Single Judge, dismissing their writ petition on the basis of an earlier Division Bench Judgment of the said High Court reported in Srinivas Desai vs State of Karnataka (I.L.R. 1993 Karnataka 2523).

The very appellant filed Writ Petition No.8719 of 1991 in the High Court for the issue of writ of mandamus directing the respondents to grant affiliation to the College of Education in Teachers Training (B.Ed.) to be established by the appellant from the academic year 1991-92 onwards etc. The learned Single Judge in the High Court by his Order dated 29.8.91 directed the respondents to consider the application filed by the appellant for starting B.Ed. college for the academic year 1991-92 and if not possible for the academic year 1992-93 after considering all aspects and keeping in view the provisions contained in Section 53 of the Karnataka State Universities Act, 1976. The appellant was said to have earlier filed the application seeking affiliation to start the B.Ed. college for the academic year 1980-81. The request of the appellant came to be rejected on the ground that the policy of the Government does not permit grant of affiliation to start any new B.Ed. college during the 8th Plan period. Writ Petition No.27443/91 came to be filed in which among other grounds it appears to have been urged that during the period for which initially such affiliation was sought by the appellant, others institutions have been granted. The learned Single Judge, who came to dispose of the said writ petition, was of the view that there had been failure on the part of the Government to discharge its statutory duties under Section 53 of the Act and the petitioner was discriminated against when permission was said to have been granted to several other institutions and, therefore, directed the Government to consider the matter afresh on the request of the appellants. Once again, the order of rejection came to be passed on 30.7.92, relying upon the policy decision of the Government necessitating filing of Writ Petition No.23544 of 1993, as noticed

earlier, both the learned Single Judge as well as the Division Bench dismissed the Writ Petition and the appeal following the earlier Division Bench judgment of the same Court.

Heard, learned counsel appearing on either side. Though, we find that the writ petition filed in Writ Petition No.8719 of 1991 was seeking for grant of affiliation for the academic year 1991-92 and the relief was also granted in the teeth of such prayer, the learned Single Judge who dealt with the subsequent writ petition filed in Writ Petition No.27443 of 1991 took into account the fact that for the period for which originally the affiliation was sought for, namely 1980-81 other institutions and applicants were granted with such affiliation and the discrimination meted out to the appellant alone constituted colourable exercise of power and therefore directed to consider the claim in the context of those facts. The learned Judge, at the same time, refrained from recording any opinion on the claim based on the minority nature of the institution. Though, we cannot countenance the claim of the appellant that being a minority institution the general policy decision of the Government placing an embargo on the opening of new institutions cannot stand in the way of the appellant's application being granted, from the peculiar facts and circumstances of this case, taken note of by the learned Judge while passing the order dated 9.4.92, which has not been challenged by any appeal, it is implicit that the claim of the appellant has to be considered for grant of affiliation keeping in view the state of affairs which prevailed during the academic year 1980-82 when similar applications were granted for others institutions though the actual grant had to be prospectively for the academic year subsequent to the date of grant and not retrospectively for the earlier years also. The fact that the applicant has been agitating the matter all along through proceedings before courts cannot be lost sight of in this regard. The decision of this Court reported in Vellore Educational Trust vs State of Andhra Pradesh and Others (1987 (Supp) SCC 543) also lends support to such consideration of their claim.

Hence, on the peculiar facts and circumstances of the present case, we direct the respondents to consider and accord affiliation as claimed by the appellant at least from the academic year 2002-2003. Since this direction is being given on the peculiar facts of this case, it is not meant to be precedent for others. The appeal shall stand allowed on the above terms. No costs.