
(2009) 11 AHC CK 0272
In the Allahabad High Court

Shri Krishna Public School

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 12, 12(2), 12(3), 3, 4

Citation : (2010) 3 AWC 3120

Hon'ble Judges : Ran Vijay Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ran Vijay Singh, J.—This writ petition has been filed, challenging the order dated 2.9.2009 by which the recognition of the petitioner's institution has been withdrawn by the District Basic Shiksha Adhikari, Etah. It appears that the petitioner's Society is running a Junior Basic School known as Sri Krishna Public School which is recognised under the U.P. Basic Education Act, 1972 (hereinafter referred as Act). The services of the Teachers are governed under the Act and U.P. Recognized Basic Schools (Recruitment and conditions of service of determination and other conditions) Rules, 1975. It appears that a temporary recognition was granted to the petitioner's institution to impart Education up to Vth Standard by the District Level Committee through its resolution dated 7.8.2008. The decision of the committee was communicated to the petitioner by the District Basic Education Officer. This recognition was w.e.f. Educational Session 2008-09.

2. Sri A.T. Kulshrestha, learned Counsel for the petitioner has assailed the impugned order dated 2.2.2009 on the following grounds:

(a) Because the District Basic Education Officer has no power to withdraw the recognition given to the petitioner's institution in view of Section 12 of the U.P. Basic Education Act, 1972. In his submissions he ought to have referred the matter to the Basic Education Board for withdrawal/cancellation of the

recognition of the petitioner's institution.

(b) Because the impugned order has been passed in gross violation of principles of natural justice as no opportunity of hearing was given to the petitioner before passing the impugned order.

(c) Because the impugned order has been passed on the basis of an ex-parte enquiry conducted against the petitioner on the instance of District Magistrate.

3. Refuting the submissions of Sri A.T. Kulshrestha, Sri D.S.P. Singh, learned Counsel appearing as intervener (counsels for complainant) has submitted that the recognition was given to the petitioner's institution only for one academic session and it has come to an end on 30.6.2009. He has also submitted that in the inquiry the petitioner's institution was found to be bogus. He has further submitted that Section 12 of the Basic Education Act is not attracted in the petitioner's case as no permanent recognition was granted to the petitioner's institution. In his submissions the provisions contained u/s 12 are attracted in those cases where the recognition has been granted by the Basic Education Board.

4. Learned standing counsel appearing for the State respondents has also supported the contention of complainant's counsel and submitted that the order passed by District Basic Education Officer, Etah is perfectly valid and the writ petition deserves to be dismissed.

5. I have heard learned Counsel for the parties. Learned Counsel for the parties have agreed for final disposal of the writ petition on the admitted facts of the case.

6. From the bare perusal of the recognition granted by the District Level Committee to the petitioner's institution it transpires that the temporary recognition was granted to run the institution w.e.f. Educational Session 2008-09 and it was for the period of five years and within five years the petitioner was required to fulfil the short comings if any. In this recognition letter it is not mentioned that this recognition is for the period of one year and it will come to an end on particular date on the contrary it was effective for the period of five years and that period has yet not expired, therefore I do not find any substance in the submissions of Sri D.S.P. Singh that the recognition was only for the period of one year and that has come to an end on 30.6.2009.

7. It is also apparent that the impugned order has been passed on the basis of inquiry report dated 4.6.2009 on the instance of District Magistrate, Etah. In the impugned order it is not mentioned that what kind of irregularity was committed by the petitioner's institution and petitioner was ever associated during the inquiry proceeding or while passing the impugned order. Hence, I find substance in the submission of learned Counsel for the petitioner that no opportunity of hearing was given to the petitioner before passing the impugned order dated 2.9.2009. It is well-settled that any adverse action involving civil consequences

without substantially complying with the principles of natural justice specially when statute enjoins the authority to take such action duly held arbitrary. In view of that I am of the view that impugned order suffers from breach of principles of natural justice.

8. It is also clear that the recognition was given by the District Level Committee and the impugned order has been passed by the District Basic Education Officer, Etah. Sri D.S.P. Singh, learned Counsel for the respondent has not been able to point out any provision under which the power of withdrawal/cancellation of the recognition has been conferred under the Basic Education Act, 1972 or the rules framed thereunder to the Basic Education Officer where the initial recognition was granted by the District Level Committee. In view of that, I am of the opinion that Basic Education Officer could not have passed the impugned order.

9. So far as the submission of learned Counsel for intervener with regard to the non-application of Section 12 of Basic Education Act in respect to a temporary recognition is concerned, it is necessary to look into the purpose of establishment of the Basic Education Board. The Board has been constituted u/s 3 of the U.P. Basic Education Act, 1972 and the function of the Board is to organise, co-ordinate and control the imparting of Basic Education and Teacher's Training, in the State. Sub-section (d) of Section 4 provides supervisory power and control over the Basic Schools and Basic Training Institute. Section 12 of the aforesaid Act deals with the control over the Basic Schools, on which reliance has been placed by the counsel for the parties. The language used in Section 12 of the Act for the purposes to test the submission of learned Counsel for the intervener is required to be looked into which run as under:

12. Control over Basic Schools.--(1) The Director may from time to time, inspect or cause to be inspected any basic school [***] and also the records and proceedings of the local body concerning or connected with discharge of the functions of the local body in respect of basic education.

(2) The Director may direct the management of a basic school to remove any defect or deficiency found on inspection or otherwise.

(3) If the management of a basic school fails to comply with any direction made under Sub-section (2) the Director may, after considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition of such school.

(4) On receipt of a recommendation under Sub-section (3) in respect of any basic school, the Board for withdrawal of recognition of such school.

10. From the bare perusal of Sub-section (2) of Section 12 it will transpire that the Director may direct the management of the Basic Schools to remove any irregularity or deficiency found during the inspection or otherwise. Sub-section (3) provides that if the management of Basic Schools fails to comply with any direction made under Sub-section (2), the Director may, after considering the

inspection or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition of such Schools. Sub-section (3) do not classify the Basic Schools where the recognition is granted temporarily or permanent or recognition granted by District Level Committee or Board. Looking into the definition of Director or District Basic Education Officer as defined under Sub-section (d) of Section 2, it may be possible that Director may get inspected the institutions through Basic Education Officer and in case any shortcoming is found during the inspection by the District Basic Education Officer, the Basic Education Officer had to intimate the irregularities to the Director and thereafter it is in the domain of the Director to act in accordance with law after getting report of the inspection submitted by District Basic Education Officer or any officer authorized for that purpose. The power of the Director is also restricted to the extent that in case any irregularity, defect committed by any institution is brought in the notice of Director, the Director may first require the institution to remove such defect and in case the defect is not removed he may refer the matter to the Board for withdrawal/cancellation of the recognition. The purpose of establishing Board is clear from the language used in the aforesaid Sections which talks about the functioning the Board to organize, coordinate and control over the Basic School. The Basic Education Officer has to act only in accordance with law and not otherwise. In view of that I am of the opinion that the order passed by Basic Education Officer is without jurisdiction.

11. In the last Sri D.S.P. Singh has invited the item No. 6 to the recognition letter dated 7.8.2009 which stipulates that if there is any concealment in obtaining recognition and later on it reveals that the same was obtained by playing fraud or misrepresentation, the recognition can be cancelled. The condition No. 6 appears to be correct only to the extent where there is any concealment of fact while obtaining the recognition but in that circumstance also the recognition cannot be cancelled without providing any opportunity of hearing.

12. In the result, writ petition succeeds and is allowed. The impugned order dated 2.9.2009 is hereby quashed. The respondents are free to proceed in accordance with law.