**1IN THE HIGH COURT OF****KARNATAKA AT BANGALORE**

W.A. Nos. 1747 of 2006 and 4600-4619 of 2011

Decided On: 10.06.2011

Appellants: **Mr. Govindagiri S/o. Shanmugam A.V. and Ors.**
**Vs.**
Respondent: **The Government of****Karnataka represented by its Secretary****EducationDepartment and Ors.**

**Hon'ble Judges/Coram:**
N.K. Patil and Arali Nagaraj, JJ.

**JUDGMENT**

**N.K. Patil, J.**

1. The Appellants claiming to be the parents of the students who are studying in various standards in ICSE and CBSE syllabus have filed these appeals, questioning the legality and validity of the order dated 10th October 2006 passed by the learned Single Judge in W.P. No. 10954/2006 and W.P. No. 11938/2006 and connected matters, wherein, they have assailed the correctness of the Circular dated 10th July 2006 issued by the Deputy Director of Public Instructions.

2. In brief, the facts of the case are as under:

The Appellants are the parents of the children studying in various standards from primary to 10th standard in ICSE and CBSE syllabus and they have challenged the Circular dated 10.7.2006 issued by the Deputy Director of Public Instructions-4th Respondent herein, contending that the said circular issued and notified to the effect that while selecting the state team by arranging different sports competitions, for the purpose of taking part in the National Sports competition organized by the School Games Federation of India, the schools coming within the jurisdiction of the Department of Public Instructions and which are governed by the provisions of the Karnataka State Education Act. 1983, shall only be permitted and the schools having ICSE and CBSE syllabus which are not governed by the provisions of the Education Act are not permitted to take part in the sports competition at any stage. Further, it is the case of the Appellants that their children excel in different sports namely. Table Tennis, Lawn Tennis and Swimming and are capable of representing the State in National competition and that they have, in fact, in the past shown their ability to participate in the various Table Tennis Championship conducted by the State and also the Table Tennis Federation of India, but by the impugned Circular, the State authorities have excluded all the students studying in the schools having ICSE and CBSE syllabus from participating in these State level meets organized and conduced by the Department of Public Instructions of the Government of Karnataka, thereby, depriving the opportunities to the students to participate in the sports competition and consequently, to get the benefit of reservation in the sports quota for admission to different professional institutions or for that matter in appointments to Group 'C and 'D' posts under the State Government. It is the further case of the Appellants that, the impugned circular issued by the Authorised Competent Authority of the Respondents is in violation of the Article 14of the Constitution of India, as it discriminates the students who are studying in various schools in the State of Karnataka having ICSE and CBSE syllabus from the students studying in the schools having state syllabus and controlled by the Department of Education, Government ofKarnataka, for the purpose of allowing them to take part in sports competitions, as all schools are established and run within the State ofKarnataka and therefore, it amounts to unreasonable classification resulting in hostile discrimination offending Article 14 of the Constitution. It is further contended that, in view of the impugned circular, the children of the Appellants would be deprived of job opportunities in the Railways and in the posts of Central Secretariat and also of reservation in admission to various professional courses. Therefore, Appellants have filed the writ petitions invoking the extra ordinary jurisdiction under Article 226 of Constitution of India.

3. The said writ petitions along with other connected matters had come up for consideration before the learned Single Judge on 10th October 2006. The learned Single Judge, after hearing the learned Counsel for the Appellants, learned Government Advocate for Respondents, after perusing the relevant materials available on file, after going through the aim and object of theKarnataka Education Act, 1983 and the salient feature of the impugned Circular issued by the Authorised Competent Authority of the Respondents, specifically, with reference to the byelaws framed for constituting the State Committee for 'Kreeda Nidhi' and its object to conduct Sports meet for schools that come within the purview and the jurisdiction of the Department of Public Instructions and also taking into consideration the specific ground taken by the Appellants that the impugned circular is in violation of Article 14 of Constitution of India, has dismissed the said writ petitions. Being aggrieved by the said order, Appellants have presented these appeals, seeking appropriate reliefs, as stated supra.

4. We have heard the learned Counsel for the Appellants and the learned Additional Government Advocate appearing for Respondents.

5. Learned Counsel Sri. B.K. Sarnpathkumar, appearing for Appellants, vehemently submitted that, learned Single Judge is not justified in declining to entertain the prayer sought by the Appellants in the Writ petitions and the ground of discrimination made in the Circular between the students who are studying in the State syllabus and those who are studying in ICSE and CBSE syllabus by excluding them from outside the ambit of bye laws framed constituting Committee for 'Kreeda Nidhi' for the students who are studying in 5th to 10th Standard. Further, he submitted that in view of the impugned circular, the students who are studying in the ICSE and CBSE syllabus are deprived of job opportunities in the Railways and in the posts of Central and for admission in professional courses under Sports category. Therefore, he submitted that the impugned Circular issued by the Respondents is liable to vitiate and the order passed by the learned Single Judge is liable to be modified by allowing these appeals by exercising the extra ordinary jurisdiction under Article 226 of Constitution of India.

6. As against this, learned Additional Government Advocate appearing for Respondents, inter-alia, contended and supported the impugned order passed by the learned Single Judge. Further, he submitted that, learned Single Judge after considering all the relevant material available on file and after going through the salient feature of 'Kreeda Nidhi', its aim and objects, has passed the said order. Further, learned Additional Government Advocate has taken us through the Preamble of the Education Act, and submitted that, the aim and object is entirely different and this Sports meet is to be conducted for the benefit of the students who are studying within the purview of the Education Act. 1983. The students who are studying in ICSE and CBSE syllabus will not come within the purview of Karnataka Education Act, 1983 and they come within the Council of Indian Schools Certificate Examination (ICSE) or Central Board Secondary Examination (CBSE) and therefore interference by this Court is not called for. Even the Appellants have not made out any good grounds to exercise the extra ordinary jurisdiction under Article 226 of Constitution of India. Therefore, he submitted that these appeals are liable to be dismissed.

7. After having heard the learned Counsel for the parties and after careful perusal of the order impugned passed by the learned Single Judge, including the impugned Circular issued by the Authorised Competent Authority of the Respondents, we do not find any error or illegality or much less material irregularity as such committed by the learned Single Judge in dismissing the writ petitions filed by the Appellants. Nor we find any injustice committed by the learned Single Judge in declining to entertain the reliefs sought in the writ petitions by upholding the Circular issued by the Respondents.

8. It emerges from the material available on record that, the Department of Public Instructions has constituted a Committee called Karnataka State Vidhyarthi Kreeda Nidhi, pursuant to which, bye-laws are framed for regulating the constitution and functioning of the said Committee and Bye law No. 4 deals with the purpose and objects of the said Nidhi. The main object of the said committee is to conduct Sports Meets for schools which comes within the purview and jurisdiction of the Department of Public Instruction. Each student coming within the control and jurisdiction of the Department of Public Instructions, who are studying in 5th to 10th standard is required to pay a prescribed fee as contribution to the 'Kreeda Nidhi'. The contribution is compulsorily payable and the authorities are enjoined with duties and obligations to collect this amount. The schools which fail to collect the amount from the students and to pay the same to the authorities are to face several coercive and penal consequences including withholding of recognition and such other measures. The Sports Meet is to be conducted by the authorities of the Department who constitute the Committees at different levels starting from the Block Level to the State Level. Further, it is not in dispute that the ICSE and CBSE schools do not fall within the jurisdiction, control and ambit of these authorities and no direction can be issued to these schools nor any coercive or penal action can be taken against them if they fail to pay the contribution towards the 'Kreeda Nidhi'. In fact, the concept of the 'Kreeda Nidhi' and the Sports Meet to be conducted by the various Committees from the Block level to the State Level is confined only to the schools coming under the purview and control of the Department of Public Instructions. It is significant to note that, as one of its objective in imparting training in Physical education, the machinery provided under the Education Act is arranging these meets and competitions. The children studying in ICSE and CBSE schools cannot as of right claim that the competition shall be thrown open for them also. They cannot contend that their fundamental rights are violated by denying them an opportunity to participate in these Sports Meet because, they do not fall in the same class of students controlled by the Department. It is pertinent to note that, the ICSE and CBSE schools are controlled by independent/autonomous bodies after obtaining recognition from their respective boards and they will not come within the purview, aim and object of the Karnataka Education Act, 1983. Learned Single Judge, after critical evaluation of the oral and documentary evidence, after going through the aim and object of the Kreeda Nidhi, the purpose for which it has been established i.e. to conduct the sports meet for the students, has come to the conclusion that, the students who are studying in ICSE and CBSE will not come under the purview and jurisdiction of the KarnatakaEducation Act nor the authorities of the Department of Public Instructions can take any action against such schools. The learned Single Judge in para-12 of the order has considered in detail with regard to the submission of the learned Counsel for the Appellants about the discrimination made in the impugned circular stating that it is in violation of the fundamental rights under Article 14 of the Constitution of India and rejected the said submission holding that the students who are studying in ICSE and CBSE cannot claim similar treatment in the matter of conduct of the Sports Meet and competitions by the Department at various levels.

9. Further it emerges from the record as rightly pointed by the learned Additional Government Advocate for Respondents and as rightly held by the learned Single Judge that, the students who are prosecuting their studies in ICSE and CBSE syllabus are entitled to represent the State in theses competitions through the Table Tennis Federation of India, the All India Lawn Tennis Association and the Swimming Federation of India, which are also the recognised institutions mentioned in Schedule II to the Rules framed by the State Government known as theKarnataka Selection of Candidates for Admission to Professional Intuitions Rules, 2004, whereunder, provisions are made for Sports Quota in favour of the students who have participated in different meets or competitions conducted by the National Schools Federation of India and other Associations. The above three Federations are also enlisted as Associations through which the students can represent the State. In fact, some of the children of the Appellants have admittedly represented the State through these Federations in the past. Therefore, the learned Single Judge is right in holding that, the representation through the 'Kreeda Nidhi' committee and in the sports meets and competitions arranged by the Department of Public Instructions is not the only mode or avenue for the students studying in ICSE and CBSE syllabus to take part and to represent the State. Therefore, it cannot be said that these students are deprived of all opportunities to represent the State in different sports Meets and competitions. Hence, the contention of the learned Counsel for the Appellants that the children of the Appellants are totally deprived of the benefit of reservations towards sports quota cannot be sustained and it has been rightly rejected by the learned Single Judge.

10. It is significant to note that, the impugned Circular pertains to the Sports meet to be conducted for the year 2006-2007 by the Department of Public Instructions and a reference is made in the said circular about the Circular issued by the Commissioner on 9.5.2006. It is clear from the impugned Circular that instructions are issued to collect the contribution to the 'Kreeda Nidhi' from the students in each school and the Block Education Officer is instructed to conduct and complete the competitions as per the sports calendar issued under his supervisions and also instructed to prepare the budgetary estimate of the income and expenditure in this regard and to obtain approval of the Deputy Director of Public Instructions. Along with these instructions, in Clause-5 of the impugned Circular, instructions are issued to the concerned officials that the schools coming within the jurisdiction and control of theEducation Act alone are permitted to participate and those which do not come within the purview of the Act, namely, the schools having ICSE and CBSE syllabus shall not be permitted. Therefore, no exception can be taken to the impugned circular as it is in keeping with the objective contained under the provisions of Education Act, whereunder, there is an obligation cast to provide training for physical education and in that regard, steps are taken to conduct sports competitions and Sports meet by the Department of Public Instructions for which expenditure is met out of the 'Kreeda Nidhi Fund' as rightly observed by the learned Single Judge. It is further relevant to note that, none of the ICSE and CBSE schools in the State ofKarnataka have approached this Court seeking any directions to the authorities to provide this facility to the children undergoing education and training in their schools. This also assumes significance in the background of the fact that, a stand is taken by the State Government that these schools have not come forward to make necessary contribution to the Fund.

11. Taking all these aspects into consideration, we are of the considered view that there is no justification or good grounds for this Court to exercise the extra ordinary jurisdiction under Article 226 of Constitution of India and to allow these appeals. Hence, we decline to entertain the relief sought in these appeals.

12. For the foregoing reasons, the appeals filed by the Appellants are dismissed as devoid of merits.

It is needless to clarify that, if the students who are prosecuting their studies in ICSE and CBSE syllabus and want the benefits of 'Kreeda Nidhi', it is open for them to redress their grievance through proper channel, if so advised or if need arises. Ordered accordingly.