

(2009) 04 AHC CK 0277

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 67952 of 2006

Committee of Management & another	APPELLANT
Vs	
State of U.P.& others	RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0277

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

S.P. Mehrotra, J.

I have heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri S.D. Shukla, learned counsel for the petitioners and the learned Standing Counsel appearing for the respondents.

The present Writ Petition has been filed, interalia, praying for issuance of suitable writ, order or direction directing the respondents to include the petitioners' institution in the list of institutions receiving grantinaid from the State Government w.e.f. 1.12.2006 after making necessary modifications in this regard in the Government Order dated 2.12.2006 (Annexure6 to the Writ Petition), and further commanding the respondents to sanction grantinaid to the petitioners' institution and to disburse the salary of the members of the staff of the petitioners' institution regularly every month w.e.f. 1.12.2006.

It is, interalia, averred in the Writ Petition that the petitioners' institution, namely, Sri Dravinath Purva Madhyamik Vidyalaya, Manduri, Pachkhora, Azamgarh, (in short "the institution in question") is a recognized Junior High School in which education is imparted from classes 6 to 8 ; and that the said institution has been granted permanent recognition as a Junior High School by the order of the Deputy Director of Education, VIIth Region, Gorakhpur dated 26.10.1984 (Annexure1 to the Writ Petition); and that the said institution has not been receiving any grantinaid from the State Government.

It is, interalia, further averred in the Writ Petition that on 7.9.2006 the State Government issued a Government Order notifying its decision for taking one thousand privately managed Junior High School on the grantinaid. Copy of the said Government Order dated 7.9.2006 has been filed as Annexure 2 to the Writ Petition.

In condition no9 of paragraph 2 of the said Government Order dated 7.9.2006, it is, interalia, provided that the institutions would be taken on grantinaid in accordance with their seniority in regard to the date of recognition.

It is, interalia, further averred in the Writ Petition that in pursuance to the said Government Order dated 7.9.2006, the Director of Education (Basic) issued an advertisement dated 9.9.2006 (Annexure3 to the Writ Petition) ;and that in pursuance to the said advertisement, the petitioners" institution submitted the application in the prescribed format along with all necessary documents in the Office of the Basic Shiksha Adhikari, Azamgarh personally on 3.10.2006.

It is, interalia, further averred in the Writ Petition that on 2.12.2006, the State Government has issued a Government Order (Annexure6 to the Writ Petition) whereby one thousand Junior High Schools, specified in the list appended to the said Government Order, have been brought on the grantinaid w.e.f. 1.12.2006.

It is, interalia, further averred in the Writ Petition that by means of the said Government Order dated 2.12.2006, a total number of 800 Boys Junior High Schools and 200 Girls Junior High Schools have been brought on the grantinaid. ;and that the 800 Boys Junior High Schools, which have been so brought on the grantinaid include such Junior High Schools, which have been granted permanent recognition dated 30.4.1988; and that the name of the petitioners" institution does not find place in the said Government Order, even though the date of grant of permanent recognition to the petitioners" institution is 26.10.1984, and the petitioner"s institution is amongst the senior most institutions of District Azamgarh.

In view of the aforesaid circumstances, the petitioners have filed the present Writ Petition seeking the reliefs as mentioned above.

Counter affidavit has been filed on behalf of the respondent no. 4. The petitioners have filed their rejoinder affidavit.

Alongwith the counter affidavit, the respondent no. 4 has filed as Annexure CA1, a copy of the Communication dated 4.1.2007 sent by the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh to the Principal/ Manager of the institution in question.

The said Communication dated 4.1.2007, interalia, indicated the reasons for not including the aforesaid petitioners" institution on grantinaid. The first reason given is in regard to the irregularities in the appointment of certain teachers and Class IV employees. The second reason given is that the recognition of the institution in question appears to be doubtful.

It further appears from the counter affidavit that in response to the said Communication dated 4.1.2007, the manager of the aforesaid institution submitted a Reply/Representation dated 20.1.2007 addressed to the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh through the District Basic Education Officer, Azamgarh. Copy of the said Reply/Representation dated 20.1.2007 has been filed as Annexure CA3 to the counter affidavit.

In paragraph 10 of the counter affidavit, it is, interalia, stated that the District Basic Education Officer, Azamgarh through his letter dated 31.1.2007 sent the said Reply/Representation dated 20.1.2007 to the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh.

In paragraph 11 of the counter affidavit, it is, interalia, further averred that till date no information has been received by the Office of the respondent no. 4, as to whether the said Reply/Representation of the petitioner has been accepted or not.

In the circumstances, it is evident that no decision has as yet been taken by the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh on the said Reply/Representation dated 20.1.2007 submitted by the petitioners in response to the said Communication dated 4.1.2007.

In the said Reply/Representation dated 20.1.2007, the petitioners have given detailed reply to each of the objections mentioned in the Communication dated 4.1.2007, on the basis whereof the petitioners' institution was not taken on grantinaid. The case of the petitioners in the said Reply/Representation dated 20.1.2007 is that the objections raised in the Communication dated 4.1.2007 were nonexistent and misconceived, and the same were liable to be treated as void.

Having regard to the nature of the objections and the Reply/Representation submitted by the petitioners thereto, it is evident that the decision on the said objections will basically involve decision on factual questions. In the circumstances, I am of the opinion that the interest of justice will be subserved if the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh, is directed to take appropriate decision on the said Reply/Representation dated 20.1.2007 submitted by the petitioners in accordance with law, keeping in view the Government Order 7.9.2006 (Annexure 2 to the Writ Petition), whereby the exercise of bringing one thousand institutions on grantinaid was initiated.

Sri Ashok Khare, learned Senior Counsel appearing for the petitioners refers to the Government Order dated 27.12.2006 (Annexure CA2 to the counter affidavit), whereby a fresh opportunity was given to the institutions, which fulfilled the requirements of the Government Order dated 7.9.2006 but could not apply by the cutoff date, and further to such institutions, which were found to be ineligible on account of certain objections. In regard to the institutions which were found to be ineligible on account of certain objections, the institutions were

to be informed by 5.1.2007 in regard to such objections, and the institutions were required to submit their report in regard to the removal of such objections by 20.1.2007.

It is submitted by Sri Ashok Khare, Senior Advocate that the said Government Order dated 27.12.2006 was subsequently withdrawn by a subsequent Government Order. In the circumstances, Sri Ashok Khare expresses apprehension that the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh (respondent no. 3) may decline to consider the Reply/Representation dated 20.1.2007 on the ground that the Government Order dated 27.12.2006 had subsequently been withdrawn.

In my opinion, the question involved in the present case is as to whether the institution in question fulfilled the requisite criteria in accordance with the Government Order dated 7.9.2006 including the criteria in regard to the seniority in respect of the date of recognition, and further, as to whether the objections/reasons for declining to bring the institution in question on grantinaid, as mentioned in the Communication dated 4.1.2007, were valid/legal or not.

The issuance of the Government Order dated 27.12.2006 and its subsequent withdrawal was not material, as the questions, mentioned above, are to be decided with reference to the Government Order dated 7.9.2006.

In view of the above, the Writ Petition is disposed of with the direction to the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh (respondent no. 3) to take appropriate decision on the Reply/Representation dated 20.1.2007 (Annexure 3 to the counter affidavit) in accordance with law and keeping in view the requirements of the Government Order dated 7.9.2006, expeditiously preferably within a period of two months from the date of production of a certified copy of this order along with a copy of the said Reply/Representation dated 20.1.2007 before the Regional Assistant Director of Education (Basic), Azamgarh Region, Azamgarh (respondent no. 3). Before deciding the matter, the respondent no. 3 will give opportunity of hearing to all concerned including the petitioners. The respondent no. 3 will decide the matter by passing a reasoned order.