



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 8<sup>TH</sup> DAY OF FEBRUARY, 2023**  
**BEFORE**  
**THE HON'BLE MR JUSTICE PRADEEP SINGH YERUR**  
**WRIT PETITION NO.2348 OF 2023 (EDN-RES)**

**BETWEEN:**

1. SHRI BYRAWESHWARA EDUCATIONAL AND  
DEVELOPMENT FOUNDATION (R)  
REGISTERED UNDER THE KARNATAKA  
SOCIETY REGISTRATION ACT  
INDIRA CONVENT HIGH SCHOOL  
NO.568, OPPOSITE JAYALAKSHMI TALKIES  
1<sup>ST</sup> CROSS, GUTHAL COLONY  
MANDYA, MANDYA DISTRICT -571 403  
BY ITS SECRETARY  
JAVAREGOWDA H.  
AGED ABOUT 50 YEARS

...PETITIONER

(BY SRI RAJU BHAT, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
APPELLATE AUTHORITY AND  
ADDITIONAL SECRETARY TO  
GOVERNMENT (ADMINISTRATION)  
DEPARTMENT OF SCHOOL  
EDUCATION AND LITERACY  
M.S. BUILDING, 6<sup>TH</sup> FLOOR  
AMBEDKAR STREET  
BENGALURU - 560 001  
REPRESENTED BY ITS  
PRINCIPAL SECRETARY
2. THE COMMISSIONER  
DEPARTMENT OF PUBLIC INSTRUCTION  
NEAR K.R. CIRCLE





NRUPATHUNGA ROAD  
BENGALURU - 560 001

3. DEPUTY DIRECTOR OF PUBLIC INSTRUCTION  
DEPARTMENT OF PUBLIC INSTRUCTION  
MANDYA DISTRICT, MANDYA -571401
4. BLOCK EDUCATION OFFICER  
DEPARTMENT OF PUBLIC INSTRUCTION  
MANDYA SOUTH DIVISION  
MANDYA DISTRICT, MANDYA - 571401

...RESPONDENTS

(BY SMT.PRAMODHINI KISHAN, AGA)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF INDIAN CONSTITUTION, PRAYING TO QUASH THE ORDER DATED 27.09.2021 VIDE ANNEXURE-A PASSED BY RESPONDENT NO.2 IN APPLICATION NO.201492 BEARING NO.C8(8)SHA.SHI.A. HO.PROU.SHA.NO.ANU/2020-21 AND UPHELD BY THE ORDER DATED 13.10.2022 VIDE ANNEXURE-B PASSED BY THE RESPONDENT NO.1 IN REVISION PETITION NO.05/2022 (ED 16 LBP 2022) IN DECLINING TO GRANT PERMISSION TO PETITIONER TO START 9<sup>TH</sup> & 10<sup>TH</sup> STANDARD AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Heard learned counsel for petitioner and learned Additional Government Advocate for respondents.

2. The petitioner is a Society registered under the Karnataka Societies Registration Act, 1960, engaged in imparting education to the public at an affordable cost. The



petitioner obtained permission to run Educational Institution from 1<sup>st</sup> to 5<sup>th</sup> standard and thereafter, from 6<sup>th</sup> to 8<sup>th</sup> standard from the academic year 2005. The petitioner is now presently running and conducting classes from 1<sup>st</sup> to 8<sup>th</sup> standard from the academic year 2015-2016 in English medium. The petitioner made an application in the year 2020-2021 to respondent No.1 seeking for proposal to start the High School in English medium from the academic year 2020-2021. Pursuant to which, respondent Nos.2 to 4 processed the said application and also held the spot inspection of the School and submitted their report. The petitioner realised that the respondents had rejected the proposal by passing an order dated 27.09.2021 on two grounds, point No.1 being building safety certificate obtained from the competent authority was not uploaded and point No.2 being the land available in the name of the Management of the petitioner is only to an extent of 0-12 guntas i.e. 1214.005 sq.mtrs. which is not sufficient to impart education from 1<sup>st</sup> to 10<sup>th</sup> standard, as prescribed by the respondents.

3. It is the contention of learned counsel for petitioner that the petitioner had secured 12 guntas of land through a



registered lease deed way back on 27.08.2021 for a period of 30 years and has been in possession of the same conducting education from 1<sup>st</sup> to 8<sup>th</sup> standard. All the basic facilities as required by the respondents are met with by the petitioner. It is also the contention of petitioner that as per prevailing Rules of the respondent-State, the petitioner obtained a building safety certificate from the Executive Engineer, PWD Division, Mysuru dated 24.08.2021 and fire safety compliance certificate from the Chief Fire Officer, Karnataka Fire and Emergency Services, Mysuru Zone, Hebbala Fire Station, Mysuru, dated 16.08.2021, which is valid as on date and he has annexed the same to the writ petition vide Annexures-F and G. It is the case of petitioner that he had filed an application seeking to start the High School and he has got necessary infrastructure and requirement to start the High School in the existing Institution.

4. Learned counsel further contends that in view of the School having started in the year 2005 itself and is presently in existence continuing Education from 1<sup>st</sup> to 8<sup>th</sup> standard, the petitioner now seeking permission to start 9<sup>th</sup> standard and above and the requirements as per the respondents would not come in the way of Rule 5 of the Karnataka Educational



Institutions (Classification, Regulation and Prescription of Curricula etc.,) (Amendment) Rules, 2017 (for short 'the Amendment Rules'), as the same is applicable only if he has not applied prior to 2017-18. However, he would not to be required to comply with the land requirement as stated in the said Rule 5 of the Amendment Rules, as proviso to Rule 5 states as under:

*"Provided further that, the above requirement of land extent shall not be applicable to the existing educational institutions started with due registration upto academic year 2017-18 except the extent of land prescribed in the right of children to free and compulsory education Act, 2009 (Act No 35 of 2009)."*

5. Learned counsel further contends that with regard to ground for rejection at point No.1 by the respondents of non-furnishing of the building safety certificate from the competent authority dated 24.08.2021 the same has been complied and cured by the petitioner and pursuant to the order of rejection passed by the State, the respondents had challenged the same before the Revisional Authority and the Revisional Authority had considered all these aspects and agreed with the petitioner



with regard to furnishing of building safety certificate which was placed along with other objections.

6. It is primarily the contention of learned counsel for petitioner that these two grounds for rejection are unsustainable in law, in view of the fact that the petitioner would not come within Rule 5 of the Amendment Rules, as he is registered prior to the academic year 2017-18. Therefore, vide proviso to Rule 5, incorporated by virtue of a notification dated 08.03.2018. He will be exempted, if he has registered prior to the academic year 2017-18 with regard to the requirement of 4,000 sq.mtrs. as stipulated in the other areas by the respondent-State.

7. Learned Additional Government Advocate vehemently contends that the fact with regard to the petitioner continuing education since 2005 is not disputed, but while seeking permission to grant approval to start High School i.e. 9<sup>th</sup> and 10<sup>th</sup> standard, the petitioner was required to file certain necessary documents as sought for. Since he had not provided the building safety certificate and had not fulfilled the requirement of Rule 5 of the Amendment Rules with regard to



4,000 sq.mtrs. in other areas, his application was rejected, which is correct and there is no illegality and perversity in the order passed by the Director on behalf of respondent No.2. The same was challenged before respondent No.1, who rejected revision petition on the ground of non-compliance of Rule 5 which prescribes requirement of 4,000 sq.mtrs. as per the said Rules in other areas. However, with regard to the first ground of rejection by respondent No.2, the building safety certificate was produced and the same was accepted as valid by the Revisional Authority. The same is not much in dispute as the building safety certificate was submitted on 24.08.2021.

8. It is the contention of learned Additional Government Advocate that the petitioner has not filed the required document of building safety certificate as on the date of application filed for granting permission to start 9<sup>th</sup> and 10<sup>th</sup> standard and the same was subsequently placed before the Revisional Authority. Hence, the same cannot be accepted as deemed compliance as he has not complied with the requirement as on date of filing of the application seeking permission. She also relies on the notification dated



07.03.2018, wherein the Sub-Rule (3) of Rule 3 of the Amendment Rules, 2018 reads as under:

*"(3) Registration and processing fee once paid shall not be refunded even when the registration is refused."*

9. This is the amendment, which was carried out vide notification dated 07.03.2018 to the original existing Rule 3. Hence, she contends that the petitioner will have to pay registration and processing fee and also submits that the building safety certificate prior to the consideration of application for permission to be granted for High School. Learned Additional Government Advocate relies on the order of the Coordinate Bench of this Court at Dharwad Bench in the case of ***Rose Bird Society R vs. State of Karnataka & Others*** [WP.Nos.101783/2021 C/w WP.No.101802/2021, DD: 09.12.2021], wherein a similar issue arose before this Court for consideration and this Court passed an order quashing the order passed by the respondent-State and held at para-6 as under:

*"6. Petitioners are educational institutions and the said institutions are recognized under the*





*provisions of the Karnataka Education Act, 1983. The applications submitted by Petitioners are rejected on the ground that the petitioners have not furnished requisite documents that they are holding 2000 sq.mts of land as specified under the Rule 5 of the Rules. However, II proviso to Rule 5 of the Rules specifies that the requirement of the land shall not be applicable to the existing educational institutions imparting education upto academic year 2017-2018. In the present case, the petitioners educational institutions are existing educational institutions having due registration to run classes upto 8th standard. Hence, the impugned Communication issued by the 2nd respondent is contrary to II proviso to Rule 5 of the Rules and there is no requirement for the petitioners to hold 2000 sq.mts. of land as specified in the Rule.”*

10. The proviso to Rule 5 of the Amendment Rules, which is extracted hereinabove, very clearly specifies and mandates that the said requirement shall not be applicable to the existing educational Institutions or to the Institutions imparting education up to the academic year 2017-18 and in the present case, the petitioner would come within the said exemption as he has registered the institution in the year 2005 for the



academic 1<sup>st</sup> to 5<sup>th</sup> standard and thereafter, 6<sup>th</sup> to 8<sup>th</sup> standard, which is prior to 2017-18. The other ground for rejection by the State also would not survive now for consideration, in view of the fact that the Revisional Court has accepted the contention of the petitioner with regard to furnishing and filing of building safety certificate dated 24.08.2021. The same having been placed on record before this Court, it shall be considered by the respondent-State while considering grant of permission to the petitioner to start the High School.

11. In view of the above discussions, I pass the following:

**ORDER**

- i) Writ petition is ***allowed***;
- ii) The order dated 27.09.2021 vide Annexures-A passed by respondent No.2 in Application No.201492 and the order dated 13.10.2022 at Annexure-B passed by respondent No.1 in Revision Petition No.5/2022, are hereby quashed;
- iii) The respondents shall consider the application already made by the petitioner earlier in the academic year 2020-2021;



- iv) The petitioner shall furnish the required documents as sought for by the respondents namely, the building safety certificate and other required documents along with prescribed fee as required under the Rules and Regulations;
- v) It is needless to mention that the respondents shall not insist the petitioner with regard to the requirement of 4,000 sq.mtrs. of land.
- vi) On furnishing all these, if the portal is not open, the respondents shall make available the provision for opening the portal either through online or shall accept the application by way of hard copy from the petitioner and process the same and consider the grant of approval within a period of three months from today.

**Sd/-  
JUDGE**

LB  
List No.: 1 Sl No.: 40