(2018) 09 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Contempt Petition No.25 of 2018

Veer Balika Mahavidyalay @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 10-09-2018

Acts Referred:
Rajasthan NonGovernment Educational Institutions Rules, 1993 — Rule 10, 13(4)

Citation : (2018) 09 RAJ CK 0094

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ajeet Bhandari, Jitendra Mishra, Ashish Sharma, Rajendra Prasad

Final Decision : Disposed Off

Judgement

Non-compliance with the order dated 17.11.2016 in SBCWP No.6402/2016 is alleged before this court.

The said petition was disposed of with a direction to the respondents to verify within 15 days the due drawn statement furnished by the petitioner-

institution with regard to payment of salary to its employees, and thereafter refer the matter for payment to the Finance Department. The Finance

Department was on its part required to release the due (as found) payment within 7 days following. It was further directed that if the due payment

were not to be made within the stipulated period set out in the courtâ??s order, the petitioner would be entitled to interest @ 9 % per annum on the

delayed payment.

Mr.Ajeet Bhandari, counsel for the petitioner-institution submitted that despite furnishing of the due drawn statement to respondents with regard to the

payment of the salary to its employees, the due grant in aid has not yet been made over. He submitted that the respondents inaction/omission

constitutes contempt of the courtâ??s order.

Reply to the petition has been filed. It has been submitted that on receipt of the due drawn statement from the petitioner, it was considered. It has

been submitted that as per the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter â??the Act of 1989â??) and Rule 10

(XVIII) of the Rajasthan NonGovernment Educational Institutions Rules, 1993 (hereinafter â??the Rules of 1993â??) total recurring grant-in-aid in a

year to any institution is not to exceed the difference between the total approved expenditure and the recurring income from all the sources of the

concerned institution. Rule 13 (4) of the Rules of 1993 also provides that the total recurring grant-in-aid from the Government of Rajasthan in any year

shall not exceed the difference between the total approved expenditure on the one hand and the institutionâ??s income from the fees and other

recurring sources during the same year, including grants from the State and Central Government, Sabhas Societies and local bodies, as also the income

from interest on reserved funds or rent of property. It has been submitted that while considering the case of the petitioner-institution pursuant to the

courtâ??s order dated 17.11.2016 on which contempt is alleged, it was found that the petitioner-institution has not included in its due drawn statement

and accounts valid income generated by it over years and it had thus received excess amount of grant-in-aid over the period. It has been submitted

that the cardinal rule for a valid grant is that if the income of the institution is more than the approved expenditure in the given year, grant-in-aid is not

payable at all. The Accounts Wing of the Department of College Education during the course of inspection of the institutionâ??s record available to it

has also found various inconsistencies in accounts of the petitioner-institution. The petitioner-institution in the previous financial years i.e. 1998-99,

1999-00, 2000-01, 2001-02, 200203, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 did not include the income under various

heads received which ought to under the extant law have been included. As per the assessment made by the department from available record it was

found that under various heads there has been additional income to the tune of Rs.27,50,959/- and Rs.75,56,000/- which was camouflaged and

suppressed. It has been submitted that all relevant records wereÂ not provided by the petitioner-institution despite notices. In fact from accounts

verified by the Department of Education a recovery of Rs.17,54,956/- from the petitioner has been found due. In this regard a detailed UO order dated

18.05.2018 was prepared by the Financial Advisor, Department of College Education and has also been annexed to the reply to petition as Annexure

R/1. Mr.Ashish Sharma submitted that in the facts of the contempt petition at the very least an accounting dispute as to amounts of grant-in-aid

allegedly due to the petitioner-institution obtains. That dispute cannot be glossed over in terrorem by the petitioner mechanically invoking the contempt

jurisdiction of this court. Such proceedings is wholly misdirected, if not malafide, cannot be permitted by the court and hence the petition be dismissed,

Mr.Ashish Sharma submitted.

Mr.Ajeet Bhandari, counsel for the petitioner in rejoinder submitted that the UO order dated 18.05.2018 has been passed on the ipse dixit of the

financial adviser who is not the competent authority. He submitted that the alleged recovery from the petitioner-institution for purported over payment

in the previous years is wholly unsustainable, in view of the fact that no notice was issued to the petitioner prior to the financial adviser arriving at the

conclusion of amounts allegedly over paid and recoverable from the petitioner.

Heard. Considered.

The courtâ??s order dated 17.11.2016 of which contempt is alleged merely required that the petitioner-institution file its due drawn statement

showing the amount of grant in aid due. That due drawn statement was to be verified by the respondents and amounts paidâ?"obviously only is found

due. A detailed reply to the petition stating that despite notices to the petitioner requisite clarificatory information relating to the due drawn statement

submitted was not furnished. In that state of affairs on verification of the record available with the respondent it was found that for past several years

with reference to the sanctioned grant-in-aid to the petitioner-institution it had been overpaid and no amount to it was thus due towards grant-in-aid.

Thus what the court is presented with in this contempt petition is an accounting dispute with regard to grant-in-aid payable to/recoverable from the

petitioner-institution. This dispute cannot be a matter to be determined in this courtâ??s contempt jurisdiction. This for the obvious reason that the

contempt jurisdiction of this court is only to ascertain as to whether the courtâ??s order has been complied with or not or an undertaking to the court

breached. I am of the considered view that due drawn statement of the petitioner-institution having been considered and it being found that no amount was due to the petitioner-institution towards sanctioned grant-in-aid, the petitioner-institution should take its remedy thereagainst if so advised. The

contempt petition is liable to be dismissed.

At this stage, Mr.Ajeet Bhandari submitted that the petitioner be allowed to make a representation with regard to the amounts of grant-in-aid due to

the petitioner or recoverable as alleged. For that the petitioner is always free without any direction of the court. However in the event of the

petitioner-institution making a representation, the respondents should consider it fairly. And in the event of a decision on the representation to the

petitionerinstitutionâ??s detriment, it shall have the remedy of filing a suit for rendition of accounts/recovery of amounts found due to it on the

sanctioned grant-in-aid by the trial court. This court, in the admitted absence of an arbitration agreement between the parties cannot visualize any

other proceedings where an accounting disputeâ?"as presently obtainsâ?"can be finally adjudicated.

The contempt petition is accordingly disposed of. Notices are discharged.