

Court No. - 10

Case :- WRIT - C No. - 27881 of 2023

Petitioner :- C/M Khadeshwari Baba Inter College And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Dubey, Katyayini

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Ms. Katyayini, learned counsel for the petitioners, learned Standing Counsel for the respondents and perused the record.

2. Claiming inclusion on the grant-in-aid list of the State Government, the petitioners filed Writ C No.5733 of 2022 (C/M Khadeshwari Baba Inter College And Another v. State of U.P. And 2 Others) which was disposed off by this Court by passing the following order dated 08.03.2022:-

"Heard learned counsel for the parties and perused the record.

By means of this petition filed under Article 226 of the Constitution, the petitioner has prayed for following relief as substantial relief:-

"(ii). Issue appropriate writ, order or direction in the nature of mandamus commanding the respondent No.1 to take final decision to include the High School Level of present institution No.-1 on grant in aid list."

Learned counsel for the petitioners submits that in above regard the petitioners has already represented the matter before the respondent No.- 1 vide representation dated 15th November, 2021 (Annexur-11 to the writ petition).

Learned Standing Counsel submits that he would have no objection in case if a direction is issued to the competent respondent concerned to

consider the representation of the petitioner strictly in accordance with law.

In view of the above, this petition stands disposed of with a direction to the respondent No.- 1 to look into the grievance of the petitioner as raised in the representation dated 15th November, 2021 and decide the same strictly in accordance with law as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

Needless to add that the order to be passed by the competent authority as directed above shall be reasoned and speaking one. "

3. When the said order was not complied with, a contempt application was filed whereafter the order impugned dated 12.05.2023 has been passed by the State Government rejecting the petitioners' claim.

4. It is contended by learned counsel for the petitioner that though the Government proceeded to note down the facts relating to grant of recognition upto the Junior High School and then High School and, thereafter, Intermediate at the first page of the order impugned, however, no finding has been recorded as to why the petitioner is not entitled to be included in the grant-in-aid list, except, that the Government has power to take or not to take any Institution on grant. She further contends that the Apex Court judgement referred to in the order impugned cannot be read against the petitioners when there is sufficient material on record to establish that identically placed Institutions were taken on grant and without assigning any cogent reason, the petitioners claim cannot be rejected by making general observations.

5. Learned Standing Counsel submits that the Apex Court has already held that right to get aid is not a fundamental right, however, he could not dispute that petitioners' claim on its own merits has not been dealt with in the order impugned except, by

making reference of the same but without recording any finding on the components/features of the claim.

6. Considering the nature of the order impugned, no fruitful purpose would be served in inviting response from the Government as the Court is satisfied that the order impugned is bereft of any valid reasons and general observations cannot come in the way of the petitioners.

7. Reference to following authorities can be made in this regard:-

(a). Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers, (2010) 4 SCC 785;

(b). S.N. Mukherjee v. Union of India, (1990) 4 SCC 594;

(c). Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Another, AIR 1976 SC 1785;

(d). Mc Dermott International Inc. v. Burn Standard Co. Ltd. and Others, (2006) SLT 345;

(e). Gurdial Singh Fijji v. State of Punjab, (1979) 2 SCC 368;

(f). State of Maharashtra v. Vithal Rao Pritirao Chawan (1981) 4 SCC 129;

(g). State of U.P. v. Battan and Others, (2001) 10 SCC 607;

(h). M/s. Travancore Rayon Ltd. v. Union of India, (1969) 3 SCC 868;

(i). S.N. Mukherjee v. Union of India, (1990) 4 SCC 594;

(j). M/s. Mahabir Prasad Santosh Kumar v. State of U.P. and others, AIR 1970 SC 1302;

(k). M/s. Travancore Rayons Ltd. v. Union of India and others, AIR 1971 SC 862;

(l). Kranti Associates Private Limited and Another v. Masood Ahmed Khan and others, (2010) 9 SCC 496.

7. However, without expressing any opinion on the merits of the petitioners' claim, the writ petition is **allowed** setting aside the

order impugned dated 12.05.2023 only for the reason that the order is an unreasoned one.

8. The State is directed to decide the petitioners' claim again by recording specific finding on its own merits **by the end of March, 2024** provided a certified copy of this order is produced before the State Government **within two weeks from today**.

9. It is made clear that the State Government shall apply its independent mind and wisdom on the petitioners' claim as per existing policy as this Court has not examined the same on merits.

Order Date :- 17.11.2023

Jyotsana