
(2017) 05 MP CK 0063
In the Madhya Pradesh High Court
Case No : 4072-2014

Rajendra Prasad

APPELLANT

Vs

Government of M.P. & Ors.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 05 MP CK 0063

Hon'ble Judges : P.K. Jaiswal, Virender Singh

Bench : Single Bench

Advocate : A.S. Kutumble, Sameer Athawale, Umesh Gajankush, P.M. Bhargava,
P. Pathak

Judgement

1. The petitioner, a trust has knocked the door of the Court in this pro bono publico to issue a writ of mandamus asking the respondents not to close "Lokmanya Sishu Mandir"? a middle school situated at Lokmanya Nagar, Indore, (M.P.).
2. The petitioner has raised a question as to whether a school being constructed and maintained with the assistance of the public donations, Indore Development Authority, "Sansad Nidhi", Devi Ahilya Trust and Nazul Department of M.P. (Indore) meant to impart education to poor and slum children can be closed for commercial interest and to grab the Nazul land.
3. Succinctly stated material facts leading to the present petition are that the petitioner is a registered public trust having 11 Trustees, besides 3 patrons, who all are highly educated and are well placed in their lives and who have zeal for social work for upliftment of financial, social, educational and cultural status of weaker section of the society.
4. Respondent no.3 is a registered Housing Cooperative Society, Respondent no.4 is a Managing Committee of Higher Secondary School named "Lokmanya Vidya

Niketan"? and Respondent no.5 is Managing Committee of "Lokmanya Sishu Mandir"? a middle School, closure of which is the substratum of the present petition.

5. "Lokmanya Vidya Niketan" is situated within the boundaries of Lokmanya Housing Society and "Lokmanya Sishu Mandir" is situated in its north just touching the boundaries of the "Society". The land on which "Lokmanya Sishu Mandir"? is situated is Nazul Land and belongs to the Municipal Corporation, Indore. The school building is raised with the assistance of Indore Development Authority, Indore, "Sansad Nidhi", Devi Ahilya Trust and also with the assistance of petitioner Trust. They all had a pious purpose to impart education to those deprived due to financial constraints, particularly, weaker section of the Society like SC/ST and OBC people. The school is imparting education to slum children up to 8th class since last 37 years. The school is recognized with the Madhyamik Shiksha Mandal, Bhopal, Department of School Education (M.P.).

6. Suddenly, on 05.04.2014, near about 200 students (the total strength of students) were given school leaving certificates alongwith their results without their asking for the same. On inquiry, it was revealed that in the 40th Annual General Meeting (AGM) of Society (Respondent no.3), dated 22.04.2012, the matter in respect of poor strength of students in the "Shishu Mandir"? was considered and it was resolved that the school be closed from the next session. The President of the Society sent a letter dated 08.11.2012 (Annexure-R/5) to "Shishu Mandir Samiti"? (Respondent No.5) intimating its intention to close the "Shishu Mandir"? from the next session of 2013-2014 i.e. June, 2014.

7. It is further revealed that "Lokmanya Vidya Niketan"? school was running into high profits. Respondent no.3 and 4 wanted to add Nursery and K.G. classes in this school to increase their income. For this purpose, to gain additional accommodation for commercial use of another school which was running short of accommodation and without incurring a single penny and also to grab Nazul land upon which building of "Shishu Mandir" is standing, the Society decided to shut down the "Shishu Mandir" in a planned way. The "Society" first stopped the admissions to the lower classes of the school "Shishu Mandir" than propagated that the students strength is falling short to meet the expenses.

8. Having learnt of the mischief, a very Senior Advocate and a Trustee of Devi Ahilya Trust made an appeal suggesting further financial assistance if required. People of nearby locality and many parents of the children studying in the school approached the "Society" and the local Authorities, but all went in vain. The "Society" is also not ready to supply the information, therefore, the petitioner was left with no option but to approach the court.

9. For closing the school, the respondent neither sought sanction or consent from the Madhyamik Shiksha Mandal or from the Department of School Education, Govt. of M.P., Bhopal, nor they apprised the students or their parents.

10. The helpless students are deprived of education; which will adversely affect

their future and will cause irreparable loss to their career, which can never be compensated for by any means.

11. The petitioner has put forth a proposal that if the respondents are not ready to run the school for whatsoever reasons, the petitioner trust is ready to undertake all liabilities and is also ready to run the school. For this purpose, the school building and furniture alongwith its funds may be handed over to the petitioner.

12. Few parents, 10 in numbers with the same pleadings, prayer and relief have also come before this Court and have filed an application for intervention. They have filed their affidavits and copies of few school leaving certificates, which according to them, were forcefully given to their wards and few other children.

13. In reply, jointly filed by Respondent no.3 and 5, the respondents have raised certain doubts about the bonafide of the petitioner as it has offered to take over the school with its building and funds.

14. It is submitted by the answering respondents that the President of the petitioner's Trust Mr. Girish Pandit is also a member of the "Society" (Respondent no.3). In 41st AGM dated 15.09.2013 of the "Society" he had raised a query regarding closure of the school which was duly replied and communicated that due to losses incurred in running the school, it is practically not possible to run the school, but he was not satisfied with the reply, even then the proposal was passed in the AGM. Annoyed by this, he has filed the present petition for taking personal revenge with the present management Committee of the "Society". Apart from this, the "Society" (Respondent no.3) had filed a Civil Suit against the son of a trustee of the petitioner namely Raman Tarnekar, therefore, he has a grudge against the "Society". Therefore, in fact it is not a petition in the public interest, but it is filed only for satisfying personal ego and agenda under the garb of PIL. Referring State of Uttranchal v. Balvan Singh Chauffle reported in (2010) 3 SCC 402, the answering respondent submitted that such practice should be deprecated.

15. It is further averred that the answering respondents (Respondent no.3 and 5) are a private body and that they are not a "State" as defined under Article 12 of the Constitution of India, the institution is an unaided educational institution and not getting any aid or assistance from the State. Therefore, the present petition is not maintainable in the name of pro bono publico.

16. The answering respondents has made it clear that respondent no.3 "Society"? was formed in the year 1963 and had developed Lokmanya Nagar into two phases with the name of Lokmanya Nagar Main and Lokmanya Nagar Extension on the certain lands purchased by it through registered sale deeds. Besides, a small piece of land; a part of Survey No.1494 ad measuring 18625 Sqft. was allotted by the State Government for which they are paying annual land revenue to the State (Respondent no.1). It is also made clear that the "Shishu Mandir"? school was established by the respondent no.3 in the year

1971. It is situated at plot No.50 on Lokmanya Nagar Extention which falls under Survey No.1446/2, the land purchased and owned by registered sale deed by the "Society" (Respondent no.3). An inquiry had been made by Nazul Officer to find out as to whether the school is situated at Nazul land and after the inquiry it was reported by him to the Dy. Commissioner (Co-operative) that the school was situated on a private land and that no irregularity has been committed by the "Society" in construction/ establishment of the school (Annexure R-3/10). Submitting two tabulation charts showing fall of student's strength and income of the school, the answering respondent has come with the pleadings that running of school was no more profitable or viable for the "Society". Since 2012 the school was incurring losses, therefore, the "Society" in its 40th AGM decided to shut down the school. Further, in 41th AGM, on 15.09.2013 the issue was again discussed. The questions raised by its members were duly replied and thereafter, the "Society" had given consent to close down the school. On 19.12.2014, a resolution was passed by the "Society" to provide transfers/school leaving certificates to the children within the time so that they can make arrangements for their admissions in other schools. The "Society" vide letter dated 23.04.2014, 29.04.2014 and 22.05.2014 informed the co-operative department as well as the District Education Officer elaborately stating the reasons for closure of the school (Annexure R-3/14). Respondents being a private body, did not require to take any permission prior to closure of the school from the Government Authorities. Owing to the deficit and depleting strength of the students, required to run the school, the respondent no.3 was unable to continue with the school. For the same reason, the recognition has also not been renewed and at present there is no recognition for running the school from Madhyamik Shiksha Mandal, Bhopal.

17. Refuting all the allegations made by the petitioner like that the "Shishu Mandir" is situated at Nazul land, it is adjacent to the another school run by the "Society", the school is being closed down to grab the land or building of the "Society" or to obtain further accommodation for another school "Lokmanya Vidya Niketan" run by the "Society" or other mala fide as alleged by the petitioner, the answering respondents have prayed for dismissal of the petition.

18. Whether the school is situated at Nazul land or not is a matter of fact and needs inquiry and evidence which can not be done in a petition under Article 226 of Constitution of India. For this reason, according to the answering respondents, no relief, as sought by the petitioner, can be granted and on this ground also they have prayed for dismissal of the petition.

19. In a separate reply, the respondent no.1 and 2 have supported the pleas taken by the respondent no.3 and 5 in their reply to the petition, particularly, with regard to the fact that the school (Lokmanya Shishu Mandir) is an unaided school, not receiving any grant from the State Government under the Rules of 1978 and it is run by a private society. They have further stated that all the students studying in the school have taken admission in the neighboring schools

and no one remains to be rehabilitated. After receiving information regarding closure of the school and other complaints in this respect, District Education Officer, Indore (Respondent no.2) has issued necessary instructions to the Sankul Principal to investigate and submit a brief report about the aforesaid school and on inquiry, it was found that the school is not situated on the Nazul land. Dismissal of the petition is also prayed by these respondents.

20. Respondent no.4 has adopted the reply filed by the respondents no.3 and 5.

21. In its rejoinder, to the reply filed by the respondent no.3 and 5, the petitioner has reiterated the pleadings made earlier except an additional pleading that on a complaint made by Shri Vinod D. Mule against the respondent to the Dy. Commissioner, Co-operative, Co-operative Inspector had conducted an inquiry and submitted its report on 19.05.2014 (Annexure P/10). The said report clearly indicates that the whole action of respondent no.3 and 5 and procedure adopted by them to close the school was bad. In this report at page no.4, it is made clear that the school in question is situated at Survey No.1494, which is a Nazul land and not a private land. Raising question about the documents (Annexure R-3/10) filed by the respondent, the petitioner has submitted that in the letter of Nazul Officer, nothing is mentioned about the Survey Number on which the school is situated. This letter, according to the petitioner, also does not say that school is situated at Survey No.1446/2, as claimed by the petitioner. To prove the facts regarding depleting strength of students and losses, no documents or no balance-sheets have been filed by the respondents. Emphasizing on its pleadings made earlier, the petitioner has repeated the prayer for the reliefs sought earlier in the main petition.

22. We have heard learned counsel for both the parties at length and considered the rival contentions made by them.

23. Preliminary objection raised by the respondents regarding maintainability of the petition has been addressed and finally adjudicated by this Court vide order dated 13.10.2014. Referring judgment of Hon''ble the Apex Court passed in K. Krishnamacharyulu & Ors. v. Shri Venkateswara Hindu College of Engineering & Anr. reported in 1997 (3) SCC 571, this Court has held that as the public interest element is present in the petition, the Writ Petition is maintainable. No further action has been taken against this order, therefore, this order has attained finality and therefore, no further descant in this regard is necessary.

24. The fact "Lokmanya Shishu Mandir" is a private unaided school and run by a private society is no more a disputed fact. No document is there to show that the averments made by Respondent no.3 & 5 in their reply regarding decreasing strength of students and increasing losses incurred in running the school or for that matter the reasons assigned for closure of the school by the respondents are incorrect, therefore, on the apprehensions, presumptions or surmises, the facts can not be relied upon. Further, the Court can not peep into the business of a private society in the name of or in the garb of involvement of the public

interest while business of the society does not appear contrary to any law for the time being in force or harmful or dangerous to the public at large. A person or as in the present case a "Society" can not be forced to continue with the particular business or work, if he or it finds himself or itself unable to continue it for some reasonable or justifiable cause and to bear losses due to continuation of the business, even when the continuation of the same may promote the public interest or may be in the public interest.

25. Nothing is on record to show that the school "Shishu Mandir" is situated at Nazul land. On the contrary, Nazul Officer, who is the competent authority to determine the fact, vide its letter Annexure-R-3/10 has clearly reported that the school is not situated at any Nazul land. Though, the petitioner has questioned this document, but then, as stated above by the respondents, this is a matter of fact to be inquired in an appropriate proceedings, which can not be made by this Court while exercising jurisdiction under Article 226 of the Constitution of India. The school is already closed, its recognition has not been renewed, students have already been rehabilitated in other schools, the process adopted by the respondent to close the school does not, prima facie, appears to be illegal or unlawful or contrary to the law, therefore, no relief, as prayed for by the petitioner, can be granted by this Court.

26. In view of the aforesaid, the question that the petitioner has any personal interest or any personal grudge in filing the present petition is need not to be further inquired or adjudicated by delving deep into the matter.

27. Consequently, the petition deserves to be dismissed and is dismissed hereby. However, no order as to the cost.