

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (C) NO. 966 OF 2008 AND CCP**
No.123/2008

% **Date of Decision : 30th May, 2008.**

WRIT PETITION(CIVIL) NO. 966/2008

MADAN LAL SHARMA Petitioner

Through Mr. R.K. Saini, Advocate.

Versus

SIR CHOTTU RAM EDUCATIONAL

TRUST & ORS. Respondents

Through Mr. K.C. Mittal, Ms.Ruchika Mittal, Mr.Sumit Babbar, Ms.Nisha Arora, Mr.Sujeet Kr. Singh, Mr.Vaibhav Kumar, Advocates for respondents 1, 2 & 5 in WPC 966 and for respondents 1-3 in CCP 123.

Mr. Shobhit Mahant, Advocate for Mr. Jatan Singh, Advocate for AICTE.

CONT. CASE (C) No. 123/2008

MADAN LAL SHARMA Petitioner

Through Mr. R.K. Saini, Advocate.

Versus

RAJENDER SINGH CHHIKARA & ORS. Respondents

Through Mr. K.C. Mittal, Ms.Ruchika Mittal, Mr.Sumit Babbar, Ms.Nisha Arora, Mr.Sujeet Kr. Singh, Mr.Vaibhav Kumar, Advocates for respondents 1-3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Sir Chottu Ram Education Trust, the respondent no.1 runs several educational institutions including the Chottu Ram Rural Institute of Technology (hereinafter referred to as the respondent no. 2, for short). The said Institute-respondent no.2 is recognized by All India Council for Technical Education, Delhi (hereinafter referred to as AICTE, for short) and the Department of Technical Education, Delhi.

2. The petitioner, Mr. Madan Lal Sharma has impugned the letter dated 4th February, 2008 by which one, Mr. M.L. Arora, has been asked to function as the Acting Principal of the respondent

No. 2 institute with immediate effect. The said letter records that the petitioner who was looking after the duties as an Acting Principal should handover the charge to Mr. M.L. Arora. The petitioner claims that he was appointed as the Principal of the respondent no.2-Institute by letter dated 24th January, 2008 for the period upto 1st February, 2009. He impugns his termination and appointment of Mr.M.L. Arora, as the Acting Principal on the ground that his term upto 1st February, 2009 cannot be cut short and Principles of natural justice have been violated. It is also submitted that no show cause notice was issued and no speaking order was passed by the respondents before terminating his appointment as the Principal of the respondent no.2-Institute.

3. Respondent no.2 is a recognised Institution. It offers diploma courses. As per terms of recognition and the statute, it is required to comply with the Guidelines and the Rules of AICTE as well as the Board of Technical Education, Delhi. It is an admitted case that AICTE has prescribed qualifications and experience for a person to be appointed as a Principal. The said qualifications are as under:-

Principal	Qualification : Master's degree in appropriate Branch of Engineering/ Technology with First Class at Master's or	15 years experience in teaching out of which at least 3 years shall be at the level of Head of Department or
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	Bachelor's level	equivalent
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4. It is also an admitted case of the parties that for appointment of a Principal, a Selection Committee has to be constituted and it should include a nominee/representative of the AICTE and the Board of Technical Education, Delhi.

5. Learned counsel for the petitioner during the course of hearing had admitted that the petitioner was not selected for appointment to the post of the Principal after following the prescribed selection procedure as no Selection Committee was constituted. The appointment, as per the petitioner, was initially as an Acting Principal vide letter dated 13th December, 2007 written by the then Chairman of the respondent no.2-Institute, Mr. Hoshier Singh Maan. By a subsequent letter dated 24th January, 2008 issued by the same person as Chairman of the said Institute but on the letter-head of the respondent no.1-Trust, the petitioner was appointed as the Principal. I also find that the petitioner does not meet and satisfy the minimum prescribed qualifications for appointment as a Principal, fixed by AICTE, as quoted above. Though the petitioner has claimed that he has 15/16 years experience as a Lecturer, he has included in the said period, the time when he had worked as an Instructor in Kanishka Institute of Electronics from 1st January, 1990 to 2nd April, 1997 and as a Lecturer in the said Institute during the period 3rd April, 2007 till 3rd July, 1998. The petitioner

had obtained a AMIE degree (which is equivalent to B.Tech. Degree) in IInd Class in March, 1997 only. The time spent by the petitioner as an Instructor cannot be counted as experience for the purpose of the eligibility requirements fixed by AICTE. At that time, the petitioner was not a Graduate in Engineering and did not possess a bachelor's degree in appropriate branch of Engineering or Technology. Having a First Class bachelor's degree in appropriate branch of Engineering and Technology is the minimum requirement prescribed for the post of a Lecturer. Teachers who were in service prior to 1st January, 1996 and possessed Second Class bachelor's degree have been granted exemption from the said requirement. As rightly pointed out by the respondent no.1-Trust and respondent no.2-Institute, the petitioner himself in his biodata dated 17th August, 2000 enclosed with his application for appointment to the post of a Lecturer under the heading "Experience" had mentioned that he had "*nearly one year as a Lecturer in the respondent no.2-Institute*". Thus, the petitioner himself had not counted his alleged experience in Kanishka Institute of Technology as relevant and one which can be taken into consideration.

6. The petitioner's alleged appointment and his claim to appointment as Principal vide letter dated 24th January, 2008 has to fail on two accounts. Firstly, there was no selection and the

petitioner's case was not recommended and approved by a Selection Committee. Secondly, the petitioner does not meet the minimum prescribed qualification specified for the said post.

7. Even as per the Rules and Regulation of respondent no.1-Trust, a Selection Committee for appointment should consist of five Members nominated by the Board of Trustees and the Principal who is the ex-officio Member. But this has to be as per the Guidelines of the Technical Board of Education, Delhi. Clause 10 of the said Rules stipulates that the Members of the Selection Committee for different institutions shall be nominated by the Board of Trustees. In addition, any new appointment or termination of staff has to be approved by the Chairman/Secretary of the Trust. No appointment letter could have been issued even as per the additional Rules and Regulations framed by the Trust without following the prescribed procedure.

8. Learned counsel for the petitioner in this regard has relied upon the alleged minutes of the meeting of the Governing Body dated 1st January, 2008. These minutes are disputed by the respondents 1 and 2. The agenda fixed for the said meeting did not include appointment of the petitioner as the Principal. As mentioned above, appointment of the staff as per the Rules and Regulations of the Trust requires selection by Members of the Selection Committee who should be nominated by the Board of

Trustees. In these circumstances and for the reasons stated above, I am not inclined to accept the contention of the petitioner that on applying the Doctrine of Defacto the petitioner's appointment as the Principal of the respondent no.2-School should be accepted.

9. Principles of natural justice should normally be followed and this requires issue of show cause notice and right to be heard. However, these Principles are not rigid principles which are to be applied blindly. Failure and effect of non-compliance and violation of principles of natural justice has to be examined in each case. Doctrine of Prejudice and Useless Formality Theory in cases of admitted and undisputed facts have been accepted and applied by Courts. (Refer to ***Ashok Kr. Sonkar versus Union of India*** reported in (2007) 4 SCC 54, ***Canara Bank versus Debasis Das*** reported in (2003) 4 SCC 557 and ***Aligarh Muslim University versus Mansoor Ali Khan*** reported in (2000) 7 SCC 529) In view of the virtually admitted factual background and position, I am not inclined to quash the letter dated 4th February, 2008 and remand the matter back to the respondents to issue show cause notice and consider the reply of the petitioner and then pass an appropriate order.

10. I may note here that the respondent-1/Trust and the respondent no.2-Institute in their counter affidavits have raised

issues and questions about the conduct of Chairman, Mr.Hoshiar Singh Maan and the Secretary Dr. Balbir Singh. During the course of hearing, it was alleged that the letter dated 24th January, 2008 has been back dated and is a procured document. It was pointed out that Dr. Balbir Singh had filed a civil suit being Suit No. 2054/2007 against Mr. Charan Singh, Vice Chairman of the Trust and others from holding a meeting on 16th October, 2007 for considering the 'no confidence motion' against him and Mr. Hoshiar Singh Maan. By an interim order, the Court had permitted holding of the meeting but had directed that no further action pursuant to resolutions, if any, adopted shall be taken. The meeting was held and in the said meeting 'no confidence motion' was passed against the said Mr. Hoshiar Singh Mann and Mr. Balbir Singh. The Suit was ultimately dismissed by the Order dated 30th January, 2008 as not maintainable in view of Section 92 of the Code of Civil Procedure, 1908. It may be noted that the arguments in the said case had concluded and the order for pronouncement was reserved on 22nd January, 2008. The purported letter dated 24th January, 2008 is between the date when the Court had heard arguments and reserved the Order and the date on which the Order was pronounced, i.e. 30th January, 2008. It is the case of the respondent nos. 1 and 2 that during the course of hearing, the trend and the views expressed by the Court had become apparent.

There appears to be merit in the contention raised by the respondent nos. 1 and 2. However, I need not express final opinion on this aspect.

11. In view of the above, I find that the Writ Petition has no merit and is liable to be dismissed. At the same time, I am disturbed at the manner in which the said respondent no.2-Institute is being managed and functioning. Inter se rivalry and personal gains/benefits and vendetta appear to be in the forefront. The Trust in question is a public Trust with the beneficiaries being the public at large. The contention of the learned counsel for the respondent no.1 that the Trust is a private Trust is incorrect. Importance of a Principal as a Head of the Institution cannot be denied or underestimated. The respondents 1 and 2 in their counter affidavit have themselves stated that no appointment to the post of Principal can be made except after issuing advertisement and after following prescribed procedure for selection and only a candidate meeting the minimum prescribed requirements can be appointed as a Principal. It is also admitted by the respondents that Mr.M.L. Arora who has been appointed as the Acting Principal does not meet the prescribed minimum qualifications due to lack of experience. Mr. M.L.Arora who was earlier appointed as an Acting Principal was removed as allegations were made against him and enquiry was initiated. The petitioner in the rejoinder has pointed out that during

the last 23 years, the respondent no.2-Institute has had about 15 different Principals, but only one of them was appointed after following the procedure prescribed for the said purpose. All other Principals have been appointed without due process and based on the personal likes and dislikes of the Board of Trustees. Adverse consequence of such appointments is apparent. Respondent no.2-Institute has been functioning without a proper Principal ever since Mr. K.L.Sharma had retired/resigned in 2006. Thereafter, one Mr. V.Narayanan was appointed as the Principal of the Institute on 1st December, 2006 for a period of one year. This appointment was also not as per the prescribed selection procedure. As per the petitioner, the term of Mr.V. Narayanan was extended upto 30th November, 2007 and he relinquished the charge on the said date. However, as per the respondents 1 and 2, Mr. V. Narayanan had resigned vide letter dated 17th October, 2007 stating as under :-

“Considering the recent development, I am to say that I am not feeling comfortable in executing my day-to-day academic and office administration. I wish to proceed on leave w.e.f. 18.10.2007 till such time a harmonious situation is restored.”

12. In these circumstances, I feel that direction should be issued to the respondents including AICTE and Directorate of Education to appoint a new Principal within three months from today after following the prescribed selection procedure. In the interregnum,

AICTE and Board of Technical Education, Delhi will appoint one nominee each, who will oversee that respondent no.2-Institute, is functioning and running as per the statute viz.; The All India Council for Technical Education Act, 1987. They shall do so without interfering with the day to day running of the Institute. The purpose and object behind is that a headless institute should not become and function like a rudderless boat. These directions are being issued in the interest of the students and to ensure that the respondent no.2-Institute is not de-recognised for violation of the terms of affiliation fixed by AICTE and the Board of Technical Education, Delhi. Once Principal is appointed the nominees shall be withdrawn.

13. Learned counsel for the respondents 1 and 2 had raised an objection about the maintainability of the Writ Petition on the ground that the respondent no.2-Institute is not a 'State' within the meaning of Article 12 read with Article 226 of the Constitution of India. As already stated above, the respondent no.1 is a public Trust which is running an educational institution, namely, respondent no.2. The said educational institution must abide by the terms and conditions fixed for affiliation and the Rules of AICTE. Failure to abide and comply with the said requirements can result in disaffiliation of the institute and de-recognition of the diploma and degrees granted by the said institute.

14. The All India Council for Technical Education is a body that is a creation of a statute being the All India Council for Technical Education Act, 1987. It has been given the responsibility to maintain requisite standards of technical education in institutes that are affiliated to it. While the Act itself does not deal with the aspect of affiliation, Chapter III of the Act deals with powers and functions of the Council. Section 10 of the said Act deals with the functions that the AICTE is to perform and also outlines the powers that it has in order to ensure the performance of the said objective. The introduction to said Section enumerates the objectives of the AICTE. It is laid down that it shall be the duty of the Council to take all steps as it may deem fit for ensuring coordinated and integrated development of technical education and maintenance of standards of the same. It is pertinent to mention sub clause (g) and (i) of the Section 10 which read as under:

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

15. The allegation against the respondent no.2-Institute is that it has failed to comply with the Rules and Regulations fixed by

AICTE and therefore it is violating the law. AICTE is also a party to the present Writ Petition. In the present case, I need not examine the larger issue whether the respondent nos. 1 and 2 are performing public functions and duties and therefore are amenable to writ jurisdiction in view of the decision of the Supreme Court in the case of ***Secretary Ministry of Information and Broadcasting versus Cricket Association of Bengal*** reported in (1995) 2 SCC 161 and of the Delhi High Court in ***Rahul Mehra versus Union of India*** reported in 114 (2004) DLT 323 and ***Rinchu versus Government of NCT of Delhi*** reported in 134 (2006) DLT 406. In these cases it was observed that writ jurisdiction can also be exercised against any person or authority even if they are not statutory authorities or instrumentalities of the State provided they are performing public duty or functions. What has to be examined is the nature of duty imposed on the body and the duty must be judged in the light of positive obligation owned by the person or authority. There is a distinction between Article 226 of the Constitution of India which confers wide powers on the High Courts to issue prerogative Writs and the English Courts.

16. It was observed in ***Federal Bank versus Sagar Thomas*** reported in (2003) 10 SCC 733, after exhaustively examining case law on the subject, that Writ can also be issued when a body or a person refuses to comply with Rules and Regulations imposed by

a Statute. The respondents 1 and 2 have failed to comply with the terms of affiliation and to this extent the Writ Petition will be maintainable. Otherwise the respondents 1 and 2 will run the risk of disaffiliation which will have adverse consequence on its students. The respondents 1 and 2 can be compelled to carry out the terms of the statute by which they are governed and they can be also asked to carry out duties placed on them by the Statute under which they have been given affiliation. Accordingly, in paragraph 18 of the judgment, it was observed as under:

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

17. Even if the respondents 1 and 2 are not State or an “Authority” under Article 12 of the Constitution of India, a writ may be maintainable against them as the said respondents have acquired affiliation and must comply with the Statute and the law. A writ petition can be filed in case the respondents 1 and 2 have failed to

comply with the terms and conditions of affiliation. In paragraph 27 of the judgment, in the case of **Federal Bank** (supra) it was observed as under:-

“27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.”

18. In view of the above, it is held that the petitioner is not entitled to appointment as a Principal and to this extent the Writ Petition is liable to be dismissed. However, directions are given to the respondents to appoint a Principal as per the prescribed

procedure within three months. Till then, AICTE and Board of Technical Education, Delhi will appoint one nominee each, who will oversee the functioning and management of the school. They shall not interfere in the day to day working but ensure that there is general compliance with the law and admissions are made as per the guidelines fixed. After the Principal is appointed, the nominees shall be withdrawn.

C.C.P. NO. 123/2008

19. I have dismissed the Writ Petition filed by the petitioner, Mr. Madan Lal Sharma claiming that he is entitled to continue working as the Principal of the respondent no.2-Institute. It is alleged in the contempt petition that the respondents 1 and 2 have violated the interim order dated 5th February, 2008 passed by this Court whereby the order dated 4th February, 2008 was stayed. The Order dated 4th February, 2008 impugned in the Writ Petition had directed Mr. M.L. Arora to perform the functions as an Acting Principal of the respondent no.2-Institute.

20. The allegations are made by the petitioner that even after passing of the stay order dated 5th February, 2008, Mr. M.L.Arora was given responsibility to assign academic work and carry out administrative and executive functions required for smooth functioning of the Institute. It is also alleged that Mr. M.L.Sharma

was advised to handover the documents relating to the Institute/Trust to Mr.M.L. Arora. Reference in this regard is made to several letters written by the Trust-respondent no.1 including letter dated 7th February, 2008 by which it was directed that the management had decided to divide the work of the Institute into two parts with Mr.M.L. Sharma looking after the developmental activities of the Institute and Mr. M.L.Arora being assigned the administrative and executive functions of the Institute.

21. For the reasons given while dismissing the Writ Petition, I am of the opinion that the present Contempt Petition should not be proceeded with any further. However, I may note my disappointment and displeasure at the manner in which the respondent nos. 1 and 2 inspite of the Stay Order dated 5th February, 2008 had written/issued the letters dated 6th February, 2008 and 7th February, 2008. The Court while granting the interim order had spelt out the reasons for the same and the respondents should have complied with the stay order, as long as the stay order was not vacated or modified. This is another reason why I have directed appointment of two nominees by AICTE and Board of Technical Education, Delhi to oversee the functioning of the respondent no.2-Institute, till a regular Principal, as per law, is appointed.

22. With these observations, the Contempt Petition is also disposed of.

In the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

MAY 30, 2008.
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