

CASE NO.:
Appeal (civil) 4927 of 2006

PETITIONER:
Ayudh Upaskar Nirmani Kalyan Samiti, Kanpur

RESPONDENT:
Govt. of India and Ors

DATE OF JUDGMENT: 14/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P (C) No. 23892 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Allahabad High Court dismissing the writ petition filed by the appellant under Article 226 of the Constitution of India, 1950 (in short the 'Constitution').

Background facts in a nutshell are as follows:-
The writ petition was filed for quashing the order dated 1.4.2005 passed by the Joint Director (Personnel and Administration), Ordnance Equipment Factories, Kanpur, (in short 'OEF'), the respondent No.4 and the order dated 21.6.2005 passed by the Director General, Ordnance Factories, Government of India, Kolkatta, respondent No.6. A further relief was sought for restraining the respondents from interfering with the running of the O.E.F. Secondary School (hereinafter referred to as the 'Secondary School') from the premises in question pursuant to the aforesaid orders and for restraining the respondents from demanding an amount of Rs.18,307/- towards monthly rent and Rs.21,968/- and premium towards lease rent and to permit the appellant to run the Secondary School on payment of rent of Rs.3,904/- per annum. A direction for refund of the amount of Rs.32,95,315/- to the appellant which had been deposited by it, was also claimed.

The appellant (for sake of convenience described as 'Society') had been registered under the provisions of the Societies Registration Act, 1861 (hereinafter to as the 'Act'). The said Society has been established by the officers and employees of the OEF. Basic object of the Society is to impart education to students in the field of Art, Science and Commerce by establishing Institutions. The Society has accordingly established the aforesaid Secondary School, which is recognized by the Central Board of Secondary Education (in short 'CBSE'). The Secondary School is running classes from class I to class XII and there are about 1000 students and 35 teachers.

According to the appellant, previously a Kendriya

Vidyalaya was being run and managed in the building in which the present Secondary School is being run. Upon shifting of the Kendriya Vidyalaya to another place, the building along with the playground was handed over to the OEF. The appellant Society was then constituted by the Officers and employees of the OEF for the purposes of establishing the Secondary School and an application was submitted by the Secretary of the Society to the General Manager of the OEF in the year 2000 seeking permission to run the Secondary School in the building. A certificate dated 14.6.2000 was issued by the Deputy General Manager of the OEF certifying that the building, which had been vacated by the Kendriya Vidyalaya, had been handed over to the Secondary School. A communication dated 2.8.2001 was also sent by the Works Manager (Administration) of the OEF to the Secretary of the Society enquiring as to whether the total lease rent of Rs.3,904/- per annum was acceptable to it. This letter was replied to by the secretary of the Society pointing out that the annual rent of Rs.3,904/- was acceptable to it.

The Director General then sent a communication dated 4.4.2005 to the Chairman of the Managing Committee of the Secondary School conveying the directives of the Chairman which are as under:

- i) OEF Secondary School run by OEF Kalyan Samiti shall not run from OEF premises after the academic session 2005-06 ends. All concerned should be intimated about the same immediately.
- ii) No student should be taken in class IX and class X in the academic year 2005-06.
- iii) The Managing Committee should deposit Rs.32,95,315/- (Rupees Thirty Two lakhs Ninety Five thousand Three hundred and fifteen only) lease rent plus premium within the period of one month without fail.
- iv) The Managing Committee shall pay a monthly rent of Rs.18,307.00 till the school functions from OEF premises i.e. till the academic session 2005-06.

It was further ordered that a compliance report may be submitted. This order dated 4.4.2005 was challenged by the appellant by filing Writ Petition No. 39846 of 2005 which was disposed of by the High Court by the judgment and order dated 17.5.2005 with the following directions:-

"After hearing learned counsel for the parties we dispose of this petition in terms of the undertaking given by Sri U.N. Sharma, learned Senior Counsel on behalf of the Board that no action adversely affecting the petitioner pursuant to the order dated 4.4.2005 shall be taken till the matter is decided by the Board. However, we make it clear that in case the petitioner is aggrieved by the order passed by the Board, he shall be at liberty to approach the appropriate Forum and the deposit already made by the petitioner shall be subject to the decision to be taken by the Board".

After the decision in the aforesaid writ petition, the appellant filed a representation dated 14.6.2005 before the Chairman of the OEF. This representation was rejected by the Board by the order dated 21.6.2005 which was impugned in

the writ petition. In the order it has been observed that according to the guidelines, the Society was created by well meaning officers and staff to look after the educational requirement of the wards of the employees and allied establishment, but the rationale behind the creation of the Society had lost its relevance as only 10% to 11% of the total students of the school are wards of employees and officers. Thus the decision was taken to close down the School more particularly when the Audit Department had also raised objection. In the order it was also pointed out that the School was running without there being any sanction of the Competent Authority as per the Land Lease Policy. A further observation was made that the Board has also given directions several times in the past that officers of the Organization should not involve themselves in the running of the Educational Institutions and should instead concentrate on their core activity for which they had been arrived at on wrong understanding of the relevant provisions. According to the correct calculation the lease rent shall be Rs.2,19,688/- per annum and one time premium was also to be charged. The appellant was, therefore, directed to comply with the directives contained in the communication dated 4.4.2005. This order dated 21.6.2005 was also impugned in the writ petition. By the impugned judgment, the writ petition was dismissed.

Learned counsel for the appellant submitted that the High Court erroneously proceeded on the basis that the occupation of the premises in question was unauthorized. Earlier in the same premises, a school was being run by the Kendriya Vidyalaya. Society which is registered has as its members, officers and employees of the OEF. The school is primarily meant for the children of the employees and officers of the factory. Documents on record go to show that permission as requested was granted and the monthly rent was fixed at Rs.3,904/-. The premium has been raised to Rs.18,500/- p.m. in addition to the arrears of the amounts of Rs.32,95,315/- which has been deposited on 5.5.2005. The school which is running in the premises is affiliated to CBSE. Only after the High Court's order, the affiliation was discontinued. But in view of the order passed by this Court the affiliation has been restored. About 1000 students are prosecuting their studies. It was pointed out that reasonable time may be granted to the appellant so that the students who are prosecuting in class IX and XI of the institution can appear at the final examinations. With reference to policy of the OEF, it is submitted that the appellant is willing to pay the lease amount and has in fact deposited about Rs.22 lakhs on 5.5.2005.

In response, it is pointed out that though appellant claims that school is meant for the wards of the employees and the officers, their number is 10 to 11 percent of the total students strength. It is pointed out that the so called handing over of possession was done by the same person who had applied for the allotment of the land. Because of the fact that large number of students are unconnected with the families of the employees and the officers, there is likelihood of security problems.

In reply, learned counsel for the appellant submitted that the possession was handed over to the appellant and it was within the knowledge of all concerned. Nearly 600 students were earlier prosecuting their studies. They continued in the appellant's school. Subsequently, there may have been some variation in the number of students, but that cannot be a

ground to refuse continuance of appellant in the premises.

We find that undisputedly, there is no decision of the OEF Board to grant any lease. But at the same time the school has been running and was affiliated to CBSE. Students are prosecuting their studies. In that sense the students prosecuting their studies are not students of any non-affiliated institution. At the same time, it cannot be lost sight of that contrary to the original position the percentage of wards of employees and officers is less than 15%. Therefore, the stand that there is valid sanction in favour of the appellant to run the school in the premises cannot be accepted. It is not disputed by learned counsel for the respondents that students are prosecuting studies in class IX and XI. It would not be in the interest of students to direct immediate closure of the institution and/or to direct the appellant to vacate the premises forthwith.

Let an undertaking be filed by the appellant to vacate the premises latest by 31.3.2008 with the further undertaking to pay the amounts to be charged by the respondents for occupation of the premises. On such undertaking being filed, appellant shall be permitted to occupy the premises till 31.3.2008.

The appeal is accordingly disposed of. However, disposal of the present appeal shall not stand on the way of the appellant moving the authorities for grant of lease of the premises in question. If such request is made the same shall be considered in its own perspective about which we express no opinion. There will be no order as to costs.