

(2010) 11 AHC CK 0282

Allahabad High Court

Case No: Writ C. No. 65882 of 2010

C/M Al Amin Abdullah Inter
College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 9, 2010

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Shishir Kumar, J.

Heard learned Counsel for petitioners and learned Standing Counsel.

2. Present writ petition has been filed for quashing the order dated 7th September, 2010 by which petitioners' application for bringing institution in question under grant-in-aid has been rejected.

3. Brief facts arising out of writ petition are that petitioner is a registered Society under the provision of Society Registration Act. An educational institution has been started by the Society in the name of Al Amin Abdullah Inter College Hasanpur District J.P. Nagar. Initially aforesaid institution was up to High School and subsequently it has been upgraded up to Intermediate level. Permanent recognition was granted by competent authority by its order dated 6.4.1987. State Government has issued a Government Order on 7.9.2006 for bringing various institution situated in the State of U.P. under grant-in-aid. An advertisement was published in the newspaper on 9.9.2006. A Condition No. 12 was mentioned in the said order that only those institutions who are imparting education from Class VI to Class VIII will only be considered for the purposes of grant-in-aid list. A writ petition was filed before this Court, same was allowed and Special Appeal filed by the State was dismissed then matter went to the Apex Court and SLP by a detailed order was dismissed vide its order dated 2nd December, 2009. In paragraph 23 of the Judgment of the Apex Court, the Apex Court has observed as follows:

As directed by the learned Single Judge of the High Court by his judgment and order dated 4th January, 2007, and upheld by the Division Bench by its judgment and order dated 15th January, 2008, the petitioners are directed to consider the case of the respondents institutions, along with other applicants, for being brought within the ambit of the grant-in-aid Scheme in pursuance of the Government Order dated 7th September, 2006, and while doing so ignore Condition No. 2 (13) of the said Order and Condition No. 12 of the Advertisement dated 9th September, 2006, issued by the Directorate of Basic Education, U.P.

4. In pursuance of dismissal of the SLP, petitioners made an application before the competent authority for bringing such institutions as petitioners have fulfilled complete requirements which is necessary for the purposes of bringing such institution under grant-in-aid in view of Government Order dated 7th September, 2006. The Apex Court has held that Condition No. 12 of the advertisement dated 9th September, 2006 will not be taken into consideration. Now the order impugned has been passed dated 7th September, 2010 dismissing claim of petitioners on irrelevant ground.

5. According to petitioners, permanent recognition was given to the institution in the year 1987 and cut of date mentioned as 30.4.1992 in the Government Order that those institutions who have been given recognition on or before 30th April, 1992 will be considered for the purposes of grant-in-aid. According to petitioners, post was created on 1.5.1987 & 4.7.1987 and approval of appointments was made on 30.6.1987 & 12.8.1988 by the competent authority. Further submission has been made that the order impugned is based on irrelevant consideration due to fact that condition on which claim of petitioners has been rejected has not been mentioned in the Government Order dated 8.9.2006. A new ground has been taken while dismissing claim of petitioners. Petitioners submit that same is not permissible in view of fact that, in case, petitioners would have given an opportunity before passing the order impugned, petitioners would have been in a position to submit documents relating to sanctioned of post and appointment. But admittedly, no notice and opportunity has been given to petitioners. Petitioners submit that a specific averment has been made in paragraph 30 of the writ petition which states that before passing the order, State Government has not been provided any opportunity while rejecting claim of petitioners. In such circumstances, learned Counsel for petitioners submits that the order impugned rejecting claim of petitioners is bad in law and is liable to be quashed.

6. On the other hand, learned Standing Counsel is not in a position to assail the order impugned by which claim of petitioners has been rejected.

7. In such circumstances, I am of opinion that with the consent of parties without inviting counter affidavit, this writ petition is being disposed of at the admission stage. From the record it appears that Condition No. 12 issued in the Government Order dated 7.9.2006 was quashed by this Court and confirmed by the Apex Court

holding therein that Condition No. 12 is arbitrary in nature and discriminatory, therefore, that cannot be a ground for consideration. Admittedly, from the record, it is clear that petitioners' institution has been granted permanent recognition in the year 1987. Therefore, in view of Government Order dated 7th September, 2006, petitioners come under the cut of date which is mentioned in the said order dated 30.4.1992. Further, from the record it also appears that ground taken by respondents regarding rejecting claim of petitioners is not sustainable in the eye of law being fact that the Government Order of 2006, this is not the condition and in case, there was any doubt in the mind of respondent-State, notice and opportunity should have been given to petitioners to submit whether appointment has been made prior to the date mentioned in the impugned order. A specific averment has been made in paragraph 30 of the writ petition, therefore, in such circumstances, I am of opinion that order impugned can easily be quashed on the ground of violation of principle of natural justice and matter can be remanded back to respondent No. 1 to pass appropriate orders strictly in accordance with law after affording opportunity to petitioners.

8. In view of aforesaid fact, writ petition is allowed. The order dated 7.9.2010 is hereby quashed and matter is remanded back to respondent No. 1 to pass appropriate detailed and reasoned order strictly in accordance with law within a period of two months from the date of production of certified copy of this order.

9. No order as to costs.