(2024) 03 KL CK 0108

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8401 Of 2021

Manager, Ebenezer Higher Secondary School	APPELLANT
Vs	
State Of Kerala	RESPONDENT

Date of Decision : 13-03-2024

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2024) 03 KL CK 0108

Hon'ble Judges : Mohammed Nias C.P, J

Bench : Single Bench

Advocate : K.Jaju Babu, M.U.Vijayalakshmi, Brijesh Mohan, Sachin Ramesh, Aravind T Ramesh, Ramanarayanan G., Nisha Bose

Final Decision : Allowed

Judgement

Mohammed Nias C. P. , J.

1. The petitioner is the manager of an aided Higher Secondary school. To improve the facilities in the school, management undertook renovation and expansion works, and the same was in progress from the academic year 2017-2018 onwards. While so as per G.O.(P) No.30/2018 dated 1.3.2018, the Government declared a policy of creating a Challenge Fund Scheme intended for Government and aided schools to expand the facilities intending to provide better avenues for learning and holistic development of children, which is produced as Ext.P1. The scheme specified that the 'Challenge Fund Scheme' contribution from the part of the Government will be on a 1:1 ratio to the amount deposited by the management on the Treasury Savings Bank account specified by the Government. It is also specified that the funds from the TSB (Treasure Savings Bank) could be withdrawn for purchases and the progress of the construction. The petitioner management submitted a request to avail the benefits of the scheme along with the proforma and requisite documents dated 15.06.2018. It was to provide for a three-storied building complex for the Higher Secondary School. The application for a building permit was also submitted to the local

authority, and the construction commenced without any delay by using their funds, legitimately expecting an allotment of Rs.50 lakh offered under Ext.P1.

2. The petitioner had deposited their part of Rs.50 lakh stipulated in the Government Order in Treasury by 3.7.2018 and requested for the Challenge Fund of Rs.50 lakh submitted along with the proof of deposit of Rs.50 lakh by the petitioner as per Ext.P3 application. The third respondent, by order dated 26.10.2018, Ext P4, declared the list of schools eligible for availing the Challenge Fund Scheme and the petitioner school was included as Serial No.5 and was allotted an amount of Rs.50 lakh in proportion to the amount remitted by them. The petitioner requested the amounts payable by the Government under Ext.P1. The petitioner submits that the construction was completed and the occupancy certificate was issued by the Panchayath as seen from Ext.P5, and the fitness certificate was also issued by the Assistant Executive Engineer, LSGD Sub Division, Kolancherry, dated 31.5.2019. The construction was based on the estimate approved by the fifth respondent and the completion report in accordance with Exts.P7 and P8, the relevant extract of the estimate and work schedule was issued to the building by the sixth respondent, as seen from Ext.P9. A three-storied RCC building, including seven classrooms, a staff room, a dining hall, a kitchen and a toilet, was constructed with an additional floor area of 742.74 sq. meters. The Grama Panchayath also issued an ownership certificate on 21.01.2020, as evident from Ext.P10. On 30.10.2020, the Headmistress of the school requested disbursement of the amount towards Government share by Ext.P11.

3. The fourth respondent issued a letter dated 17.12.2020 addressed to the Headmistress pointing out that bills included in the application submitted for the release of the funds were not counter-signed by the Engineer, Local self Government department and also did not contain a valuation certificate. The petitioner accordingly submitted the valuation certificate and also the bills signed by the Assistant Executive Engineer. The petitioner submits that despite furnishing the Ext.P13 valuation certificate, no amount was paid after the compliance of the directions in Ext.P12. Thereafter, the petitioner filed a grievance petition in the Santhwana Sparsham Adalath 2021 and a hearing was scheduled on 18.02.2021 in the presence of the ministers and found that the petitioner was effected construction of the school on the terms of Ext.P1 and that they were entitled to the benefits of Challenge Fund Scheme. The copy of the communication as regards the Adalath is marked as Exts.P16 and P17.

The petitioner submits that they had a legitimate expectation as the work was carried out on the strength of the assurance in Ext.P1. The writ petition was originally filed seeking a direction to respondents 1 to 4 to disburse the Challenge Fund Scheme benefit of Rs.50 lakh. By an interim order of this Court dated 24.3.2023, the first respondent was directed to consider Exts.P2 and P3 applications preferred by the petitioner and take a decision with due regard to Exts.P1, R4(a), P4, P9 and P16 within two months. Accordingly, Ext.P20 decision was taken, which was also challenged by way of amendment to the writ petition. The reasons stated in Ext.P20 are that some of the bills submitted by the petitioner bear the dates during 2017 and that the claim of the management was wrong as the construction works had already started much before the introduction of the Challenge Fund Scheme and the invoices submitted by the management pertaining to the year 2017 cannot be accepted. In short, the contention is that the management had started the construction well before the Challenge Fund Scheme and they completed the project on their own without any proper sanction from the departmental authorities before the commencement of the Challenge Fund Scheme.

4. The Government has filed a counter-producing Ext.R4(a) dated 15.11.2019 to contend that the school authorities had to carry out the construction activities at their own instance based on their available financial position and the Government Orders only permitted to claim activities which commenced only after 1.3.2018. It is also stated that the Tahsildar issued Ext.P16 without assessing/verifying the documents submitted.

5. Heard senior counsel Sri.Jaju Babu, instructed by Sri.Brijesh Mohan and Smt.Nisha Bose, the learned senior Government Pleader.

6. It is not disputed that the petitioner was included in Ext P1 scheme by Ext.P4 dated 26.10.2018 and was one among the 23 schools selected for the project commenced under Ext.P1. Ext.P4 did have conditions that the construction has to be supervised by the Engineer concerned of the Local Self Government department and that the concerned Educational Officer has to verify whether the construction is as per the permit granted by the local bodies. It is based on Ext P1 that the management remitted the amount to the Treasury, and the same was allowed to the used. The first rejection by the Government and the claim of the petitioner was by Ext.P12 because the bills were not counter-signed and the valuation certificate was not enclosed. These defects were cured, as is evident from the documents produced. The reason now put forth in Ext.P20, the impugned order, is that the construction was already complete, and thus the petitioner was not covered under Ext.P1 Scheme, objections were also raised that some of the bills were for the period before 1.3.2018. The petitioner was selected and found entitled by Ext.P4, and the conditions mentioned in Ext.P4 were for the implementation of the Scheme. The petitioner had also remitted Rs.50 lakh in the Treasury as part of the conditions and had completed the work. Having found the entitlement of the petitioner through Ext.P4, the respondents cannot be heard to contend at this point that the petitioner is not entitled since the construction was already over using their own funds. It has to be verified and ascertained before selecting the petitioner school, finding them to be entitled under Ext.P1.

7. Having made the petitioner believe that they were entitled under the Scheme and the petitioner had acted under Ext.P1 scheme, the contention of the Government that the petitioner is not entitled to be included under the Scheme

cannot be accepted. By Ext.P1, the State had made a representation, and acting on the same, the petitioner had remitted the amounts. Ext.P4 must be understood as one that found the petitioner entitled to Ext.P1 Scheme. The respondents are under a legal obligation to exercise the powers they had reasonably and also in good faith and to effectuate the purpose for which the power is conferred. The doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 of the Constitution of India finds concrete expression. (see the judgment in NOIDA Entrepreneurs Association v. NOIDA [2011(6) SCC 508]

8. If it is a case that the petitioner was not entitled and still was selected and found to be entitled under Ext.P4, the officials who are responsible for the same must be taken to task after a proper enquiry in that regard. The selection and inclusion of the petitioner in Ext.P4 and making him remit Rs.50 lakh as part of the Scheme and thereafter come up with objections much after the construction cannot be justified on the part of the Government, whose actions are enjoined to be just and fair in every sphere of their activities. The reason stated for rejecting the claim of the petitioner after finding him entitled under Ext.P4 cannot be sustained even though the claim of the petitioner for the bills submitted before 1.3.2018 need not be honoured.

9. For the balance of the amount, the respondents or the competent among them are directed to take a fresh decision in the light of the observations made above and the documents produced in the writ petition after putting the petitioner and other affected parties on notice and after affording reasonable opportunity of hearing. Orders as directed above shall be passed within three months from today, and the amounts to which the petitioner is found entitled shall be paid within one month thereafter. After paying the amount due to the petitioner, it will be open to the Government to take appropriate action against the official responsible for including the petitioner in Ext.P4 in case the petitioner school is found not entitled to the benefit of Ext.P1. Since public money is involved and if it is ultimately found that the petitioner is not entitled to the benefit of Ext.P1 Scheme, the Government will have to pay the amount to the petitioner as promised and recover it from the officials responsible, as stated above.

The writ petition is allowed as above.

