
(2016) 07 AHC CK 0040

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23529 of 2016

C/M Gautam Buddha Inter College

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Citation : (2016) 7 ADJ 665 : (2016) 6 AILLJ 126 : (2016) 5 AllWC 4974 :
(2016) 4 UPLBEC 3023

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Advocate : Bhawesh Pratap Singh and Irshad Ali, Advocates, for the Appellant;
C.S.C, Mool Chandra Maurya, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Suneet Kumar, J.—Committee of management, Gautam Buddha Inter College, Aliganj, District Etah has approached this Court assailing the order dated 11 April 2016 passed by the State Government in exercise of power conferred under Section 16-D (4) of the Uttar Pradesh Intermediate Education Act, 1921 (Act), whereby, appointment of authorised controller to manage the affairs of the institution was approved.

2. The short question for determination is as to whether the State Government before passing the order under Section 16-D(4) is bound to give an opportunity to the Committee to show cause.

3. In the facts of the present case, a show cause notice dated 1 October 2015 was issued purportedly under Section 16-D(3) by the Director of Education (Madhyamik), Allahabad (Director) to the second petitioner to show cause regarding financial irregularities.

4. It appears that the petitioner Committee failed to submit reply, therefore, another notice dated 23 November 2015 was issued which also went unreplied, consequently, the Director recommended to the State Government that an

authorised controller be appointed to manage the institution vide communication dated 18 February 2016. Pursuant thereof, State Government by the impugned order dated 11 February 2016, passed under Section 16-D(4) appointed an authorised controller for a period of six months.

5. It is sought to be urged by the learned counsel for the petitioner that it would be mandatory for the State to have put the Committee of Management to notice before passing an order under Section 16D(4), as it eventually entails civil consequence.

6. Sri Ashish Singh, learned counsel appearing for the caveator and the Standing Counsel would contend that sub-clause (4) of 16-D does not provide for any notice to the Committee of Management. The State Government is required to merely pass an order on the recommendation of the Director.

Rival submissions fall for consideration.

7. The facts are not in dispute, the scheme of the provision contained in Section 16-D(1) provides that Director may cause a recognised institution to be inspected from time to time, sub-clause (2) would provide that the Director may direct the management to remove any defect or deficiency found during the inspection or otherwise, whereas, sub-clause (3) provides the eventualities upon which the Director may refer the case of the institution to the Board for withdrawal of recognition of such institution or issue notice to the Committee of Management to show cause within thirty days from the date of receipt of such notice why an order under sub-section (4) should not be made. Sub-section (4) would provide that where the Committee of Management of an institution fails to show cause within the time allowed under sub-section (3) or within such extended time as the Director may from time to time allow, or where the Director, after considering the cause shown by the Committee of Management, is satisfied that any of the grounds mentioned in sub-section (3) exists, he may, recommend to the State Government to appoint an Authorised Controller for that institution. Thereupon, the State Government may, "by order, for reasons to be recorded, authorise any person (hereinafter referred to as the Authorised Controller) to take over, for such period not exceeding two years, as may be specified, the Management of such institution and its property."

8. On plain reading, sub-section (4) is silent regarding requirement of notice to be served upon the Committee of Management before any order is passed by the State Government.

9. In my opinion, it would be incumbent upon the State Government to issue notice to the aggrieved party to show cause before passing an order on the recommendation of the Director. The decision making authority is the State Government and not the Director. Aggrieved party would have every right to show cause before the State Government, contending that the recommendations made by the Director are either incorrect or per se perverse. It would, therefore, be incumbent upon the State Government to pass suitable order considering the

objections. It is immaterial whether the Committee of Management has appeared before the Director pursuant to the show cause notice under sub-section (3). Principle of natural justice would have to be read into sub-section (4) to uphold the vires of the section.

10. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action.

11. In *A.K. Kraipak and others v. Union of India and Ors.*, (1969) 2 SCC 262, the Apex Court observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see *Income Tax Officer and Ors. v. Madnani Engineering Works Ltd. Calcutta*, (1979) 2 SCC 455.

12. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held.

13. The question with regard to the requirement of an opportunity of being heard in a particular case, even in the absence of provisions for such hearing, has been considered by the Supreme Court in a catena of cases.

14. In *Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I and Anr.*, (2008) 14 SCC 151, the question for adjudication was whether in the absence of a provision in the Income Tax Act, 1961, an opportunity of hearing was required to be given to an Assessee before an order under Section 142(2A) of the said Act, directing special audit of his accounts was passed? A Bench of three Judges explaining the concept of "natural justice" and the principles governing its application, summed up the legal position as under:

"Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

15. I may, however, hasten to add that no general rule of universal application

can be laid down as to the applicability of the principle *audi alteram partem*, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine.

16. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power.

17. Notwithstanding, the fact that the sub-section (4) does not contain any express provision for the affected party being given an opportunity of being heard. Undoubtedly, action under the said sub section is a function which involves due application of mind to the facts as well as to the requirements of law. Therefore, it is plain that before acting upon the recommendation of the Director, State is bound to put the aggrieved party to notice. Civil consequence of superseding the Committee of Management follows the decision of the State Government and not of the Director.

18. In my view, therefore, if the requirement of opportunity to show-cause is not read into sub-section (4) of Section 16-D it would be open to challenge being violative of Article 14 of the Constitution of India on the ground that power conferred on the competent authority primarily being arbitrary.

19. The Supreme Court in *Kesar Enterprises Ltd. v. State of U.P.*, 2011 (4) AWC 3909 (SC), was considering the issue as to whether Sub-rule (7) of Rule 633 of the Excise Manual postulates the requirement of hearing before steps for recovery of penalty under the said Rule are initiated. The Court was of the opinion that though there was no specific provision under the rule to issue show cause notice or to provide opportunity of hearing before the penalty is imposed, the Court, however, was of the view that the order having civil consequence would require necessarily an opportunity of hearing. (Refer- *C.B. Gautam v. Union of India*, 1993 (1) SCC 78 and *Mardia Chemicals Ltd. v. Union of India*, 2004(4) SCC 311.

20. It is evident from the statement of law that the decision making authority under sub Section (4) is the State Government not the Director, therefore, civil consequence flows from the order of the State Government and not from the recommendation of the Director. Therefore, before any order is passed by the State Government it would necessarily have to put the Committee of Management to notice. As to whether the Committee of Management had responded to the show cause issued by the Director under sub-section (3) or not would have no bearing.

21. The impugned order dated 11 April 2016 passed by the State Government in exercise of power conferred under Section 16-D (4) of the Uttar Pradesh Intermediate Education Act, 1921 is set aside. It is provided that the State Government shall pass a fresh order after giving opportunity to the petitioner to

show cause. The petitioner undertakes to file representation/objection within six weeks from date and it is expected that the State Government shall pass the order within next eight weeks thereafter.

22. Subject to the above, the writ petition is allowed.

23. Any orders passed pursuant to the impugned order shall abide by the decision of the State Government in pursuance of this order.

24. No costs.