

Education Act, 1983

Chapter 12 - Taking over of Management, Requisitioning and Acquisition of Educational Institutions

In this chapter,-

(a) "educational institution" means any school, college or other institution for imparting education which is managed by an individual, body or local authority and is recognised by the State Government.

(b) "persons interested" includes all persons claiming or entitled to claim interest in the amount payable on account of the taking over of the management of the educational institution or requisitioning or acquisition of the property used for the purposes of an educational institution or of any other institution connected therewith under this Act.

Section 67 - Taking over of management of educational institutions in public interest

(1) Where the State Government is 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, it may, after giving one month's notice to the person or body of persons incharge of 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 State Government¹[for a period of one year]:

Provided that no private educational institution under the management of a Religious Institution, Endowment or a Wakf shall be taken over without the prior consent of such management:

²[Provided further that if the State Government is of the opinion that in order to secure the proper management of the educational institution, it is expedient that such management should continue to vest in the State Government after the expiry of the said period of one year, it may issue direction for the continuance of such management for a further period not exceeding one year as it may think fit, so however, the total period for which such management shall continue to vest in the State Government shall not, in any case, exceed two years.]

(2) The educational institution referred to in sub-section (1) shall be deemed to include all assets, rights and lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, stores instruments and vehicles, cash balances, revenue fund, investments and book debts and all other rights and interests arising out of such property as were immediately before the date of taking over of the management under sub-section (1) (hereinafter in this Chapter referred to as the date aforesaid) in the ownership, possession, power or control of the management of such educational institution and all books of account, registers and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement (not being a contract) or agreement specified in section 61 in so far as it relates to the management of the educational institution and in force immediately before the taking over, shall be deemed to have terminated on the date aforesaid.

(4) All persons, in whom the management of the educational institution vested immediately before the taking over shall, as from the date aforesaid, cease to be so vested and shall be deemed to have vacated their offices as such on the date aforesaid.

(5) Notwithstanding anything in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3) or who ceases to hold any office by reason of the provisions contained in

sub-section (4) shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the cessation of management or for the loss of office, as the case may be.

(6) Notwithstanding any judgement, decree or order of any court, tribunal or other authority or anything contained in any other law for the time being in force, every person in whose possession or custody or under whose control the educational institution or any part thereof or any properties attached thereto vest shall transfer the same to the special officer appointed by the State Government for the purpose of carrying on the management of such educational institution for and on behalf of the State Government, or where no special officer is appointed, to such other person as the State Government may direct.

(7) For the removal of any doubt, it is hereby declared that any liability incurred by the private management in relation to the educational institution before the taking over shall be enforceable against the said Governing Council and not against State Government or the Special Officer.

(8) The amount payable in respect of the vesting in the State Government or the Governing Council of an educational institution under sub-section (1) shall be an amount equal to the average net annual surplus income of such educational institution during the period of its existence, or the period of five consecutive accounting years immediately preceding the date of such vesting whichever is less:

Provided that no such amount shall be payable if the trusts or Governing Council under which the educational institution is founded makes provision for the running of such institution.

Explanation.- In this sub-section, the expression "accounting year" means the period beginning on the 1st day of July of any year and ending on the 30th day of June of the year next following.

(9) The amount payable under sub-section (8) shall subject to rules made under this Act, be paid by the competent authority to the person interested in the educational institution in such manner and within such time as may be prescribed.

1. Substituted by Act 8 of 1998 w.e.f. 11.4.1998.

2. Inserted by Act 8 of 1998 w.e.f. 11.4.1998.

Section 67A - Relinquishment of management of educational institutions

1[67A. Relinquishment of management of educational institutions

(1) After the expiry of the period specified in sub-section (1) of section 67, the management of educational institution shall vest in accordance with the order, if any, of any court and if there be no such order, vest in the Governing Council or managing committee (by whatever name called) of such educational institution or such other body or person, as the case may be, entitled thereto.

(2) If at any time before the expiry of the period referred to in sub-section (1) of section 67, it appears to the State Government that the purpose of vesting of the management of educational institution in the State Government has been fulfilled or that for any other reason it is not necessary that the management of such educational institution should remain vested in the State Government, it may, by order published in the official gazette, relinquish the management of such educational institution with effect from such date as may be specified in the order.

(3) On and from the date specified under sub-section (1) the management of the educational institution shall be transferred in accordance with the order, if any, of any court, and if there be no such order, shall be transferred to the Governing Council or managing committee (by whatever name called) of the educational institution or such other body or person, as the case may be, entitled thereto.]

1. Inserted by Act 8 of 1998 w.e.f. 11.4.1998.

Section 68 - Power to terminate contract of employment

If the State Government or the Special officer appointed under section 67 is of opinion that any contract of employment entered into by the Governing Council in relation to the educational institution at any time before taking over is unduly onerous, it or he may, by giving to the employee one month's notice in writing or salary or wages for one month in lieu thereof, terminate such contract of employment.

Section 69 - Contracts etc., made in bad faith may be cancelled or varied

(1) If the State Government is satisfied, after such enquiry as it may think proper, that any contract or agreement entered into at any time within a period of two years immediately preceding the date aforesaid between the Governing Council in relation to the educational institution and any other person, in relation to any service, sale or supply to, or by the educational institution and in force immediately before the taking over has been entered into in bad faith or is found detrimental to the interest of the educational institution, it may make, within one hundred and eighty days from the date aforesaid an order cancelling or varying (either unconditional or subject to such conditions as it may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly:

Provided that no contract or agreement shall be cancelled or varied except giving to the parties to the contract or agreement one month's notice to make a representation in this regard.

(2) Any person aggrieved by an order under sub-section (1) may, within thirty days from the date of communication of the order, make an application to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the educational institution is situated for the variation or reversal of such order and there-upon such court may confirm, modify or reverse such order.

Section 70 - Avoidance of voluntary trusts

Any transfer of property, movable or immovable, or any delivery of goods made by or on behalf of the educational institution (not being a transfer or delivery made in the ordinary course of transaction or in favour of a purchaser for valuable consideration and in good faith), if made within a period of one year immediately preceding the date aforesaid, shall be void as against the Government or the special officer, as the case may be.

Section 71 - Requisitioning of an educational institution

(1) Where recognition or permission granted to an educational institution is withdrawn by the State Government under sub-section (2) of section 39 or otherwise, or where an educational institution is closed before the last working day of an academic year and if the State Government consider it necessary to requisition any property movable or immovable, which before the withdrawal of the recognition or permission or the closing of the institution or of any other institution connected therewith, such as hostel for students, quarters for the residence of employees or playground, then notwithstanding anything to the contrary in any other law for the time being in force, the State Government may, within three months from the withdrawal of the recognition or permission or the closing of the educational institution, as the case may be, requisition such property and make such further orders as appears to it to be necessary or expedient in connection with the requisition.

(2) Before requisitioning any property under sub-section (1), the State Government,-

(a) shall call upon the Governing Council or any other person who is in possession of the property by notice in writing to show cause, within fifteen days of the date of the service of such notice to him why the property should not be requisitioned and shall consider the objections, if any, shown by the Governing Council or other person, and

(b) may, by order, direct that the Governing Council or any person shall not, without permission of competent authority, dispose of, structurally alter, lease or in any manner deal with, the

property until the expiry of such period, not exceeding three months, as may be specified in the order.

(3) Where any property is requisitioned under sub-section (1) the Government may,-

(a) use or deal with such property for any educational purpose; or

(b) by order, permit any person or body or local authority to use or deal with such property for any such purpose, subject to the payment of such rent and other sums to the Government and the observance of such conditions as may be specified in the order.

Section 72 - Summary power for taking possession of property

(1) Any person remaining in possession of any property in contravention of an order issued under section 71 may be summarily dispossessed of such property by an officer empowered by the State Government in this behalf and in the case of a building if free access to it is not afforded to such officer, he may after giving reasonable warning and facility of withdrawing to any women not appearing in public according to the customs in the country, remove or open any lock or bolt or break open any door or do any other act necessary for effecting such dispossession.

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer, direct any police officer not below the rank of Sub-Inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty.

Section 73 - Release from requisitioning and discharge of liability of the State Government

(1) The State Government may, at any time, release any property requisitioned under this Chapter and in such a case the possession of the property released from requisition shall be delivered to the Governing Council or any person from whose possession the property requisitioned, was taken or if there were no such Governing Council or person, the person deemed by the State Government to be entitled to the possession of such property, and such delivery or possession shall be full discharge of the State Government from all liabilities in respect of that property which any other person may be entitled, by the due process of law, to enforce against the person to whom possession of the property is so delivered.

(2) Where the person to whom possession of any such property is to be delivered cannot be found or has no agent or other person empowered to accept delivery on his behalf, the State Government shall cause to be published in the official Gazette a notice declaring that the property is released from requisition and in the case of any immovable property, the State Government shall also cause a copy thereof to be affixed, on some conspicuous part of such property.

(3) When the notice referred to in sub-section (2) is published in the official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof, and the State Government shall not be liable for any amount, rent, or other claim in respect of such property for any period after the said date.

Section 74 - Acquisition of property

(1) Where any property is vested under sub-section (1) of section 67 in connection with the management of an educational institution or is subject to requisition under sub-section (1) of section 71, the State Government may, if it considers it necessary to acquire the property for any public purpose connected with education, acquire at any time¹[but before the expiry of the period referred to in sub-section (1) of section 67] such property for the said public purpose by publishing in the Official Gazette a notice to the effect that the State Government has decided to acquire the property in pursuance of this section:

Provided that before issuing such notice, the State Government shall call upon the Governing Council or any other person who in the opinion of the State Government is the person interested in such property to show cause why the property should not be acquired; and after considering the objections, if any, shown by the Governing Council or other person interested in the property the State Government may pass such orders as it deem fit.

(2) When notice as aforesaid is published in the Official Gazette, the requisitioned property shall from the day on which the notice is so published, cease to be subject to requisition and vest absolutely in the State Government free from all encumbrances.

1. Inserted by Act 8 of 1998 w.e.f. 11.4.1998.

Section 75 - Principles and methods of determining amount for property requisitioned or acquired

(1) Where any property is requisitioned or acquired under this Act, the amount payable therefor shall be as determined and paid in the manner and in accordance with principles hereinafter set out, that is to say,-

(a) where the amount is settled and fixed by agreement it shall be paid accordingly;

(b) where there is no such agreement, the State Government shall appoint as arbitrator a person who is holding or has held a judicial office not below the rank of a District Judge, for determining the amount;

(c) at the commencement of the proceedings before the arbitrator the State Government and the person to whom the amount is payable shall state what according to them is the fair amount;

(d) the arbitrator shall after the enquiry determine the amount which appears to him to be just and specify the person or persons to whom such amount shall be paid and in making the award determining the amount he shall have regard to the circumstances of each case and the provisions of sub-section (2), (3), (4) and (5) so far as they are applicable;

(e) where there is any dispute as to the person or persons who are entitled to the amount, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to the amount, he shall apportion the amount amongst such persons according to their rights: and

(f) nothing in the Arbitration Act, 1940 (Central Act 10 of 1940) shall apply to arbitrations under this section.

(2) The amount payable for the requisitioning of any property, movable or immovable, shall in respect of the period of requisition, be a sum equal to the rent which would have been payable for the use and occupation of the immovable property or for the use of the movable property if it had been taken on lease for that period.

(3) The amount payable for the acquisition of any immovable property under section 74 shall be,-

(a) the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition,

whichever is less.

(4) The amount payable for the acquisition of any movable property shall be the price which such property would have fetched in the open market if it had been sold on the date of acquisition.

(5) Where any property requisitioned or acquired under this Act was acquired with the grant from the State funds, the amount of such grant shall be taken into account in the prescribed manner in determining the amount payable.

Explanation.- For purposes of this sub-section, all the property acquired by the educational institution shall be deemed to have been acquired with the aid of such grant, contribution, donation or collection unless the Governing Council of the educational institution proves to the satisfaction of the arbitrator that the property has been acquired otherwise.

Section 76 - Payment of amount for property requisitioned or acquired

The amount payable under the award of arbitrator shall subject to any rules made under this Act, be paid by the competent authority to the person interested in such manner and within such time as may be specified in the award.

Section 77 - Appeal from the award of the arbitrator under section 75 in respect of amount

Any person aggrieved by the award of the arbitrator under section 75 may, within sixty days from the date of such award, prefer an appeal to the High Court:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 78 - Arbitrator to have certain powers of civil court

The arbitrator appointed under this chapter, while holding arbitration proceedings under this Act, shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence or affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commissions for examination of witnesses.

Section 79 - Powers of entry and inspection and calling for information

The competent authority may, for the purpose of requisitioning or acquiring any property under this Chapter, by order,-

- (a) empower any authority to enter and inspect any property specified in the order liable to be requisitioned or acquired under this Act;
- (b) require any person to furnish to such authority such information in his possession relating to the property as may be specified in the order.

Section 80 - Provisions for existing staff of educational institutions

Notwithstanding anything to the contrary in any contract or agreement or any law for the time being in force the following provisions shall apply in regard to the persons on the staff of the educational institution immediately before the date on which the management of the educational institution is

vested in the State Government, namely:-

(a) the State Government shall have power to terminate the services of any such person for reasons to be recorded in writing after giving him three calendar month's notice in writing or paying him three month's pay in lieu of such notice;

(b) a person whose services have been retained shall be governed at his option either by the conditions of service as may from time to time be prescribed or by the conditions of service applicable to him immediately before such vesting.

Section 81 - Posts of employees of educational institutions vested under this Chapter to be treated as a unit for certain purposes

The posts in each category of employees of the educational institutions in a district which have vested in the State Government under this Chapter shall be a separate unit for all purposes including seniority, promotion, discharge or reversion for want of vacancies.
