

21.05.2024
Item No. 36
Crt.No.02
b.r.

WPA 25504 of 2017

Garankati Madhyamik Shiksha Kendra
-vs-
The State of West Bengal & Ors.

Mr. Pankaj Halder
.... For the petitioner.

Mr. Ansar Mandal, Ld. AGP
Mr. Bhaskar Prasad Vaisya, Ld. AGP
Ms. Srilekha Bhattacharyya
Mr. Sagnik Chatterjee
... for the State/ Resp. 1,2,4 and 5.

Md. Sarwar Jahan
Ms. Tapati Sarkar
.... For the respondent no.3.

Pursuant to the leave granted by this Court previously, supplementary affidavit filed by the petitioner, is taken on record. Copy has been served.

Mr. Pankaj Halder, learned counsel, appears for the petitioner.

Mr. Ansar Mondal, learned Additional Government Pleader and Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader, appear for respondent nos. 1, 2, 4 and 5.

Md. Sarwar Jahan, learned counsel, appears for respondent no.3.

This is the fourth round of writ litigation.

The petitioner claims setting up and approval of an alleged **Madhyamik Shiksha Kendra** under the name and style of **Garankati Madhyamik Shiksha Kendra (the M.S.K.)**.

The last writ petition, before this writ petition being **WP No. 11304(W) of 2017** filed by the petitioner, was disposed of by a co-ordinate Bench by its order dated **April 25, 2017, annexure p-9 at page-35** to the writ petition. After the said order being passed and the same being the last one which has been acted upon all the previous orders passed in the previous writ petitions would have no further effect. Under the said order dated April 25, 2017, the respondent no.3 was directed to consider the issue with the following observation made by the co-ordinate Bench :-

“ In this backdrop, in my considered view that since nothing is reflected as has been submitted by Mr. Mukherjee in the impugned order, impugned order cannot be sustained.

Accordingly, impugned order is quashed and set aside. I direct the mission director, respondent no.3 to revisit the issue on the basis of the earlier order dated 22nd September, 2016 within six weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorized

representative and also giving an opportunity of hearing to the other interested government personnel thereby communicate the decision to the petitioner within one week.

Needless to mention that the respondent no.3 at the time of taking decision is at liberty to rely on all the relevant circulars/government orders. It is further directed that at the time of taking decision the respondent no.3 shall consider the G.O. prevailing prior to the 31st March, 2008 to take the decision. The respondent no.3 is at liberty to inspect the petitioner's Sisu Siksha Kendra by any of his subordinate and before holding such inspection of the said Siksha Kendra prior notice shall be given by the respondent no.2 to the concerned Sisu Siksha Kendra".

The said order was acted upon by granting an opportunity of hearing by the respondent no. 3 to the petitioner and other parties directed therein and the issue was ultimately decided by the respondent no.3 by its impugned reasoned order dated **August 24, 2017, annexure p-10 at page-39** to the writ petition.

The petitioner has assailed the said impugned order dated August 24, 2017 passed by the respondent no.3 through this writ petition.

Mr. Pankaj Halder, learned counsel for the petitioner prays for quashing of the said impugned order and mandamus directing the State Authority to allow the M.S.K. to be set up and approved in accordance with law.

Learned counsel for the petitioner has urged two principle points on which he has challenged the said impugned order that without any prior notice being issued upon the petitioner, the enquiry was made in respect of the said M.S.K. and that no enquiry report was furnished before the petitioner prior to the hearing had taken place before the respondent no.3 on **August 24, 2017**. He submits that since no prior notice was served before the M.S.K. the petitioner was not present at the time of inspection and an unilateral inspection was carried out by the authority. He further submits that since the enquiry report was not furnished before the petitioner, it did not have any opportunity to deal with it before the respondent no.3 in course of the hearing held on August 24, 2017.

He further submits that, all the points and issues raised by the petitioner in course of the hearing before the respondent no.3 was not recorded by the respondent no.3 neither decided by it, while passing the impugned reasoned order. He submits

that the previous orders passed in the earlier writ petitions were not considered by the respondent no.3 and in derogation thereof the impugned reasoned order was passed.

Mr. Halder, learned counsel for the petitioner submits that, the said impugned order dated August 24, 2017 should be set aside and necessary direction be issued upon the State Authority for allowing to set up the said M.S.K. and approve the same.

Md. Sarwar Jahan, learned counsel, appearing for the respondent no.3, submits that the petitioner does not have any legal entity or existence to file this writ petition. He submits that unless an M.S.K. is set up and approved in the eye of law, no other entity can claim to be an M.S.K. and file a writ petition. He submits that in the instant case, the prayer of the petitioner itself is for set up and approval of M.S.K., therefore, there being no existence of the petitioner in the eye of law, the writ petition is not maintainable.

Referring to the impugned reasoned order, Md. Jahan submits that the points and the issues raised by the petitioner before this Court in this writ petition to challenge the said impugned order were never raised before the respondent no.3. The impugned reasoned order shows the petitioner has not raised the plea that

without prior notice an enquiry was held in respect of the M.S.K. or that no enquiry report was submitted to the petitioner before participating in the hearing. The petitioner, therefore, has waived his right to canvass those issues before this Court through this writ petition.

Md. Jahan further submits that the said impugned reasoned order is very well versed and reasoned and the same was passed by the respondent no.3 after taking into consideration of the submissions made on behalf of the petitioner and upon consideration of all the relevant materials available before it.

He, therefore, submits that the said impugned reasoned order dated August 24, 2017 should not be interfered with.

Mr. Ansar Mondal, learned State Counsel has adopted the submissions made by Md. Sarwar Jahan, learned counsel for the respondent no.3 in entirety and submits that the impugned reasoned order is otherwise just and proper and should not be interfered with.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court reiterates the principle of law already settled on the field of judicial review.

This Constitutional Court in exercise of its power under judicial review under Article 226 of the Constitution of India, has a limited authority to assess the impugned order. This Constitutional Court does not sit on appeal over the impugned order. This Court shall only interfere with the impugned order if there is a glaring perversity, illegality on the face of it and if there is a fundamental breach of law and natural justice appearing on the face on it.

On a scrutiny of the said impugned order, it appears that the same was passed pursuant to the direction of the co-ordinate Bench dated **April 25, 2017**. All other previous orders passed in the previous writ petition would have no prevailing effect over the said order dated April 25, 2017 since the parties have acted thereupon and the petitioner has participated in the hearing without any objection.

On a careful scrutiny of the impugned order, it appears to this Court that the objections raised by the petitioner before this Court and the plea taken in support thereof, appears to have been not taken by the petitioner before the respondent no.3 in the hearing when the impugned reasoned order was passed. The petitioner ought to have taken the plea before the respondent no.3 or ought to have recorded it by way of an objection in writing that no prior

notice was served upon the petitioner before enquiry of the M.S.K. and no enquiry report was submitted to the petitioner before hearing. Not an iota of submission is available, to have been made on behalf the petitioner, from the said impugned order.

The petitioner allowed the said impugned reasoned order to be passed without raising its objections to the effect as stated above. The conduct of the petitioner shows that the petitioner has waived its objections by not taking the same before the respondent no.3 in the hearing and as such is estopped from arguing the same at this belated stage.

This Constitutional Court while exercising its jurisdiction under Article 226 of the Constitution of India also exercises its equitable jurisdiction. Waiver and estoppel are the rules of equity. The petitioner by waiving its right to raise objection, as discussed above, has waived its right to raise those plea any further.

Even otherwise, the impugned order upon scrutiny is found to be a well reasoned and considered order after considering all the relevant materials before the respondent no.3. Accordingly, the impugned reasoned order is **not interfered with**.

The impugned reasoned order dated **August 24, 2017** passed by the **respondent no.3, annexure p-10 at page-39** to the writ petition **stands affirmed.**

For the foregoing reasons and discussions, this writ petition, **WPA 25504 of 2017** stands **dismissed**, without any order as to costs.

(Aniruddha Roy, J.)