
(2007) 12 AHC CK 0109
In the Allahabad High Court
Case No : Writ Petition No. 1399 (M/B) of 2007

Kisan Vikas Gramodyog Sewa Samiti	Vs	APPELLANT
State of U.P.and others		RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 12 AHC CK 0109

Hon'ble Judges : H.L.Gokhale, CJ and Anjani Kumar, J

Final Decision : Disposed of

Judgement

H.L. Gokhale, C.J.—Heard Mr. Gaurav Mehrotra in support of this petition. Ms. Sangeeta Chandra, learned Standing Counsel for the State Government appears for respondent Nos. 1 to 6. Mr. Sanjai Kumar appears for respondent No. 7. Respondent No. 8 has been served.

2. The petitioner herein claims to be an educational society. It had applied for setting up a Secondary SchoolcumIntermediate College at Block Jhanjhari in District Gonda in pursuance to the advertisement dated 7.7.2006 issued by the District Inspector of Schools who is respondent No. 6.

3. It had so happened that the petitioner's claim was not entertained but the claim of respondent No. 7 had come to be entertained. An order was passed on 14.9.2006 by the committee of some seven officers which held that the respondent No. 7 was fulfilling the necessary requirements and the others applicants were not. This order was challenged by the petitioner by filing one earlier writ petition being Writ Petition No. 6823 (M/B) of 2006. The Division Bench which heard the matter recorded as follows :

"Learned Counsel for the parties agree that before taking any decision on the recommendation of the selection committee, the representation of the petitioner be considered and disposed off by a reasoned order in accordance with law, expeditiously.

With these observations with the consent of parties, the writ petition is disposed of finally."

4. Now what has happened is that the Special Secretary of the Education Department has passed an order on 20.2.2007 rejecting the objections of the petitioner thereby giving a green signal to respondent No. 7 to go ahead. It is both these orders dated 14.9.2006 and the Secretary's order dated 20.2.2007 which are challenged by the petitioner by filing the present writ petition. The petitioner has also prayed for a mandamus that the petitioner's application dated 31.7.2006 should be considered.

5. Now what is material to note is that the advertisement given by the District Inspector of Schools laid down certain conditions of eligibility. They were principally seven and those are :

(i) The institution must be registered one and whose registration must have renewed until date.

(ii) The institution must have at least one acre of land and there must be necessary entries in the revenue records.

(iii) The institution ought to have a regular source of income, (iv) The institution must have a possibility of having at least 100 students, (v) The plot of land must be accessible by road and with usual facilities of transport.

(vi) No high tension electric line should be going on to the concerned parcel of land, and

(vii) The institution must have the corpus of Rs. 20 lack and must present a blue print of proposed building.

6. Mr. Mehrotra, learned Counsel for the petitioner submits that as far as the first order which is of recommendation passed by the concerned committee is concerned if one looks into it, all that it says is that the respondent No. 7 is fulfilling all the requirements and the other applicants do not. In this order some Senior Government Officers are supposed to have taken this decision. The decision records that there were only four applicants for setting up a secondary schoolcumintermediate college and, a school is to be set up and the conditions therefrom are laid down. The minimum that was expected by the concerned committee was that they will examine the eligibility of all the four claimants. It is an established principle of administrative determination that when an advertisement is given and there are large number of applicants, the merits and demerits of the applicants ought to be discussed at least in a reasoned manner and that should be reflected in the order passed by them. This recommendation does not say anything of the sort.

7. It is because of this kind of situation that the Division Bench directed that the representation of the petitioner be considered and be disposed off by a reasonable order. This has led to the order passed by the Secretary dated

20.2.2007.

8. Mr. Mehrotra has a serious objection to this order. The order records three objections raised by the petitioner in paragraph 1. The first objection is that the land is not easily accessible. The Secretary has recorded that as per the Collector's report, the place where the school is proposed to set up is at a distance of three kms. from GondaUttraula main road. Mr. Mehrotra has relied upon a report of four officers of the various departments which was placed before the Secretary prior to his passing of this order and the report, clearly raises doubt with respect to accessibility of this plot of land. Mr. Mehrotra points out that it is a sort of landlord plot. He has drawn our attention to the map which shows that there are agricultural fields around and it is very difficult to say as to whether there is really any Kachcha road going upto the plot of the school as claimed by the respondent No. 7.

9. The second objection was that there was a high tension wire going above the concerned plot of land. The secretary has mentioned that the Executive Engineer has given a report that no such wire is going over the plot of the proposed building. This is again contrary to the report dated 22.1.2007 signed by the four officers including the Executive Engineer.

10. The third objection was with respect to the number of students who are likely to attend this school and the order of the Secretary records that some 186 students will be available within the periphery of five kms. from four Junior High Schools.

11. Be that as it may, when the High Court remanded the matter for consideration of the representation of the petitioner, the Secretary was expected to apply his mind to all these objections and also the claim of the petitioner. The petitioner's representation dated 6.10.2006 clearly referred in paragraph 4 that the District Inspector of Schools, Gonda had found his application to be in order. This is what he has stated in paragraph 4 of his representation and ultimately prayed that the decision in favour of respondent No. 7 be set aside and the application of the petitioner be entertained and his institution be allotted the responsibility of setting up a school in the concerned block.

12. Mr. Sangeeta Chandra, learned Standing Counsel for the State submitted that the earlier order of recommendation dated 14.9.2006 must be having the necessary notings in the Government's file which will justify as to why the concerned committee has recorded that the respondent No. 7 fulfils the requisite qualifications and not others. She further submits that as far as the order passed later on 20.2.2007 by the Secretary is concerned, the Secretary was supposed to decide the representation of the petitioner which he had decided. According to her, he was supposed to decide the objection against the respondent No. 7. only.

13. Mr. Sanjai Kumar, learned Counsel appearing for respondent No, 7 has principally adopted the same submissions raised by Ms. Chandra, learned Standing Counsel appearing for the State.

14. We noted the submissions of the learned Counsel for all the parties. The submission of Ms. Chandra is recorded only for being rejected. We are not concerned with what entries the officers are having in their files. The officers concerned were looking into the claim of four claimants to set up a school as per the advertisement given by the District Inspector of Schools. The question is whether they are fulfilling all the conditions or not. The least that was expected was that the officers should have made a necessary chart to show as to whether the conditions were satisfied by any of those schools and which of the society was to be preferred. All that the recommending report says is that only respondent No. 7 fulfils the conditions and none others. That is the salutary sentence in the report dated 14.9.2006. Surely such a report cannot stand the test of reasonableness, which is minimum requirement when claims are made in pursuance of an advertisement given by a public body.

15. Similar is the position of the order passed by the "Secretary on 20.2.2007. The High Court had clearly expected him to consider the representation of the petitioner and the High Court's order in a very clear terms stated that the representation of the petitioner be considered and disposed of by a reasoned order. We have referred to the representation of the petitioner. The petitioner has not represented and is not litigating merely to cancel the decision in favour of respondent No. 7. He is claiming that his society is the better society and that society should be authorised to set up the concerned school. Prayer No. 3 of the petition is for a mandamus that the application of the petitioner's society ought to be considered. The Secretary has, therefore, clearly erred in not considering the claim of the petitioner. That was also an opportunity for the Government to correct itself and at that stage if an appropriate order was passed, further delay in this behalf could have been forfeited.

16. Ms. Chandra, learned Standing Counsel submits that the officers of the Government are responsible for the resultant delay.

17. The idea of giving an advertisement is to select the best society to set up a school. If there are large number of claimants, surely their claims have to be considered. Their relevant merits have to be examined. That has not been done either by the recommending body or by the Secretary. In the circumstances, both these orders will have to be set aside.

18. The consequence will be that there will be one more remand. We again send back the matter to the Special Secretary, Department of Education who is respondent No. 2 who will call for all the necessary records from the concerned departments with respect to the documents which four parties have already placed before the authorities concerned. He will also call all the four parties on a particular day so that if they want to state anything to him they should get an opportunity. We make it clear that no new application will be entertained nor any party will be permitted to add to the record which is already before the Government. In this process, the decision should be taken early. We expect the Secretary to take a decision within six weeks from the receipt of a certified copy

of this order, so that there is no further delay in setting up a school. Petition stands allowed in these terms. There will be no order as to costs.

19. We make it clear that the Secretary will take the decision on the merits of the documents which are on record. Whatever observations are made in this order are for the purpose of decision of the matter, which he is expected to decide on merits.