
(2007) 09 OHC CK 0012
In the Orissa High Court

Shri Dillip Kumar Samal

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 193, 219, 228

Citation : (2008) 105 CLT 59 : (2007) 2 OLR 788

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Judgement

1. Heard.

2. Petitioner claims for implementation of the award/order dated 29.03.2005 passed by the Orissa State Education Tribunal in G.I.A. Case No. 11 of 2003. Annexure-1 is the copy of that award, in which it has been ordered as follows:

The case is allowed on contest but without costs. The appointment of the applicant shall be approved. The applicant shall be paid grant-in-aid @ 2/3rd from 17.10.1998 and at full salary cost w.e.f. 20.7.1999 within a period of three months from the date of communication of this judgment.

3. While hearing this case together with a batch of cases, several opportunities were granted to the State Government of Orissa to come forward with a positive case if the State Government wants to provide a mode of execution by amending the law suitably, in as much as there is no provision in Orissa Education Act, 1969 (in short "the Act") and different Rules thereunder to execute order/award of the State Education Tribunal, if such order/award is made against the State. The Secretary to the State, Higher Education Department even appeared in person on one occasion. Learned Advocate General also appeared and made statement that additional affidavit would be filed in that respect, but no such statement has come forward from the State. It is a matter of regret that when the State is to be an ideal employer, it is behaving in that fashion. Such approach and attitude of the State Government is not appreciated. A copy of this order be

communicated to the Chief Secretary, Govt. of Orissa for due information of the State Government.

4. Section 3(r) of the Act defines the term Tribunal" as "Tribunal or a Tribunal, as the case may be, constituted u/s 24-A of the Act". While constituting the Tribunal u/s 24-A it has been provided under Sub-section (3) that the Tribunal shall have the power to hear and dispose of the appeals preferred to it. In Sub-section (4) it has been provided that while disposing of the appeal, Tribunal may make such consequential orders and issue such directions as it may deem necessary for giving effect to its decision. (Underlined by us to put emphasis). Sub-section (5) thereof provides that decision of the Tribunal shall be final and binding on all parties and shall not be called in question in any Court of law. In that respect this provision has to be read together with Section 10-A of the Act. In Sub-section (3) of that Section it has been provided that any person aggrieved by an order passed under Sub-section (1) [i.e., by the Director in the case of teachers and other staff members of a college and Circle Inspector in case of teachers and other staff members of a school], may prefer an appeal to the Tribunal within a period of one month from the date of receipt of a copy of the order.

5. Section 24-B of the Act came into the statute book as per the Orissa Act 5 of 1998, dated 07.04.1998. It provides jurisdiction, power and authority with the Tribunal to adjudicate all disputes and differences between the teachers/ employees and the Managing Committee/ Governing Body of private educational institutions or by any of them with the State Government or any officers or authority of the State Government relating to or connected with eligibility, entitlement, payment or non-payment of grant-in-aid. As per the provision in Sub-sections (5) and (6) of Section 24-B, Tribunal has been granted the discretion to regulate its own procedure and such proceedings be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860. Therefore, by Section 24-B original jurisdiction is vested with the Education Tribunal on the aforesaid nature of dispute. Section 24-C gives appellate jurisdiction with the High Court. In either case the order/award passed by the Tribunal are subject to writ jurisdiction under Article 227 of the Constitution of India, so far as appeals u/s 24-A is concerned and appellate jurisdiction so far as the proceeding u/s 24-B are concerned.

6. Orders and awards passed by the Education Tribunal subject to the aforesaid supervisory or appellate jurisdiction of the High Court have to be respected and implemented or else providing a forum for adjudication becomes meaningless. In the additional affidavit filed on behalf of the opposite party No. 1 by Sri Chaturbhuja Mallick, Deputy Secretary to Government, Department of Higher Education, Orissa, Bhubaneswar, it is stated that, "It is an admitted fact that there is no specific provision in the Orissa Education Act, 1969 for execution of the order of the State Education Tribunal. But the order/ judgment passed by the Tribunal, which appears consistent to the provision of law, the same are implemented forthwith. But in case any inconsistencies became apparent on the

face of the record with regard to the provisions of law, the matter referred to Law Department to examine the legality and validity of the judgment as per the provision of Rules of Business of the Government to challenge the said judgment before this Hon"ble Court u/s 24-C of the Orissa Education Act, 1969". (From paragraph-3 of the addl. affidavit). The recourse said to be undertaken by the State is within its competency and discretion. At the same time when the State appeals to the High Court invoking the supervisory or appellate jurisdiction, then unless and until an order is passed for stay of the order/judgment of the Tribunal, such order/ judgment is executable and, therefore, the State was directed to make a statement if they propose to make suitable provision in the Act or the Rule, as the case may be. As stated earlier, the State has avoided giving a reply in spite of several adjournments granted in its favour.

7. A judgment/order passed by a statutory authority holds good until it is set aside or modified by the superior forums provided under the law. The State Government at any level have no statutory right or jurisdiction to stall or interfere with the order/award passed by the Education Tribunal save and except proceeding in accordance with law. Sub-section (6) of Section 24-A is clear mandate in that respect.

8. When the grievance of the teaching and non-teaching staff are considered and decided either u/s 24-A or 24-B and that is not implemented by the respective officers of the State, such helpless litigants rush to the High Court with application under Article 226 of the Constitution on the ground that there is a failure on the part of the State in implementing a lawful award/order by a lawfully constituted Tribunal. When the State Government is to find ways and means to minimize the litigations so as to give a peaceful living to its citizens, it cannot adopt callousness attitude over such issue and thereby indirectly inducing the teaching and non-teaching staff of the schools and colleges to indulge in litigations by spending money instead of concentrating themselves in their service either to impart education or otherwise.

9. An order/award of the Tribunal, as noted above, is liable to be implemented unless there is any contrary order/stay order from the superior Court, i.e. the High Court. Mere filing of a writ petition under Article 227 or appeal u/s 24-C, the State Government cannot keep quiet and thereby non-implementing a lawful order of a competent authority.

10. In another further affidavit filed by Sri Ashok Kumar Tripathy, as the Commissioner-cum-Secretary to Govt., Department of High Education, Orissa, he advanced various contentions, which are devoid of substance. In paragraph-9 of that affidavit he has quoted the judgment dated 06.12.2004 passed in W.P. (C) No. 939 of 2003. Their Lordships observed that:

We are of the view that this Court is not the proper forum to be approached in an application under Article 226 and 227 of the Constitution of India for implementation of the order of the State Education Tribunal. The petitioner in

this writ application has only prayed for implementation of the order of the Tribunal and for its consequential benefits.

In the penultimate paragraph, their Lordships held that:

In view of the facts and circumstances of the case, without going into the merits of the case and observing anything on that score, the opposite parties 1 and 2 (State and the Director, Higher Education) are directed to implement the order dated 17.09.2002 passed by the State Education Tribunal in G.I.A. Case No. 3 of 2001 within a period of three months from the date of communication of this order if the said order has not been challenged before any forum.

Virtually, the above quoted judgment in no way gives any advantage to the State and the Higher Education Department to redeem it from the obligation of implementation of the award/orders of the Tribunal, if they are legally liable to be implemented.

11. On consideration of all the facts and circumstances, this writ petition is disposed of with the direction to opposite party Nos. 1 and 2 to implement the order in G.I.A. Case No. 11 of 2003 within a period of three months from the date of receipt of a copy of this order, in the event of non-existence of order of stay passed by the High Court in its appellate or writ jurisdiction, as the case may be. The State Government is further directed to take appropriate steps at the earliest to consider providing appropriate provisions of law relating to the manner in which order of the Tribunal shall be executed.

12. Requisites by registered post with AD be filed, as undertaken, by 28.09.2007, to communicate this order to opposite party Nos. 1 and 2.