

Court No. - 39

Case :- SPECIAL APPEAL No. - 406 of 2020

Appellant :- State Of U.P. And 5 Others

Respondent :- C/M Baba Hanuman Das Kanya Poorva Madhymic
Vidyalaya

Counsel for Appellant :- Sanjay Kumar Singh

Counsel for Respondent :- Prabhakar Dwivedi

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Mr. Arimardan Singh Rajpoot, learned Additional Chief Standing Counsel for the respondent-appellant/State and Mr. Vikram Bahadur Yadav, Advocate holding brief of Mr. Prabhakar Dwivedi, learned counsel for the petitioner-respondent.

2. The present intra court appeal is directed against the order of the learned single judge dated 22nd November, 2019 passed in Committee of Management Baba Hanuman Das Kanya Poorva Madhyamik Vidyalaya Vs. State of U.P. & % Others, 2019:AHC:198335. By that order, the learned single judge has quashed the order dated 27th September, 2017/27th December, 2017 passed by the Deputy Secretary, Shiksha Anubhag-VI, Government of U.P. at Lucknow, rejecting the claim of the petitioner for Grant-in-Aid (Financial Aid) to the petitioner institution.

3. The petitioner-committee of management has established a junior high school. It was given recognition by the Additional Director of Education (Basic), VII Region, Gorakhpur on 2nd March, 1989. On 7th September, 2006, the Government of U.P. introduced Grant-in-Aid scheme (hereafter referred to as the "scheme") to support private educational institutions, described as aided institutions. The petitioner-committee of management applied for Grant-in-Aid. That was first rejected by the order dated 4th January, 2007 passed by the Assistant Director, Education (Basic), Gorakhpur. Again the claim of the petitioner was rejected on 28th July, 2011 by the State Government. That was challenged in writ petition. The same came to be dismissed. The special appeal filed there-from being Special Appeal No. 351 of 2013 was allowed on 29th October, 2014. The order dated 28th July, 2011 passed by the State Government was set aside

and the matter was remitted to the proper authority i.e. Secretary, Education (Basic), Government of U.P. at Lucknow to pass a fresh order after giving opportunity of hearing to the petitioner-respondent.

4. While making compliance of that order, the Additional Chief Secretary, Shiksha Anubhag-6, Government of U.P. passed the order dated 27th December, 2017 and rejected the claim of the petitioner-committee of management. Reason to reject the claim of the petitioner-committee of management has been recorded in paragraph-8 of the order. It reads as below:

"उपर्युक्त समग्र तथ्यों के परिप्रेक्ष्य में रिट याचिका सं० 62182/2015 ग्राम विकास सेवा समिति व अन्य बनाम यूनियन ऑफ इण्डिया व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 05.11.2015 के अनुपालन में प्राथमिक शिक्षा के मान्यता प्राप्त असहायिक विद्यालयों के संबंध में विगत वर्षों की स्थापित नीति का पुनरावलोकन किया गया। समयक विचारोपरान्त पाया गया कि सम्प्रति प्राथमिक शिक्षा की गुणवत्ता में सुधार किये जाने एवं जो विद्यालय स्थापित हैं, उन्हें आधारभूत सुविधाएं उपलब्ध कराते हुए विकसित किया जाना आवश्यक है। विद्यालयों में शैक्षिक गुणवत्ता के सुधार हेतु राज्य सरकार द्वारा बहुत गम्भीरता से विचार किया जा रहा है। इसके अन्तर्गत छात्र संख्या के आधार पर अध्यापकों की तैनाती (समायोजन), छात्रों एवं अध्यापकों की नियमित उपस्थिति, पठन – पाठन का नियमित अनुश्रवण एवं छात्र – छात्राओं के अधिगम स्तर में वृद्धि हेतु प्रयास किया जा रहा है। इसके दृष्टिगत वर्तमान में प्राथमिक शिक्षा में नवीन विद्यालय स्थापित किया जाना / अनुदानित किया जाना समीचीन नहीं पाया गया है। आगामी 05 वर्षों के बाद स्थिति का पुनरावलोकन किया जायेगा और यदि आवश्यकता पाई जाती है, तो तदनुसार विचार किया जायेगा।

तदनुसार मा० उच्च न्यायालय में योजित विशेष अपील सं० – 351/2013 प्रबन्ध समिति, बाबा हनुमान दास कन्या पूर्व माध्यमिक विद्यालय बनाम उ०प्र० राज्य व अन्य में पारित मा० उच्च न्यायालय के आदेश दिनांक 29.10.2014 के समादर में उक्त प्रस्तर – 7 में प्राविधानित नीति के अनुसार याची प्रबन्धक का प्रत्यावेदन दिनांक 21.04.2017, 10.08.2017 एवं 03.11.2017 को एतद्द्वारा निरस्त कर निस्तारित किया जाता है।"

5. In allowing the writ petition, the learned single judge has observed as, below:

"Having heard the learned counsel for the parties, I am of the view that at the time when the petitioner had applied everything was in order. The petitioner was having a permanent recognition. The vacancies were proper and the teachers and the non-teaching staff were given proper appointment in accordance with law and what is more there were students studying in the institution who required free education as per ' The Right of Children to Free and Compulsory Education Act, 2009.

Under such circumstances, the impugned order dated 27.9.2017 cannot be sustained in the eyes of law and the same is, accordingly, quashed.

The respondents no. 1, 2, 3 and 5 are directed to give the grant-in-aid to the petitioner's institution from the day the petitioner Institution had applied through its management.

With these observations, the writ petition is allowed."

6. Having heard the learned counsel for the parties and perused the record, the Additional Chief Standing Counsel for the respondent-appellant is right in his contention that the learned single judge has not given any reason (in law), to issue a positive direction to the State-authorities to provide Grant-in-Aid to the petitioner-respondent and he is further right in his contention that such administrative decision may not have been made under the jurisdiction of judicial review of administrative orders.

7. A writ proceeding instituted under Article 226 of the Constitution of India remains a proceeding of judicial review. Thus, the order impugned in such proceeding remains open to judicial scrutiny of the procedure adopted to reach the decision. At the same time, it is not a proceeding in continuation to the administrative decision making. That is the fundamental difference that must be maintained, while exercising writ jurisdiction arising from administrative orders.

8. At the same time, the above error in principle committed by the learned single judge may not be enough to allow the appeal filed by the State in its entirety. Perusal of the order dated 27th December, 2017 passed by the Additional Chief Secretary, Shiksha Anubhag-6, Government of U.P. at Lucknow is imaginative and unreasoned in equal measure. On specific query, learned Additional Chief Standing Counsel fairly states that at present the State Government has neither withdrawn its scheme nor the scheme has been placed in abeyance.

9. In view of the above fair statement, we find it wholly unacceptable that the State Government has chosen to reject the claim made by the petitioner-respondent for wholly ambiguous narration of facts. Unless the scheme had been withdrawn or had been placed in abeyance, the State Government remained obligated to consider the claim arising there-from, on the strength of the merits of the claim.

10. To begin with, the State Government is presumed to act fairly and reasonably. It is presumed not to engage in an exercise of pick and choose. Therefore, an objective consideration of the petitioner's claim to be admitted to the benefit of the scheme and to be allowed Grant-in-Aid, was mandatory.

11. Perusal of the impugned order (as has been extracted above) reveals that in the name of reasoning, imagined facts have been stated. Though, there is some discussion preceding the concluding paragraph no.8, the narration in that paragraph does not bring out any reason to hold that the petitioner-respondent was not entitled to Grant-in-Aid. Even if the scheme has been revisited and certain new parameters have been recognized or identified or prescribed to admit an institution under the scheme and even if the State Government were to apply such new standards to the case of the petitioner-respondent, due consideration of the particular facts of the petitioner's claim should have been made.

12. We may hasten to add that we have not recorded any conclusion as to the merits of the case and at present, we also find that the present case is distinguishable from that of State of U.P. Vs. The C/M Sri Dravi Nath Purva Madhyamik Vidyalaya & Another, 2020: AHC:34966-DB. In that case, institution had been admitted to the scheme and aid was being provided. Later, it was discontinued for reason of some defect noted in the initial appointment granted by the institution. Also, the discontinuance of grant was occasioned by the reasoning that another institution was found established within the radius of 300 metres. In the present case, neither the petitioner has earlier been admitted to the scheme nor objections of the nature considered in C/M Sri Dravi Nath Purva Madhyamik Vidyalaya (Supra), have been raised, at this stage.

13. In view of the above discussions and deliberation, the present intra court appeal is allowed and the order passed by the learned single judge dated 22nd November, 2019 is set aside. Also, for the reasons recorded above, the order passed by the Additional Chief Secretary, Shiksha Anubhag-6, Government of U.P. dated 27th December, 2017 is also set aside. The matter is remitted to that authority to pass a fresh reasoned and speaking order, as expeditiously, as possible preferably within three

months from today, after giving due opportunity of hearing to the petitioner-respondent, keeping in mind the observations made above.

14. The writ petition is disposed of subject to the observations made above.

(Shiv Shanker Prasad, J.)

(Saumitra Dayal Singh, J.)

Order Date :- 13.12.2023

Sushil/-