

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1556 of 2016

(Arising out of order dated 3-7-2015 passed by the Secretary, School Education Department, Government of Chhattisgarh in Case No.F 18-85/2014/20—2 and order dated 7-3-2015 passed by the Secretary, Chhattisgarh Board of Secondary Education, Raipur)

Board of School & Technical Education (CG) Bilaspur, Through its Secretary Nitin Lamba, S/o Balbir Singh Lamba, Aged about 29 years, R/o Building No. A-6, Nature City, Mungeli Road, Bilaspur, Chhattisgarh, India – 495001

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Versus

1. State of Chhattisgarh, Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh Board of Secondary Education, Through its Secretary, CGBSE, Pension Bada, District Raipur, Chhattisgarh
3. T. Radhakrishnan, the then Chairman of Chhattisgarh Board of Secondary Education, Presently M.D. Chhattisgarh State Ware House Corporation, Raipur, S/o Late Shri C. Thungapan, Aged about 59 years, R/o Officers Colony, Rajendra Nagar, Raipur, Chhattisgarh

---- Respondents

For Petitioner: Mr. R.S. Bains and Mr. Romir S. Goyal, Advocates.
For Respondent No.1 / State: -

Mr. Prasun Kumar Bhaduri, Govt. Advocate.

For Respondent No.2: Mr. Alok Bakshi, Advocate.

For Respondent No.3: Mr. Sanjay K. Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/09/2017

1. Mr. T. Radhakrishnan, respondent No.3 herein, in the capacity of Chairman of Chhattisgarh Board of Secondary Education, on 7-11-2012 passed an order granting temporary equivalence for

secondary and higher secondary examinations to the petitioner herein i.e. the Board of School & Technical Education (BSTE) and thereafter on 8-11-2012, he himself is said to have convened the meeting of the Curriculum Committee constituted under the Chhattisgarh Madhyamik Shiksha Adhiniyam, 1965 (for short, 'the Act of 1965') which is said to have been recommended for the said temporary equivalence. Ultimately, on 1-2-2014, complaint was made by the Registrar, Chhattisgarh Swami Vivekanand Technical University to the Directorate of Technical Education, Government of Chhattisgarh and then the wheels of investigation about the order dated 7-11-2012 started running leading to suspension of order dated 7-11-2012 and 8-11-2012 by respondent No.1 herein. Thereafter, departmental enquiry was initiated against respondent No.3 by the Government. Thereafter, suspension of orders dated 7-11-2012 and 8-11-2012 led to filing of batch of writ petitions including by the petitioner herein before this Court W.P.(C) No.604/2014 in which the Division Bench of this Court after hearing the parties directed respondents No.1 and 2 herein to conduct fresh enquiry in accordance with law and consistent with the principles of natural justice. By order dated 3-7-2015, respondent No.2 revoked the order granting temporary equivalence granted to the petitioner on 7-11-2012 and also revoked the order dated 8-11-2012.

2. Impugning legality, validity and correctness of the order dated 3-7-2015 passed by respondent No.1 (Annexure P-1) and also questioning the order dated 7-3-2015 (Annexure P-2), this writ

petition has been filed stating and styling the aforesaid orders being not sustainable, bad and contrary to law and therefore they are liable to be set aside.

3. Mr. R.S. Bains, learned counsel appearing for the petitioner, ably assisted by Mr. Romir S. Goyal, would vehemently submit that the orders passed by respondents No.1 and 2 revoking the temporary equivalence granted on 7-11-2012 followed by the recommendation of the Curriculum Committee dated 8-11-2012, are strictly in accordance with law and the State Government and respondent No.2, both are absolutely unjustified in revoking the aforesaid orders passed on non-existent facts and are perverse on the face of record which are not available on record. Therefore, the impugned orders are liable to be set aside.
4. Mr. Prasun Kumar Bhaduri, learned Government Advocate while vehemently opposing the submission made on behalf of the petitioner, in his usual vehemence, would submit that the order passed by the State Government is strictly in accordance with law. The petitioner Board is nothing but an out and out fraudulent institution which has committed fraud and the then Chairman – respondent No.3 herein had passed order without approval of the Curriculum Committee, on 7-11-2012 and has convened the meeting of the Curriculum Committee on his own under his own signature, whereas under the Act of 1965, the power to grant equivalence either vests in the Board under Section 8 of the Act of 1965 or in the Executive Committee under Section 19 of the said Act and, therefore, the Chairman of the respondent Board has no

power and jurisdiction under Section 15 to grant equivalence to the examining body as such, the State Government is absolutely justified in revoking the order granting temporary equivalence dated 7-11-2012 followed by recommendation of the Curriculum Committee dated 8-11-2012.

5. Mr. Alok Bakshi, learned counsel appearing for respondent No.2, would also support the impugned orders adopting the argument advanced by Mr. Bhaduri, learned State counsel, and submit that the respondent Board has passed separate order assigning valid and sufficient reasons to support the order impugned, as such the order of the Board is strictly in accordance with law and no interference is warranted in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India and therefore the writ petition deserves the treatment of dismissal.
6. Mr. Sanjay K. Agrawal, learned counsel appearing for respondent No.3, would submit that respondent No.3 has unnecessarily been impleaded as party in this writ petition, a separate departmental enquiry is proceeding against respondent No.3 and the matter is pending before the Central Administrative Tribunal (CAT), therefore it be made clear that any decision would not affect the pending petition before the CAT and the pending departmental enquiry before the disciplinary authority.
7. I have heard learned counsel for the parties and considered the rival submission made herein-above and also gone through the record with utmost circumspection.

8. The root question for consideration would be, whether respondent No.1 and respondent No.2 Board are justified in revoking the order granting temporary equivalence in favour of the petitioner and / or whether the order granting temporary equivalence is in accordance with law.
9. As stated herein-above, the order granting temporary equivalence was passed on 7-11-2012, meeting was convened by the then Chairman of the respondent Board on 8-11-2012 and the said temporary equivalence has been recommended, but it appears from the record that even after 8-11-2012, no order appears to have been passed and placed on record granting temporary equivalence passed either by respondent No.2 Board or by the Executive Committee of the Board constituted under the Act of 1965. Thereafter, on a complaint being made by the Registrar of the Chhattisgarh Swami Vivekanand Technical University to the Directorate of Technical Education, the matter was enquired into and effect and operation of orders dated 7-11-2012 and 8-11-2012 were suspended leading to filing of batch of writ petitions in which this Court directed to pass fresh order after giving opportunity of hearing to those writ petitioners.
10. In order to decide the dispute, it would be appropriate to refer to the provisions contained in the Act of 1965.
11. The Board of Secondary Education is constituted under Section 3 of the Act of 1965 and Chairman is appointed under Section 5 of the said Act. Section 8 of the Act of 1965 provides for powers of the Board and the Board shall have the powers stated in clauses

(a) to (mm)(v) of the Act. Powers of the State Government is provided in Section 9 and powers and duties of Chairman are provided in Section 15. Some emergency power has also been given to the Chairman under sub-section (3) of Section 15 of the Act of 1965. Section 19 provides for constitution of an Executive Committee consisting of 9-10 members. Sub-section (5) of Section 19 provides that subject to the general control, direction and superintendence of the Board, the Executive Committee shall be competent to deal with any matter within the competence of the Board, as such, the Executive Committee is a smaller body of the Board which can take decision which the Board is competent to take. Section 24 speaks about Constitution of Committees etc., and sub-section (1) of Section 24 provides that the Board may from amongst its members and officers and other persons constitute such committees as may be prescribed by Regulation, to aid and advise the Board and the Executive Committee in discharge of their functions and in particular may constitute the committees which includes Curriculum Committee. Under Section 28, Power of Board to make Regulations has been provided and the Board has been conferred with the power to make regulations not inconsistent with the provisions of the Act or the rules made thereunder for the purpose of carrying into effect the provisions of the Act. In exercise of that power, Regulations namely the Board of Secondary Education (Chhattisgarh) Regulations, 1965 (for short, 'the Regulations') have been constituted. Chapter X of the Regulations deals with the Curriculum Committee. Regulation 48 (1) of the

Regulations provides that the Curriculum Committee shall consist of the Vice-Chairman, the Secretary and fifteen members elected by the Board from among the Conveners of the various committees of courses. Regulation 48 (2) provides that the Vice-Chairman shall be the Convener of the Committee. The duties of the Curriculum Committee have been incorporated in Regulation 49 of the Regulations. Regulation 49 (j) is one of the duties prescribed for the Curriculum Committee which states as under: -

“(j) to decide the equivalency of Examinations conducted by the Board / Universities and other Examining bodies.”

12. From the aforesaid scheme of the Act of 1965 and the Regulations made thereunder, it is quite vivid that the principal body constituted under the Act is the Board constituted under Section 3 of the Act of 1965 and powers of the Board have been defined under Section 8. However, the Executive Committee constituted under Section 19 is also competent to deal with any matter within the competence of the Board. Various Committees are constituted under Section 24 of the Act of 1965, which also includes Curriculum Committee, to aid and advise the Board and the Executive Committee in discharge of their functions and as such, the Curriculum Committee is an advisory/recommendatory body which has to extend its recommendation either to the Board or to the Executive Committee, as the case may be. But definitely, it is not a body competent to take decision and the only body competent to take decision is either the Board or the Executive Committee constituted

under the Act of 1965.

13. Their Lordships of the Supreme Court in the matter of **The Marathwada University v. Seshrao Balwant Rao Chavan**¹ have in unmistakable terms held that when the Act prescribes a particular body to exercise a power, it must be exercised by the body unless the power is delegated and held as under: -

“It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation.”

14. After having scanned the scheme of the Act of 1965 noted herein-above, reverting back to the facts of the case, it is quite apparent that the then Chairman of the respondent Board on its own on 7-11-2012 passed order granting temporary equivalence to the petitioner Board and on his own signature, convened the meeting of the respondent Board on 8-11-2012. Though on 8-11-2012, the said agenda is said to have been approved, but thereafter, no order or final order has been passed by the Board that there is dispute with regard to attending of meeting by the members of the Curriculum Committee which is said to have been recommended on 8-11-2012 without going into that dispute, as it is the case of the State/respondent No.1 that there was no agenda for consideration so as to granting order as to temporary equivalence to the petitioner Board.

15. The Curriculum Committee constituted under Section 24 of the Act of 1965 is duty bound to aid and advise the Board or the Executive

¹ AIR 1989 SC 1582

Committee, as the case may be. But here, the respondent Board has not taken any decision to grant the order granting temporary equivalence to the petitioner Board and the then Chairman on its own on 7-11-2012, passed order granting temporary equivalence. Since the power to grant equivalence is vested in the respondent Board or the Executive Committee, the order granting temporary equivalence could have been passed only by the Board or the Executive Committee, as the case may be, with the recommendation of the Curriculum Committee as per Regulation 49 (j) of the Regulations which has not been done. The State Government as well as the respondent Board has clearly held that in absence of firm recommendation of the Curriculum Committee and in absence of order have been passed by the competent authority which is the respondent Board or the Executive Council, as the case may be, the order passed by the then Chairman is without jurisdiction and without authority of law, as he had no authority and jurisdiction to pass the order dated 7-11-2012. As it has already been held, the Curriculum Committee has not advised or recommended at any point of time, the order was passed neither by the competent Board (respondent No.2) nor by the Executive Committee of the Board granting temporary equivalence and power and jurisdiction to pass order granting equivalence has not been delegated to the Chairman of the Board or the Executive Committee, as such, the order passed by the Chairman was *non est* and void. Therefore, the impugned orders passed by respondents No.1 and 2, after hearing the parties as per the

direction of this Court, are strictly in accordance with law and I do not find any jurisdictional error or illegality warranting interference under Article 226 / 227 of the Constitution of India.

16. As a fallout and consequence of aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s). However, it is made clear that this will not affect the pending departmental enquiry or pending petition by respondent No.3 before the competent court or the competent authority. Those proceedings shall be dealt with strictly in accordance with law on their merits. However, the petitioner is entitled to proceed in accordance with law.

Sd/-
(Sanjay K. Agrawal)
Judge