
(2011) 02 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44314 of 2010

Shiksha Prasar Samiti and Another

APPELLANT

Vs

State of U.P and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Constitution of India, 1950 — Article 21A, 39, 41, 45
Right of Children to Free and Compulsory Education Act, 2009 — Section 18(1), 38, 38(2)
Uttar Pradesh Basic Education Act, 1972 — Section 12, 4
Uttar Pradesh District Boards Primary Education Code, 1926 — Section 2(5), 4(2)

Citation : (2011) 3 ADJ 643 : (2011) 3 AWC 2978

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The Petitioner-society runs several institutions of the primary and middle level that came to be registered in the year 1942, inspired by the preachings of the Father of the Nation Mahatma Gandhi and also encouraged by the local population of district Aligarh, Agra and the surrounding areas. The society was set up with the object of removing illiteracy and propagating education on Gandhian lines.

2. The institutions run by the Petitioner-society are now called upon to shut down and closed under the orders of the Basic Educational Authorities on the ground that the institutions established and run by the Petitioner-society does not have any recognition and, therefore, in view of the provisions of Right of Children to Free and Compulsory Education Act, 2009 running of such institutions is prohibited.

3. The Petitioner had earlier come up before this Court questioning the said action taken by the Assistant Basic Education Officer, Khair Aligarh whereupon this Court proceeded to dispose of the writ petition with a direction to consider

the grievance of the Petitioners on their representation and pass an order within two weeks. The said Officer has now passed the impugned order on 3rd July, 2010, and aggrieved the present writ petition has been moved.

4. This Court granted an interim order on 31st August, 2010 restraining the authorities from taking any further action pursuant to the impugned order and called upon the learned Standing Counsel to file a counter-affidavit on behalf of the Respondents. An affidavit sworn by Dr. Mukesh Kumar Singh the District Basic Education Officer, Aligarh has been filed supporting the impugned order alleging that the Petitioner-institution has no recognition by the Uttar Pradesh, Basic Education Board and no documents have been filed to indicate the extension of the benefit of grant by the Director of Public Instructions. Accordingly, in the absence of any recognition as required under the 2009 Act, the institution has to shut down and the impugned order does not suffer from any infirmity.

5. This issue relates to Basic Education within the State of U.P. Entry 25 of List III (Concurrent list) of the Seventh Schedule to the Constitution provides for legislation on such subjects. Prior to the advent of the Constitution, the District Boards which are Local Bodies were In-charge of such Education and was governed by the provisions of the United Provinces, District Boards Primary Education Act, 1926. The Education Code was also framed to regulate the running of such institutions but the same did not have a statutory force. However, they regulated the business of recognition, maintenance and running of such institutions and later on the U.P. Basic Education Act was framed by the Legislature in the year 1972 that holds the field. All Basic Schools whether of the Primary grade or of the Junior High School grade governed by the provisions of the said Act.

6. The system of education as prevailing in the State, and even throughout the country was not found to be satisfactory, and in order to gear up the level of basic education, the Central Government took up the matter in order to fulfil the constitutional aspirations of the founding fathers a constitutional amendment was brought about by the Parliament introducing Article 21-A endeavouring to confer fundamental rights on all children between the age of 6-14 years to receive free and compulsory education. This was in furtherance of the extension of directive principles of State policy as contained in Article 39(f), Article 41 and Article 45 of the Constitution of India. Article 21-A is quoted below:

Article 21-A. Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

7. The said amendment which was brought about way back in the year 2002 remained a dead letter and having progressively discovered that we are lacking in education, it took 63 years for the Parliament to enforce the said basic right which was introduced through Article 21-A by enacting the Right of Children to

Free and Compulsory Education (Act No. 35 of 2009).

8. The Petitioners contend that the Act has been framed without Rules having been prescribed and the institutions which were already running like those established by the Petitioner-society are now being shut down under the provisions of the 2009 Act for want of recognition.

9. Sri Ojha learned Counsel for the Petitioner submits that the society was established in the year 1942 and it has been running the institution from the Pre-Independence era. He has also relied on several documents indicating that the grant-in-aid in one shape or the other was extended from State funds and the examinations of the students of such institutions have been conducted by the Board. He has placed reliance on the documents filed alongwith the writ petition to contend that the manner in which recommendations have been made for extending certain grants to the Petitioner, leaves no room for doubt that the institutions were acknowledged as basic institutions, entitled to disseminate education at the Primary and the Junior High School Level. It is for this reason, that the communications which have been brought on record demonstrate that the Petitioner was recognised by the Respondent-State Government in one form or the other.

10. On the aforesaid foundation, Sri Ojha submits that on facts it was established that the institutions run by the Petitioner-society had a State recognition and in such a situation without there being any Rules prescribed under the 2009 Act, no such action could have been taken for closing the institution on the pretext of want of recognition. In short his submission is that the institutions are recognised and even otherwise assuming for the sake of arguments that there is no formal recognition by the Board yet in the absence of any specific Rules prescribed for the manner of processing recognition under the 2009 Act, no action could be taken.

11. Learned Standing Counsel on the other hand submits that the grant or financial aid as relied upon by the Petitioner was in the shape of an aid given by the then District Boards as an incentive grant and which was not either a recurring or non-recurring grant to the Petitioner-institution. Learned Standing Counsel submits that the such periodical extension of financial aid does not in any way conclude that the institution had a recognition by the competent authority either under the 1926 Act or the 1972 Act. It is submitted by the learned Standing Counsel that the rejection order does not suffer from any infirmity and such institutions have to be closed if they do not obtain recognition under the 2009 Act. It is further contended that the statutory provision which has been enforced compels the authorities to take action against such institutions and therefore there being no error this Court need not interfere with the action taken by the Respondents.

12. Having heard learned Counsel for the parties, there is nothing in the counter-affidavit to indicate that specific Rules relating to grant or otherwise for

recognition under the 2009 Act have been prescribed or enforced. Nonetheless, the issue relating to the recognition of the Petitioner-institution is to be assessed on the basis of the claim that the Director of Public Instructions which authority was in existence in the Pre- Independence era, had acknowledged the establishment of the institution or not.

13. From a perusal of the records which have been filed alongwith the writ petition it appears that financial assistance had been extended to the institutions on instructions from the Director of Public Instructions. Not only this, the then Secretary to the Government of the United Provinces wrote a letter to the Commissioner of Agra Division, Agra indicating that the recommendations of the Director of Public Instructions has been received and a grant, which would be non-recurring, should be given to the society in that current financial year to the tune of Rs. 5,000/- through the District Board to the Petitioner-society as it was contributing substantially towards the cause of education.

14. The Director of Public Instructions in response to the aforesaid orders issued a letter to the Chairman of the District Board at Aligarh to extend the said benefit to the Petitioner-society. Several other communications have been brought on record to indicate that the financial assistance of a non-recurring nature was given to the Petitioner-society time and again to sustain itself. This has continued for a fairly long time till 2001.

15. The counter-affidavit of the Respondents also acknowledges the fact that the students of such institutions, are allowed to appear in the examinations of the Board and the certificates issued by the institution run by the Petitioner-society are valid. The counter-affidavit, however, refuses to acknowledge the Petitioner-society and its institutions to be recognised either under the 1926 Act or the 1972.

16. The question is as to the status of such institutions which are fairly large in number. In order to ascertain the status of such institutions one will have to fall back upon the definition of the word recognised institution. A reference has been made to the provisions of the U.P. District Boards Primary Education Code, 1926. The said Act defined a recognised Primary School u/s 2(5) as a school which for the time being was recognised by the Director of Public Instructions. To further understand the said definition, one may also referred to the Educational Code of Uttar Pradesh Part VII which also defines in Chapter-V thereof a recognised Junior Basic and Senior Basic Schools. A school means recognised institution which follows the curriculum prescribed by the department or by the Board. The Educational institutions are defined in Chapter-I of the aforesaid Educational Code they include under private management aided institutions and also unaided institutions which do not receive any regular grant-in-aid from public funds. However, under the Education Code, the power to recognise such schools has been given to the District Inspector of Schools.

17. The first issue is as to whether the claim of the Petitioner that it was

recognised by the Education Department can be accepted or not. The documents which have been relied upon by the Petitioner prima facie indicate the involvement of the Director of Public Instructions who has been defined to be the authority competent to recognise a primary school under the 1926 Act.

18. The Respondents in their counter-affidavit have alleged that the Petitioner had failed to provide any document evidencing release of token grant to the Petitioner by the Director of Public Instructions. This could have been ascertained from the own records of the State Government as their Government records Petitioner has brought on record. The communications issued by the Director of Public Instructions recommending release of aid to the Petitioner and which has been acknowledged by the Secretary of the Department in the letters as brought on record. Consequently, this aspect will have to be proved further as to whether the Director of Public Instructions will be presumed to have recognised the schools run by the Petitioner-society by virtue of extending the benefit of token grant. The nature of the aid has also to be examined which can be a pointer for the purpose of such investigation.

19. Coming to the second part of the submissions, it is not disputed by the Petitioner that no formal recognition has been granted after the enforcement of the Basic Education Code, 1972. It is to be seen that when the Act was originally enforced, Section 4(2)(c) defined the functions of the Basic Education Board to include the recognition of institutions. However, an amendment was brought about in the year 1975 being U.P. Act No. 21 of 1975 whereby the said definition was omitted and substituted by the present Section 4 of the 1972 Act. Nonetheless, the control over Basic Education Schools as defined u/s 12 continued which also included the power to withdraw the recognition of a school on account of defaults mentioned therein. The Basic Education Act, however, does not indicate anything about the recognitions granted by other authorities prior to the enforcement of the said Act. It is u/s 18(1) of the Right of Children to Free and Compulsory Education Act, 2009 that requires a recognition in order to enable a school to function as a Basic School. The question is as to whether the Petitioner by virtue of the documents relied upon by it, is entitled to be treated as a recognised institution or not.

20. In the opinion of the Court, the Assistant Basic Education Officer has not delved into in depth in this matter. For this, reference can be had to the queries raised by the District Basic Education Officer in his letter dated 16th July, 1985 and the letter of communications in this regard. Apart from this, in the opinion of the Court, such an issue should be decided by an authority at least of the rank of the Secretary Basic Education, inasmuch as, the Director of Education has now substituted the Director of Public Instructions. Not only this, the issue as to whether appropriate Rules have been framed in exercise of the powers u/s 38 of the 2009 Act has also to be examined. This is necessary in order to assess the impact of the enforceability of the 2009 Act with the aid of such rules. Section 38(2)(g) of the 2009 Act provides for framing of Rules prescribing forms for

grant of recognition. The Assistant Basic Education Officer has not gone into this issue to find out as to whether such Rules exists in order to enforce the provisions of the Act and has called upon the Petitioner-institution to obtain recognition.

21. On account of the aforesaid grey areas of investigation, in the opinion of the Court, it would be appropriate that the matter is investigated and decided by the Respondent No. 1 in the light of the observations made hereinabove and also after examining the impact of the relevant Act and Rules applicable to the controversy. The impugned order being deficient in the manner indicated hereinabove therefore deserves to be quashed.

22. Accordingly, the order dated 3rd July, 2010 is set aside with a direction to the Respondent No. 2 to decide the claim of the Petitioner including all aspects of recognition or otherwise and pass an appropriate order in accordance with law.

23. If it is ultimately found that the Petitioner will have to seek a formal recognition under the Basic Education Act, 1972 then the Petitioner-institution shall be given an opportunity to do so before proceeding against it under the provisions of the 2009 Act. For this the authorities will have to remember that such institutions were set up in order to cherish the ideals of Mahatma Gandhi-the object for which these schools were set up half a century ago-let them be not throttled at the altar of State Sponsored unbridled laws. The endeavour should be to make them survive which would be in tune with Article 21-A of the Constitution. For this the institutions should be encouraged to resurrect themselves by giving them a helping hand to overcome their shortfalls. They should not be driven to a wall or to the edge of cliff to a point of no return. These institutions are not money-spinning devices of modern day commercialisation. They were set up in an atmosphere of patriotism and nationalistic fervour when the country was yet to achieve freedom. It was a pre-independence creation and therefore such institutions should not be viewed with suspect. Rather they should be looked up with respect.

24. The concept of not allowing unrecognised institutions to flourish is to check mushrooming of institutions and prevent lowering of standards of education. It is to not allow the benchmark to sink further in order to maintain the quality of education. This does not mean that institutions should be compelled to shut down. The idea is to compel institutions to improve their standards upto the required level. To close an institution on a pure technical plea of recognition without assessing the actual potential of the institution would be negating the object of compulsory education.

25. It is also expected that if the authority comes to the conclusion that something more is required to be done, then the State Government should be persuaded to frame a scheme for such institutions as a matter of policy to be adopted to protect such institutions.

26. The writ petition is accordingly, allowed.