

Court No. - 10

Case :- WRIT - C No. - 25856 of 2023

Petitioner :- C/M Lala Babu Baijal Memorial Inter College And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Gautam Baghel, Babboo Ram

Counsel for Respondent :- C.S.C., Navin Kumar Srivastava, Ritesh Upadhyay, Sukrampal

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Gautam Baghel, learned counsel for the petitioners, Shri Jitendra Singh, learned Additional Chief Standing Counsel for respondent nos.1, 2 and 3, Shri Ritesh Upadhyay, learned counsel for respondent no.4 and perused the record.

THE CHALLENGE

2. This writ petition has been filed challenging a notice dated 31.07.2023, whereby the District Inspector of Schools, Hapur has called upon the petitioners' Management to produce evidence in relation to seven points.

PREVIOUS ORDER IN THIS PETITION

3. This Court, raising *prima facie* doubts upon maintainability of the writ petition in view of objections raised by Shri Ritesh Upadhyay based upon notifications dated 07.05.1975 and 06.06.2023 (wrongly typed as 09.06.2023 in the order) passed following order on 22.11.2023:-

"1. This petition has been filed challenging notice dated 31.7.2023, whereby the District Inspector of Schools, Hapur has called upon the petitioners' Management to produce evidence in relation to seven points.

2. Sri Gautam Baghel, learned counsel for the petitioners submits that the show-cause notice is without jurisdiction and it has been issued in purported exercise of powers under The

Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974, whereas the power to undertake such an exercise is vested in Director of Education alone.

3. Sri Ritesh Upadhyay, learned counsel for the contesting respondent has, however, placed before this Court the notifications dated 7.5.1975 and 9.6.2023 and he submits that by virtue of these notifications, the power to issue such notice has been conferred and delegated upon the District Inspector of Schools also and, therefore, the petition has no merit and same be dismissed.

4. At this stage, learned counsel for the petitioner seeks time to go through the said notifications.

5. Sri Ritesh Upadhyay is directed to serve a copy of aforesaid notifications upon Sri Gautam Baghel, learned counsel for the petitioner during course of the day.

6. Put up this case on 8.12.2023 as fresh so as to enable the learned counsel for the petitioners to satisfy the Court on maintainability of the writ petition against a show-cause notice. "

THE NOTIFICATION OF DELEGATION OF POWER

4. The notification dated 07.05.1975, being germane to the controversy involved, is reproduced as below:-

“शिक्षा निदेशालय (माध्यमिक) उत्तर प्रदेश

आदेश संख्या शि० मु०/ 4200-466, लखनऊ: दिनांक: 7 मई, 1975

अधिसूचना

उत्तर प्रदेश शैक्षिक संस्थायें (अस्तियों के अपव्यय का निवारण) अधिनियम 1974 (उत्तर प्रदेश अधिनियम संख्या 3. 1975) की धारा 2(क) के उपबन्धों के अनुसार शिक्षा निदेशक (माध्यमिक शिक्षा) निम्नलिखित अधिकारियों को उनके सम्मुख अंकित कृत्यों को सम्पादित करने के लिए प्राधिकृत करते हैं:-

(क) मण्डलीय उप शिक्षा निदेशक- अपने मण्डल के समस्त बालक शिक्षा संस्थाओं द्वारा अधिनियम की धारा 4(4) तथा 5(1) के अधीन प्रस्तुत प्रत्यावेदन। आवेदन प्राप्त करना तथा उन पर आदेश देना।

(ख) मण्डलीय बालिका विद्यालय निरीक्षिका- अपने मण्डल के समस्त बालिक शिक्षा संस्थाओं से समस्त अस्तियों को विवरण प्राप्त करना तथा अधिनियम की धारा 4(4) तथा 5(1) के अधीन के उनके द्वारा प्रस्तुत प्रत्यावेदन/ आवेदनों को प्राप्त करना और उन पर आदेश देना।

(ग) जिला विद्यालय निरीक्षक- अपने जनपद की समस्त बालकों की शिक्षा संस्थाओं से अस्तियों का विवरण प्राप्त करना।

ह० श्याम नारायण मेहरोत्रा
शिक्षा निदेशक (माध्यमिक शिक्षा)
उत्तर प्रदेश।"

SUBMISSION OF PETITIONERS

5. The submission of Shri Gautam Baghel is that the said notification deals with the delegation made under Section 2(a) of the Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 (hereinafter referred to as 'the Act, 1974'), and he submits that all the powers under the Act have not been delegated upon anyone but delegation of power upon the Regional Deputy Director of Education is restricted only to power under Section 4(4) and 5(1) of the Act, 1974 and insofar as the District Inspector of Schools is concerned, the delegation is only to the extent of obtaining instructions from all Institutions in the district in relation to "DETAILS OF ASSETS". Shri Baghel has referred to Section 8 of the Act, 1974 and submits that "ASSETS" have been described in a table contained at the end of the said provision which reads as follows:-

"संस्था के समस्त आस्तियों (Assets) का विवरण

					<u>प्रपत्र (क)</u>		
संस्था का नाम... .. .					जिला... .. .		
क्र०सं०	भूमि का प्रकार	बड़े कक्षों की संख्या	छोटे कक्षों की संख्या 400 वर्ग फीट से कम के क्षेत्रफल वाले	योग	स्तम्भ 5 में दिखाये गये कमरों का प्रकार		
					लिटल छत वाले कमरों की संख्या	टिन की छत वाले कमरों की संख्या	छप्पर/ छपरैल की छत वाले कमरों की संख्या

1	2	3	4	5	6	7	8
1. विद्यालय का मुख्य भवन							
2. छात्रावास							
3. आवासीय भवन							
4. दुकानें							
5. अन्य (पशुओं का शेड, ट्यूबवेल तथा सम्बद्ध कक्ष पुर्नव्यवस्था योजना कक्ष आदि)							
भवन किराये का है अथवा निजी		भवन का वर्तमान अनुमानित मूल्य		वार्षिक आय यदि कोई हो		विशेष विवरण	
9		10		11		12	

प्रबन्धक के हस्ताक्षर

नोट- भवन का मानचित्र संलग्न किया जाये जिसमें कमरों व बरामदों की नाप व किस प्रयोग में आ रहा है, अंकित किया जाये।

प्रधानाचार्य के हस्ताक्षर

प्रपत्र (ख)

क्र०सं०	भूमि का प्रकार	प्लॉट नं०	क्षेत्रफल (एकड़)	भूमि वर्तमान अनुमानित	भूमि किस प्रकार की है		भूमि किस प्रयोग	
					कृषि	कृषि के लिए	कृषि	बटाई
1	2	3	4	5	6	7	8	9
1. सन्दान की भूमि								
2. कृषि वर्ग की भूमि								
3. पुर्नव्यवस्था योजना की भूमि								
4. अन्य भूमि								
(क) विद्यालय भवन से संलग्न								
(ख) बागवानी								
(ग) खेल का मैदान								
(घ) अन्य								
में आ रही		भूमि विद्यालय के नाम दाखिल खारिज हो गई है अथवा नहीं			भूमि पर कक्षों का विवरण		विशेष विवरण	
किराये पर	बिना प्रयोग की				संख्या	लागत		
10	11	12			13	14	15	

हस्ताक्षर प्रबन्धक

नोट- (1) भूमि का एक मानचित्र जिसमें चोहद्दी व प्लॉट नम्बर का क्षेत्रफल दिखाया गया हो, संलग्न किया जाये।

(2) खसरा व खतौनी की प्रमाणित प्रतिलिपि भी संलग्न की जाये।

हस्ताक्षर प्रधानाचार्य"

6. It is, therefore, contended by Shri Baghel that, even if, the District Inspector of Schools proceeds to call upon any Institution to furnish information, such information cannot go beyond those aspects which are enumerated in the table, whereas, in the present case, by the impugned notice, the petitioner-Institution has been called upon to furnish details with respect to the entire immovable properties as well as amount of compensation received by the Institution arising out of land acquisition proceedings, its utilization as well as deposit in the concerned bank accounts etc. etc.

GOVERNMENT ORDER DATED 06.06.2023

7. Insofar as the second Government Order dated 06.06.2023 relied upon by Shri Upadhyay is concerned, it is contended by Shri Baghel that the role of District Inspector of Schools has been defined as one of the members of a six-member Committee described in Clause 3(8) of the said Government Order which should be read alongwith other sub-clauses and is meant only for holding proceedings in relation to utilization of income received by the Institution and, therefore, even if, the said Clause is read, the action can be taken strictly in accordance with law, by a six-members Committee and not by the District Inspector of Schools alone. Shri Baghel has also referred to 'Annexure 10' to the writ petition which is a copy of the order dated 10.04.2023 passed by this Court in Writ C No.3867 of 2023 (C/M Rashtriya Kanya Inter College And Another v. State of U.P. And 4 Others) and submits that the said writ petition had arisen out of a notice dated 31.12.2022 issued by the Joint Director of Education, Moradabad Region, Moradabad and the Director of Education (Secondary), on his personal appearance, filed his affidavit before this Court stating that the impugned notice dated 31.12.2022 had been issued by the Joint Director in excess of the jurisdiction conferred by law. The submission is that taking note of the

admission made by the Director, this Court quashed the impugned notice and allowed the writ petition giving liberty to the Director of Education to proceed in accordance with law.

8. He has also placed reliance upon a decision of Apex Court in the case of Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala And Others, (2002) 1 SCC 633 and submits that the normal rule of construction is that when a Statute vests certain power in an authority to be exercised in a particular manner, the said power has to be exercised only in the manner provided in the Statute itself. It is further argued that the Apex Court in M/s Cannon India Private Limited v. Commissioner of Customs, 2021 AIR (SC) 1699 has held that if notice is issued by the Officer who does not have any authority of law, the same is liable to be set aside.

SUBMISSION OF THE STATE

9. Shri Jitendra Singh, learned Additional Chief Standing Counsel, on the other hand, submits that the writ petition against a notice calling upon certain information and documents from the Management of a recognized Institution is not maintainable and infact the petitioner is avoiding to furnish the information sought for whereas under the Scheme of the Act, 1974, such information must come before the Authorities and, hence, no interference is warranted.

SUBMISSION OF THE CONTESTING PRIVATE RESPONDENT

10. Shri Ritesh Upadhyay, learned counsel for respondent no.4, submits that Section 2(d) of the Act, 1974 defines the “PROPERTY” in the following words:-

"2.(d)- 'property', in relation to an institution, includes all immovable properties belonging to or endowed wholly or purely for the benefit of the institution, including

lands, buildings and all other rights and interests arising out of such property as may be in the ownership, possession, power or control of the Management."

11. The submission is that not only the immovable properties but also all other rights and interests arising out of such property are included in the description of "property". He further submits that the "District Inspector of Schools" is also included in the definition of Director as per Section 2(a) of the Act, 1974 and, therefore, notice issued by District Inspector of Schools is well within his competence.

DISCUSSION OF RIVAL CONTENTIONS

12. Having heard learned counsel for the parties, the Court finds that certainly the Regional Deputy Director of Education can exercise the delegated powers under Sections 4(4) and 5(1) of the Act, 1974, however, in the present case, there is no dispute with respect to any power allegedly exercised by the Regional Deputy Director of Education. The issue involved here is as to whether, either under Clause (ग) of the notification dated 07.05.1975, or under any power conferred under the Government Order dated 06.06.2023 or under any provision of the Act, 1974, the District Inspector of Schools is competent to issue notice which has been impugned in the present writ petition.

13. The interpretation of the word "ASSETS", as made by Shri Baghel referable to the Table described at the end of Section 8 of the Act, 1974 persuades this Court to minutely examine the said table. The Court finds that, apart from the main building of the institution, hostel, residential building, shops etc. described in Format 'क', there are different clauses in the table in relation to the aspects as to whether property is rented or any private property, the current value of the building, annual income, if any and "special details" (विशेष विवरण). There is another Format (ख) just below it which also describes different nature and categories of land

including agricultural land and other land and also other details including "special details" (विशेष विवरण).

OBJECT OF THE ACT, 1974

14. Before arriving at a conclusion, it is necessary to refer to the OBJECT with which the Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 was promulgated by the Legislature. The Act begins with the object "An Act to provide for measures to prevent the dissipation of assets of Educational Institutions."

JUDICIAL PRONOUNCEMENTS ON PURPOSE INTERPRETATION

15. Jurisprudence of statutory interpretation has moved from literal interpretation to purposive interpretation, which advances the purpose and object of a legislation. The Supreme Court in catena of judgments has dealt with the issue of literal interpretation vis-a-vis purposive interpretation. The Apex Court, in Central India Spinning and Weaving Manufacturing Comp. versus Municipal Committee, Wardha, AIR 1958 SC 341 has held that it is a recognised principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act.

16. The Supreme Court, in Girdhari Lal & Sons versus Balbir Nath Mathur); 1986(2) SCC 237, has held that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain

words should be interpreted according to their plain meaning. There need no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary. It ent to observe that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices, or absurdities, vide K.P. Varghese v. ITO, (1981) 4 SCC 173, State Bank of Travancore v. Mohd. M. Khan, (1981) 4 SCC 82, Som Prakash Rekhi v. Union of India (1981) 1 SCC 449, Ravula Subba Rao v. CIT, AIR 1956 SC 604, Govindlal V Agricultural Produce Market Committee, (1975) 2 SCC 482 and Babaji Kondaji v. Nasik Merchants Co-op Bank Ltd. (1984) 2 SCC 50.

17. The Supreme Court, in Utkal Contractors & Joinery Pvt. Ltd. versus State of Orissa; 1987 (3) SCC 279 has observed that a statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the Preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be

construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. [See-Eera (through Dr. Manjula Krippendorf) v. State (NCT of Delhi) and Anr 2017(15) SCC 133].

18. The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature, the duty of the court is to see that the intention of the legislature is not frustrated. If there is any doubt or ambiguity in the statutes, the rule of purposive construction should be taken recourse to, to achieve the objectives. (See Swedish Match AB & Anr. Securities & Exchange Board, India & Anr., (2004) 11 SCC 641.

19. The Apex Court, in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors. (1987) 1 SCC 424, held that Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the

Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

20. Same view has been reiterated in S. Gopal Reddy Vs. State of Andhra Pradesh, (1996) 4 SCC 596, Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat, (2005) 2 SCC 409, Anwar Hasan Khan Vs. Mohd. Shafi & Ors. (2001) 8 SCC 540, Union of India & Ors. Vs. Filip Tiago De Gama of Vedem Vasco De Gama, (1990) 1 SCC 277, Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424: (AIR 1987 SC 1023) and N. K. Jain v. C. K. Shah (1991) 2 SCC 495: (AIR 1991 SC1289)

FINDINGS AND CONCLUSION

21. Following the cardinal rule of PURPOSIVE INTERPRETATION, as emphasized by the Supreme Court in the above-cited authorities, in the considered opinion of this Court, the word "ASSETS" mentioned in the table contained in section 8 of the Act, 1974, cannot be read in isolation, rather, it being part of the Statute, the definition of "PROPERTY" contained in Section 2(d) of the Act, 1974 has to be read simultaneously. The impugned notice seeks information with respect to the entire immovable properties of the Institution as per Point No.1 and remaining point Nos. 2 to 7 are in relation to the compensation received by the Institution arising out of land acquisition operations and its deposit as well as utilization etc. and, in the considered opinion of the Court, compensation received by the petitioner institution out of land acquisition proceedings is certainly covered into "RIGHTS AND INTERESTS ARISING OUT OF SUCH PROPERTY" and, hence, the amount of compensation is certainly included in the definition of

'PROPERTY' which is referable and relatable to the description of "ASSETS" contained in the Table, if not under Clause 1 to 5 of Format 'क', then definitely under "Special Details" (विशेष विवरण) and income and also in Format (ख). In this view of the matter, it cannot be said that the information sought by the District Inspector of Schools goes beyond the aforesaid Table.

22. Insofar as the power of the District Inspector of Schools to seek any information is concerned, the Government Order dated 06.06.2023 is quite comprehensive in nature. Various Clauses and Sub-clauses of the said Government Order are in consonance with the provisions of the Act, 1974 and the purpose which the Act seeks to achieve. Merely because the District Inspector of Schools forms part and parcel of a six-member Committee as per Clause 3(8) of the said Government Order, as of now, there is no adjudication made by the said Committee which includes even the Manager and Principal of the Institution. The present writ petition has been filed at the stage where only a notice asking certain information has been issued by the District Inspector of Schools. Even otherwise, the U.P. Intermediate Education Act, 1921 as well as the aforesaid Act, 1974 prescribe a well structured procedure to be followed by the Director of Education in case violation of provisions of the Act is found to be committed by the concerned Management. No such proceedings have been initiated as of now and, therefore, it cannot be presumed that the Authority who is not empowered under the Act, 1974 is proceeding to take substantive action against the Management.

23. As far as the affidavit filed by the Director of Education before this Court in Writ-C No.3867 of 2023 is concerned, neither the affidavit nor notice dated 31.12.2022 impugned in the said case is before this Court. Even otherwise, the notice impugned in the present writ petition has not been issued by the Joint Director of Education nor can it be said that it is a notice under Sections 4 and 5 of the Act, 1974. The power of Director

of Education under Section 4(4) of the Act, 1974 is to pass an order on representation filed by the Management against the order under Sub-Section (2) of Section 4 of the Act, 1974 or upon application for sanction being made to him under Sub-Section (3) and upon consideration of such matters and "information" as he may consider necessary. It is not a stage when any action has been taken under Sub-Section (2) of Section 4 nor has an application for sanction under Sub-Section (3) of Section 4 been considered. Therefore, this Court is of the view that no action under Section 4 has yet commenced and the information asked by the District Inspector of Schools is well within his competence. Further Writ-C No.3867 of 2023 was decided on 10.04.2023 when the Government Order dated 06.06.2023 had not even come into existence and, therefore, this Court had no occasion to deal with the competence of the District Inspector of Schools as per the said Government Order. Further, the competence of an officer issuing a notice has to be seen as per statutory provisions as well as under the sub-ordinate legislation contained in a Govt. Order etc and it cannot depend solely upon a stand taken in an affidavit, as an administrative power cannot be treated as vested or divested or conferred merely by an admission made by an Officer in an affidavit or otherwise.

24. For all the aforesaid reasons, the impugned notice is found to be within jurisdiction and, therefore, the challenge made to it does not fall within any of the exceptions under which Writ Jurisdiction under Article 226 of the Constitution of India can be exercised against a notice.

25. The writ petition fails and is, accordingly, **dismissed.**

Order Date :- 8.12.2023

Jyotsana

(Kshitij Shailendra, J.)