

(2016) 10 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9409 of 2014.

Meera Siksha Samiti, Sangariya (Regd.) through its Secretary, Sanjay Arya S/o. Shri Om Prakash Arya, aged about 44 years, resident of - 1/262, Nai Abadi, Ward No.15, Sangariya, District - Hanumangarh (Raj.) - Petitioner @HASH State of Rajasthan through the

Date of Decision : 17-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 WLN 281

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Mr. Sajjan Singh, Advocate, for the Petitioner; Mr. Digvijay Singh Jasol, AGC, for the Respondents No. 1 to 5; Mr. Digvijay Singh for Mr. H.S. Sidhu, Advocates, for the Respondents No. 6 to 9

Final Decision : Allowed

Judgement

Mr. Arun Bhansali, J. - This writ petition under Article 226 of the Constitution of India has been filed by the petitioner-Society aggrieved against the order dated 26.09.2014 (Annex.-P/1).

2. The petitioner-Society was operating Meera Girls College and Meera Girls Higher Secondary School at Sangaria, District ? Hanumangarh. The petitioner Society by its resolution dated 25.07.2010 proposed acquisition of the educational institutions by the State Government and the State was approached in this regard.

3. By order dated 31.08.2013 issued by the Joint Secretary to the Government, Higher Education (Group-III) Department, it was communicated to the Director, College Education that the State Government has accepted the request of the Managing Committee for takeover by the State Government along with movable and immovable assets and granted administrative sanction for takeover of private college ? Meera Girls College, Sangaria (Hanumangarh). It was also indicated that the communication was issued with concurrence of Finance (Exp.I)

Department and that formal financial sanction would be issued separately; pursuant to the said communication dated 31.08.2013, the Director, College Education, Rajasthan, Jaipur constituted a Committee, which comprised of the Principal, Government College, Hanumangarh as Nodal Officer, Assistant Director, Regional Office, College Education, Bikaner and Assistant Accounts Officer, Government College, Hanumangarh, both as members and directed the Committee to undertake the procedure regarding takeover and submit the same by 10.09.2013.

4. On 04.09.2013, the Dy. Director, Planning also issued a communication seeking information. By registered surrender deed dated 20.09.2013 executed by the petitioner-Society in favour of State/ Government of Rajasthan through Nodal Officer, the movable and immovable properties of the institution were relinquished in favour of the State.

5. By communication dated 26.09.2013 issued by the Joint Director, College Education to the Joint Secretary, Higher Education (Group-III) Department, it was indicated that the State Government has already issued its administrative sanction for takeover of the college; on 29.09.2013, the Director posted one Indraraj Singh Chetiwal from Government College, Suratgarh to Government Girls College, Sangaria, Hanumangarh as Acting/Working Principal, who took over the charge on 02.10.2013 from Dr. Harmendra Singh Garcha vide Annex.- P/8. Thereafter, the Director, College Education by his order dated 04.10.2013 delegated the financial powers to the said Indraraj Singh Chetiwal; on 04.03.2014, one Smt. Manju Bishnoi, Laboratory Assistant was transferred from Govt. College, Kaladera to Government Girls College, Sangaria.

6. It is indicated that the above actions, whereby the administrative sanction was issued by the Government, surrender deed was executed by the petitioner-Society, Principal was appointed and employees were transferred from other Government College, the process of takeover of the college was complete, however, suddenly by order dated 26.09.2014 (Annex.- P/1), it was ordered that six colleges indicated in the order, which were taken over by the State, the said orders were de-notified with immediate effect and cancelled. Where after, the Joint Director, College Education by his communication dated 27.10.2014, sent to the petitioner-Society, forwarded a representation dated 02.10.2014 from the employees seeking payment of 13 months outstanding salary. The petitioner-Society has filed the present writ petition, as already noticed hereinbefore questioning the action of the State in de-notifying/cancelling the takeover of the college.

7. It is submitted by learned counsel for the petitioner-Society that the order dated 26.09.2014 is wholly non-speaking, no reasons have been indicated, no provision has been quoted and, therefore, the same is bad in law. It is submitted that there is no provision in law for de-notifying any institution once it is taken over, reference has been made to the provisions of the Rajasthan Civil Services (Appointment and other Service Conditions of Employees of Private Institutions

and other Establishments taken over by the Government), Rules 1977 (?the Rules of 1977?). It is submitted that under the Rules of 1977, there is no provision for de-notification and/or cancelling the order of takeover and once the takeover was complete, merely by passing an administrative order, the same cannot be cancelled. Further submissions have been made that the order has been passed in gross violation of principles of natural justice, inasmuch as, no opportunity of hearing was given to the petitioner-Society before passing of the order impugned. Submissions were made that after taking over of the institution, the salary etc. of the teachers have not been paid and the agitated teachers are sought to be directed towards the petitioner's institution, which presently has nothing to do with either the outstanding salaries and/or of the institution as such the order de-notifying/cancelling takeover of the college is void. It is prayed that the writ petition be allowed and the order dated 26.09.2014 (Annex.-P/1) be quashed and set aside. Reliance was placed on *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.*, AIR 1978 SC 851 and *Vinod Kumar v. State of Haryana*, (2013) 11 SCC 293.

8. Vehemently opposing the submissions made by learned counsel for the petitioner, learned counsel for the respondent-State supported the order impugned. In the reply to the writ petition filed though indicated as on behalf of the respondent No.4, but submitting before the Court that the same was on behalf of the respondent Nos. 1 to 5, it was submitted that the respondents did not receive the financial consent and until such financial consent was received, the order of de-acquisition is valid and legal. It was also claimed that the model code of conduct came into being on 04.10.2013 and the State Government was not competent to take decision regarding acquisition of the said institution. Further submissions were made that after the new Government came to power, a decision was taken to review the decisions of last six months of previous Government; further reasons (a) to (e) have been indicated in the reply seeking to justify the decision to de-notify the college.

9. Submissions have also been made that the Cabinet Committee took decision and, thereafter, the order of cancellation of acquisition of the petitioner's institution was passed, however, a specific submission was made that so far as the payment of salary was concerned, only the salary, which is required to be given to the staff would be determined by the District Collector and thereafter on such determination, the same would be paid to the employees.

10. None of the documents filed by the petitioner-Society indicating the execution of relinquishment deed, appointment of working/acting Principal, transfer of employees to the said college i.e. taking over of the college by the State pursuant to the administrative sanction dated 31.08.2013 (Annex.-P/2) have been denied. However, after filing of the initial reply, several documents have been produced by the petitioner-Society questioning the entire action of the respondents being malafide and in violation of principles of natural justice and legal provisions and the respondent-State seeking to justify their action based on

the note-sheets/deliberations contained therein.

11. It was submitted by learned counsel for the respondents that in view of the reasons indicated in the reply i.e. the fact that the institution was being operated within the same premises, where the school owned by the petitioner-Society was operating, is against the policy of the State Government; a working women hostel was also operating in the adjoining building; the college was being run on agriculture land; the students' strength was relatively low and that more colleges were already functional though all private at Sangaria and, therefore, the acquisition of the institution was not found viable by the Government. It was submitted that the issue of takeover of the petitioner's college was revisited and for several reasons it was decided to de-notify the said acquisition. Submissions were sought to be made that before arriving at the said decision, the Principal of the college was involved in the discussions and, therefore, it cannot be said that there was violation of principles of natural justice. It was prayed that the writ petition be dismissed.

12. Certain applicants sought impleadment as party to the present writ petition indicating interest similar to the petitioner as they being teachers, working with the college, have been deprived payment of salary, despite direction passed by a coordinate Bench of this Court in the case of *Hansraj v. State of Rajasthan & Ors.*, S.B. Civil Writ Petition No.1717/2014 decided on 28.03.2014, were not being paid salary, were impleaded as party to the present writ petition, the learned counsel appearing for the said private respondents supported the submissions made by learned counsel for the petitioner.

13. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

14. A bare perusal of the documents produced by the petitioner clearly indicates that a decision dated 31.08.2013 was taken by the State for taking over of the private college from the petitioner-Society and administrative sanction in this regard was issued with the concurrence of the Finance (Exp.I) Department. Pursuant to the said sanction, the petitioner executed a registered surrender deed/release deed dated 20.10.2013 in favour of the State, which on behalf of the State was signed by the Nodal Officer, who was appointed by the Director, College Education for the purpose. The Principal from Government College, Suratgarh was transferred to the said college, who took over as working Principal of the college, financial powers were also conferred on the Principal and further transfers took place from other colleges to the said college, indicating a complete takeover of the college by the State.

15. Rule 5 of the Rules of 1977 provides for taking over of private institutions and the consequences qua the employees of the existing institution. The Rules of 1977, does not envisage a situation where a Government College/Institution as such and/or an Institution already taken over can be de-notified and/or its takeover may be cancelled by the State Government and the consequences

thereof, inasmuch as, as already noticed, by execution of the relinquishment/surrender deed dated 20.09.2013, the movable and immovable assets of the Institution had vested in the State, which cannot be re-vested in the petitioner's Institution ipso facto by passing an order of de-notification. The State being aware of the above circumstances has taken note of the said aspect of the matter and by note-sheet (Annex.-R/5) by the Chief Minister, it has been indicated that the Finance Department and Administration Department may take necessary action as regards exemption of Stamp Duty, though oblivious of the fact that under proviso (i) to Section 3 of the Rajasthan Stamp Act, 1998, no duty is chargeable in respect of any instrument executed by or on behalf of the Government.

16. It is also significant to note that the order dated 26.09.2014 (Annex.-P/1), has simply been marked to Director, College Education and District Collectors of various Districts, in which, six colleges are situated without even indicating and/or communicating the said order to the petitioner-Society.

17. From the entire material available on record, it is obvious that before passing of the order dated 26.09.2014, the petitioner Institution, if it has anything to do with the order dated 26.09.2014, which it is apparent that the respondents are treating as if now the college vests back in the petitioner-Society, the said Society was not at all given any opportunity of hearing. The feeble attempt made by the counsel for the respondents to indicate that the Principal of the college was involved in the deliberation, is a mere empty formality, inasmuch as, the working Principal of the college was appointed by the Government after the college was taken over and by involving the said Principal, it cannot be said that the petitioner-Society was accorded any prior opportunity of hearing before passing of the order impugned dated 26.09.2014.

18. The order dated 26.09.2014, does not delineate any reasons for taking of the said decision, supplementing the reasons by way of filing of the affidavit as has been done by the State, is not permissible as laid down by Hon'ble Supreme Court in the case of Mohinder Singh Gill (supra) as under:-

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

19. In view of the above state of affairs, without going into the reasons as now sought to be presented by the State seeking to justify its action, which reasons also are vehemently opposed by the petitioner as baseless, the action of the respondents on account of the two preliminary aspects of principles of natural justice i.e. failure to provide audi alterum partum and unreasoned order, cannot be sustained.

20. The reason indicated in the reply of the State regarding lack of financial

consent is on its face incorrect as it is obvious from the order dated 31.08.2013, that the order was issued with concurrence of Finance Department and also gives out its I.D. dated 31.08.2013.

21. So far as further submission made in the reply regarding change of Government and review of the earlier decisions is concerned, the same by itself cannot be a reason for review of the earlier decision as laid down by Hon^{ble} Supreme Court in the case of Vinod Kumar (supra), and the same in any case does not empower the State to violate the principles of natural justice.

22. In view of the above discussion, the writ petition filed by the petitioner-Society is allowed. The order dated 26.09.2014 (Annex.-P/1) passed by the Dy. Secretary (Admin), Higher Education (Group-III) Department is quashed and set aside qua Meera Girls College, Sangaria, District ? Hanumangarh, with all consequences as if the order dated 26.09.2014 was never passed qua the said college.