



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

Bench
[3446]
Sr. No:-SL-1

WRIT APPEAL NO: 829 of 2023

Sri Trikoteswara Swamy Educational Society and
Others

...Appellant(s)

Vs.

The State Of Andhra Pradesh and Others

...Respondent(s)

D Krishna Murthy, Advocate for Petitioners.

GP for Higher Education, Advocate for Respondents.

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE R RAGHUNANDAN RAO**

DATE : 3rd May, 2024.

PER DHIRAJ SINGH THAKUR, CJ:

The present writ appeal under clause 15 of the Letters Patent has been preferred against the judgment and order dated 03.04.2023 passed in W.P.No.29072 of 2017.

Brief facts of the case:

2. The petitioners/appellants herein filed W.P.No.29072 of 2017 challenging the Government Order bearing number G.O.Ms.No.17 Higher Education (CE) Department dated 30.03.2017, whereby the assets and management of Sri Trikoteswara Swamy Educational Society were ordered

to be taken over by the Government. The G.O. was challenged inter alia on the ground of violation of principles of natural justice as also the procedure prescribed under Section 60 of the Andhra Pradesh Education Act, 1982 (hereinafter referred to as "Act of 1982").

3. Sri Triketeswara Swamy Educational Society/appellant No.1 herein is a society registered under Societies Registration Act, 1860. The said society started a degree college known as Nandamuri Basavatarakam and Nallapati Venkateswarulu Choudary Degree College, Narasarpeta/appellant No.2 herein, with effect from December, 1984. According to the petitioners, the college was being run very well to the satisfaction of the students studying therein. The petitioners alleged that the Speaker of the Andhra Pradesh Legislative Assembly started interfering with the management of the college and succeeded in dividing the managing body into two groups. Several cases were filed against the management of the college, which finally ended in favour of the management of the college. Several enquiries were set up which also ended in favour of the management of the college.

4. The claims made in the writ petition with regard to the successful running of the college by the management of the petitioner, however, do not find support from the writ court inasmuch as a Division Bench of the

erstwhile High Court of Andhra Pradesh, vide its order dated 12.12.1996 passed in W.A.No.1112 of 1996, directed that the charge of Secretary and Correspondentship of the college, run by the society, be handed over to the District Collector, Guntur District. The genesis of the aforesaid order lay in the allegations of omission, commission and mismanagement levelled against the management of the college in question. The order passed by the Division Bench was challenged before the Apex Court but was confirmed by virtue of the judgment and order dated 05.05.2007, passed in Civil Appeal No.1431 of 1997. The Collector, Guntur, appears to have run the affairs of the college from 1996 to 2004.

5. From 2005 onwards, the college came under the Secretary and Correspondentship of Mr. N. Ramachandra Prasad, during whose time it was alleged that the functioning of the college deteriorated to the extent that the Nagarjuna University, to which the petitioner college was affiliated, disaffiliated it after an inquiry. On a surprise visit and inquiry into the allegations made by the public regarding mismanagement and misuse of assets, the Regional Joint Director, Guntur, submitted a report stating that there were only eleven unaided teaching staff and two aided teaching staff in the college and there were no admissions during the academic year 2014-15.

6. The Government then ordered the appointment of a three-member committee through its order dated 09.10.2014 for the submission of a detailed report on the functioning of the college, which report was furnished to the Commissioner of Collegiate Education. The committee recommended the takeover of the college by the management.

7. A show cause notice dated 01.09.2015 was then issued to the petitioner college, represented by its Secretary, N. Ramachandra Prasad, as to why action be not taken as per the recommendations of the committee under Section 60 of the Act of 1982. An explanation was tendered vide letter dated 14.12.2015, in which a stand was taken that at the time when the management was handed over to the Special Officer i.e., the District Collector, Guntur, in the year 1996, there were 1300 students and when handed back in 2005, the strength had fallen to 860 and that the decrease of the students' strength was because of the management of the Special Officer. Further, the Director of Collegiate Education had deployed the aided teaching and non-teaching staff except the Principal, one attender and one watchman, subject to the condition that as and when the college received proper strength, the staff would be repatriated. The petitioner college rendered a detailed explanation running over ten pages.

8. Subsequently, another show cause notice dated 11.02.2016 was issued by the Joint Secretary to Government, Higher Education Department, directing the petitioner to furnish a final explanation of the management, failing which the petitioner was informed that action would be initiated on the material available as per the records. To this show cause notice also an explanation was rendered by the petitioner college on 19.03.2016.

9. Pursuant to the above show cause notices, the Government issued G.O.Rt.No.214 Higher Education (CE) Department dated 23.09.2016, holding as under:

“6. It is observed that the Secretary & Correspondent of NBT&NVC College, Narasaraopet, Guntur district has not put forth any material record in his defence except blaming his political rivals, which is unbecoming. In addition he himself agreed that during the tenure of the District Collector, as incharge, MPLADS and UGC funds were utilized for the construction of buildings of the college. He has further requested a chance to bring back to the college its old name and fame.

7. After careful examination of the entire matter, the Government hereby order that the management of the NBT&NVC College be taken over along with infrastructure, records, computers, buildings etc. with immediate effect, in terms of A.P. Education Act, 1982.

8. The Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad shall take further action accordingly.”

10. The aforesaid Government Order dated 23.09.2016 was challenged in W.P.No.32811 of 2016, the operation whereof was stayed initially by an interim order dated 26.09.2016 and subsequently, by order dated 04.01.2017 the writ petition was disposed of for enabling the Government to withdraw the said Government Order and pass appropriate orders. Needless to say that the Government perhaps realized that the Government Order in the ultimate analysis would not be sustainable in law and sought to withdraw the Government Order. Finally, the G.O.Ms.No.217 Higher Education (CE) Department, dated 30.03.2017 was issued.

11. On a perusal of the G.O.Ms.No.217 dated 30.03.2017, it can be seen that the explanation rendered by the petitioners “was not found convincing and satisfactory” and considering the material on record, the Government proceeded to order that the management and assets of the college be taken over in public interest. For facility of reference, paragraphs 16, 20 and 21 of the G.O.Ms.No.217 are reproduced hereunder:

“16. The Secretary and Correspondent of the college has been given ample time and opportunity for offering his explanation. He has been given every document as requested by him to place his defence. He was allowed sufficient time since 20-07-2015. However, the explanation submitted by him through fourth and

sixth read above is not convincing and therefore found not satisfactory.

...

...

20. Accordingly, in cancellation of the orders issued in the seventh read above, the Government hereby order to take over the Management and the assets of NBT and NVC College, Narasaraopet, Guntur district, by the Government in Public Interest.

21. The Commissioner of Collegiate Education, Andhra Pradesh, Vijayawada, shall take further action in the matter.”

12. The G.O.Ms.No.17, dated 30.03.2017, thus came to be challenged before the learned single Judge, principally on two grounds. Firstly, that the explanation tendered by the petitioner had not been considered in the proper perspective and that the same was disregarded summarily by saying that the explanation was not convincing and satisfactory without assigning any reason whatsoever. Secondly, that the order impugned ordering the takeover of the management and the assets of the college by the Government in public interest was contrary to Section 60(1) of the Act of 1982 which envisages as under:

“60.Taking over of management of educational institutions in public interest –

(1) Where the Government are of opinion that the management of any educational institution should either in the public interest or in order to secure the proper management of the said

educational institution be taken over, they may, after giving one month's notice to the management of such educational institution to make any representation, direct by notification, that the management of the said educational institution shall with effect on and from the date specified therein vest in the Government until the said educational institution is acquired:

Provided that no private institution under the management of a religious institution, endowment or a wakf shall be taken over without the prior consent of such management."

13. Notification has been defined under Section 2(31) of the Act of 1982 as follows:

"(31)"Notification" means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;"

Apart from this, the Government, in exercise of its powers conferred under Sections 60 to 69 read with Section 99 of the Act of 1982 has framed the A.P. Educational Institutions (Taking Over Management, Requisitioning and Acquisition) Rules, 1983, (hereinafter referred to as "Rules of 1983") which was published in the A.P. Gazette on 25.08.1983.

14. According to Rule 3(1), a notice for taking over the management of any educational institution under Sub-Section 1 of Section 60 has to be

given to the manager of the institution or the educational agency, if any, in Form-1.

15. Rule 3(3) of the Rules of 1983 further envisage that where the Government is of the opinion that the management of the educational institution shall be taken over either in public interest or to secure proper management, they may by notification in Form-II, direct that on and from the date specified therein, the management of the institution shall vest in the Government.

16. Not only this, sub-rule (4) of Rule 3 further envisages that the notification under sub-rule (3) of Rule 3 shall also specify the Special Officer for the purpose of carrying on the management of the institution and to whom the possession of the educational institution and properties attached thereto, shall be delivered. A copy of the notification is then to be delivered in person or sent by registered post as also to be affixed on the notice board or at a conspicuous place within the institution, as per Rule 3(5) of the Rules of 1983. For facility of reference, Rule 3 is reproduced hereunder:

“3. Taking over of Management of Education Institutions:-

(1) A notice for taking over management of any educational Institution under sub-section (1) of Section 60, shall be given to the manager of the institution or the educational agency, if any, in Form 1.

(2) The representation, if any received from the manager or the educational agency in response to the notice, shall be considered by the Government and if they are satisfied that there is no necessity to take over the management of the educational institution, the Government may drop further proceedings in this regard.

(3) Where the Government are of the opinion that the management of the educational institution should be taken over either in the public interest or in order to secure the proper management, they may by notification in Form 11, direct that on and from the date specified therein the management of the institution shall vest in the Government.

(4) The notification under sub-rule (3) of this rule shall also specify the Special Officer for the purpose of carrying on the management of the institution and to whom the possession of educational institution and the properties attached thereto, shall be delivered.

(5) A copy of the notification shall be delivered in person or sent by registered post addressed to the manager of the educational agency, and shall also be affixed on the notice board or at a conspicuous place within the institution.”

17. Apart from the above, Rule 4 of the Rules of 1983 further envisaged that immediately after service of the notification, the manager of the

educational agency shall prepare a detailed inventory in duplicate of all property, movable and immovable which shall be attested by the Manager of the educational agency and a copy has to be delivered to the Special Officer, the manager of the educational agency is to be held personally responsible for the correctness of the inventory so made.

18. Rule 6 of the Rules of 1983 envisages payment of compensation after the issuance of notification under Section 60(1).

19. In the backdrop of the aforementioned provisions of the Act and the Rules, the case of the petitioners is that apart from the violation of principles of natural justice, provisions of Section 60(1) of the Act of 1982 as also the Rules framed thereon had been violated inasmuch as no notification under Section 60(1) was published in Form-II which required a specified date with effect wherefrom the properties of the institution were to vest in the Government till the acquisition of the said institution. The said Form-II also envisages the appointment of a Special Officer for purposes of carrying on the management of the institution on behalf of the Government.

20. It may be worthwhile to reproduce herein the requirement of Form-II which is required to be notified for purposes of fulfilling the requirement of Section 60 of the Act of 1982 and the Rules framed thereunder:

SCHEDULE
(Reasons for taking over the management)
FORM II
[See Rule 3 (3)]
(Notification under sub-section (1) of Section 60)

Whereas, The Government are of the opinion that in public interest and in order - to secure the proper management of.....in..... village.....taluk.....District the management of the said institution shall be taken over;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 60 of the Andhra Pradesh Education Act, 1982 the Government of Andhra Pradesh hereby notifies that the management of the said institution and all the properties attached thereto shall vest in the Government on and from.....(date) until the said institution is acquired.

Under sub-section (6) of Section 60 of the said Act the Governor of Andhra Pradesh hereby appoints.....as Special Officer for the purpose of carrying on the management of the said institution for and on behalf of the Government.

Hyderabad.
Date.

Secretary to Government.

21. Admittedly, there has been no notification published in the Government Gazette in terms of Section 60 of the Act. Not only this, the impugned order does not appoint a Special Officer for purposes of carrying on the management of the said institution, as is otherwise the requirement of the Act and Rules. All that the impugned order states is that “the Government hereby order to take over the management and the assets of

NB and NVC Degree College, Narsaropet, Guntur District in public interest". The compliance of Section 60 to the extent of notification in the Government Gazette and the appointment of a Special Officer was a prerequisite for giving effect to the provisions of Section 60 for taking over the management of an educational institution.

22. In the present case, however, it can be seen that it was the Commissioner of Collegiate Education of Andhra Pradesh that had appointed the District Collector, Guntur, as the Special Officer for purposes of management of the institution, which, in our opinion, is impermissible as the Special Officer had to be appointed by the Government through a notification published in the Gazette.

23. Apart from this, the order impugned to us clearly is a non-speaking order, no reasons at all had been given as to why the explanation rendered, which runs over ten pages in the explanation dated 14.12.2015 and over two to three pages in the explanation dated 19.03.2016, is not found satisfactory.

24. It is settled law that a judicial, quasi-judicial, or executive authority, while passing an order that has the effect of visiting a person with civil consequences, must record reasons in support of its conclusions, as

recording reasons operates as a restraint on the arbitrary exercise of power, be it judicial, quasi-judicial, or administrative. Absence of reasons could reflect arbitrariness, whereas recording reasons would reflect whether the concerned authority had applied itself in the correct perspective, in accordance with law, and therefore facilitate the process of judicial review by superior Courts.

25. In **Mahabir Prasad Santosh Kumar vs. State of U.P.**¹, the Supreme Court was dealing with the cancellation of licenses of wholesale distributors of sugar. It was held:

“5. The case discloses a disturbing state of affairs. The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the licences was quasi-judicial: it could be made only on a consideration of the charges and the explanation given by the appellants. That necessarily implied that the District Magistrate had to give some reasons why he held the charges proved, and the explanation unacceptable....”

26. The Supreme Court in **Kranti Associates Private Limited vs. Masood Ahmed Khan**² held that recording of reasons emanates from the broad doctrine of fairness and decision making and that the said

¹ (1970) 1 SCC 764

² (2010) 9 SCC 496

requirement was virtually a component of human rights and was considered a part of Strasbourg jurisprudence.

27. In the present case, while the explanation rendered by the appellants was held to be not satisfactory, no reasons are given as to why it is held to be unacceptable or non-satisfactory. What is recorded in the order impugned with regard to the explanation tendered is only a conclusion and does not reflect the reasons.

28. The learned single Judge, by virtue of judgment and order impugned, dismissed the writ petition on the ground that the public interest demanded that the college management and assets be taken over by the Government and that the allegation that the impugned order was not properly served on the petitioner could not be countenanced, as no prejudice was caused to the petitioner in not properly serving the impugned order and that the same was not in breach of the provisions of Section 60 of the Act of 1982.

29. In our opinion, the judgment and order impugned dated 03.04.2023 is unsustainable in law inasmuch as the learned single Judge had not considered in the correct perspective the G.O.Ms.No.17 dated 30.03.2017,

on the touchstone of either the requirement of Section 60(1) of the Act of 1982 and the Rules framed thereunder, or from the perspective of the requirement to pass a reasoned order in regard to the explanation tendered by the appellant college. For that reason, the impugned judgment and order is set aside along with the G.O. impugned in W.P.No.29072 of 2017 and the writ appeal is allowed without costs.

30. The necessary consequence of setting aside the order impugned dated 30.03.2017 would in the ordinary circumstances result in handing over of the management of the institute back to the petitioner, however, we are informed that, after the Government has taken over the college, currently certain courses are being run for the benefit of the students on the college premises. Any order passed by us directing the handing over of the premises to the petitioner would therefore severely prejudice the running of the said courses.

31. We, therefore, direct the official respondents to consider the explanation rendered by the appellants and pass a speaking order thereupon. In case the explanation is acceptable, the necessary consequences would follow, and in case the same is not acceptable, the notification as required to be published in accordance with Form-II of the Rules, be published in the Andhra Pradesh Government Gazette by specifically mentioning the date with effect from and by specifying the

Special Officer for the purpose of carrying on the management of the institution. A copy of the said notification would also be served upon the appellants. The needful shall be done within a period of three months.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

R. RAGHUNANDAN RAO, J.

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