
(2009) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13959 of 2008

Ayodhya Prasad Narmada Prasad Uchchatter Madhyamik
Shala and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Madhya Pradesh Ashasakiya Shikshan Sanstha Anudan Niyam, 2008 — Rule 8
Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya
Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 1(4), 10, 2
Madhya Pradesh Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983 — Rule
5(3)
Madhya Pradesh Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 2008 — Rule
3, 8

Citation : (2010) ILR (MP) 105 : (2009) 4 MPLJ 287

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Jha, J.

The Petitioners have filed this petition being aggrieved by order dated 22-10-2008 passed by the Respondent/State whereby it has been directed that the District Education Officer, Jabalpur shall operate the account of the Petitioner institution from 22-10-2008.

The brief facts leading to the filing of the petition, according to the Petitioners, are that the Petitioner institution, which is a registered society, is running a primary, middle and higher secondary school in the name "Ayodhya Prasad Narmada Prasad Higher Secondary School, Cantonment., Jabalpur. Previously the Petitioner society was receiving grant from the State Government for the purposes of running its school under the provisions of the M.P. Ashasakiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ke Vetan Ka Sanday) Adhiniyam, 1978 and the provisions of the M.P. Ashaskiya Shikshan Sanstha

(Anudan Ka Pradaya) Adhiniyam, 1978. In the meeting of the general body of the Petitioner society held on 5-2-2007, it was decided to stop availing of the facility of grant under the aforesaid provisions of the Act with effect from 1st April, 2007. It is stated that thereafter the Petitioner society stopped availing of the grant given by the State Government.

It is pertinent to note that the provisions of the M.P. Ashasakiva Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Vetan Ka Sanday) Adhiniyam, 1978 underwent widespread amendments on and from 13-4-2000 and the provisions of the Act regarding grant-in-aid, salary etc. were watered down giving elbow room to the State to determine the quantity of grant to be given to the school and also giving freedom to the educational institution to determine salary of its employees. The validity of the amended Act was challenged before this Court wherein the amendments were declared to be unconstitutional. However, pursuant to order passed in Special Leave Petition, which is pending before the Supreme Court against the order passed by this Court, as an ad-interim measure 50% grant-in-aid was to be released to the educational institution. The matter is still pending adjudication.

In the year 2008, the State Government in exercise of powers u/s 10 of the Adhiniyam 1978, notified the M.P. Ashasakiva Shikshan Sanstha Anudan Niyam, 2008 repealing amongst others, the M.P. Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983. These Rules came into effect with effect from 20-2-2008. Prior to coming into force of these Rules, the Respondent/State issued a notice to the Petitioner institution on 1-9-2007 asking it to withdraw the grant from its Bank account released by the State for the period subsequent to 1st April 2007. As the Petitioner institution failed to withdraw the grant released by the State, the Respondent/State issued another notice dated 24-12-2007 directing it to withdraw the grant failing action under Rule 5(3)(ii) and (iv) of the M.P. Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983 shall be taken by enforcing the provision to operate it's account by a single officer of the State. It is stated that the Petitioners having decided not to await grant from the State and run the school on its own its own strength and having informed the State to that effect, did not withdraw the grant forcefully released by the State.

Being aggrieved by the aforesaid notice, the Petitioners filed a writ petition (WP No. 2815/2008) before this Court which was disposed of by order dated 30-4-2008 with liberty to prefer a representation to the Commissioner, Public Instructions, Bhopal taking up all the grounds. Pursuant to the liberty granted by this Court, the Petitioners preferred their representation on 25-5-2008 contending inter alia that as the Petitioner society had stopped availing of the facility of grant-in-aid under the provisions of the Act 1978, it was no longer covered by its provisions and, consequently, no action under the Act and Rules framed thereunder could be taken against the Petitioner, that the Rules of 1983 have been repealed by the subsequent Rules of 2008 and, therefore, the provisions of Rule 5(3)(ii) and (iv) of the Rules 1983 under which the action is

sought to be taken against the Petitioner society are no longer in existence and that even otherwise, no cause of action arose as the Petitioner institution was regularly disbursing the salary to its staff from its own funds. It is submitted that the Respondent/State without applying its mind to the provisions of the Act 1978 and the Rules 1983 has rejected the representation filed by the Petitioners by the impugned order dated 22-10-2008 with a direction that the District Education Officer, Jabalpur would singally handle the account of the Petitioner institution for a period of one year.

The learned Counsel for the Petitioners submits that since 1st April, 2007, the Petitioner institute is a private un-aided school as it does not avail of any grant by the State and in such circumstances no action under the provisions of the Act amended or unamended can be taken against the Petitioners in view of the provisions of Section 1(4) and 2(e) of the Act 1978 which restrict the applicability of the Act only to institutions receiving grant-in-aid from the State.

It is further submitted by the learned Counsel for the Petitioner that after the repeal of the Rules 1983 by the Niyam of 2008, the power and authority of the State to impose the system of managing the account singally as provided by Rule 5(3) of the Rules 1983 has ceased to exist and, therefore, the State authorities have no power to order that the District Education Officer, Jabalpur would singally manage the account of the Petitioner institution.

It is next contended that the Petitioner institution is on it's own managing the school with its own funds and is paying regular salary to its employees and in such circumstances, when the Petitioner institution is able to pay the salary of its staff and manage the school in all respects the impugned order passed by the Respondent authority dated 22-10-2008 deserves to be quashed.

Per contra, the learned Counsel for the Respondent/State submits that the Petitioner institution was receiving grant from the State prior to April 2007 subsequent to which it unilaterally stopped to withdraw the grant which was deposited in the joint account and in such circumstances, notices were issued on 1-9-2007 and 24-12-2007 under the provisions of Rule 5(3) of the Rules 1983 which was very much in existence at that point of time. It is submitted that in view of the aforesaid facts and circumstances, the action taken by the Respondent/State under the provisions of Rule 5(3) of the Rules 1983 in respect of notices which were issued prior to repeal of Rules 1983 cannot be found fault with. It is further submitted that the action taken by the State authority has been bona fidely taken only to protect the interest of all the staff and the children studying in the Petitioner school and to ensure proper management of accounts and payment of salary to the staff and, therefore, the action taken by the Respondent/State is bona fide. It is prayed that the petition be dismissed.

Two applications for intervention have been filed, one in support and the other in against the Petitioner by the teachers who are all on role of the Petitioner institution. While one set of the teachers have expressed satisfaction with the

functioning of the Petitioner institution, another set, represented by Shri Sanjay Dwivedi, Advocate, has opposed the same and has submitted that the Petitioner institution has resorted to the aforesaid method to avoid the regulation and restrictions provided in the Act of 1978 and the provisions of the M.P. Society Registrickaran Adhiniyam, 1973, so that they can continue to manage the school on their own whims and fancies and to avoid payment of salary due to its staff.

From a perusal of Section 1(4) of the Adhiniyam, 1978 in juxta position of Section 2(e), the definition clause, it is clear that the provisions of the Act apply to the institutions as defined u/s 2(e), i.e., non-government educational institutions for the time being receiving grant from the State Government or from the Madhya Pradesh Uchcha Shiksha Anudan Ayog, as the case may be, established, administered and managed by a society registered or deemed to be registered under the M.P. Society Registrickaran Adhiniyam, 1973, excluding an educational institution established, administered and managed by the State Government, the Central Government, a local authority or any agency managed, controlled, approved or sponsored by the Central or the State Government or by a non-trading corporation formed and registered under the M.P. Non-trading Corporation Act, 1962 or deemed to have been registered thereunder. The same definition of "institution" is again repeated in Rule 3(e) of the Rules 2008.

From a perusal of the aforesaid provisions of law, it is also clear that an institution covered under the Act includes an institution when it "for the time being receives grant from the State". There is no provision under the Act or the Rules as it stands today, which makes it mandatory or compulsory for an institution to accept grant-in-aid from the State. In other words, there is no explicit provision in the Act or the Rules which prohibits an institution from stopping to avail of the grant or to refuse to avail of the benefit of the grant or empowers the State to force an institution to accept grant even when it does not wish to do so. However, the words "for the time being" used in Section 2(e) of the Act in the definition of "institution" and the words "the grant as fixed by the State Government from time to time" u/s 5(2) of the Act, 1978 does clearly indicate that a grant may be continued, reduced or dis-continued.

12-A. In the instant case, the Petitioner society by its resolution dated 5-2-2007 has taken a decision in its general body meeting to manage the school with its own funds and has decided not to avail of the facility of grant-in-aid under the Act 1978 and acting upon the aforesaid resolution, has sent several communications to the State authorities including a notice through its advocate informing the State that it no longer wishes to avail of the grant-in-aid under the provisions of the Act 1978.

In view of the aforesaid facts and circumstances, I am of the considered opinion that the Petitioner institution cannot be forced to receive the grant-in-aid, as contended by the learned Counsel appearing for the Respondent/State and, therefore, as it is not receiving any grant from the State Government since April 2007, it does not fall within the definition of an "institution" as provided u/s 2(e)

of the Act, 1978 and is, consequently, excluded from the applicability of the Act 1978 in view of Section 1(4) thereof.

As far as the second contention of the learned Counsel for the Petitioner is concerned, it is seen that the notices u/s 5(3) of the M.P. Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983 were issued to the Petitioner institution prior to the coming into force of the Niyam 2008 with effect from 20-2-2008. However, Rule 8 of Niyam 2008, which deals with repeal of the existing Rules, does not save any action initiated under the old Rules, more so, in view of the fact that there is no corresponding provision as Rule 5(3) in the Rules 1983, in the Niyam of 2008 empowering the authorities to pass an order enforcing the system of managing the account singally. Rule 8 of the Niyam 2008 reads as under:

8. Repeal of existing Rules. - The Madhya Pradesh Ashasakiya Shikshan Sanstha (Suspension of Teacher and Other Staff) Rules, 1978, Madhya Pradesh Sanstha Nidhi Rules, 1983, Madhya Pradesh Ashasakiya Shikshan Sanstha (Procedure regarding dismissal, removal of teacher and other staff) Rules, 1983, Madhya Pradesh Ashasakiya Shikshan Sansthan (Promotion of teacher and other staff working in the school) Rules, 1988 and Madhya Pradesh Ashasakiya Shikshan Sanstha (Recruitment of teachers and other employees) Rules, 1979 shall stand repealed. Provided that any order made or any action taken under the Rules so repealed shall be deemed to have been made or fallen under the corresponding provisions of these rules.

In view of the aforesaid, upon repeal of the Rules, 1983 by the Niyam 2008, the State authorities could not have passed any order under the repealed Rule 5(3) conferring power on the District Education Officer, Jabalpur to operate the account of the Petitioner institution singally by the impugned order dated 22-10-2008 and those proceedings stood repealed and were not saved by Rule 8 of the 2008 Rules. It is also clear from the scrutiny of the impugned order that the authorities of the State, inspite of the that the Petitioner institution was directed by this Court to approach the State for redressal of its grievances have not applied their mind as to the applicability of the Rules and have taken action under the aforesaid provisions by passing a cryptic unreasoned order. Thus, the impugned order has been passed without any application of mind by the Respondent authorities and in such circumstances, suffers from perversity, material irregularity and manifest illegality. The impugned order, therefore, deserves to be and is hereby quashed.

It is made clear that this Court has addressed itself to the order impugned in the present petition and has not delved into any issue relating to the violation of right of the employees of the Petitioner institution, which is a separate issue and is not a subject matter of the present petition.

With the aforesaid clarification, the petition filed by the Petitioners is allowed. In view of the peculiar facts and circumstances of the present case, there shall be

no order as to costs.