
(2017) 03 AHC CK 0017
In the Allahabad High Court
Case No : Writ C No. 12859 of 2012

Uma Shankar Bajpai

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 4 ADJ 774

Hon'ble Judges : Mahesh Chandra Tripathi, J.

Bench : Single Bench

Advocate : V.P. Shukla and Rohan Gupta, Advocates, for the Petitioner; C.S.C. and V.K. Shandilay, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mahesh Chandra Tripathi, J.— Heard Shri Akshay Mohiley, Advocate holding brief of Shri Rohan Gupta, appearing for the petitioner and Shri Pankaj Rai, Additional Chief Standing Counsel for the State respondents.

2. In this petition, the following principal reliefs have been claimed:-

"A) issue a writ, order or direction in the nature of certiorari quashing the order dated 10.2.2012 and 17.2.2012 issued by respondent No.3.

B) issue a writ, order or direction in the nature of mandamus commanding the respondent no.1 and 2 to initiate action at the appropriate level for issuing of utilization certificate to the institution of the petitioner.

C) issue a writ, order or direction in the nature of mandamus directing the respondent no.5 to issue utilization certificate immediately in pursuance of the Government order dated 4.9.2008."

3. The present writ petition was entertained on 15.3.2012 and on the said date the Court had proceeded to pass following order:-

"Learned counsel for the petitioner is permitted to implead Principal Secretary, P.W.D. Department, Government of U.P. Lucknow and Chief Engineer, P.W.D. Department, Lucknow as respondent nos. 6 and 7 in the array of respondents forthwith.

Learned Standing counsel has accepted notice on behalf of respondent nos. 1 to 5.

Issue notice to newly impleaded respondent nos. 6 and 7.

Each one of the respondents is accorded six weeks time to file counter affidavit. Rejoinder affidavit may be filed within next two weeks.

List thereafter.

It has been contended on behalf of petitioner that under Government Policy which has been so issued for opening of institution at Asevit Vikas Khand, petitioner submits that his institution in question has been selected and thereafter first instalment of Rs. 10 lacs has been released. Petitioner is contending that he has utilized the said amount of Rs. 10 lacs and thereafter for getting second instalment, only after furnishing utilization certificate and after verification of the same proceeding was to be undertaken, and then only second instalment is liable to be released but authorities who are responsible for issuance of No Objection certificate and utilization certificate and are not carrying out verification proceedings, and are not discharging their duties on the pretext that till date requisite instructions from the Higher Officers have not been received. On one hand authorities are taking such a view and on the other hand petitioner submits that petitioner has utilized the said amount of Rs. 10 lacs, proceedings in spite of the fact that recovery has been made. Petitioner has contended that he is being metted with arbitrary and discriminatory treatment and for creation such a situation authorities are themselves responsible and petitioner is not at all responsible for such situation.

Prima facie arguments advanced requires consideration by this Court and have some substance.

Consequently, till the next date of listing no recovery shall be made from the petitioner's institution.

Respondent nos. 6 and 7 at the point of time of filing counter affidavit shall give specific reasons as to why till date requisite instructions for issuance of certificate and Utilization certificate have not been issued."

4. Learned counsel for the petitioner submits that the petitioner fulfilled all the criteria laid down in the Government order dated 01.9.2000 and applied for grant of financial assistance to the tune of Rs.30 lacs for establishing a College imparting education in science subjects in an unserved block in District Kanpur Nagar. The petitioner was granted permission to run the institution as well as to construct the building of the institution. Thereafter the land in question was

mortgaged in favour of the State Government for 15 years and the Regional Higher Education Officer, Kanour had sent the mortgage deed to the Directorate of Higher Education, U.P. Allahabad on 21.2.2007. The first instalment of Rs.10 lacs was released by the Government on 22.1.2007 and the same was given to the petitioner on 3.12.2009 but the remaining two instalments have not been released in favour of the petitioner. At present, the petitioner is willing to return the amount of first instalment (Rs.10 lacs) along with 6% interest.

5. Confronted with this situation, Shri Pankaj Rai, Additional Chief Standing Counsel submits that the matter can very well be considered and redressed by the Principal Secretary, Higher Education, U.P. Lucknow at the first instance.

6. The Court has proceeded to examine the record in question and finds that once the interim order was accorded way back on 15.3.2012 staying the recovery and admittedly the remaining two instalments have not been released, then no useful purpose would be served in keeping the writ petition pending any further.

7. In view of above, without expressing any opinion on the merits of the issue and considering the facts and circumstances of the case, this writ petition is disposed of finally with liberty to the petitioner to file a fresh representation along with certified copy of this order before the competent authority, which is stated to be first respondent, the Principal Secretary, Higher Education, U.P. Lucknow, who may consider the representation filed by the petitioner and decide the same in accordance with law, expeditiously and preferably within a period of two months from the date of receipt of the representation.

8. For a period of two months from today or till disposal of the representation, whichever is earlier, no coercive action would be taken against the petitioner.