

(2018) 11 UK CK 0137

In the Uttarakhand High Court

Case No : Special Appeal No. 523, 524 Of 2014, 128 Of 2015, Writ petition No. 439 Of 2015 (S/S), Writ petition No. 776 Of 2015 (M/S)

Army Welfare Education Society & Others

APPELLANT

Vs

Sunil Kumar Sharma & Others

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2018) 11 UK CK 0137

Hon'ble Judges : Lok Pal Singh, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : P.R. Mullick, Sandeep Tiwari, M. C. Pant, Aditya Pratap Singh, Shashank Upadhyay, Puran Singh Bisht

Final Decision : Disposed Off

Judgement

Lok Pal Singh, J.

1. Since the controversy involved in the abovementioned cases is identical and has arisen as a result of closing down of an Institute / School, therefore, they are being heard and decided together by this common judgment and order for the sake of brevity.

2) Special Appeal nos. 523 of 2014 and 524 of 2014 have been directed against the impugned judgment and order dated 05.08.2012, passed by the learned Single Judge, in Writ Petition No. 341 (S/S) of 2012, Sunil Kumar Sharma & Others vs. Union of India & Others, whereby the writ petition filed by the petitioners (respondent nos. 1 to 49 herein) was allowed.

3) Special Appeal no. 128 of 2015 has been filed for quashing the interim order dated 01.04.2015, passed in WPMS no. 776 of 2015, and for taking back the control and management of the school transferred to the District Authorities and to initiate mediation proceedings and for the transition period, take suitable action, for the benefit of the academic session 2015-2016.

4) By way of Writ Petition no. 439 (S/S) of 2015, the permanent teaching and non-teaching staff of the institution known as "Institute of Brothers of St. Gabriel", Province of Northern India, have sought quashing of the impugned resolution dated 24.03.2015 (Annexure no. 1 to the writ petition) passed by the respondents. A further writ has been sought commanding the respondents not to discontinue the services of the petitioners and to pay them their service benefits and other emoluments as paid to them while they were being paid by the joint venture of Institute of Brothers of St. Gabriel and Bengal Engineering Group Benevolent Trust, Roorkee.

5) In Writ Petition no. 776 (M/S) of 2015, a student of the institution, has sought writ of mandamus commanding the respondents to continue the operation of the Institution under the cover of any other society instead of closing it down thereby infringing the fundamental rights conferred to the students by the Constitution of India and to permit the students to continue their study.

6) Special Appeal nos. 523 of 2014 shall be the leading case.

7) Factual matrix of the case is that the petitioners (respondent Nos. 1 to 49 herein) preferred a writ petition against the appellant as well as against respondent nos. 52 to 55. The petitioners have contended that the Institute of brothers of St. Gabriel province of Delhi is a society registered under the Society's Registration Act XXI of 1860. The aforesaid society in alliance with Bengal Engineering Group (BEG) Benevolent trust Roorkee- a trust created, funded and managed by Bengal Engineering Group (BEG & Centre) started to run a school at Roorkee named as Bengal Sappers St. Gabriel's Academy Roorkee in the year 1967. The said school is permanently affiliated to the C.B.S.E. New Delhi. An agreement was executed in this regard between the Society and Bengal Engineering Group Benevolent Trust, Roorkee on 13.07.1967. As per the terms of agreement, the building and land were leased in favour of the Society initially for a period of 30 years till 20.04.1997. After the expiry of 30 years, i.e., 20.04.1997, the lease was further extended for a period of 15 years, which ultimately came to an end in March 2012.

8) When it was a joint venture of school management of Institute of Brothers of St. Gabriel and Bengal Engineering Group (BEG) Benevolent trust Roorkee it was within a joint control of management of Institute of Brothers of St. Gabriel and Bengal Engineering Group (BEG) Benevolent trust Roorkee and others. The Bengal Engineering Group (BEG) Benevolent Trust Roorkee was created to join the hands with the Institute of Brothers of St. Gabriel to run the school for the benefit of children of Army personnel as well as for the local children. The Deputy Commandant, Bengal Engineering Group and Centre Roorkee wrote a letter on 26.04.2010 to the Bengal Sappers St. Gabriel's Academy Roorkee about the policy decision taken by the Bengal Engineering Group Benevolent Trust that it is not renewing the agreement dated 27.04.1997 and has decided that from 01.04.2012 i.e. the academic year 2012-2013 onwards, the Institute of Brothers of St. Gabriel will not remain associate with it. The agreement with the Institute

of Brothers of St. Gabriel was not renewed and the Deputy Commandant, Bengal Engineering Group and Centre, who is de facto Chairman of the Bengal Engineering Group Benevolent Trust vide letter dated 28.02.2012 addressed to the Brothers of St. Gabriel terminated the services of entire teaching as well as administrative (non-teaching) staff.

9) The said letter was under the heading "Change of School Management". Relevant portion of the said letter is extracted hereunder:

"(a) Services of the teachers and administrative staff of St. Gabriel's Academy School should be terminated before the establishment of APS No. 2 Roorkee. Existing competent teachers meeting the CBSE educational qualifications may be considered for appointment on adhoc basis for one year after a gap of minimum of seven days from the date of termination of service. The condition of holding an AWES Score Card for appointment as teachers may be relaxed in their case. They should be advised to appear and qualify in All India Written Test scheduled on second Sunday of Dec. 2012. The terms and conditions for their employment should accordingly be formulated."

10) From a bare perusal of letter dated 28.02.2012, it would reveal that the services of the teachers and other staff, including the petitioners, should stand terminated and adhoc appointment shall be given to those, who possess the requisite CBSE educational qualification.

11) Learned Single Judge after considering the pleadings & material brought on record and after giving ample opportunity of hearing to the parties allowed the writ petition no. 341 (S/S) of 2012, Sunil Kumar Sharma and others vs Union of India and others, vide impugned judgment and order dated 05.08.2014.

12) Admittedly, an agreement between the Institute of brothers of St. Gabriel and Bengal Engineering Group (BEG) Benevolent Trust Roorkee was executed long back in the year 1967, which was renewed in 1997, to run the Institute till March 2012, but subsequently the Bengal Engineering Group (BEG) Benevolent Trust Roorkee declined to continue as a partner with Institute of brothers of St. Gabriel, though the Institute of brothers of St. Gabriel did not contest the matter and peacefully decided to say goodbye to the school.

13) The core issues involved in the writ petition as well as in the present special appeals are:

(1) Whether the writ petition against the appellant herein under Article 226 of the Constitution of India is maintainable, or not?

(2) Whether a unilateral decision of the appellant herein would entitle it to change the service conditions of the writ petitioners after terminating the partnership venture with the Institute of Brothers?

(3) Whether the Commandant of Bengal Engineering Group and Center, Roorkee, who is the de facto chairman of the Bengal Engineering Group Benevolent Trust,

without there being any written permission from the Ministry of Defence, can engage a private lawyer to contest the aforementioned cases?

14) The learned Single Judge having placed reliance on plethora of judgments and having considered the Article 226 of the Constitution of India has held that the appellant is discharging the public duties as a Society run by the Bengal Engineering Group Benevolent Trust which is funded by the Union of India. Besides this, a writ petition is maintainable against a private body if it is found that such a private body is performing a public function.

15) Hon'ble Apex Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs V.R. Rudani and others*, (1989) 2 SCC 691, has held that a writ petition is maintainable against a private body if it is performing a 'public function'. Thus, it is clear that a writ petition under Article 226 of the Constitution of India is maintainable against a private body discharging a public duty or positive obligation of a public nature.

16) The Parliament in its wisdom has enacted the Right of Children to Free and Compulsory Education Act, 2009, considering it as a fundamental right of children. The institution is affiliated to the Central Board of Secondary Education. The Central Government has accorded affiliation to the CBSE to impart education as per its syllabus. Thus, there is a discharge of public function of the institutions recognized and affiliated with CBSE. Though the learned Single Judge has recorded the reasons in holding that the writ petition is maintainable against the appellant but, at the cost of repetition, we deem it necessary to deal with the issue and after having considered the provisions of Article 12 and 226 of the Constitution of India and the catena of judgments, we are of considered opinion that the writ petition against the appellant was maintainable and has rightly been held maintainable by the learned Single Judge.

17) Second issue before the learned Single Judge and this Court is - as to whether the cancellation of regular appointment of the teaching and non-teaching employees of the institution run by joint venture and giving the ad hoc appointment to the teachers is valid or not? The learned Single Judge on the pleadings of the parties and considering the fact that long back in the year 1967 created a joint venture for imparting the education and continued till 2012 and the appellant by unilateral action decided to break up the joint venture. The institute of brothers of St. Gabriel did not challenge their unilateral action, and departed quietly.

18) Admittedly, the appellant herein has unilaterally changed the service conditions of the writ petitioners by way of letter dated 28.02.2012 (copy Annexure 6 to the writ petition). A perusal of the pleadings of the rival parties would reveal that the appellant herein as well as the respondent Bengal Engineering Group and Center were not a party before learned Single Judge. The Deputy Commandant of the Bengal Engineering Group and Center is the de facto Chairman of the Bengal Engineering Group Benevolent Trust. The Union of India

was also impleaded as a party respondent. The Commandant or the Deputy Commandant has no individual or personal capacity. Deputy Commandant has discharged his duties as de facto Chairman of the Bengal Engineering Group and Benevolent Trust (hereinafter referred to as Benevolent Trust). The Deputy Commandant has no independent power being an ex officio of the Benevolent Trust. The Deputy Commandant cannot work arbitrarily. Since the appellant and respondent Bengal Engineering Group Benevolent Trust were party and same relief was granted, the Bengal Engineering Group Benevolent Trust has not chosen to file the Special Appeal against the impugned judgment and order passed by learned Single Judge. It is true that the appellant being a Society has preferred this Special Appeal, but it was the decision of respondent no. 51 to issue letter dated 28.02.2012 (copy Annexure 6 to the writ petition). The service conditions of the teaching staff and non-teaching staff, which were continuing before terminating the legality of Institute of Brothers of St. Gabriel and taking over the entire management of the Institution by the Bengal Engineering Group Benevolent Trust. The learned Single Judge has considered elaborately that the Benevolent Trust cannot change the service condition unilaterally and convert the regular services of the teaching and non-teaching staff and to issue ad hoc appointments to them. The appeal has been preferred by Army Welfare Education Society, whereof the institution was a joint venture of Brother of St. Gabriel and Bengal Engineering Group Benevolent Trust. The appellant may be an apex body (society) running the Army Schools throughout the country, but it cannot escape from the noble idea of creating Bengal Engineering Group Benevolent Trust for imparting education. Service benefits and status of the employee / employees could not be reduced without assigning sound reasons by the employer and without affording opportunity of hearing to them. We are also of the view that the services of the teaching and non-teaching staff cannot be changed from regular services to ad hoc services.

19) We have noticed that the Bengal Engineering Group Benevolent Trust is the aggrieved party, but appeal has not been preferred by it. We are of the opinion that the appellants cannot be said to be aggrieved persons and appeal at their behest is not maintainable.

20) The affairs of Bengal Engineering Group and Center come within the control of the Ministry of Defence, Union of India. Deputy Commandant has no authority to engage a private lawyer without the permission of Union of India. The purpose of granting permission to engage a private lawyer is also a serious issue, but for the reasons best reason to the officer concerned a private lawyer has been appointed by the appellant herein, which is discharging a public duty, to contest the aforementioned matters. Deputy Commandant of Bengal Engineering Group and Center holding a post in the Indian Army, which comes within the control of Ministry of Defence, Union of India ought not to have engaged a private lawyer without permission of the Union of India.

21) We find no illegality, perversity or jurisdiction error in the impugned

judgment passed by learned Single Judge dated 05.08.2012, allowing the writ petition, filed by the teaching and non-teaching staff of the Institution. Since the record of the writ petitions which were pending before the learned Single Judge were called by this Court considering the common question involved in the special appeals as well as in the writ petitions which were pending before the learned single judge, we are of the view that aforementioned special appeals are liable to be dismissed. The same are hereby dismissed. The writ petitions mentioned aforesaid are also disposed of accordingly as the relief sought in the writ petitions has already been adjudicated in the appeals.