

Court No. - 7

Case :- WRIT - C No. - 9339 of 2023

Petitioner :- Town Polytechnic, Ballia Thru. Its Chairman And Others

Respondent :- State Of U.P. Thru. Secy. Technical Education, Lucknow
And Others

Counsel for Petitioner :- Lalta Prasad Misra

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Supplementary affidavit has been filed today, which is taken on record.
2. Sri Amrendra Nath Tripathi, Advocate has filed on application for intervention on behalf of Kamlesh Singh, which is taken on record.
3. Heard Dr. Lalta L.P. Misra, learned Senior Advocate, assisted by Miss. Neha Chadda, for the petitioners; Sri Nitin Mathur, learned Addl. C.S.C. for the State, and Sri Amrendra Nath Tripathi, learned counsel for the Intervener.
4. With the consent of the parties, this matter is being finally decided.
5. Under challenge in this petition is the order dated 13.10.2023, annexed as Annexure-1 to the writ petition, whereby the Director, Technical Education, Kanpur, has been directed to initiate action and to report back to the State Government within 3 days.
6. Dr. L.P. Misra, Advocate has raised a challenge to the order impugned on legal grounds which are that the Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 (hereinafter referred to as the 'Act, 1962') has been issued which governs the

establishment and constitution of a Board of Technical Education in Uttar Pradesh and for the matters connected therewith.

7. It is contended that under the provisions of sub-Section (1) of Section 14 of the Act, 1962 the State Government may communicate to the Board its views on any work done or conducted by the Board or in respect of any matter with which the Board is concerned and the Board shall thereupon report to the State Government the action taken or proposed to be taken by it in regard thereto. Likewise, as per sub-Section (2) of Section 14 of the Act, 1962 it is provided that if the Board fails to take action within a reasonable time to the satisfaction of the State Government or fails to communicate the action taken or proposed to be taken, the State Government may, after considering any explanation furnished or representation made by the Board, issue such directions, consistent with the provisions of this Act and the rules and regulations made thereunder. Sub-Section (3) of Section 14 of the Act, 1962 provides that notwithstanding anything in sub-sections (1) and (2), the State Government, in any emergency, which in its opinion requires that immediate action should be taken, may, without prior reference to the Board, issue such directions or take such other action, consistent with the express provisions of the Act, 1962.

8. The contention is that by means of the order impugned dated 13.10.2023 the State Government has exercised its powers under the provisions of sub-Section (3) of Section 14 of the Act, 1962 and has required the Director of Technical Education to do the acts as indicated in the order.

9. The argument is that the power under sub-Section (3) of

Section 14 of the Act, 1962 can only be exercised in an emergency, as specifically provided under sub-Section (3) of Section 14 of the Act, 1962, consequently, without spelling out the emergency which has led the State Government to pass an order under sub-Section (3) of Section 14 of the Act, 1962, no such order could have been passed.

10. Further argument is that sub-Section (3) of Section 14 of the Act, 1962 is an exceptional power vested in the State Government and in case the exceptional power is being exercised by the State Government, then the reasons thereof should reflect from the order impugned itself, but the order impugned is lacking on the grounds and circumstances which has led the State Government to pass the order by invoking its emergency powers under the provisions of sub-Section (3) of Section 14 of the Act, 1962 and, thus, the order impugned merits to be set aside on this legal ground alone.

11. Dr. L.P. Misra also argues that certain powers are vested under the provisions of Section 22-D of the Act, 1962, but the said powers are vested with the Director. The only power which vests with the State Government would be under sub-Section (4) of Section 22-D of the Act, 1962, which provides that on receipt of a recommendation referred to in clause (b) of sub-Section (3), where the State Government is satisfied that in the interest of the Institution the Management of that institution be handed over to an Authorized Controller, then the State Government may, by an order, for such period, as may be specified in the order, appoint an Authorized Controller.

12. Based on the above, the argument is that it is only on the basis of a recommendation, as sent by the Director of Technical Education, that such power could be exercised by the State

Government, if at all the said powers are exercised under the provisions of sub-Section (4) of Section 22-D of the Act of 1962, which has also not been done while passing the order impugned.

13. On the other hand, Sri Nitin Mathur, learned Addl. Chief Standing Counsel states that certain irregularities were committed in making of appointments by the Town Polytechnic, Ballia, which has led the State Government to pass order under sub-Section (3) of Section 14 of the Act, 1962. It is also contended that the Director, Technical Education, is also hand-in-gloves with the candidates, who have been selected. Thus, the State Government had no option, but to pass the order impugned under Section 14(3) of the Act, 1962.

14. Having heard the learned counsel for the parties and perused the records what emerges is that by means of the order dated 13.10.2023 the State Government has issued certain directions to the Director, Technical Education.

15. It is admitted by the learned Addl. Chief Standing Counsel that the order has been issued under the provisions of sub-Section (3) of Section 14 of the Act, 1962 and the order has been passed by the State Government by invoking its emergency powers. For the sake of convenience, Section 14 of the Act, 1962 is reproduced below:

“14. (1) The State Government may communicate to the Board its views on any work done or conducted by the Board or in respect of any matter with which the Board is concerned and the Board shall thereupon report to the State Government the action taken or proposed to be taken by it in regard thereto.

(2) If the Board fails to take action within a reasonable time to the satisfaction of the State Government or fails to communicate the action taken or proposed to be taken, the State Government may, after considering any explanation furnished or representation made by the Board, issue such directions consistent with the provisions of this Act and the rules and regulations made thereunder as it may think fit. The Board

shall comply with the said directions within the time specified therein and if it fails to do so, the State Government may take all such steps as it may deem necessary to give effect to such directions.

(3) Notwithstanding anything in sub-sections (1) and (2), the State Government, in any emergency which in its opinion requires that immediate action should be taken, may without prior reference to the Board, issue such directions or take such other action consistent with the express provisions of this Act as it may think fit.”

16. From a perusal of the provisions of Section 14 of the Act, 1962, it is apparent that the emergency powers as vested with the State Government under the provisions of sub-Section (3) of Section 14 of the Act, 1962 can be exercised, notwithstanding anything contained in sub-Section (1) and sub-Section (2) of Section 14 of the Act, 1962, meaning thereby that it is only in case of an emergency and in the opinion of the State Government, in matters which require immediate action, that an order can be passed under the provision of sub-Section (3) of Section 14 of the Act, 1962.

17. Perusal of the order impugned dated 13.10.2023 indicates that it does not reflect anywhere as to what has led the State Government to invoke its extraordinary and emergency powers, as vested in it under the provisions of sub-Section (3) of Section 14 of the Act, 1962.

18. Needless to mention that where the extra ordinary powers are to be exercised, it can only be in case of an emergency and where in the opinion of the State Government requires said action to be taken under the provisions of the sub-Section (3) of Section 14 of the Act, 1962, then consequently the said "opinion" of the State Government should be reflected from the order itself, which is lacking in the instant case. It is settled provision of law that reasons are the hallmark of an order.

19. The argument as raised by Sri Nitin Mathur, learned Addl. C.S.C., that certain irregularities have been committed by the

Director of the Technical Education while making appointments cannot persuade the Court to read something, which is not contained in the order impugned in as much as nothing precluded or prohibited or restricted or constricted the State Government from indicating in the order impugned the emergency and opinion which led the State Government to pass the order impugned.

20. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The order dated 13.10.2023, a copy of which is annexed as Annexure-1 to the writ petition, is set aside.

21. It is left open for the respondents to pass an order, if required, in accordance with law.

22. As regards the prayer made for issue of a mandamus commanding the respondent No., 5, i.e. the Director, Technical Education, Kanpur, to accord approval of the candidates selected vide order dated 3.10.2023, the Court is of the view that once the State Government is already seized with the matter pertaining to certain irregularities having been made in the said selection, this Court is not required to issue any directions with regard thereto and it is always open for the respondents to proceed with the matter in accordance with law.

(Abdul Moin, J.)

Order Date :- 27.10.2023

A.Nigam