

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
WPA 27376 of 2022
Avlon Shiksha Niketan & Ors.
Vs.
State of West Bengal & Ors.

For the Petitioners : **Mr. Amales Ray, Adv.,**
Ms. Mousumi Bhowal, Adv.,
Mr. Aman Gupta, Adv.,
Mr. Ishan Bhattacharya Adv.

For the respondent
No. 6 : **Mr. Somnath Ganguli, Adv.,**
Ms. Ujani Pal Samanta Adv.,

For the College
Authority : **Mr. R. Chakraborty, Adv.,**
Ms. Amrita De Adv.

For the State : **Mr. Biswabrata Basu Mallick, Ld. AGP.**
Mr. Sanjib Das Adv.,

Reserved on : **14.01.2024**

Judgment on : **27.02.2025**

Subhendu Samanta, J.

1. Instant writ petition is filed challenging impugned order dated September 23, 2022 passed by the respondent No. 6 being the Director of Public Instructions, Government of West Bengal, in pursuance to the directions of this court dated August 17, 2022 in WPA 10275 of 2022.

2. The brief fact of the matter is that in 2017-18 Avlon Shiksha Niketan (ASN) petitioner No. 1 conceptualise and manage a three

years self financing course, called as BBA in Tourism, Aviation and Hospitality which has been affiliated to the West Bengal State Council of Higher Education and University of North Bengal. The said course was being run by different colleges, in collaboration with petitioner.

3. Sarajoni Naidu College for Women (respondent 4 and 5) has accepted the proposal of petitioner for launching the said BBA course in the said college on certain conditions. Accordingly on 6th February, 2019, the memorandum of understanding (MOU) was executed between the college and Avlon Shiksha Niketan for launching said BBA course in the academic sessions 2019-20,2020-21 and 2021-22. That was granted affiliation by West Bengal State University. The students took admission in the BBA course in the said college and the session has started. The college authority communicated an order of termination of MOU due to “unavoidable circumstances” on 15.05.2022.

4. The petitioner challenges the validity of the impugned termination letter dated 15.05.2022 in earlier writ petition No. WPA 10275 of 2022. The said writ petition was disposed of by a Co-ordinate Bench dated 17.08.2022 with a direction as follows:

In the present case, having regard to the disputed question of facts involved in this case I am inclined to give a direction upon the State to issue appropriate direction in terms of Section 18 of the West Bengal Universities and colleges (Administration and Regulation) Act, 2017. In that view of the matter, I dispose of the writ petition giving direction upon the Principal Secretary, Department of Higher Education to depute a competent officer

to look into the grievance of the petitioner as made out in this writ petition. The said officer will pass the appropriate direction after hearing the college as well as the petitioners. Let such decision be taken within a period of four weeks from the date of communication of this order. Till such decision is taken by the said officer, the order of termination dated May 15, 2022, shall not be given any effect to.

5. In terms of the said direction the Director of Public Instructions has given opportunity to the parties of being heard and passed the impugned order. The operative portion of the impugned order set out as follows:

On scrutiny of the materials made available by the parties, the undersigned is of the view that when some anomalies in the matter of quality education as per standard prescribed by the WBSU and UGC were pointed out the reports of the two committees, the college authority was not supposed to consult the collaborating partner. Since the college authority was not in a position to maintain the standard of education meant for BBA course, it took the painful decision of discontinuing with the BBA (Honours) course and termination of the MOU dated 06.02.2019 without being unmindful of the interest of the final year students to complete their examination, The GB took the decision of discontinuing the BBA course as the college alone was accountable to the University for up keeping the standard of conduction of BBA course for which affiliation was granted by the University, So, it was decided that there was no need for continuing with the collaboration agreement in the form of MOU dated 06.02.2019. So, on ultimate analysis it is found that no illegality, impropriety or material irregularities was committed by the GB of the Sarojani Naidu College for Women at Dum Dum in terminating the MOU dated 06.02.2019 with Avlon Siksha Niketan and therefore the termination letter dated 15.05.2022 issued by the Principal of the said college as direction of the GB cannot be faulted with. The affiliation was for three years and after the expiry of the affiliation period, the question of continuation of BBA (Honours) in TAH from that

college through its collaborating partner like Avlon Siksha Niketan does not arise at all.

With the aforesaid observations the matter assigned to the undersigned by the Hon'ble Court could have been disposed of but before parting with the matter the undersigned considered it to be a duty to direct the authenticity of the Sarojini Naidu College for Women, Dum Dum to release the admitted dues to the Avlon Siksha Niketan to the extent of Rs. 31,66,201/- (Rupees Thirty One Lakhs Sixty Six Thousand Two Hundred and One Only) as per statement of Accounts as submitted by the college authority on 20.09.2022 subject of determination of actual dues, if any, at the appropriate forum because the college authority has no right to withhold the said admitted amount after termination of the MOU.

With the aforesaid decision regarding the termination of the MOU dated 06.02.2019 and the direction upon the college authority the matter is disposed of.

Let copies of this order be communicated to all concerned including the petitioner forthwith.

6. Being aggrieved by and dissatisfied with the order the instant writ petition has been preferred it is the case of the petitioner that respondent No. 6 has not entered into the matter and passed the impugned order arbitrarily and unreasonably. It is further case of petitioner that respondent No. 6 has fail to appreciate of this case and came to an erroneous finding that as the affiliation of Concerned University for running the BBA course has already been expired the questions of continuation of BBA course cannot arose at all. It further submission of the petitioner that the order of termination of memorandum of understanding dated 15.05.2022 is highly illegal whereby the authority concern has violated the terms of the agreement. He further submits that the respondent No. 6 has failed to consider the facts that before termination the college authority should

have issued one months notice upon the petitioner, thereby, the college authority has violated the principle of natural justice in terminating the MOU.

7. He further submits the impugned order is required to be set aside and respondent No. 6 may be directed to rehear the matter.

The college authority contended that letter of termination was issued in terms of the memorandum of understanding. The report of the monitoring authority and chair person of the under graduate board of students, both pointed out some grave anomalies like non-supply of books and study materials of students, non engagement of quality of experience faculty as per UGC norms and denial of monitory internship training as per WBSU syllabus carrying 75 marks in final examination; the reasons thereto the college authority had no option than to put impression upon the reports of the two committees thereby Governing Body has taken a decision for termination of MOU. It is the further case of the college authority that, GB resolution dated 13.05.2022 is very much clear wherein the principal of college was asked not to disclose the identity of the students and the problem with which they were confronted, for the sake of the students privacy, GB member of the college were directed to refer the grounds in the termination letter as “unavoidable circumstances”.

8. It is the further case of the college authority that in terms of the memorandum of understanding the college authority is within the domain to take decision or terminated the contract.

9. It is the further case of the college authority that the petitioner has embedded the prayers of earlier writ petition in the instant writ petition, thus, it is not at all maintainable.

10. Respondent No. 6 has submitted that according to the direction of Hon'ble Co-ordinate Bench of this court, the respondent No. 6 has given sufficient opportunity to the petitioner as well as the college authority to disclose their case. They placed their documents, they also placed written notes of argument at the time of hearing. It is the case of the respondent authority that the period of affiliation has already been over. Thus, the writ petition became infructuous.

In reply, the petitioner argued that the instant writ petition is very well maintainable. This court can entertain the writ petition on the basis of the prayer of the petitioner and if the prayer 'a' is allowed, the subsequent prayers, which are consequential in nature, required to be allowed automatically.

11. Learned Counsel for the petitioner also argued that the writ court can entertain disputed question of fact as well can provide monetary relief in given facts and circumstances of this case. In support of his contention he cited a decision of Hon'ble Supreme Court in **ABL International Limited and Another Vs. Export credit Guarantee Corporation of India Limited and Ors. (2004) 3 SCC 553.**

12. Having heard the Learned Counsel for the parties it appears that the Co-ordinate Bench while disposed of the earlier writ petition

was of opinion that having regard to the disputed questions of fact involved in this case, it was directed upon the State to disposed of the matter by giving opportunity of hear to the parties.

13. The impugned order disclosed that the parties were given sufficient opportunity of being heard and they have placed their documents and written notes of arguments. At the time of argument Learned counsel for the petitioner argued that reports of both the committees were not handed over to the petitioner. On plain reading of the impugned order, it appears that such questions were never raised by the petitioner at the time of hearing. Moreover during the course of argument the petitioner urged that the reports of Doctor Pranom Dhar wherein Doctor Dhar advised the college authority to seek explanation from the petitioner, proves that the petitioner was well aware about the reports of both the committees.

14. Let me consider whether the ratio laid down by the Hon'ble Supreme Court in **ABL International (Supra)** is at all applicable in the present facts and circumstances of this case.

The principles are laid down in Para-27 of that judgment.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

b) Merely because some disputed questions of fact arise for consideration, same cannot be a

ground to refuse to entertain a writ petition in all cases as a matter of rule.

c) A writ petition involving a consequential relief of monetary claim is also maintainable.

15. The Hon'ble Supreme Court in deciding the **ABL International** has perused the contract executed between the parties and is of opinion that:

The only fact that is disputed is the obligation of the first respondent to cover the risk of non-payment of consideration by cash in US currency on the ground that the risk covered by the first arising out of non-supply of goods by the barter method only this limited area of dispute can be settled by looking into the terms of the contract of insurance as well as the export contract and the same does not require consideration of any oral evidence or any other documentary evidence other than what is already on record. The claim of the contesting parties will stand or fall on the terms of the contracts, interpretation of which does not require any external aid.

16. So, it is the obvious decision of Hon'ble Apex Court that when the limited area of dispute between the parties can be settled by looking into the terms of the contract which does not required consideration of any oral evidence or any other documentary evidences other than what is already on the record, in those case disputes question of fact may be decided by a High Court in writ jurisdiction.

In the present case facts and circumstances shows the memorandum of understanding was terminated in terms of the reports of both committees. The reports is arising out of the different perspective i.e. the non-supply of books and study materials by the petitioner to the

students, non-engaging qualified teachers as per UGC norms, moreover, placing the students in a place for internship wherein they were sexually exploited. It is quite obvious that all the allegations of the college authority were not admitted by the present petitioner. To decide the fact that is who is telling truth, the deliberation would be oral evidence and matter would be correctly deliberated or decided by taking evidences both oral and documentary. Thus, the facts situation of **ABL International (supra)** is completely different to that of the present facts and circumstances of this case.

Moreover, it appears that the respondent No. 6 has taken note of entire disputed question of facts including the reports of both the committees. From the impugned order it appears that petitioner filed written notes of argument before the respondent No. 6 wherein entire focus has been laid on the allegation that the termination of MOU was nothing but a counter blast of claim of the petitioner for release of 85% share in the revenue amounting to more than Rs. Fifty lakhs. The contract between the petitioner and the college authority is commercial contract which should be construed strictly in its terms. The college authority has given ample power regarding renewal of the said agreement which subject to the satisfaction of the Governing Body of Sarajoni Naidu Government College for women on the basis of performance review.

17. The college authority in terms of the said memorandum of understanding has reviewed the performance of petitioner No. 1 which was non-satisfactory. There are several complaints regarding the

appointment of faculty below UGS norms as well as non-supply study materials to the students it was not at all answered by the petitioner either before the respondent No. 6 or before this writ court. So in my view the impugned order passed by the respondent No. 6 suffers no illegality.

18. The Hon'ble Supreme Court in **State Bank of India and Ors Vs. Rajesh Agarwal** has elaborated the principle of audi alteram partem as follows:

We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo iudex in causa sua, which means that no person should be a Judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

19. In **State Bank of India (supra)** the Hon'ble Supreme Court has decided the issue of applicability of principle of natural justice before imposition of black listing in respect of the petitions therein and has held that when the blacklisting has entails to Civil consequences, the principle of audi alteram partem shall must follow.

20. In the present case the petitioner was given sufficient opportunity of being heard by the respondent No. 6. Thus, the principal of violation of natural justice in terms of audi alteram partem cannot made applicable. Moreover, they are no condition in the MOU regarding scope of hearing before cancellation.

21. Under the above facts and circumstances after careful perusal of the impugned order passed by the respondent No. 6 it appears to me that the order is not at all perverse, unreasonable or arbitrary. Thus, this court find no material to interfere with the impugned order. Consequently writ petition fails and disposed of as devoid of merit.

22. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)