

(2017) 05 MP CK 0099
In the Madhya Pradesh High Court
Case No : 17943 of 2014

ANUSUIYA DAHARWAL

APPELLANT

Vs

GOVIND RAM @ TAPPU KADVE AND FIVE OTHERS

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Citation : (2017) 05 MP CK 0099

Hon'ble Judges : Hemant Gupta, Subodh Abhyankar

Bench : Single Bench

Advocate : Dinesh Upadhyay, Amit Seth

Judgement

1. The petitioner has sought a direction to the respondent/State to constitute a Regulatory Committee for monitoring the fees structure of private schools in the State of Madhya Pradesh as per the decision dated 9.5.2014 and 2. 8.2014 within one month or before starting the session 2015- 2016.

2. The writ petitioner relies upon an order passed on 7.4.2014 in W.P. No.21560/2012 and W.P. No.7390/2013 wherein the petitioner was given liberty to submit representation which was required to be decided by the Principal Secretary, School Education Department as expeditiously as possible preferably within four weeks. Since the order was not passed, a Contempt Petition No.952/2014 was filed wherein, later the rule nisi was discharged on 22.08.2014. It is thereafter, the petitioner has again filed the writ petition. The petitioner has attached the guidelines dated 30th April, 2015 (Annexure P/9) issued by the State Government regulating the fee of the private schools. But it is conceded that such guidelines have been struck down by the Gwalior Bench of this Court in W.P. No.2450/2012 (Little Angels Shiksha Samiti Vs. State of M.P. and others) and other connected cases on 13.5.2015. The reliance of the petitioner is on a judgment of Hon'ble the Supreme Court in the case of Modern School Vs. Union of India and others, (2004) 5 SCC 583 .

3. On behalf of the State, it is pointed out that the Madhya Pradesh Ashaskiya

School Viniyam Adhiniyam, 1975 was enacted but it was to come into force from the date of publication of the notification but no such notification has been published. In the return, it has been also stated that the State Government has made deliberations with regard to framing of guidelines for regulation of the fees in private unaided school. A draft committee has been constituted but one of the issues was whether introduction of such mechanism may cause adverse effect on the quality of education in the State of Madhya Pradesh. There are important distinct factors which can determine the basic tuition fees and other fees by any institution/organization and the facilities provided are based upon the resources of the private schools. The quality of infrastructures in these schools is also better. It is further pointed out that after introduction of Right to Education Act, 2009, all schools are bound to provide 25% reservation for students below poverty line. It was stated that regulation of fees in the private schools is a complex issue which depends upon various factors as mentioned above.

4. We have heard learned counsel for the parties and find that no direction can be issued to the legislature to frame a law to regulate fee of the private unaided schools. The Supreme Court in a judgment of *Census Commissioner and others Vs. R. Krishnamurthy*, (2015) 2 SCC 796 has held that the writ court does not have the jurisdiction to issue direction to the State to frame legislation. The Court held as under:- "26. In this context, we may refer to a three Judge Bench decision in *Suresh Seth v. Indore Municipal Corpn.*, (2005) 13 SCC 287 wherein a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a Member of the Legislative Assembly and also of a Mayor of a Municipal Corporation. Repelling the said submission, the Court held: (SCC pp. 288-89, para 5)

"5. ..In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187 (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J&K v. A.R. Zakki*, 1992 Supp (1) SCC 548. In *A.K. Roy v. Union of India*, (1982) 1 SCC 271 it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature."

In *V. K. Naswa vs. Home Secretary, Union of India and others*, (2012) 2 SCC 542, the Supreme Court held as under :

"18. Thus, it is crystal clear that the Court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."

5. The judgment in the case of Modern School (supra) has been examined by the Gwalior Bench of this Court wherein it has been held as under: "51. It is also relevant to mention that the use of "reasonable surplus" and question of profiteering needs to be examined by financial experts. Thus, Government is required to apply its mind on this aspect also. This direction for consideration is all the more necessary because in Modern School Vs. Union of India (supra) the Apex Court opined that any control or regulation over an educational institution must be done only by legislation Act and not by any executive instruction. Government needs to consider this aspect as well. The Regulatory body must have statutory backing.

52. In view of aforesaid, Government may also examine whether its recent policy dated 30.04.2015 will serve the aforesaid purpose or not. Government shall consider these aspects in the context of aforesaid findings and take appropriate decision. This exercise must be completed within six months from today."

6. Since any control or regulation over an educational institution can be done only by legislation and not by an executive instruction and for that legislative action this Court cannot direct the legislature to frame a law, therefore, we find that the petitioner is not entitled to any other indulgence.

7. In view of the aforesaid, we do not find any merit in the present petition. Accordingly, it is hereby dismissed.