

(2019) 02 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 10715 Of 2014, 7539, 7967 Of 2015, Ca No. 62 Of 2018, 15752 Of 2015, Ca No. 3171, 8758 Of 2016, Cp No. 278 Of 2016

Sumanta And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 18, 19

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Rules, 1995 — Rule 12

Constitution Of India, 1950 — Article 21A

Citation : (2019) 2 AllMR 406 : (2019) 3 BCR 350

Hon'ble Judges : T.V. Nalawade, J; Sunil K. Kotwal, J

Bench : Division Bench

Advocate : R.I. Wakade, A.V. Deshmukh, D.K. Rajput, R.S. Deshmukh

Final Decision : Disposed Off

Judgement

T.V. Nalwade, J

1. Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. Writ Petition No. 10715 of 2014 is filed by one Smt. Sumanta Sutare and eight other employees of the respondent School by name Vinay Shikshan Sanstha, Aurangabad. The petitioners are teaching and non-teaching staff of the School. Writ Petition No. 7539 of 2015 is also filed by Smt. Sumanta Sutare and two other employees of the same School. Writ Petition No. 7967 of 2015 is filed by the employees of the same School and the last Writ Petition No. 3914 of 2016 is filed by the management of the School. The School is already de-recognized by the competent authority.

3. Both the sides are heard.

4. The School was Marathi medium Primary School and the State Government had given permission to the institution to start this School at Hamalwadi, Railway Station, Aurangabad. It is the contention of the employees that when the institution was under the management of one Shri. Madhukar More, the School was running smoothly, but when the management came under the control of Shri. Arun Misal, the School faced all kinds of problems due to peculiar modus operandi of Shri. Arun Misal. It is contended that Shri. Arun Misal illegally transferred the School to other place like Mukundwadi without consulting the employees and without taking permission of the authority. It is their contention that Shri. Misal wants to employ his near and dears in the School and that is why, he took the steps like transfer of the School to other place and he did not allow the previous employees to join the duty. It is contended that the School was getting grant-in-aid from the Government and so such mischievous act was done by Shri. Misal.

5. It is the contention of the employees that when Mr. Misal stopped making payment of the salary from the month of May 2013, the complaint was made by the employees to the authority. It is contended that only after the complaint, the salary of the employees was released for the period from May 2013 to November 2013.

6. It is case of the employees that Mr. Misal did not appoint Head Master on the School and due to that, processing of the salary bills etc. was stalled and so the Education Officer had given direction to see that senior most teacher is appointed as Headmaster for some time and Shri. C.G. Gajbiye was appointed as in-charge Head Master by Education Officer. It is contended that to this appointment the management, Misal took objection and the Education Officer withdrew the order of appointment of Shri. Gajbiye.

7. It is case of the employees that their appointments were made after following due procedure and their appointments were approved by the authority and in view of that, even if the recognition is withdrawn, the employees are entitled to be declared as surplus employees. It is contended that some employees are already declared as surplus employees due to decrease in the strength of the students, but they are not absorbed. It is contended that Shri. Misal is creating obstructions and due to that, steps are not being taken for absorption of the surplus employees and he is not even forwarding the proposal of giving pensionary benefit to the retired employees. Petitioner No.1 Smt. Sumanta Sutare retired due to superannuation on 31.10.2014, but her proposal was not forwarded for giving pensionary benefit. By making such contentions in Writ Petition No. 10715/2014, relief was claimed for giving direction to see that salary of the employees is paid. In Writ Petition No. 7539 of 2015, these employees had prayed even for giving direction to the authority to see that the School is de-recognized and staff is declared as surplus staff.

8. For de-recognition of the School, the employees had given the grounds, which are mainly, the illegal transfer of the School from Hamalwadi Railway

Station, Aurangabad to Mukundwadi, the ground that the School was not properly managed, that, the strength of the students had come down drastically and the management had indulged in illegal activities etc.

9. In the petition filed by the management bearing Writ Petition No. 3914 of 2016, it is contention of the management that it had filed representation application to the authority for seeking permission to transfer the School from Hamalwadi Railway Station, Aurangabad to Mukundwadi, Aurangabad, but no decision was taken on that representation. During the pendency of this petition, the authority took the decision of de-recognition and then amendment was made in the petition for getting relief of setting-aside the order of de-recognition. Relief is claimed for giving direction to take decision on the representation made for granting permission to transfer the School from initial place to Mukundwadi, Aurangabad.

10. On factual aspects, some incorrect statements were made for the management during the argument. When there is record to show that permission was granted to the institution to start School at Hamalwadi, Railway Station, Aurangabad and it was actually started there and the School was transferred within few years to Mukundwadi and then in Mukundwadi also, to other place. Submission was made that Hamalwadi is a place from Mukundwadi. The School was transferred on two occasions without taking permission of the authority. There is correspondence like letter of the Secretary of institution showing that School was started at Hamalwadi Railway Station, but institution had transferred the School to Mukundwadi. There is also reply of the management to the show cause notice, given to the effect that the School was shifted from Hamalwadi Railway Station, Aurangabad to Mukundwadi and that was done only after giving proposal of transfer. However, the record in respect of proposal is from 2013. There is clear possibility that the Education Officer had joined hands with the institution. In the past, the correspondence was made with the authority by the management from the address of Mukundwadi, which was not address of the recognized School and the authority made correspondence with the management on that address. Some record like correspondence made by the Education Officer with regard to the previous representation made by the management is produced, but there is clear possibility that the Education Officer had joined hands with the management and due to that, the institution could do aforesaid mischief, to transfer the School from initial place to other place. For transfer of the School, some procedure is required to be followed, which includes the permission of the local body, the consent of the staff members etc., but there is no such record. The record of inspection shows that at no place, the institution had sufficient facilities including the place at which the School was shown to be transferred illegally. The record shows that the quality of the standard of the School was not up to the mark. Due to all these circumstances and the complaint made by the staff members and as the strength of the students had come down to the alarming low, the enquiry was conducted. There is record of enquiry and there is record of show cause notice. When the initial strength was more than

500, the strength had come down below 100 and the attendance of those 100 students was also not up to the expectations. All these circumstances are considered by the authority. There was also the enquiry report and on that basis, the order of de- recognition is passed by the authority.

11. The submissions made show that the teaching staff in respect of the School to whom there was approval of the authority and who can be declared as surplus, will be absorbed at other place and some of the staff members were actually referred for absorption and they were absorbed. The arrangement is also made in respect of few students who had taken admission in the present School.

12. Argument is advanced by the learned counsel for the management that no proper procedure was followed before passing order of de- recognition. The grievance is in respect of the notice and also giving of the opportunity. He submitted that the provisions of M.E.P.S Rules, mentioned in the order are not there in the book. Submissions were also made that the authority was not competent to pass such order and due to revengeful attitude, the authority passed the order. It was submitted that as this Court had given direction to the Secretary to remain present in person, vindictive order came to be passed.

13. It was a primary School receiving grants-in-aid from the State Government. The provisions of Right of Children To Free and Compulsory Education Act 2009 (herein-after referred to as the Act) and the Rules framed by the State Government in the year 2011, for implementation of this Act (herein after referred to as Rules) need to be kept in mind for the decision of the present matter. In the Act and Rules, there are provisions with regard to giving of recognition and for de-recognition of such Schools. The norms and standard for such Schools are prescribed. The procedure for de-recognition of the School is also mentioned and the relevant provisions of the Act and the Rules can be Sections 18, 19 and Schedule of the Act and Rule 12 of the Rules. These provisions show that the State has the power, but it is also the duty of the State to see that there is implementation of the provisions of the Act as the Act is made to enforce fundamental right given to the 'child' as per Article 21-A of the Constitution of India.

14. The correspondence of the year 1983 shows that the permission was granted to the management to start primary School at Hamalwadi. The record is sufficient to infer that, this place is situated at main Railway Station, Aurangabad and not at Mukundwadi. The initial permission was on permanent no grant basis, but subsequently the grants were given to the School.

15. The record of the present matter is sufficient to infer that for many years, the irregularities of the School were ignored by the Education Officer (Primary). When permission was granted to start the School at aforesaid place, within few years, the School was shifted to Mukundwadi and even in Mukundwadi, the School was shifted at two different places like Sanjay Nagar and Raj Nagar. This was done without the permission of the authority. It appears that the authority

kept making correspondence on the address given by the institution, which was not the place at which the School was sanctioned. Some copies of the correspondence are produced by the institution to show that in the year 1992, the Education Officer had requested the competent authority to do the needful in respect of the application made by the institution for permission to transfer the School. As per the submissions made and record, there was no such record with the authority and the School was shifted from place to place by the institution without seeking permission of the competent authority. In the reply given by the institution to the show cause notice issued by the competent authority before ordering de-recognition, there is clear admission that the School was transferred by the institution without getting prior permission of the competent authority. Only on this ground and the provisions of the Act and the Rules, the recognition could have been withdrawn by the authority. This is because, the School was sanctioned for the place where the persons from weaker section of the society and also dis-advantaged group are residing. Further, there is no record with the institution to show that any steps were taken in respect of the students who were admitted in the Schools at previous places. The record of even School leaving certificate or transfer certificate was not available with the management when the enquiry was made by the committee constituted under the Rules.

16. The record with regard to the strength of the students and also the facilities provided is also against the institution. It appears that till the year 2003, the strength of the student was around 500, but from the next year, the strength started coming down. It had reached even 70, when on record the School was run for I to VIII standards. All those 70 students were also not attending and the attendance shown was of 54 students. No permission was there to start class for the standard VIII, but without permission such class was started.

17. Even in the year 2011-2012, some record was created by the Education Officer by joining hands with the institution to show that the School was properly run and recommendation was made to allow the application made for transfer of the School when the School was already transferred illegally. In the report prepared, on the basis of visit of Block Education Officer, Gangapur, dated 15.01.2014 by the Dy. Director of Education dated 15.06.2015 also there was recommendation to transfer. This record does not show even the strength of the students. This record speaks loud about the approach of officers like Education Officer and Dy. Director.

18. The report prepared by the committee constituted as per Rule 12 and dated 5.4.2016 shows that the School was not having record of the strength and also of other particulars for the years 2006 -2007 to 2010- 2011. In the year 2010-2011, the strength was 70, but the attendance was 46. The record of the year 2013-2014 was shown and for that year, strength was shown as 134, but the attendance was shown of 104 students. For the subsequent year like year 2014-2015. no information was supplied by the School. In June 2015, the School was, in locked condition.

19. The various reports of the Education Officer including the report of March 2016 shows that no attendance of students was recorded and even Muster Roll for the teachers was not maintained. The record shows that the School was shown to be run in the shed like structure and when the record shows that admission was given in I to VIII standards, six rooms were shown to be made available for the class rooms. There was no education material and on the books, there was nothing to show that books were belonging to the School. There was no material for teaching staff. In that year also, there was no record of the School Leaving Certificate of the students. The record shows that even after 33 years of giving recognition, permission to the School, the Management could not get building of its own for the School.

20. All the aforesaid circumstances are considered by the Education Department of the Government and other circumstances are also considered that the management was not allowing the teachers to work in the School. It is already observed that the management was interested in giving employment to its nears and dears and for that it wanted to remove the previous employees. The management was not making available basic facilities in the School. The department made the order on 20.04.2016 of de-recognition and asked the concerned to take steps for implementation of that order. There is subsequent record showing that Education Officer took steps on 02.08.2016 and prior to that, the superior authority had taken steps on 5.5.2016. It is not disputed by the management that show cause notice was issued and reply was given to the show cause notice. Thus, the procedure given in Rule 12 was followed by the authority for taking the decision. The reasons given are the breach of provisions of the Act and Rules and other grounds are also mentioned, which are already quoted.

21. Copy of the reply of management is on record and reply dated 7. 03.2016 shows that the Management admitted that the School was shifted in the past without taking permission of competent authority. It had grievance that due to the conduct and approach of previous management and the teachers, the strength of students came down and they were virtually preventing the parents of the students to admit their children in this School. There was grievance in respect of mid-day meal also but the management put the blame on others. There were no facilities to hostel students, but for that also, the management put the blame on others. The contentions of the management and record shows that previous management had virtually sold this School to the present management. It is not disputed that there was dispute between the present management and teaching staff and in the reply, it is contended by the management that no teacher was attending the School. Thus, most of the irregularities which were noticed by the committee constituted under Rule 12 were admitted by the management.

22. The aforesaid record was more than sufficient for the competent authority to take decision of de-recognition. It is unfortunate that the institution was allowed

to run the School for many years, even when there were aforesaid circumstances and the Education Officer had virtually joined hands with the Management. Such institutions create show of running the School and grab the Government grants. Against such institutions, strong action is expected and in the present matter, no other decision was possible from the authority. The record shows that even after de-recognition order, attempt was made by this management with the help of other Education Officer to show that the School was still being run. The provisions of the Act shows that for such act, criminal action ought to have been taken against the management, but the Education Officer gave recommendation to consider the representation made by the Management for granting the recognition. In such cases, it is always necessary to keep in mind that the persons of weaker sections and disadvantaged group do not dare to come forward to make complaints against the management and they are interested only in seeing that their children are shown on record and record is created to see that their children have passed the elementary education. In such cases, the irregularities cannot be ignored by the Court. So this Court holds that it is not possible to interfere in the order of de- recognition.

23. So far as the other proceedings are concerned, it can be said that direction can be given to the respondents to process the matters after ascertaining that the teaching staff was properly appointed and approved. The matter can be processed for declaring the teaching staff surplus and for giving pensionary benefits to the staff who retired due to superannuation.

24. In the result, Writ Petition No. 3914 of 2016 stands dismissed and Rule is discharged in that proceeding.

25. The other matters are partly allowed, but the respondents are to first ascertain as to whether the teaching staff was appointed by following due procedure and then declare the staff as surplus. Further steps are to be taken in respect of surplus staff like absorption. Steps are also to be taken to give pensionable benefits to the staff of the School only after ascertaining the aforesaid things. Rule made absolute only that extent in the remaining proceedings.

26. The contempt proceeding is to be placed before the regular Court dealing with contempt proceedings. Civil Applications are also disposed of.