

(2012) 02 MP CK 0090

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Appeal No. 480 of 2011

State of M.P. and
others

APPELLANT

Vs

Bhaiyalal Lodhi and
others

RESPONDENT

Date of Decision: Feb. 10, 2012

Acts Referred:

- Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 - Section 2(1)

Hon'ble Judges: Sujoy Paul, J; Sheel Nagu, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Justice Sheel Nagu

1. I.A. No. 6065/2011 is an application seeking condonation of delay of 229 days. Though the reasons assigned by the State for condonation of delay are not very convincing but considering the fact that the matter deserves to be heard on merits, this Court in the interest of justice is inclined to condone the delay in preferring this appeal. Accordingly I.A. No. 6065/2011 is allowed and disposed of. Delay in preferring this writ appeal stands condoned.

This writ appeal u/s 2(1) of the Madhya Pradesh Uchcha Nayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, assails the order dated 13/12/2010 passed in W.P. No. 719/2007 (S), whereby while allowing the writ petition the impugned order of closure of Education Guarantee Scheme (EGS) Centers concerning the petitioners/respondents herein was quashed with a direction to take back the petitioners in service with all benefits except arrears of salary.

2. The State and its functionaries have assailed the order of learned Single Judge primarily on two grounds, (1) that the objection of delayed filing of writ petition No. 719/2007 (S) was neither considered nor decided by the writ court and (2) the appointment of the petitioners/ respondents herein as Shiksha Karmi at EGS Centers was itself unlawful as the said Centers were opened in gross violation of Education Guarantee Scheme. The violation pointed out by the State was that the said Centers could not have been opened as they were situated within 1 km. periphery of the existing primary school and the children who were enrolled in this EGS centers were also enrolled in the said primary school.
3. A bare perusal of the order of learned Single Judge elicits non consideration of both the above said objections raised by the State.
4. As regards merits of the case is concerned, the learned Single Judge does not seem to have gone into this aspect at all and has chosen to quash the impugned order of closure of EGS Centers in which petitioners/ respondents herein were appointed solely on the ground of violation of principal of audi alteram partem, after placing reliance on law laid down by the Apex Court in the case of [Shri Shekhar Ghosh Vs. Union of India \(UOI\) and Another](#) .
5. The averments in the writ petition indicate that petitioners did not point out as to when the EGS Centers were closed down. The petitioners merely contended that they have not been allowed to work and fresh Gurujis have been appointed. The petitioners further contended that they have not been adjusted against other EGS Centers which are still working.
6. The writ petition lacks in material particulars as the petitioners have failed to mention as to when the petitioners were not assigned any work as Shiksha Karmi at different EGS Centers to which they were appointed on different dates. The petitioners have also failed to mention that from which date they have not received any salary (honorarium). The date of decision of the Government closing the EGS Centers has also not been mentioned in the writ petition. It appears that the petitioners while filing the petition knew that the order of closure has been passed way back in the year 1999/2000 and since they are filing the writ petition in the year 2007 the obstacle of delay and laches may scuttle their stale claim. This apprehension appears to have impelled the petitioners to suppress the material particulars by filing a vague petition.
7. When the reply of the State was filed disclosing the factum of the date and reasons for closure of the EGS Centers the rejoinder that was filed in response, further lacked in material particulars as it contained mere bald denial of the objection taken by the State.
8. It is pertinent to mention here that the writ court has quashed the impugned order of closure of EGS Centers of the petitioners, whereas perusal of the relief clause in the writ petition reflects that no particular order was under challenge. The counsel for the

petitioners/ respondents herein has also not brought to our notice that any subsequent amendment was carried out in the writ petition to incorporate the challenge to any particular order of closure of EGS Centers. On the other hand the scrutiny of the return

filed by respondent No. 5 (District Project Coordinator) in the writ petition makes it clear that Annexure P/3 which is a letter dated 17/08/1999 and is treated by the State to be the order of closure does not contain any decision of closure. The said letter dated 17/08/1999 reflects that the District Collector, Datia, has been informed by the report submitted by the Committee headed by the Sub Divisional Officer that certain EGS Centers are being run in violation of guidelines laid down by the Education Guarantee Scheme, and the Collector has by this letter dated 17/08/1999 sought information in regard to the said violation from the Chief Executive Officer, Janpad Panchayat, Datia. Whether any specific order of closure was passed subsequently or not is not reflected from the record and the counsel for the State is also not in a position to make any statement in that regard.

9. Be that as it may, after hearing arguments of learned counsel for rival parties, this Court is of the considered view that besides the petition being wanting in material particulars, the State has also failed to bring on record the order of closure of EGS Centers. On the other hand the learned Single Judge has in fact quashed the impugned order of closure of EGS Centers on the assumption that letter dated 17/08/1999 (Annexure /3) is an order of closure of EGS Centers. The important aspect of delay which though was suppressed by the petitioners in their writ petition has also not been considered by the learned Single Judge, even when the same was raised by the State in it's return.

10. It may not be out of place to revert to the letter dated 17/08/1999 to highlight an important aspect of the same which bears relevance to the issue involved herein. The letter dated 17/08/1999 in the Pratilpee Section at item No. 3 indicates that the Sankul Coordinator had been directed to register the name of those students in the primary school situated within the periphery of 1 km, who had been earlier enrolled at the EGS Centers which were opened in violation of the policy. This direction by the District Project Coordinator contained in the letter of the Collector dated 17/08/1999 indicates to a certain extent that the process of closure by shifting of children from wrongly opened EGS Centers to the primary school was directed to be given effect to.

11. The obvious consequential action pursuant to letter dated 17/08/1999 must have been the stoppage of salary of the petitioners/ respondents who had been appointed as Gurujis/ Shiksha Karmis in the said wrongfully opened EGS Centers. Thus the cause of action which was occasioned by the said decision to shift the children from EGS Centers primary school must have been available to the petitioners in the year 1999/2000 and therefore, it was the bounden duty of the petitioners to explain the delay of 7 years for not raising the said cause of action which was ultimately raised in the year 2007 by filing Consequently, in the conspectus of facts and failure of the petitioners/ respondents herein

to provide material particular and to explain the delay and latches in preferring the writ petition, this court is of the considered view that the writ petition ought to have been rejected at the very outset or at least when the return was filed disclosing the said factum of delay and reason for closure of EGS Centers. Moreover, the order of closure not having been challenged by writ petitioners initially in the writ petition or by any subsequent amendment, could not have been quashed by the writ court.

13. Before parting, it is relevant to mention here that the reliance placed by learned Single Judge on the decision of the Apex Court in the case of [Shri Shekhar Ghosh Vs. Union of India \(UOI\) and Another](#), is misplaced as the said decision lays down the law based upon the peculiar factual matrix which is distinguishable. The learned Single Judge has relied upon the said verdict of the Apex Court in support of the proposition that mistake by an administrative authorities can very well be rectified after following the principle of natural justice by affording prior opportunity to the beneficiary of the mistake. A perusal of the factual matrix attending the case before the Apex Court indicates that the factum of the mistaken promotion of the employee therein was detected after 7 to 8 years and also that the said decision by the Apex Court was rendered with the consent of the opposite counsel who admitted that the employee concerned was entitled to a hearing. Thus the ratio laid down by the Apex Court in the said case is of no application herein.

14. Moreover, the decision of the Apex Court in the case of Shekhar Ghosh (supra) is of no avail to the petitioners as the petitioners have failed to demonstrate that even if an opportunity was granted to them prior to closure of unlawful EGS Centers, it would have made a difference in the ultimate conclusion of closure. The factum of decision of closure of wrongly opened EGS Centers was taken by the State on reasonable ground of violation of the scheme which is an undisputed fact herein. Thus, the application of principle of natural justice in such a situation would have been an exercise in futility and therefore, on the principle of "useless formality theory", the principle of audi alteram partem stands excluded.

15. Accordingly, writ appeal stands allowed and the impugned order dated 13/12/2010 is set-aside.

Certified copy as per rules.