

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(254)

CWP-11244-2022

Date of decision: - 22.05.2023

Sanatan Dharam Mahila Mahavidyalaya

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pawan Kumar, Senior Advocate with  
Ms. Vidushi Kumar, Advocate, and  
Mr. Surya Kumar, Advocate,  
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Ravindra Singh, Advocate and  
Mr. Kshitiz Goel, Advocate, for  
Mr. Puneet Gupta, Advocate,  
for respondent No.3.

Mr. Arjun Partap Atma Ram, Advocate  
for respondent No.5.

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**VIKAS BAHL, J. (ORAL)**

1. Present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the order dated 10.05.2022 (Annexure P-9) passed by respondent No.1, vide which, the Sub-Divisional Magistrate, Hansi has been appointed as the Administrator of S.D. Mahila Mahavidyalaya, Hansi (Hisar). Further prayer has been made for directing the respondents not to interfere in the working of the college.

2. Learned Senior counsel for the petitioner has submitted that in the present case, vide order dated 10.05.2022 (Annexure P-9), the Sub-Divisional Magistrate, Hansi has been appointed as the Administrator of the S.D. Mahila Mahavidyalaya, Hansi (Hisar) under Section 3 of the Haryana Private Educational Institutions (Taking over of Management) Act, 1978 (hereinafter referred as 'the Act of 1978'). It is submitted that the said order is absolutely illegal and against law and is in violation of the Act of 1978, more so, Section 3(c) of the Act of 1978 and also the Haryana Private Educational Institutional (Taking over the Management) Rules, 1980 (hereinafter referred as '1980 Rules'). It is submitted that under Section 3 of the Act of 1978, the maximum period for which an Administrator can be appointed is three years. It is argued that in the present case, as per the impugned order, the Administrator has been appointed for an indefinite period, which is against the provisions of Section 3(1)(c) of the Act of 1978. It is also argued that the provisions of Section 3(1)(c) of the Act of 1978 stipulate that before the competent authority takes over the management of an Educational Institution, it has to form an opinion that it is expedient in the interest of the college education to take over the management of the said Educational Institution. It is argued that the impugned order does not reflect any application of mind so as to remotely show that the said aspect has been taken into consideration before taking over the management of the college and thus, on the said ground alone, the impugned order deserves to be set aside. It is further submitted that as per the provisions of Rule 3(3) of the 1980 Rules, the Competent Authority is required to pass a speaking order

before taking over the management of a college/educational institution. It is stated that the said rule read in conjunction with Section 3(1)(c) of the Act of 1978, envisages that there should be application of mind, more so, on the aspect of, the taking over being expedient in the interest of the college and the same should be reflected in the order passed. It is argued that in pursuance of the show cause notice dated 16.03.2022 (Annexure P-7), the petitioner had filed a detailed reply dated 24.03.2022 (Annexure P-8) controverting each and every allegation made in the show cause notice and also levelled allegations against respondent No.5, but however, without considering the said reply, a cryptic & non-speaking order dated 10.05.2022 (Annexure P-9) has been passed by the Additional Chief Secretary to Government of Haryana, Higher Education Department, Chandigarh. It is submitted that on the said ground also, the impugned order deserves to be set aside. In support of his arguments, learned Senior counsel for the petitioner has relied upon a judgment of a Co-ordinate Bench of this Court passed in case titled as “**Bhagwan Shri Krishan College of Education (For Women), Mandi Dabwali Vs. Director of Higher Education, Haryana, Chandigarh, reported as 1991(2) RSJ 213.**”

3. Learned Senior counsel for the petitioner has also made a reference to the interim order dated 24.05.2022 passed by Co-ordinate Bench of this Court in the present writ petition to highlight the fact that the order of appointment of the Administrator had been stayed by the Co-ordinate Bench of this Court and the said interim order has been continuing till date. The said order dated 24.05.2022 is reproduced herein below: -

*“It is inter alia submitted that Rule 3 (3) of the Haryana Private Colleges (Taking Over of Management) Rules 1980, has been violated inasmuch as the order of appointment of Administrator is non-speaking. Further, Section 3 (c) of the Haryana Private Educational Institutional (Taking Over the Management) Act, 1978 has also been violated as the Administrator has been appointed for an indefinite period.*

*Notice of motion for 11.01.2023.*

*Mr. Samarth Sagar, Addl. AG, Haryana accepts notice on behalf of respondents No.1, 2 and 4 and waives service.*

*Respondents No.3 and 5 be served in the ordinary manner.*

*Meanwhile, order of appointment of Administrator shall remain stayed.*

**(SUDHIR MITTAL)**  
**JUDGE**

**24.05.2022”**

4. Learned State counsel as well as learned counsel for the private respondents have submitted that in the present case, a show cause notice dated 16.03.2022 (Annexure P-7) was issued by the Director Higher Education, Haryana, in pursuance of a detailed inquiry conducted by a committee constituted by the Guru Jambheshwar University of Science & Technology, Hisar and a reply dated 24.03.2022 (Annexure P-8) to the same was also filed by the petitioner and after considering the same, the impugned order has been passed. It is stated that the procedure in accordance with law has been followed and thus, the impugned order deserves to be upheld.

5. This Court has heard learned counsel for the parties and has gone through the paper-book.

6. The order dated 10.05.2022 reads as under: -

**“GOVERNMENT OF HARYANA**  
**DEPARTMENT OF HIGHER EDUCATION**

**ORDER**

*The Governor of Haryana is pleased to appoint Sub-Divisional Magistrate, Hansi as the Administrator of the S.D. Mahila Mahavidyalaya, Hansi (Hisar) under Section 3 of the Haryana Private Educational Institutions (Taking over of Management) Act, 1978 (hereinafter referred as 'the Act of 1978').*

*ANAND MOHAN SHARAN  
Additional Chief Secretary to Govt. of Haryana  
Higher Education Department,  
Chandigarh”*

A perusal of the above order would show that the same has been passed for an indefinite period and thus, the same is in violation of Section 3(1)(c) of the Act of 1978. Moreover, a further perusal of the above order would also show that neither it has been observed that it is expedient in the interest of the college education to take over the management of the college nor a speaking order has been passed nor there is any reason given in the same so as to even remotely indicate that there was due application of mind or that the reply filed by the petitioner dated 24.03.2022 (Annexure P-8) controverting all the allegations made in the show cause notice dated 16.03.2022 (Annexure P-7) was taken into consideration. It is thus apparent that the impugned order is in violation of Section 3(1)(c) of the Act of 1978 and also Rule 3(3) of the 1980 Rules.

7. Relevant portion of Section 3 of the Act of 1978 is reproduced herein below: -

*“3. Power to take over management of [Educational Institutions]-[(1) Whenever the State Government, on receipt of a report from the [University concerned State Board of Technical Education, Haryana, as the case may be, or otherwise) is satisfied that the managing committee or President of an Educational Institution]*

has-

(a) neglected to perform or persistently made default in the performance of duties and functions imposed on it by the State Board of Technical Education, Haryana or by the Universities incorporated under the Haryana State Acts, or the statutes, ordinances or regulations made thereunder; or]

(b) failed to carry out any order passed or directive issued by the State Government or any order passed by the Director Affiliated (Educational under the Haryana Institutions] (Security of Service) Act, 1979); or

(c) exceeded or abused its or his powers;

and that it is expedient in the interest of college education to take over the management of such [Educational Institution), the State Government may, after giving the managing committee or the president of such [Educational Institution], a reasonable opportunity of showing cause against the proposed action, and after considering the reply, if any, made by the managing committee or the president of such (Educational Institution), as the case may be, make an order for taking over the management of such [Educational Institution] by an Administrator, for a period not exceeding three years, as it may deem fit."

A perusal of the above reproduced provision would show that the maximum period for which an Administrator can be appointed is three years and the said Administrator can be appointed only after the competent authority is of the opinion that the ingredients of one of the sub-clause (a), (b) and (c) of Section 3(1) of the Act of 1978 is met and that it is expedient in the interest of the college education to take over the management of the college/educational institution. In the present case, the Administrator has been appointed for an indefinite period and in the impugned order, no reason has been recorded to reflect that there was any application of mind on the aspect of the appointment of the Administrator being expedient in the interest of college education.

8. Co-ordinate Bench of this Court in **Bhagwan Shri Krishan College of Education (For Women), Mandi Dabwali case (supra)** has held as under: -

*“18. The other aspect of the matter is that under the provisions of section 3(i) of the Haryana Private Colleges (Taking over the Management) Act, 1978, it was incumbent on the part of respondent No.1 to have published the period for which the management of the college had been taken over the Government. From the perusal of Annexure P-7 it is observed that the Government has not fixed any period/date for which the management of the college was taken over. The management of the college cannot be taken over by for indefinite period. Consequently, the impugned order cannot be sustained.*

*For the reasons aforesaid, this writ petition is allowed and order Annexure P-7 is quashed. There will, however, be no order as to costs.”*

Even in the above-said case, one of the aspects which were taken into consideration by the Co-ordinate Bench of this Court was that no period was fixed for which the management of the college therein was taken over and it was observed that the management of the college could not be taken over for an indefinite period and accordingly, after taking into consideration the said aspect and also other factors, the impugned order was set aside.

9. Rule 3 of the 1980 Rules which has also been apparently violated in the present case, is reproduced herein below: -

*“3. Procedure to take over management of colleges [Section 3).-*

*(1) The show cause notice contemplated under sub-section (1) of section 3, shall be accompanied by a copy of the report of the University concerned, if any, or if it is based on the satisfaction of the Government, the show cause notice shall specify the definite*

*allegations/charges on which the proposed action is to be taken. The copy of the complaint on which the enquiry is based, shall also be furnished along with the show cause notice.*

*(2) The managing committee or the president of the college concerned shall be given at least a period of 21 days for the purpose of showing cause from the receipt of the show cause notice and for stating in writing whether it/he admits the truth of all or any of the allegations/charges, what explanation of defence, if any, it/he wishes to furnish.*

*(3) After considering the reply to the show cause notice, if any, made by the managing committee/president, as the case may be, if the Government is of the view that the management of such a college be taken over, it shall pass a speaking order for taking over the management of such a college. The order so passed shall be duly served on the managing committee/president of such college.*

*(4) If at any time, before or on the expiry of the period for which the management of the college is taken over, the Government decides to hand over the management along with the college property to the duly constituted managing committee of the college, [a notice to this effect] shall be duly served on the managing committee/president of the college informing it/him of the proposed action.*

A perusal of the said rule would show that it is the mandate of law that in case the Government is of the view that the management of a college needs to be taken over, then, a speaking order is to be passed. Use of the phrase “**speaking order**” has been specifically mentioned in the said rule in order to avoid any arbitrary take over of an Educational Institution. In the present case, to the show cause notice dated 16.03.2022 (Annexure P-7), a detailed reply dated 24.03.2022 (Annexure P-8) had been filed and in the said reply, the allegations made in the show cause notice were sought to be controverted. From a perusal of the impugned order, it cannot even remotely be stated that the said reply has been considered or that the said order is a speaking order.

10. The argument of learned counsel for the respondents to the effect that show cause notice had been issued and a reply had been filed, would also not cure the defect in the impugned order which has been passed in clear violation of Section 3(1) of the Act of 1978 and Rule 3(3) of the 1980 Rules and thus, the impugned order deserves to be set aside.

11. Keeping in view the above-said facts and circumstances, the present writ petition is allowed and the impugned order dated 10.05.2022 (Anenxure P-9) is set aside.

12. It would be open to the respondents to take action against the petitioner, if so required, in accordance with law and after taking into consideration the observations made in the present order.

13. Pending application(s), if any, stand disposed of in view of the above.

**May 22, 2023**  
naresh.k

**( VIKAS BAHL )**  
**JUDGE**

Whether reasoned/speaking?  
Whether reportable?

Yes  
Yes