

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.40323 OF 2016

ORDER:

Heard Mr.Subba Rao for petitioner and the learned Assistant Government Pleader (School Education) for respondents.

The petitioner challenges proceedings of Collector and District Magistrate, Prakasam District in Rc.No.3871/C3/2016 dated 11.11.2016, as illegal and contrary to Section 24 (3) (a) of the A.P. Education Act,1982 (for short 'the Act').

To appreciate the legal objections raised by the petitioner, the proceedings impugned in the writ petition read thus:

"Rc.No.3871/C3/2016, Dated:11.11.2016

Sub: Elementary Education- Certain allegations levelled against Correspondent, NJA Primary School, Bosenagar, Chirala - Sri N.Samuel Moses, Correspondent, NJA Elementary School, Bosenagar, Chirala-Suspended from Correspondent ship- Orders-Issued-Regarding.

Ref: 1.Progs. Rc.No.1023/PS-II-1/2016, Dated: 03.11.2016 of the Commissioner of School Education, A.P., Ibrahimpatnam, Amaravathi.  
2. Note orders dated 11.10.2016 of the Collector and District Magistrate, Prakasam District, Ongole.  
3. G.O.Ms.No.14, Edn (SE-PS-I).Dept., Dated 24.02.2006.

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It is noticed that the Manager & Correspondent, NJA Primary School, Bosenagar Chirala is not discharging his duties according to job chart, and encouraging the bogus roll and misuse of Mid Day Meal amounts and also failed to see the administrative affairs of the school properly and he is acted himself as cooking agency to the school up to April, 2015. The Cooking cost and honorarium for cooking agency was credited to his bank A/c.No.20149932388, SBI, Chirala, being a teacher he should not act as cooking agent. He has misappropriated the government funds by showing bogus attendance and

MDM attendance and drawing the honorarium of cooking agent. It is also noticed that he is drawing honorarium for four cooks-cum- helpers where the students are only 148.

Hence, in terms of the orders issued in the reference 1<sup>st</sup> to 3<sup>rd</sup> cited, Sri N.Samuel Moses, Correspondent, NJA Primary School, Bosenagar, Chirala is hereby suspended from Correspondent ship for violation of rules, orders of government and competent authorities as per Section 24(3) (a) of Andhra Pradesh Education Act 1 of 1982 and the amendment issued in G.O.Ms.No.14, Edn (SE-PS-I), Dept., Dated 24.02.2006 and the Mandal Educational Officer, Chirala is hereby appointed as Special Officer to NJA Primary School, Bosenagar, Chirala. The Mandal Educational Officer, Chirala is instructed to take charge as Special Officer and report compliance to the under signed immediately.

(This has got the prior approval of the Collect and District Magistrate, Praksam district, Ongole.)”

The case of petitioner is that the procedure under Section 24 of the Act is independent and suspension of Secretary or Correspondent of an educational institution though is available to respondents, the same is subject to compliance with the conditions stipulated by Section 24 (3)(a) of the Act, which reads as follows:

(3)(a): Where the competent authority is satisfied that the management is responsible for the lapses or irregularities of the institution, the competent authority may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing suspend the management and appoint a special officer till the reconstitution of the management :

Provided that in relation to a private institution, under the management of a charitable or religious institution, charitable or religious endowment and a wakf, the competent authority shall be the Government or an authority or officer authorised by the Government in this behalf.

[Provided further that no management of minority educational institution shall be suspended under this sub-section save for mis-management].

Counsel for petitioner to demonstrate as matter of fact that the petitioner was not put on notice before passing the suspension proceedings impugned in the writ petition, relies on the references stated in the proceedings. He prays for setting aside the proceedings impugned in the writ petition.

This Court on 22.11.2016 granted interim suspension. The 3<sup>rd</sup> respondent filed counter affidavit and also a petition to vacate the interim order. The District Educational Officer/3<sup>rd</sup> respondent does not dispute the factual objection raised by the petitioner namely, that the petitioner was not put on notice before issuing proceedings impugned in the writ petition. But however, by way of reply it is averred that a few of ancillary or incidental aspects are looked into against the subject school and in such enquiry the Correspondent participated and therefore, the requirement of notice is substantially complied with.

The reply of respondents, if accepted, would be against the statutory requirement under Section 24(3(a) of the Act. Further, the participation in ancillary or incidental proceedings without knowledge of suffering an order of suspension cannot be treated as a circumstance for passing the order of suspension. Such discretion is not conferred on respondents by Section 24 of the Act. The proceeding impugned in the writ petition is set aside on the short ground of not conforming to Section 24(3)(a) of the Act, and after

perusing the stand taken in the counter affidavit, this Court is of the view that the respondents can be given liberty to proceed against the petitioner/Correspondent in accordance with law.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:12.09.2017  
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