

(2023) 10 CHH CK 0044

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 1797 Of 2016???

Khalsa Education Society

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Constitution of India, 1950 — Article 29, 30, 30(1), 226
MP/CG Ashaskiya Shikshan Sanstha Adhiniyam 1978 — Section 6(a), 6(a)(iii), 6(3)(a), 6(4)(a), 6(b), 6(e)

Citation : (2023) 10 CHH CK 0044

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Ashish Shrivastava, Aman Pandey, Binu Sharma, Naveen Nirala

Final Decision : Disposed Of

Judgement

1. The petitioners have preferred the present writ petition under Article 226 of the Constitution of India seeking for the following reliefs:

“(i) It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records concerning the case of the petitioner education society from the possession of the respondents for its kind perusal.

(ii) This Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting aside the impugned order dated 13/04/2016 (Annexure P/1) issued by the respondent No.3 District Education Officer, Raipur by declaring the same to be illegal and inoperative in law.

(iii) Any other relief/reliefs which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition may also please be granted to the petitioners.”

2. Brief facts of the case as projected by the petitioners are that, the petitioner Khalsa Education Society is stated to be a Religious/Minority Educational Institution and is registered under the MP/CG Societies Registrikaran Adhiniyam,

1973, Petitioner Education Society runs various Schools such as, Khalsa Primary School Raipur, Khalsa Higher Secondary School, Raipur, Mata Sundari Public School (English medium) Raipur, Mata Sundari Montessori, Gurunanak Nagar, Raipur, Mata Sundari Montessori, Govind Nagar Raipur. Petitioner Education society is also stated to be a one of the biggest Religious/Minority institutions in and around Raipur which has established number of Schools both Hindi and English medium and has earned good reputation since last many decades. Pertinently, MP Minority Commission has also issued a directory/list of institutions run by Minority Societies wherein the petitioners' Educational Institution i.e. Khalsa Higher Secondary School finds its place at Serial No.2. The Schools of the petitioner education society are run, managed and controlled by it and it is a Religious/Minority Community /Institution within the meaning of Article 30 of the Constitution of India. However, the provisions of MP/CG Ashaskiya Shikshan Sanstha Adhiniyam 1978, MP/CG Ashaskiya Shikshan Sanstha (Padachut) Niaym 1983 and MP/CG Ashaskiya Shikshan Sanstha (Adhyapakon tatha Anya Karmachariyon) Appeal Niyam, 1978 are applicable in petitioner's Education Society but to the limited extent. Pursuant to the decision rendered by Hon'ble High Court of MP vide dated 29/11/1978 wherein certain non-government educational institutions have approached before the Hon'ble High Court challenging some of the provisions of Adhiniyam 1978 wherein pursuant to and in compliance of the aforesaid order dated 29/11/1978, a circular vide dated 26/5/1979 was issued by the Department of Education, Government of MP according to which the provisions of Section 6 (a), sub Section 3 (a) 4(a), and Section 6 (b) and 6 (e) were since not in consonance with the Article 30 of the Constitution of India, declared as not applicable to the Schools run, managed and controlled by the Education Institutions which are established by religious/minority Educational/institutions. Pertinently, similar circular was issued vide dated 11/04/1984 by the Directorate of Public Instructions, Madhya Pradesh, referring to the aforesaid circular dated 26/5/1979 and issued instructions that if any action with regard to suspension/ removal/dismissal is taken against the employees by the management of such educational institutions which are established by a religious/minority community/institution then in such circumstances they are not required to seek prior approval from the Officers of the Education Department.

3. The respondent No.4, Smt. Kuldeep Kaur Bhattal, who was working as Assistant Teacher in one of the Schools of the petitioner education society i.e. Khalsa Primary School Raipur was placed under suspension vide order dated 04/02/1994 in contemplation of the Departmental Enquiry on the grounds of continuous unauthorized absence, negligence of duty and undisciplined behaviour. Further, a charge sheet dated 14/02/1994 was also issued to the respondent No.4 leveling four charges against her and ultimately, after the detailed Departmental Enquiry conducted against the respondent No.4 and also after affording proper and sufficient opportunity of hearing and after taking into consideration the enquiry report submitted by the Enquiry Officer on 24/5/1984

wherein all the charges leveled against the respondent No.4 were found proved, the respondent No.4 was removed from service by the competent authority i.e. the Chairman of the petitioner education society, vide order dated 12/07/1995.

4. The respondent No.4, feeling aggrieved by the aforesaid order of removal from service dated 12/07/1995, preferred an appeal initially before the Deputy Director, Public Instructions, Raipur, District Raipur vide dated 27/01/1996. The petitioner without waiting the decision in the appeal, rushed to Hon'ble High Court of MP at Jabalpur by filing a writ petition. However, the same was disposed of with a direction to the competent authority to decide the appeal within a period of 8 weeks from the date of receipt of copy of the order. Further, at a later stage, the Deputy Director, Public Instructions, Raipur, has rejected the appeal of the respondent No.4 being not maintainable as the same is outside its jurisdiction. The respondent No.4 once again approached Hon'ble High Court of MP by filling a Writ Petition No.790/1998, however, during the pendency of the writ petition, in view of reorganization of the State of MP, the aforesaid writ petition was transferred to this Hon'ble Court wherein, vide order dated 06/03/2006, the writ petition was disposed of with a direction to the respondent No.4 to file a proper appeal within a period of 2 weeks which shall be decided by the competent authority within stipulated period. The respondent No.4 preferred an appeal on 08/08/2006 i.e. after 154 days, therefore, the competent authority could not entertain the appeal and dismissed the same on 16/01/2007. The petitioner education society also while submitting its response/reply on 02/01/2007 to the appeal also objected the appeal on the grounds of delay and laches. The respondent No 4 once again approached before this Hon'ble Court by filing yet another writ petition being registered as WP (S) No.3029/2007 and, thereafter, another properly constituted writ petition was registered as WP (S) No. 6826/2009 wherein, this Hon'ble Court, taking a lenient view once again disposed of the writ petition vide order dated 08/03/2011 with a direction to the competent authority/appellate authority to consider and decide the appeal of the respondent No. 4 on its own merits.

5. After the aforesaid order dated 08/03/2011 passed in WP(S) No. 6826/2009, the respondent No.3 District Education Officer Raipur issued a letter dated 30/05/2011 and a similar letter was also issued on 18/07/2011 to the petitioner education society for sending necessary details of respondent No.4 Smt. Kuldeep Kaur Bhattal pursuant to which the petitioner education society furnished complete details as desired on 10/08/2011. The respondent No.3, District Education Officer Raipur once again vide yet another letter dated 19/08/2011 sought certain information with regard to respondent No.4 and also the information as to whether before removing the respondent No.4 from service any approval has been obtained from the competent officer or not, and if the approval has been received then copy of the approval letter may be given. Petitioner education society in reply/response to the letter/memo dated 19/08/2011, again submitted a detailed response vide dated 27/08/2011 and in categorical terms furnished information that removal of the respondent No.4 from

service vide order dated 12/07/1995 was in accordance with law and further information in this regard was also furnished to the Deputy Director Public Instructions, District Raipur on the same date in compliance of circular dated 26/05/1979 and 11/04/1984 and further a certificate to this effect as required under the aforesaid circulars has also been issued.

6. All of sudden, the respondent No.3-the District Education Officer, vide impugned order dated 03/09/2011 without considering and appreciating the reply dated 10/08/2011 and 27/08/2011 submitted by the petitioner education society and further without taking into consideration the circular dated 26/05/1979 and 11/04/1984 allowed the appeal of the respondent No.4 holding that since before issuance of order of removal from service of respondent No.4, prior approval from the competent officer under the provisions of Rule 10(a) of the Appeal Rules, 1978 has not been obtained. The respondent No.3, vide impugned order dated 03/09/2011, has further directed that necessary dues may be paid by the petitioner education society to the respondent No.4 from the date of suspension to the date of order of removal from service.

7. In view of the aforesaid facts and circumstances of the case, the petitioner society feeling aggrieved by the aforesaid impugned order dated 03.09.2011 issued by the respondent No.3, District Education Officer, Raipur approached before this Hon'ble Court by filing a writ petition being registered as WPS No. 6175/2011 challenging not only the aforesaid order dated 03.09.2011 but also the action taken by the respondent No.3 inter alia on the ground that the aforesaid order dated 03.09.2011 as well as direction was not only arbitrary and illegal in nature but also in serious contravention of the circular dated 26.05.1979 issued by the Education Department of erstwhile State of Madhya Pradesh and further there is circular dated 11.04.1994 issued by the Deputy Director, Public Instructions, Government of Madhya Pradesh and further the law laid down by the Division Bench of the Hon'ble Madhya Pradesh High Court in the matter of Siddhi Bala Bose Library Association and others v. State of MP reported in 1979 MPLJ 379.

8. This Hon'ble Court upon hearing the matter finally and further taking into consideration the law laid down by the Division Bench of the M.P. High Court in the matter of Siddhi Bala Bose (supra) as well as in the matter of S. Ram, Principal v. G. P. Shrivastava, Registrar another Division Bench decision of the M.P. High Court, wherein the provisions of Section 6 (a) (iii) of the Act, 1978 has been held to be not applicable to the minority/linguistic education institution and further the law laid down by the Hon'ble Supreme Court in the matter of Bihar State Madarsa Education Board v. Anjuman reported in 1994, Supp (2) SCC 509 and Younis Ali Sha v. Mohammad Kalam, reported in 1999 (3) SCC 676, vide order dated 03.12.2015 has been pleased to allow the petition and the aforesaid order dated 03.09.2011 passed by the respondent No.3/appellate authority i.e. the District Education Officer, Raipur was quashed. The Hon'ble Court vide paragraph 22 has further observed that the appeal before the respondent No.3 is

restored to the file of the District Education Officer, Raipur for hearing and disposal afresh in accordance with the rule, on its own merit, within a period of 2 months from the date of receipt of the certified copy of this order. The parties were also directed to appear before the District Education Officer (Revenue) on 11.01.2016 and party will also cooperate in disposal of the appeal as the termination order was passed as back on 12.07.1999.

9. In view of the aforesaid facts and circumstances of the case, the petitioner society duly appeared before the respondent No.3 on 11.01.2016 and thereafter on subsequent dates for disposal of the appeal afresh in compliance of the order dated 03.12.2015 passed by this Hon'ble Court in the matter of WPS No. 6175/2011. However, the respondent No.3 instead of disposing of the pending appeal in accordance with the directions issued by this Hon'ble Court vide 03.12.2015 in WPS No. 6175/2011 as well as the law laid down by Hon'ble Supreme Court and the High Courts, raised a question with regard to minority status of the petitioner society, which otherwise was not at all the issue before the District Education Officer, Raipur or any other authority of the State Government initially or before the Hon'ble Court in the aforesaid writ petition nor the respondent State or its officers have raised any preliminary objection with regard to minority status of the petitioner society in any proceedings, however, all of a sudden raised this issue with regard to the minority status of the petitioner society and a notice to this effect was issued by the respondent No.3 vide dated 30.01.2016 and thereafter on 19.02.2016 to submit a certificate showing the minority status of the petitioner society.

10. Upon receiving the aforesaid letter dated 30/01/2016 and thereafter on 19/02/2016 the petitioner society was surprised with regard to the objections raised by the respondent No.3, however, has submitted its reply vide dated 08/02/2016 & 26/02/2016 to the aforesaid letter dated 30/01/2016 as well as 19/02/2016 respectively and informed the respondent No.3 that the question with regard to minority status of the petitioner institution was never raised earlier nor disputed by any other Government authority in the past in view of the Buy-laws of the petitioners' educational society and the petitioner society is a minority institution since its inception and all the government officers, under the State Government have been corresponding with the petitioner society treating the petitioner society as a minority institution without any objection, however, since the respondent No.3 has raised this objection, therefore, the petitioner may be granted sometime to submit a certificate duly issued by the Commissioner, Tribal Welfare Department of the Government of Chhattisgarh as now he is the competent authority to deal with the issue with regard to the status of the minority institution. However, despite representations and reply to the aforesaid letter dated 30/01/2016 as well as 19/02/2016 vide reply dated 08/02/2016 & 26/02/2016, the respondent No.3 was adamant not to entertain and consider any request of the petitioner in a most arbitrary and illegal manner without considering the entire facts and circumstances of the case and further in complete misinterpretation of the provisions of Article 29 & 30 of the Constitution

of India as well as the order dated 03/12/2015 passed in WPS No. 6175/2011 by this Hon'ble Court and also the decision of Siddhi Bala Bose Library Association & others v. State of MP, reported in 1979 MPLJ 379, the respondent No.3 has, all of a sudden, vide impugned order dated 13/04/2016, once again set-aside the termination order dated 12/07/1995 of the respondent No.4 and directed for reinstatement and payment of back wages w.e.f. 30/07/1995 holding that since the petitioner society has failed to submit any certificate with regard to their minority status, therefore, under the provisions of the Act, 1978 before passing any order with regard to termination of respondent No.4, prior approval from the competent authority is necessary. It would be very pertinent to mention here and rather surprising that the respondent No.3, the District Education Officer, Raipur, himself has recently, vide letter dated 26/03/2016 addressed to the petitioner No.2. the Principal, Khalsa Higher Secondary School, Raipur informed that the Chhattisgarh State Minority Commission organizing an Annual Conference on 31/03/2016 at Shahid Smaraka Bhawan, Nav Bharat Press premises, Raipur wherein all the office-bearers and institutional heads of aided minority private Primary, Middle, High School and Higher Secondary Schools within Raipur District, are going to be felicitated and, its such, they are required to be present in the Conference and, thereafter, on 31/03/2016, Chhattisgarh State Minority Commission, Raipur has also issued a Certificate to the petitioner No.2 and one Smt. Arti Sharma, Head Mistress of Khalsa Primary School, Raipur, for their outstanding contribution in the field of education in the State of Chhattisgarh.

11. In humble submission of the petitioner, impugned order dated 13.04.2016 as well as the entire action of the respondent No.3 issued by the Respondent No.3, the District Education Officer, Raipur is not only bad, illegal and arbitrary in nature but is also in serious violation of the mandate of the finding recorded and the direction issued by this Hon'ble Court vide order dated 03.12.2015 in WPS No. 6175/2011 as well as the decision of the Hon'ble Supreme Court in the matter of Bihar State Madarsa Education Board v. Anjuman Ahale-hadees, reported in 1994, Supp (2) SCC 509 and Younis Ali Sha v. Mohammad Abdul Kalam, reported in 1999 (3) SCC 676, as well as the decision of High Court of MP in 'Siddhi Bala Bose Library Association & others v. State of MP, reported in 1979 MPLJ 379, S. Ram, Principal v. G.P. Shrivastava, Registrar and Ors 1992 MPLJ 149. Hence this petition.

12. I have heard the contentions put forth by learned counsel for the parties and perused the material available on the record.

13. Learned counsel for the petitioner submits that the impugned order dated 13.04.2016 as well as entire action of the respondent No.3 is not only bad, illegal, arbitrary in nature, but also in serious violation on the mandate of the finding recorded and the direction issued by this Court vide order dated 03.12.2015 in WPS No. 6175/2011. The impugned order dated 13.04.2016 is bad, illegal, arbitrary and entire action of the respondent No.3 in as much as the fact that it was not at all the case and the issue that the petitioner Society does

not belong to minority status, whereas in the past the State Government as well as their authorities have never raised this issue or objected with regard to the minority status of the petitioner-Society in view of the several correspondences between the petitioner-Society and State Government, but the petitioner-Society indisputably enjoys the minority status in the State of Chhattisgarh. The impugned order dated 13.04.2016 is not only bad, illegal, arbitrary, but it is also untenable in the eyes of law in as much as the fact that respondent No.3 though referred the circular dated 26.05.1979 issued by the Education Department of erstwhile State of Madhya Pradesh and further the circular dated 11.04.1984 issued by the Deputy Director, Public Instructions, Govt. of Madhya Pradesh, according to which no prior approval of the competent officer under the Education Department is necessary or required before taking any action with regard to removal from service in respect of the employee of the Schools run, managed and controlled by the Religious/Minority Community/Institutions. He further submits that in previous round of litigation this Court had settled the issue of requirement of approval of competent authority, then learned Appellate Authority could not have again gone into the same question, therefore the Appellate Authority had committed grave error in law by not adhering the order passed by this Court and again deciding the appeal on the same grounds as earlier order, which was quashed by this Court holding that the petitioner is a minority institution. In support of his contention, he placed reliance on the judgment reported in 1994 Suppl (2) SCC 509 in the matter of "Bihar State Madarsa Education Board v. Anshuman Ahale-hadees", 1999 (3) SCC 676 in the matter of "Younis Ali Sha v. Mohammad Abdul Kalam" as also the judgment reported in 1979 MPLJ 379 in the matter of "Siddhi Bala Bose Library Association & others v. State of Madhya Pradesh".

14. I have heard the learned counsel for the parties and perused the material available on the record.

15. It is not disputed that previously petitioner filed WPS No. 6175/2011 against same respondents and this Court after hearing both the parties passed the order dated 03.12.2015 and set-aside the previous order of Appellate Authority dated 03.09.2011 passed by the respondent No.3-Appellate Authority and directed the Appellate Authority that after hearing both the parties pass a fresh order in accordance with law on its own merits.

16. In previous order, this Court categorically discuss all previous orders passed by the Hon'ble Apex Court and various Courts. This Court also while passing the order dated 03.12.2015 in WPS No. 6175/2011 observed as under:

"11. It is not dispute in dispute that petitioner-institution is minority institution within the meaning of Article 30(1) of the Constitution of India and running a school known as "Khalsa Primary School" in which the respondent No.4 was employed as Assistant Teacher She was terminated by order dated 12.07.1995 against which appeal was preferred, which has been allowed by the respondent No.3/Appellate Authority by impugned order by recording following finding-

12. The question that has cropped up for consideration is whether the petitioner-minority Institution was required by the Act of 1978 and the Rules made thereunder to seek prior approval of the Competent Authority before terminating the services of the respondent No 4. In order to resolve the controversy, it would be appropriate to notice Legislative changes in Section 6 (a) (iii) of the Act of 1978 and the Rules made thereunder. Unamended Section 6 (a) (iii) of the Act of 1978 provides as under:-

"(iii) no teacher or other employee shall be dismissed or removed from service or his services terminated without prior approval of the competent authority"

17. In view of the above, the respondent authorities have been directed to pass a fresh order, but the respondent authorities while passing the impugned order dated 13.04.2016 observed as under:

18. The respondent authorities did not consider this Court's previous order that this Court after hearing both the parties observed in para 11 & 12 that petitioner-Institution is a minority institution within the meaning of Article 30(1) of the Constitution of India and running a school known as "Khalsa Primary School" in which the respondent No.4 was employed as Assistant Teacher and in para 12 this Court observed that to question that has cropped up for consideration is 'whether the petitioner-Minority Institution was required by the Act of 1978 and the rules made thereunder to seek prior approval of the competent authority before terminating the services of the respondent No.4', but the respondent authorities again asked for certificate of Minority Institution from petitioner Society and on failing has passed the impugned order.

19. It is clear that the impugned order is not passed by the respondent authorities according to the previous order. On this ground alone, the impugned order is liable to be set-aside. The impugned order (Annexure P/1) dated 13.04.2016 is set-aside and the respondent authorities again directed that according to observation made by this Court in previous order in para 11 & 12 pass a fresh order in accordance with law. It is also directed that since this matter is pending from 2011, the respondent authorities after hearing both the parties, pass the order within a period of 2 months from the date of receipt of the copy of this order and both parties are directed to appear before the District Education Officer, Raipur/Appellate Authority on 5th of December, 2023.

20. With the aforesaid observations and directions, the present writ petition stands disposed of.