

Court No. - 19

Case :- WRIT - C No. - 9730 of 2024

Petitioner :- Ganga Prasad Mishra

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy.,
Secondary Education, Lucknow And Others

Counsel for Petitioner :- Hemant Kumar Mishra,Aishvarya
Mathur,Alok Kr. Misra,Arti Ganguly

Counsel for Respondent :- C.S.C.,Krishna Madhav Shukla

Hon'ble Manish Mathur,J.

1. Heard Ms. Aishvarya Mathur, learned counsel for petitioner, learned State Counsel for opposite parties no.1 to 4 and Mr. Sandeep Dixit, learned Senior Counsel assisted by Mr. Krishna Madhav Shukla, learned counsel for opposite parties no.6 and 7.

2. On 05.12.2024, the following order had been passed:-

"Heard Ms. Aishvarya Mathur, learned counsel for the petitioner, learned State counsel for opposite parties No. 1 to 4 and Sri Sandeep Dixit, learned senior counsel assisted by Sri K. M. Shukla, learned counsel for opposite parties No.5 & 6.

In addition to the order passed earlier by this Court, learned counsel for petitioner reiterates the submission that order impugned dated 15 October, 2024 has been passed without jurisdiction.

It appears that earlier this Court had passed an interim order dated 14 November, 2024, which was challenged in Special Appeal No. 278/2024 which was allowed by means of judgment and order dated 27 November, 2024 setting aside the interim order primarily on the ground that such interim protection could not have been granted without first adjudicating the preliminary objection.

Upon perusal of impugned order, it appears that the same has been passed in pursuance of initial complaint made by one Vinay Kumar Shukla,

whereafter the District Inspector of Schools was directed to hold an inquiry into the matter, which was conducted on 12 August, 2024 resulting in submission of report dated 16 August, 2024. Neither of the two are on record.

Learned State counsel has submitted that the opposite party No.5 has been arrayed in the capacity of Ex-officio President of the committee of Management of the institution and would not be deemed to have been arrayed as District Magistrate and therefore has declined to accept notices on his behalf.

Nonetheless for proper adjudication of the preliminary objection, the State counsel is granted three days' time to seek instructions and to procure copies of the complaint made by Sri Vinay Kumar Shukla as well as the direction dated 12 August, 2024 to the District Inspector of Schools for conducting an inquiry and report of the District Inspector of Schools, by the next date of listing.

List this case on 10 December, 2024, as fresh."

3. In pursuance thereof, learned State Counsel has furnished copies of the complaint dated 12.08.2024 and direction issued by the District Magistrate to the District Inspector of Schools dated 12.08.2024 as well as the report of District Inspector of Schools dated 16.08.2024. The same is taken on record.

4. A perusal of the complaint dated 12.08.2024 reveals that it has been made to the District Magistrate concerned alleging that Principal of the institution is illegally charging fee from students who are required to be imparted education gratis under the Right to Education Act. Upon receipt of such complaint, the District Magistrate vide order dated 12.08.2024 directed the District Inspector of Schools to conduct an inquiry and submit report within a period of three weeks. In pursuance of aforesaid

directions, the District Inspector of Schools has furnished his report dated 16.08.2024, which forms the basis of the impugned order.

5. Learned counsel for petitioner has submitted that a perusal of aforesaid documents make it evident that not only was the complaint made to the District Magistrate under the Right to Education Act but direction has thereafter also been issued exercising powers of the District Magistrate and not of the ex officio President of the Institution. It is submitted that since the District Inspector of Schools does not come within supervisory jurisdiction of the ex officio President of the Institute, such a power necessarily can be construed only to have been exercised as District Magistrate. It is, therefore, submitted that the tenor of the order itself indicates exercise of power as District Magistrate and not as ex officio President of the society.

6. Learned counsel appearing for opposite parties no.6 and 7 has refuted submissions advanced by learned counsel for petitioner with the submission that provisions of Bye law 12(h) II(a) clearly empowers the ex officio President of the society to eliminate any member when it finds that it is undesirable in the interest of Institution to keep such person as a member of the Committee of Management. It is submitted that a perusal of the impugned order make it evident that aforesaid power has been quoted in the impugned order itself and forms the basis of

exercise of his power. It is submitted that since the bye laws do not prescribe any mode of inquiry upon receipt of complaint, it is very well within the power and jurisdiction of ex officio President of the society to take aid of any authority including the District Inspector of Schools as has been done in the present case. It is, therefore, submitted that irrespective of an inquiry having been conducted by the District Inspector of Schools, the exercise of power has been rendered under Section 12(h)II(a) of the bye laws.

7. Learned State Counsel has adverted to Section 3 read with Section 12 of Right of Children to Free and Compulsory Education Act, 2009 to indicate responsibility of schools and teachers for providing free and compulsory education. He has also adverted to Section 32 of the aforesaid Act to indicate the provision regarding redressal of grievances under the aforesaid act and also adverted to Section 2(h) of the Act which defines a local authority.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of impugned order, it is evident that the impugned order clearly relies on bye law 12(h)II(a) (sic', k) of the Bye Laws of the Society while exercising powers to remove petitioner as a Member from the Society with consequential effect being his removal as Secretary of the Society.

9. A perusal of the impugned order also makes it evident that the said order while purporting to exercise power under said bye law has placed complete reliance on the report dated 16.08.2024 submitted by the District Inspector of Schools.

10. A perusal of the complaint dated 12.08.2024 also makes it evident that it has been addressed to the District Magistrate concerned raising a grievance regarding non-compliance of statutory provisions of the Act, 2009. It also appears from the directions issued by the District Magistrate dated 12.08.2024 that it is in pursuance of such complaint that the District Inspector of Schools has been directed to submit his report, which thereafter has been submitted on 16.08.2024. The provisions of Section 32 of the Act of 2009 read with Section 2(h) of the aforesaid act makes it evident that it is in fact the District Inspector of Schools, who would exercise power with regard to grievances raised under Section 32 of the Act.

11. A conjoint perusal of the complaint as well as consequent report and orders, therefore, makes it evident that not only the complaint but subsequent proceedings are as a result of grievance raised under Section 32 of the Act of 2009. While passing the order dated 12.08.2024, the District Magistrate has clearly exercised power of referring the dispute raised under Section 32 of the Act of 2009 to the authority defined under Section 2(h) of the Act of 2009 being the District Inspector of

Schools.

12. In such circumstances, it is apparent that not only the complaint but exercise power have clearly been taken under the Act of 2009 and not while exercising power under bye laws of the Society. The exercise of power by the District Magistrate is required to be seen in terms of the tenor of the order and not by the nomenclature indicated therein.

13. Such fact is also evident in terms of duties of the appropriate government defined under Section 8 of the Act of 2009 with the term 'appropriate government' being further defined under Section 2(a) being the State, the State Government.

14. In view of aforesaid discussion, it being apparent that power has been exercise as District Magistrate concerned under the Act of 2009 and not under bye laws 12 of the Bye Laws, the preliminary objections hereby stands rejected and the petition is thus held to be maintainable.

15. At this stage, Mr. Krishna Madhav Shukla, learned counsel appearing on behalf of opposite parties no.6 and 7, on the basis of instructions, submits that the impugned order may be set aside granting liberty to the appropriate authority to pass order afresh in terms of powers to be exercised under bye law 12 of the Bye Laws.

16. Mr. Rahul Shukla, learned Additional Chief Standing Counsel submits that he does not have any such instructions on behalf of opposite parties no. 1 to 4.

17. In view thereof, notice to opposite party no.5 stands dispensed.

18. Considering aforesaid submissions as well as impugned order, it is evident that same has been passed relying completely on the report submitted by the District Inspector of Schools.

19. In the considered opinion of this Court, in case the ex officio President exercises his powers under by law 12 of the Bye Laws, he may exercise power to eliminate any Member when he **finds** that it is undesirable in the interest of institution to keep a person as member of the Committee of Management.

20. The term '**finds**' clearly imposes an embargo upon the absolute exercise of power by the ex officio President under by law 12(h)II(a) of the Bye Laws. The term '**finds**' clearly denotes the fact that such an order can be passed by the ex officio President of the Society only after reaching a substantive satisfaction that the member concerned has acted to the detriment of the interest of the Institution. Quite evidently, such a finding is required to be recorded on the basis of material placed before the said person and such a power cannot be exercised in a vacuum as has been done in the present case

placing reliance only on the report of the District Inspector of Schools. Even if a report is submitted by any authority acting in aid of the ex officio President, it is the bounden duty of the ex officio President to apply his independent mind to the material placed before him and thereafter only to reach a subjective satisfaction regarding complicity or otherwise of the member with regard to grievance or allegations leveled against him.

21. In such circumstances, also, this Court does not find the impugned order to be in accordance with even the bye law 12(h)II(a) of the Bye Laws of the Society.

22. Submission of learned counsel for opposite parties no.6 and 7 for remanding of dispute for consideration afresh is devoid of merit for the twin reason that firstly, as observed hereinabove, the complaint appears to have been made under the Act of 2009 to a statutory authority and not to the ex-officio President of Society and secondly, that even otherwise it has been made against the Principal of the Institution and not against any member of the Committee of Management. Such submission for remand is therefore rejected.

23. This order however does not preclude any enquiry by the statutory authority on the complaint under the Act of 2009.

24. In view of discussion made hereinabove, the impugned order dated 15.10.2024 is hereby quashed by issuance of a writ in the nature of certiorari. The consequential order dated

17.10.2024 also, therefore, stands **quashed**.

25. Consequently, the writ petition succeeds and is **allowed** at the admission stage itself. Parties to bear their own cost.

Order Date :- 10.12.2024

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