
(2013) 07 RAJ CK 0168

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 89 of 2013

Shri Mahaveer Digamber Jain Senior Secondary School

APPELLANT

Vs

Civil Judge (Junior Scale) No. 1 and Another

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 07 RAJ CK 0168

Hon'ble Judges : Narendra Kumar Jain, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : R.N. Mathur and Mr. Vibhor Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

1. These two intra-court appeals, related with the same subject matter and involving akin issues, have been considered together and are taken up for disposal by this common order. By way of these appeals, the appellant, a non-government educational institution seeks to question the common order dated 17.12.2012 whereby the learned Single Judge of this Court has dismissed the writ petitions (CWP Nos. 19674/2012 and 19675/2012) preferred against the respective orders dated 18.10.2012 as passed by the Executing Court in the proceedings for execution of the order passed by the Rajasthan Non Government Educational Tribunal ("the Tribunal") on 31.07.2006.

2. In the said order dated 18.10.2012, the only question considered by the Executing Court, i.e., the Addl. Civil Judge (Jr. Div.) Jaipur Metro, Jaipur on the application moved by the judgment-debtor, i.e., the present appellant was as to whether the State Government was required to be impleaded as a party to the execution proceedings on the submissions that the liability in the present matter is to be borne by the State Government too. The orders passed by a learned Single Judge of this Court in other writ petitions of the institution, i.e., dated 04.07.2008 in CWP No. 8526/2006 and dated 03.07.2008 in CWP No. 8527/2006 were also referred. The Executing Court found that there was no necessity of

impleading the State Government as a party to the proceedings.

3. After, thus, rejecting the application, the Executing Court also proceeded to issue the process for recovery of the amount due under the order in question. The order dated 18.10.2012 in its entirety, as found on the record of SAW No. 89/2013, could be noticed for ready reference as under:-

4. The learned Single Judge found the appellant-institution's challenge to the order so passed by the Executing Court devoid of any merit and proceeded to dismiss the writ petitions with the following observations:

I have considered the submissions made by learned counsel for petitioner and find that execution of the order of the Tribunal has been sought by the respondent. The State Government has no role to play inter-se between the employee and them because execution is between the employee and the petitioner being employer. Even if, judgment in the earlier writ petition of the petitioner is looked into, this Court had given liberty to seek release of grant-in-aid, if it is an approved expenditure under the Act of 1989. There is no direction on the Government to pay amount to the employee so as to implead Government as party in execution. The State Government has no role to play in the execution petition because Tribunal's order has to be satisfied by the petitioner.

In view of the above, I do not find any illegality in the impugned order by which application moved by the petitioner has been dismissed. The writ petitions are found to be devoid of merit, hence, same are dismissed.

This disposes of stay applications also.

5. Seeking to question the order aforesaid it has strenuously been argued by the learned counsel that as a necessary consequence of the orders passed in the earlier writ petitions (Nos. 8526/2006 and 8527/2006) filed by the appellant-institution, the Government is under obligation to consider release of grant to the extent allowable; and when the obligation of the Government to release the grant to the appellant-institution towards benefit of selection scale to be made available to the employees of the institution is in existence, the Government cannot be said to be an outsider or stranger to the litigation. It is submitted that the impleadment of the State Government in the proceedings before the Executing Court is necessary so as to enable the Executing Court to effectively and finally determine all the questions arising in the matter. The learned counsel has also referred to the orders passed in CWP Nos. 8526/2006 and 8527/2006 and submitted that despite making of the application by the appellant, the Government has not released the required grant while taking untenable and unjustified stand. The learned counsel has also submitted that the appellant is otherwise a prestigious institution against whom unnecessary coercive orders have been issued by the Executing Court; and the learned Single Judge ought to have considered the proprietary of such part of the order too.

6. We are afraid, the submissions do not make out a case for interference in the

intra-court appeals.

7. So far the observations about coercive process in the order dated 18.10.2012 are concerned, they are only in the natural course of the proceedings in execution where the Executing Court has issued attachment warrant for recovery of the amount that remains due after adjustment of the amount already paid by the judgment-debtor i.e., the appellant-institution. That part of the order was neither suffering from any jurisdictional error nor was as such the subject matter of petition; and, in our view, there was nothing in the said part of the order which would have been taken up for interference or even observations by the learned Single Judge.

8. So far the core question about impleadment of the State Government in the execution proceedings is concerned, we are at one that the observations made by the learned Single Judge that the State Government is having no role to play in the execution proceedings between the employees and the appellant-institution. A look at the order dated 31.07.2006 makes it clear that the Tribunal has essentially fastened the liability on the appellant-institution and it is this order which is under execution. Therefore, in our view, neither the learned Executing Court nor the learned Single Judge committed any error in declining the prayer made by the appellant for impleadment of the State Government.

9. We may, however, observe that so far the claim as sought to be made by the appellant against the State Government is concerned, the same was a subject matter of consideration in the said petitions filed by the appellant, i.e., CWP Nos. 8526/2006 and 8527/2006 wherein the learned Single Judge of this Court not only passed the order that the petitioner (i.e., the present appellant) may submit application to the Government for release of grant, if it is an approved expenditure but also left it open that if aggrieved by the Government's decision, the petitioner would be free to avail the remedy available in accordance with law. The learned Single Judge, in the orders so passed in CWP Nos. 8526/2006 and 8527/2006, has observed as under:-

Without going into merits of the matter at this stage, petitioner may submit application to the state government for release of grant if it is an approved expenditure under the provisions of the Act, 1989 within one month and the state government may consider and pass appropriate orders within three months thereafter in accordance with law.

If still petitioner feels aggrieved by their decision, he will be free to avail remedy available to him under law.

10. So far the said part of the rights of the appellant qua the Government and their inter-se position is concerned, neither any observations have been made by the Executing Court nor by the learned Single Judge in the impugned order dated 17.12.2012, which could be considered prejudicial to the rights, whatever, being claimed by the appellant against the State Government. However, in the interest of justice, we, again, make it clear that so far the claim of the appellant against

the State Government is concerned, the matter is open for all the concerned to take recourse to appropriate remedies in accordance with law. Subject to the observations foregoing, these appeals stand dismissed.