

Court No. - 2

Case :- SPECIAL APPEAL No. - 62 of 2024

Appellant :- Society Shri Gandhi Rashtriya Vidyalaya Rath ,
Hamirpur Thru. Sabhapati And Another

Respondent :- C/M Shri Gandhi Rashtriya Vidyalaya Inter
College Hamirpur Thru. Manager Ram Ratan Gupta And Others

Counsel for Appellant :- Mahendra Bahadur Singh, Madhukar
Ojha, Puneet Chandra

Counsel for Respondent :- Ajay Pratap Singh, C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

**(order on C.M. Application No.1 of 2024 : Application for
Leave to Appeal)**

1. Objection to the application for leave to appeal filed today by Shri Ajay Pratap Singh, learned counsel for the respondent Nos.1, 2 is taken on record.

2. Heard Shri Vijay Bahadur Singh, learned Senior Advocate assisted by Shri M.B. Singh, Shri Puneet Chandra, Shri Saurabh Yadav, Shri Madhukar Ojha, learned counsel for the appellants and Shri Ajay Pratap Singh, learned counsel for the respondent Nos.1, 2 as well as learned Standing Counsel for State-respondent Nos.3 to 6.

3. This is an application seeking leave to appeal challenging the judgment dated 08.02.2024 passed in Writ-C No.1285 of 2024 by means of which the writ petition filed by respondent Nos.1 and 2 challenging the order dated 27.12.2023 passed by the State Government in exercise of its powers under Section 16(d) (4) of the Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921") appointing an authorised controller has been allowed on the ground that the order is non speaking order.

4. The appellants herein claim to be the Sabha Pati and member of the parent society which runs the college whereas respondent Nos.1 and 2 are in the management of the college (not the society). The petitioners claim to have complained to the State Government about the illegalities being committed in management of the institution managed by respondent No.1 and 2 and established by the appellants society based on which the order dated 27.12.2023 appointing the authorised controller was passed. They were heard before the writ Court as interveners.

5. In view of the above, the instant application for leave to appeal is allowed.

(order on appeal)

6. Learned counsel for the appellants has relied upon a decision of the Hon'ble Supreme Court in the case of **State of U.P. and others vs. Committee of Management of S.K.M. Inter College and Another reported in 1995 Supp (2) SCC 535** paragraph 8 to contend that the order of the State Government appointing the authorised controller was a reasoned order, therefore, the learned writ Court has erred in allowing the writ petition of respondent Nos.1 and 2. He has also emphasised that the allegations are very serious and they pertained to selling of the land belonging to the college etc. and other financial irregularities.

7. Paragraph 8 of the aforesaid judgment reads as under :-

"Shri Raju Ramchandran, learned counsel for the respondents, has contended that the requirement of recording reasons mentioned in sub-section (4) of Section 16-D has not complied with. Recording of reasons is preceded by consideration of the explanation followed by agreement or disagreement with the explanation submitted by the Management. Reasons recorded in that behalf would not constitute compliance of sub-section (4) of Section 16-D. We are afraid that we cannot agree with the contention. It is settled law that administrative authorities are not required to record reasons as elaborately as an order by a Court. What is required is application of mind to the relevant facts placed before the administrative authority; short reasons that weighed with them to take action need to be recorded. It is seen that the order at hand is an elaborate one and from the record it is seen that the Director had culled out material facts that emerged from the record. In fact it was specifically stated about misappropriation of the funds; non-accounting of the poor boys' fees collected from the students; fee collected for construction of the Science Block. The collections spread over six to seven years and yet the building was not completed. Failure to account the money and depositing it into the account amounts to misappropriation. The existence of the properties is not disputed."

8. The ratio of the said judgment is that administrative authorities are not required to record reasons as elaborately as an order by a Court. What is required is application of mind to the relevant facts placed before the administrative authority, short reasons that weighed with them to take action need to be recorded. In the said case as observed by Hon'ble the Supreme Court in para 8 itself the order was an elaborate one and from the record it was seen that the Director had culled out material facts that emerged from the record. There were specific finding regarding misappropriation of the funds; non-accounting of the poor boys' fees collected from the students; fee collected for

construction of the Science Block etc. However, when we peruse the order passed by the State Government on 27.12.2023 in the case what we find is that it does not even mention the allegations which were levelled in the show cause notice dated 12.06.2023. There is a cursory mention of the reply submitted by the respondent Nos.1 and 2 to the said show cause notice on 17.08.2023 without discussing as to what the reply was. The order then goes on to state that in response to the said reply dated 17.08.2023, the Director concerned has submitted his report and the contents of the said report have been quoted/referred in his order in para 2 at length. However, again we do not find any consideration of the reply dated 17.08.2023 even after taking into consideration the said report of the Director dated 18.12.2023, the order straightway then refers to the provision contained in Section 16(d)(4) of the Act, 1921 and thereafter in para 6 it has been held as under:

"6. प्रश्नगत प्रकरण में शिक्षा निदेशक, माध्यमिक द्वारा उपलब्ध करायी गयी आख्या / प्रस्ताव, संस्तुति तथा शासन स्तर पर की गयी सुनवाई के दृष्टिगत श्री गांधी राष्ट्रीय विद्यालय इण्टर कालेज, राठ, हमीरपुर में माध्यमिक शिक्षा अधिनियम 1921 (यथा संशोधित) की धारा-16 डी (4) के अंतर्गत संस्था एवं उसकी परिसंपत्तियों के प्रबंधन एवं व्याप्त अनियमितता के निराकरण हेतु जिला विद्यालय निरीक्षक, हमीरपुर (पदेन) को छः(6) माह हेतु इस प्रतिबंध के साथ प्राधिकृत नियंत्रक नियुक्त किया जाता है कि प्राधिकृत नियंत्रक निर्धारित समयान्तर्गत विद्यालय में व्याप्त अनियमितताओं का निराकरण करते हुए नियमानुसार मान्य प्रबंध समिति के गठन की कार्यवाही सुनिश्चित करेंगे।"

9. Even as per the ratio of the decision quoted hereinabove, it cannot be said that the order satisfies the requirements of Section 16(d)(4) of the Act, 1921 which enjoins upon the State Government to record reasons for appointing an authorised controller. We have perused the impugned judgment passed by the writ Court and do not find any error therein. However, at this stage, learned counsel for the appellant states that the writ Court has not prescribed any time limit for a fresh decision to be taken by the State Government. We find this fact to be correct. We, accordingly, modify the judgment of the writ Court to the extent that the State Government shall take fresh decision in light of the judgment dated 08.02.2024 passed by the Writ Court within a period of six weeks from the date of submission of a certified copy of this order.

10. During this period of six weeks, we also deem it proper to direct that the respondent Nos.1, 2 who claim to be managing the college in question shall not take any major decision on policy or financial matters without approval of the DIOS concerned.

11. The report of the Director dated 18.12.2023 shall be supplied to the respondent Nos.1, 2 by the State Government

and thereafter a fresh decision shall be taken after giving an opportunity to the respondent Nos.1,2 to respond to the said report also because it is a material adverse to the said respondents. Whether the term of the committee of management of the college has expired or not and what would be its impact upon the issue involved, it can be seen by the concerned authority. Subject to aforesaid, we find no other reason to interfere with the writ Court's judgment.

12. The special appeal is **disposed of** accordingly.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 4.4.2024

Shubhankar