

Court No. - 32

Case :- WRIT - C No. - 63834 of 2014

Petitioner :- C/M Chaudhary Nawab Singh J.H.S. Thru Manager
And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Uma Nath Pandey

Counsel for Respondent :- Y.S. Bohra

Hon'ble Saral Srivastava,J.

1. Heard Sri Uma Nath Pandey, learned counsel for the petitioner and Ms Ainakshi Sharma, learned Standing Counsel for the State-respondents.

2. The petitioner by means of present writ petition has assailed the order dated 09.09.2014 passed by respondent no.1-Secretary, Basic Education, State of U.P., Lucknow whereby the respondent has refused to take petitioner's institution namely Chaudhary Nawab Singh Junior High School, Mohan Nagla, Tandoli, Aligarh on grant-in-aid.

3. The petitioner's institution has been established and has been granted permanent recognition as a Junior High School by order of the Regional Assistant Director of Education (Basic), Agra dated 21.03.1986.

4. It is further submitted that The Secretary, Board of Basic Education, U.P. issued certificate regarding permanent recognition on 24.06.2002. The State Government on 07.09.2006 issued a Government Order notifying its decision for taking 1,000 (one thousand) privately managed Junior High Schools on the grant-in-aid.

5. The petitioner pursuant to the Government Order dated

07.09.2006 submitted application for taking the institution on grant-in-aid on 08.11.2006.

6. When the respondent did not pay any heed to the application of the petitioner for taking the institution on grant-in-aid, he preferred Civil Misc. Writ Petition No.69807 of 2006 which was disposed off with Civil Misc. Writ Petition No.69785 of 2006 by this Court vide judgement and order dated 12.08.2009 directing the State Government to decide the application of the petitioner in accordance with law.

7. Thereafter the respondent no.1 passed an order dated 13.04.2010 rejecting the application of the petitioner on the ground that the petitioner has wrongly appointed four Assistant Teacher. Besides this, the application of the petitioner was rejected on the ground that the petitioner did not comply with the requirement of the paragraph 2(4) and 2(6) of the Government Order dated 07.09.2006.

8. The order dated 13.04.2010 came to be challenged by the petitioner in Writ-C No.32188 of 2010 which was allowed by this Court vide judgment and order dated 20.09.2013. This Court quashed the order dated 13.04.2010 and remanded the matter back to the respondent no.1 to decide the claim of the petitioner afresh.

9. Now respondent no.1 has passed an order dated 09.09.2014 on the ground that the petitioner's institution does not have any right to claim grant-in-aid in view of the judgement of this Court in Writ Petition No.11412 of 2007 (Vidya Devi Laghu Madhyamik Vidyalay, Parsadeeh Gaur, District Basti Vs. State of U.P. and others). The other ground on which the institution was refused to be taken on grant-in-aid was that there are nine Schools of Basic Education Council established by Parishad within the radius of three kilometers of petitioner's institution, therefore, petitioner's

institution cannot be taken on grant-in-aid.

10. In the counter affidavit, it is stated that in view of judgment of this Court in Writ Petition No.38992 of 2017 a policy has been framed. It is submitted that in the last five years the number of students in unaided institution has been reduced. It is further stated that in view of the judgment of Apex Court in Civil Appeal No.865 of 2021 the petitioner does not have any fundamental right to ask the respondent to take the institution on grant in aid. It is further stated that since there are nine schools established by the Parishad within three kilometer radius of the petitioner's institution, therefore, petitioner's institution cannot be taken on grant-in-aid.

11. Challenging the aforesaid order, learned counsel for the petitioner contented that the impugned order cannot be sustained inasmuch as the respondent no.1 while rejecting the claim of the petitioner has placed reliance upon judgment of this Court in Writ Petition No.11412 of 2007 that the petitioner does not have any fundamental right or any legal right to demand grant-in-aid merely because it has established an institution at his own or within the eligibility criteria laid down in various Government orders or of policy framed by the State Government for the purpose. It is contended that the said judgment has been set aside by this Court in ***Special Appeal No.248/2008 (Vidya Devi Laghu Madhyamik Vidyalaya, Basti Vs. State of U.P. and others) reported in 2008 (3) ADJ 714 (DB)*** and therefore, the first ground for rejecting the claim of petitioner is not sustainable.

12. It is further contended that so far as the other ground that there are several institutions established by Parishad within the radius of three kilometers of the petitioner's institution is concerned, this Court in the case of ***Committee of Management, Shri Dravi Nath Purva Madhyamik Vidyalaya and another Vs. State of U.P. and***

others reported in 2019 (1) ADJ 513 has rejected the similar contention and taken the petitioner's institution on grant-in-aid.

13. It is submitted that so far as the contention raised in the counter affidavit on the basis of the judgment of the Apex Court is concerned, the said judgment is not applicable on the facts of the present case inasmuch as in the instant case, the petitioner has applied for taking the institution on grant-in-aid pursuant to the Government Order dated 07.09.2006 and because of the arbitrary and illegal approach of the respondent, the petitioner's institution was not taken on grant-in-aid under the Government Order dated 07.09.2006 whereas the other institutions have been taken on grant-in-aid, therefore, the petitioner cannot be discriminated.

14. Per-contra, learned Standing Counsel would submit that the petitioner's does not have fundamental right or legal right to ask the respondent to take the institution on grant-in-aid. It is further contended that the petitioner's institution cannot be taken on grant-in-aid since nine institutions established by Parishad are within three kilometers radius of petitioner's institution, therefore, there is no illegality in the impugned order and writ petition deserves to be dismissed.

15. I have heard learned counsel for the parties and perused the record.

16. So far as the rejection of first ground is concerned, the judgment of this Court in Writ Petition No.11412 of 2007 was set aside by this Court in Special Appeal No.248 of 2008 reported in 2008 (3) ADJ 714 (DB). Relevant Paragraph nos.4, 5, 6 and 7 of the said judgment are reproduced herein below:

"4. The learned Single judge has rejected the petition, amongst other grounds, by observing that it is a matter of judicious discretion of the State Government to choose some institutions which comply with the conditions for grant-in-aid. He has also observed that the State has limited resources and all its revenue cannot be poured only in education sector.

5. In our view, there was no need for the learned Single Judge to go into any of these aspects. The State Government had come out with a policy of giving grants to some 1000 schools and the question was whether the appellant was fulfilling the requirement as given in such policy. If the appellant fulfilled those requirements, the appellant ought to have been considered. The Government has to follow its own policy and cannot be permitted to pick and choose at their own whims. We cannot ignore that the State has the responsibility to make effective provision for securing the right to education under Article 41, which is a directive principle of the State policy, and Article 21-A of the Constitution of India has also been introduced laying down that the State shall provide free and compulsory education to children of the age of 6 to 14 years in such manner as the State may by law determine.

6. The fact remains that large number of children are still uneducated and are not going to schools. The State is undoubtedly trying its level best of its own to achieve such goal, but for years together private schools are also permitted to operate in the education field and the Government has been giving grants. As per the policy, the inclusion of the schools fulfilling the requirement in the list for grant of aid is to be made on the basis of the date of permanent recognition granted to the concerned school by the education authorities. If there are two schools fulfilling the norms which are both recognized on the same date, then also the policy provides that the strength of the students in the previous year and the results of the class VIII students would be the determining factor. If a school is fulfilling the requirements as laid down by the State, there is no reason why the State should not give grant to such school, specially when, as in the case of the petitioner it is contended that schools recognized later than the petitioner have been included in the list, which is against the policy of the State Government itself.

7. In the circumstances, we allow this appeal and set aside the order passed by the learned Single Judge dismissing the petition and direct the authorities of the State, and to begin with the respondent no.3, to process the application of the petitioner once again. Prima facie we find that the objection raised by respondent no.3 on 18.1.2007 is answered by the petitioner but then he may look into the reply of the petitioner once again, take necessary decision and if satisfied, forward the papers to the first respondent Secretary, Basic Education, who shall thereafter pass necessary order in accordance with law and the policy of the State Government in this regard. The necessary exercise be completed preferably within three months from the date of receipt of a copy of this order."

17. So far as the another ground that there are several institutions within three kilometer radius of the petitioner's institution, therefore, petitioner cannot be extended the benefit of Government Order dated 07.09.2006 is concerned, this Court in paragraph 8 of the judgment passed in Committee of Management, Shri Dravi Nath Purva Madhyamik Vidyalaya (supra) has repelled the similar contention. Paragraph 8 of the said judgment is reproduced herein below:

"Having heard the learned counsel for the parties and having gone through the record, I am of the view that the orders dated 18.11.2011 and 23.5.2014 cannot be sustained. The reasons as have been given in both the orders have no basis. In the order dated 13.7.2011 which was passed in Writ Petition No. 29572 of 2010 this Court had observed that when the School was given a permanent recognition in the year 1984 then the Basic Siksha Adhikari after 23 years could not question the appointment of the employees of the School. Further more, the order had found that the appointments were correctly made and there was a proper approval also accorded to the appointments. Further, the reason which has now been given in the order dated 23.5.2014 also is an absolutely erroneous one. When the petitioners college was recognized in the year 1984 and was running from much before the order of recognition then as per 'the Rules of 2011', the Institutions which had come up in the vicinity of the institution of the petitioners could not have been opened at all. It does not lie in the mouth Secretary Basic Education to say that since there were other institutions being run by the Parishad in the vicinity of the petitioners' Institution, the petitioners were dis-entitled from getting the financial aid. Further, I find that under the provisions of 'the Act of 2009' and as per the Article 21A of the Constitution of India, children studying in the petitioners' Institution were also entitled for free education and this was possible only if the petitioners' Institution was granted a proper financial aid. In the judgement reported in 2014(9) SCC 692 (State of U.P. & Ors vs. Pawan Kumar Divedi & Ors), and in view of the judgement reported in 2015 (2) UPLBEC 1154 (Paripurna Nand Tripathi and Ors. vs. State of U.P. and Ors.) wherein it has been held that it was the Fundamental Right of every child between the ages 6 to 14 to get free education, I am definitely of the view that the petitioners institution which runs classes 6 to 8 alongwith other classes should be given grant-in-aid for which it was eligible ever since 2006."

18. It is pertinent to mention that against the judgment of this Court in Committee of Management Shri Dravi Nath Purva Madhyamik Vidyalaya (supra), the respondent-State preferred Special Appeal (Defective) No.932 of 2018 which was dismissed by this Court vide judgment and order dated 24.02.2020. The judgment and order dated 24.02.2020 passed in Special Appeal (Defective) No.932 of 2018 are reproduced herein below:

"This appeal is barred by limitation from 80 days. Ignoring the same we have looked into merits of the case. By the judgement impugned learned Single Bench set aside the order dated 18.11.2011 and quashed the order dated 23.05.2014.

By the orders aforesaid the financial aid was stopped that was allowed to the respondents / petitioners' institution. The financial aid came to be detained firstly, on the count that the appointments of the employees with the institution were not made in accordance with applicable rules and secondly, on the count that as per the applicable rules no two aided institution could have been allowed to continue within a periphery of 300 meters. From perusal of the facts available on record it is apparent that a permanent recognition was

given to the respondents / petitioners' institution in the year 1984. At that time all necessary enquiry was made and nothing was found adverse. After a lapse of 23 years it was not open for the respondents to say that at the time of grant of permanent recognition the appointments were dehors the rules.

So far as the second argument is concerned that too lacks merit. As per the facts averred the respondents / petitioners' institution was the first institution working in the area and within the periphery of 300 meters a school was subsequently established. Learned Single Bench in quite ambiguous terms after examining the record held that, that in the vicinity of the institution other school could not have been opened at all. Learned Single Bench while dismissing the petition for writ also imposed a cost of Rs. 50,000/-. Having considered all the facts and circumstances of the case we deem it appropriate to reduce the same to a sum of Rs. 5,000/- that is required to be paid to the petitioners' institution while making payment of next term aid. The appeal stands, disposed of, accordingly."

19. The respondent-State thereafter preferred Special Leave to Appeal No.4539 of 2021 against the judgment of Special Appeal (Defective) No.932 of 2018 which was also dismissed by the Apex Court vide judgment and order dated 30.07.2021. The order of Apex Court dated 30.07.2021 is reproduced herein below:

"We are not inclined to interfere with the impugned judgment passed by the High Court. Special Leave Petition is dismissed.

Pending applications, if any, also stand disposed of."

20. Therefore, the second ground on which the petitioner's claim was rejected is not sustainable in law.

21. So far as the contention of the respondent based upon the judgment of Apex Court in Civil Appeal No.865 of 2021 is concerned, in the instant case, it is pertinent to mention that the right of the petitioner to claim grant-in-aid has accrued under the Government Order dated 07.09.2006. The respondent did not take any step to consider the claim of the petitioner which led the petitioner to prefer the Writ Petition No.69807 of 2006 before this Court and after direction of this Court, the respondent considered the claim of the petitioner.

22. Thereafter, the respondent on misconceived ground rejected the claim of the petitioner by order dated 13.04.2010 which order

again was challenged by the petitioner in Writ-C No.32188 of 2010 and this Court allowed the writ petition by judgment and order dated 20.09.2013 and remanded the matter to the authorities concerned to decide the claim of the petitioner afresh. The relevant extract of the judgment in Writ-C No.32188 of 2010 is reproduced herein below:

"The grounds taken in the impugned order for rejecting the application are that the building of the college was not constructed as per the prescribed standards; that there was difference between the registered students and the students who were present at the time of inspection and that four posts of Assistant Teachers were created in violation of the Government Order dated 7.9.2006.

Learned counsel for the petitioner has submitted that the controversy involved in this petition is covered by the decision rendered by the Court on 27th August, 2013 in Writ Petition No.59940 of 2010 (Committee of Management, Shivdei Balika Junior High School, Bisalpur, Pilibhit & Anr. Vs. State of U.P. & Ors.) connected with eleven other writ petitions. According to him, the aforesaid ground fall in the second category of cases mentioned in the judgment.

It needs to be noticed that the second category of writ petitions were also allowed but with a direction to the State Government to pass a fresh order on the applications submitted by the School for bringing them on the grant-in-aid list in accordance with the Government Order dated 7th September, 2006 after providing adequate opportunity to the petitioners since no opportunity had been provided to the petitioners while rejecting the application for the reasons mentioned in the order.

In view of the reasons contained in the aforesaid judgment and order dated 27th August, 2013 passed in Writ Petition No.59940 of 2010, the impugned order dated 13th April, 2010 passed by the State Government is set aside. It shall, however, be open to the State Government to pass a fresh order on the application submitted by the Institution for bringing it on the grant-in-aid list after providing adequate opportunity to the petitioners.

The writ petition is, accordingly, allowed to the extent indicated above."

23. The petitioner approached this Court under the Government Order dated 07.09.2006 and it is only because of the arbitrary action of the respondent, the petitioner could not get his legible due whereas the respondents have extended the benefit to the other institutions under the Government Order dated 07.09.2006. The State Government cannot be expected to act arbitrary to defeat the right of anybody who under law is entitled to have that legal right.

24. In such view of the fact, the judgment of the Apex Court relied upon by the State Government with regard to the contention that petitioner has no fundamental right to take the institution on grant-in-aid, is not attracted in the present case.

25. Thus, for the reasons given above, the impugned order cannot be sustained and is set aside. Normally the Court would have remanded the matter to consider the claim of the petitioner afresh but in the instant case, the petitioner's right to get its institution on grant-in-aid accrued under the Government Order dated 07.09.2006 and more than 19 years have passed, the petitioner is yet to get justice. In such view of the fact, it is not a case where this Court should remand the matter to the authorities. Accordingly, writ petition is ***allowed*** and the respondent no.1 is directed to take the petitioner's institution on grant-in-aid forthwith.

Order Date :- 25.4.2025

Mohit