***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

<u>+ WRIT PETITION NO.14925 OF 2011</u>

% DATED 12TH OCTOBER, 2015

Between:

P. Venkateshwara Naik and another … Petitioners .. Petitioner

and

$ The State of Andhra Pradesh rep.

by the Secretary to Government,

Tribal Welfare Department and others … Respondents

<Gist:

>Head Note:

! Counsel for petitioners : Sri D. Linga Rao

^Counsel for respondent Nos.1 & 2 : Govt. Pleader for Social Welfare

^Counsel for respondent No.3 : Sri Sarrang Afzul Purkar

? CASES REFERRED:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF

ANDHRA PRADESH

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WRIT PETITION NO.14925 OF 2011

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DATE OF JUDGMENT PRONOUNCEMENT : 12th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1.	Whether Reporters of Local newspapersmay be allowed to see the judgment?	Yes/No
2.	Whether copies of the judgment may bemarked to Law Reporters/Journals	Yes/No
3.	Whether His Lordship wishes to see the fair copy of the judgment?	Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.14925 OF 2011

O R D E R

The petitioners belong to Lambadi community, a recognized Scheduled Tribe. The second petitioner is the minor son of the first petitioner. He was selected for admission in Ist Class in Hyderabad Public School, Begumpet, in 2005, upon passing an entrance test. This was pursuant to his sponsorship by the Tribal Welfare Department of the State under a scholarship scheme promulgated for the benefit of Scheduled Tribe children. The eligibility prescription for availing the scholarship was that the parental income of the child should not exceed Rs.12,000/- per annum.

Pertinent to note, several applicants under this scheme appeared at the entrance test and the second petitioner was one of the successful candidates. The Commissioner of Tribal Welfare, Andhra Pradesh, issued proceedings dated 23.03.2005 recording that the social status of the candidates provisionally selected by Hyderabad Public School, Begumpet and Ramanthapur, had been verified and as their claims were found to be genuine, provincial clearance was granted for their admission in terms of the scholarship scheme. The Principals of Hyderabad Public School, Begumpet and Ramanthapur, were informed thereunder that the said students were eligible for sanction of scholarship and that hostel and boarding may be provided to them, subject to the following conditions:

a) The above student should not be in receipt of any other Scholarship of Tribal Welfare Department.

b) If it is found that the information furnished in the certificates pertaining to the parental income and tribe are false at any stage the admission of concerned candidate will be cancelled and also the amount sanctioned and paid towards special scholarships if any will be recovered by appropriate means.

c) The above students selected for Ist Class must put in 75% attendance in the school every Quarter of the academic year and if the attendance falls short of 75% the admission will be cancelled.

d) If any selected student does not secure promotion to the next higher class, his scholarship will be cancelled and his name will be struck off from the rolls of Public School, unless the absence is due to unavailable circumstances like prolonged illness etc.

e) The Scholarship is awarded purely on temporary basis and it can be cancelled at any stage in case of failure on the part of the awardees in fulfilling any of the above conditions laid down.

f) The parents of the students are informed that they will be held responsible for any damages committed by their children in the school premises.

g) The parents of the students are informed that the admission issued is provisional and the same may be cancelled at any time if any information is found to be false and if the students do not abide by the discipline and conditions of the Public School authorities.

h) Necessary certificates such as nativity, income, and caste should be furnished to the school authorities before admission.

i) The District Tribal Welfare Officer, Hyderabad and Ranga Reddy Districts is requested to claim Scholarships to the students as shown at Annexure – I & II duly obtaining proposals from the Principal, HPS, Ramanthapur, Begumpet.

j) The Provisional declaration of their status as being ST, does not preclude or prevent any further detailed enquiry into their tribal status in future.

There is no dispute that the father of the second petitioner, the first petitioner herein, fulfilled the eligibility criteria in so far as his annual income was concerned at that point of time. The Mandal Revenue Officer, Kothakota, had issued Income Certificate dated 07.05.2005 confirming that the first petitioner had an annual income of Rs.11,000/- from coolie work.

The second petitioner thereafter pursued his school education in Hyderabad Public School, Begumpet, by availing the scholarship.

While so, the Commissioner of Tribal Welfare, Andhra Pradesh, issued show-cause notice dated 30.11.2010 to the first petitioner. Therein, he stated that the Government had started the scheme of pre-matric scholarship for Scheduled Tribe children who were admitted to Hyderabad Public School, Begumpet and

Ramanthapur, so as to provide quality education to children coming from poorer sections and that G.O.Rt.No.329, Social Welfare (Q) Department, dated 21.05.1993, promulgated in this regard, stipulated that a S.T. child who avails of such facility and prosecutes his studies in Hyderabad Public School, Begumpet and Ramanthapur, should not have a parental income exceeding Rs.12,000/- per annum. It was also noted that under Office Memo dated 24.12.2009, the income ceiling of the Scheduled Tribe parent was enhanced from Rs.12,000/- to Rs.18,000/- per annum with effect from 2010-11. Having adverted to these facts, the Commissioner stated that an enquiry had been conducted by the Tribal Welfare Department and it was found that the first petitioner was working in the Education Department as a Government Teacher at Kothakota in Mahabubnagar District. As his annual income was more than Rs.18,000/- per month, he was stated to be ineligible and as he had suppressed the facts and admitted his son, the second petitioner, in Hyderabad Public School and was fraudulently availing Government scholarship, he was called upon to explain as to why the scholarship sanctioned to his child should not be cancelled besides recovering the already sanctioned amount.

The first petitioner submitted his explanation under letter dated 13.12.2010. Despite the same, the Commissioner of Tribal Welfare, Andhra Pradesh, issued proceedings dated 15.02.2010 (signed on 18.02.2011) stating that the first petitioner had joined service as a Government Teacher on 26.12.2005 and that his gross salary, as per the details furnished by the District Educational Officer, Mahabubnagar, was Rs.14,633/- per month, aggregating to Rs.1,75,596/- per annum, and upon careful examination of the matter in view of Government Orders, viz., G.O.Rt.No.329 dated 21.05.1993 and the Memo dated 24.12.2009, the pre-matric scholarship sanctioned to the second petitioner was cancelled from the academic year 2010-11. Pursuant thereto, Hyderabad Public School, Begumpet, the third respondent, issued letter dated 01.03.2011 to the first petitioner calling upon him to pay Rs.1,57,860/- towards the fees for the year 2010-11.

Challenging the action of the authorities in canceling the pre-matric scholarship sanctioned to the second petitioner and in insisting upon payment of Rs.1,57,860/- for 2010-11, the petitioners approached this Court by way of this writ petition. The proceedings dated 15.02.2010 (signed on 18.02.2011) and the consequential letter dated 01.03.2011 of the third respondent school were questioned and a consequential declaration was sought that sanction of the scholarship to the second petitioner and his admission in the third respondent school was legal and valid.

By order dated 14.06.2011, this Court directed the respondents to allow the second petitioner to pursue his studies in the third respondent school and further directed that no recovery of amount should be effected from the petitioners.

WPMP No.31708 of 2015 was filed by the petitioners seeking a direction to the respondents to issue the X^{th} Class pass certificate, Transfer Certificate and Bonafide Certificate of the second petitioner without insisting on payment of the fee arrears due to the third respondent school to enable the second petitioner to seek admission in Intermediate Course, which was scheduled to commence on or after first week of August, 2015. In the affidavit filed in support thereof, the first petitioner, deposing on behalf of himself and his minor son, the second petitioner, while reiterating the facts of the case stated that the second petitioner had continued his studies pursuant to the interim order granted in this writ petition and had completed his X^{th} Class. However, the school authorities failed to issue him his X^{th} Class pass certificate, Transfer Certificate and Bonafide Certificate from I^{st} Class to X^{th} Class while the same were issued to others who appeared for the examination along with him and owing to this, the second petitioner was unable to take up his Intermediate Education. The third respondent school, insisting on payment of its fee arrears as a condition precedent for issuing the said certificates, withheld the same.

Earlier, in the affidavit filed in support of the writ petition, the first petitioner deposing on behalf of himself and his minor son, the second petitioner, stated that the very basis for the show-cause notice dated 30.11.2010 was erroneous as he had never suppressed any facts about his employment. He pointed out that the scholarship was sanctioned by the State in March, 2005, while he secured appointment as a Secondary Grade Teacher only in December, 2005. He further stated that he was appointed as an apprentice for two years and during that period his remuneration was only Rs.1,200/- per month during the first year and Rs.1,500/- per month during the second year. He was extended the regular pay scale attached to the post only after December, 2007, and the gross salary of Rs.14,633/- per month, referred to in the impugned proceedings, was his salary effective from October, 2010, after implementation of PRC-2010. He therefore asserted that all the eligibility conditions were fully satisfied as on the date of sanction of the scholarship and there was no misrepresentation or suppression on his part as alleged. He further asserted that eligibility to draw the sanctioned scholarship continued notwithstanding the factum of his subsequent employment. He stated that he had four children in all, three daughters and one son, and that he was the only earning member in the family, which also included his brother who was dependent on him.

The third respondent school filed WVMP No.549 of 2015 to vacate the interim order dated 14.06.2011. In the counter-affidavit filed in support thereof, the Principal of the school, while seeking to justify the cancellation of the scholarship by the authorities on the one hand, also stated that the fee payment of Rs.1,57,860/- had not been made for the academic year 2010-11 and no fees had been paid thereafter. The second petitioner was stated to be in Xth Standard and once he appeared for the final examination, the school asserted that it would not be in a position to recover the fees due. Details of the outstanding fees were furnished by way of a separate statement which reflects that a sum of Rs.11,48,705/- is due to the school.

The Commissioner of Tribal Welfare, Telangana State, being the successor-in-interest, filed a counter-affidavit seeking to justify cancellation of the second petitioner's scholarship. While narrating the facts as set out *supra*, he referred to G.O.Rt.No.329 dated 21.05.1993, whereby the Government issued orders to extend the scheme of granting scholarships to all Scheduled Caste/Scheduled Tribe students who were admitted to Hyderabad Public School, Begumpet and Ramanthapur, on merit basis and that the prescribed income limit of Rs.12,000/- p.a. should continue. The Commissioner asserted that as the first petitioner secured employment in December, 2005, and his salary was in excess of Rs.12,000/- per annum, the scholarship was liable to be cancelled.

Perusal of G.O.Rt.No.329 dated 21.05.1993 reflects that it was only an embodiment of further orders issued pursuant to the policy of granting scholarships to needy Sc/ST children. Therein, reference was made to the letter dated 09.09.1992 of the Commissioner of Social Welfare, Andhra Pradesh, to extend the scheme of granting scholarships to those SC students who had been admitted to Hyderabad Public School, Begumpet and Ramanthapur, on merit basis, subject to the income limit of Rs.12,000/- p.a. Thereupon, the Government after careful consideration accepted the proposal and ordered as follows:

1. to extend the scheme of granting scholarships to all those SC/ST students

who have been admitted to the Hyderabad Public School, Begumpet and Ramanthapur on merit basis over and above the statutory reservation quota.

2. to remove the restriction of eligibility of one child per family in all such cases mentioned above.

It is not in dispute that at the point of time the second petitioner was considered for grant of pre-matric scholarship, he fulfilled the parental income eligibility criteria, as his father, the first petitioner, had an annual income of only Rs.11,000/-. Despite an opportunity being given to the learned Government Pleader to produce the policy under which this scholarship scheme was introduced, no such document was placed before this Court. The G.Os., which have been made part of the record, only speak of the modalities involved in implementation of the scheme but the parent policy document under which the scheme was introduced was not produced. G.O.Rt.No.329 dated 21.05.1993 is not the policy document, as perusal thereof reflects that it only extended the scheme of granting scholarships.

However, the conditions subject to which the scholarship was sanctioned to the second petitioner are spelt out in the proceedings dated 23.03.2005 of the Commissioner of Tribal Welfare, Andhra Pradesh. These proceedings were general in nature and were not limited to the second respondent alone. Perusal of the conditions prescribed thereunder, which have been extracted *supra*, and more particularly Clause (d) thereof, manifests that the scholarship was not sanctioned for one year or in relation to Ist class alone and the sanction was for the entire pre-matric education of the child. Clause (d) speaks of the selected student not securing promotion to the next higher class which would entail cancellation of his scholarship. This condition would not have been imposed had it been a scholarship sanctioned only for one year, that is, for Ist Class during the academic year 2005-06 alone, as contended by the learned Government Pleader. The argument of the learned Government Pleader in this regard therefore does not hold water. This Court accordingly finds that the scholarship was granted at one go for the entire pre-matriculation education of the second petitioner.

That being so, it was not open to the State to review the eligibility of the second petitioner in terms of his parental income after the initial sanction of the scholarship upon due verification of his fulfilling the eligibility criteria. Had it been the intention of the State that a beneficiary of the scholarship be subjected to such verification on an annual basis, a condition would have been included in that regard in the proceedings dated 23.03.2005. As the stipulated conditions therein did not empower such an exercise being undertaken every year and as the scholarship was liable to be cancelled only in case of failure on the part of the awardee to fulfill any of the conditions laid down, as per Clause (e), the same has to be construed strictly and it would not be open to the State to introduce a new condition which goes against the very spirit of the scholarship scheme. Therefore, the State could only undertake verification of the eligibility criteria in terms of parental income of the beneficiary at the time of sanctioning the scholarship and mere disbursal of the scholarship amount each year would not entitle it to reopen the issue of the beneficiary fulfilling the eligibility criteria as regards the parental income each year.

That apart, the thrust of the argument advanced by the leaned Government Pleader, which appears to be to the effect that the parent of the beneficiary must necessarily stagnate at the same level of poverty which earned his child the benefit of the scholarship offered by the State, is against constitutional principles. In this regard, reference may be made to the Directive Principles of State Policy enumerated in Part IV of the Constitution. Trite to state, though these principles are not enforceable by any Court, they are fundamental in the governance of the country and it shall be the duty of the State to apply them (Article 37). Article 39 of the Constitution requires the State to direct its policy towards securing an adequate means of livelihood to its citizens, while Article 41 requires the State to make effective provision for securing the right to work and to education. Article 43 requires the State to endeavour, by suitable legislation, to secure a living wage and conditions of work ensuring a decent standard of living and Article 46 requires that the State shall promote, with special care, the educational and economic interests of weaker sections of the people and in particular, Scheduled Castes and Scheduled Tribes. It would therefore be against public policy for the State to insist that a Scheduled Tribe parent, whose child has been given the benefit of a scholarship, should maintain the same level of poverty so as to get his child educated. Such a retrograde and debilitative measure cannot be the intendment of a scholarship scheme floated by the State for empowerment of Scheduled Castes/Scheduled Tribes.

The learned Government Pleader would further contend that by availing the scholarship amount for his son, the first petitioner who is earning an annual income of Rs.1,75,596/- would be depriving another deserving Scheduled Tribe child of such benefit. However, the record demonstrates that the annual fee payable to Hyderabad Public School, Begumpet, for the academic year 2010-11 was Rs.1,57,860/- and the table of fee arrears filed by the third respondent school shows that every year there was a steady increase in the fees, so much so that the fee payable for the X^{th} class was nearly Rs.3,00,000/-. Though the first petitioner started earning Rs.1,75,596/- per annum after the grant of the scholarship, he clearly does not have the wherewithal to shoulder the financial burden of educating his son in Hyderabad Public School, Begumpet. Thus, even on ground realities, this Court finds that the first petitioner could not have shouldered the financial responsibility of his son's education in Hyderabad Public School, Begumpet. As it was the policy of the State that deserving and meritorious children belonging to Scheduled Castes and Scheduled Tribes should have the benefit of the quality education offered by Hyderabad Public School, Begumpet and Ramanthapur, the State cannot backtrack upon its commitment on the ground that the parental income of the child exceeded the stipulated minimum thereafter as such a child, without the benefit of the scholarship, would necessarily have to leave the Hyderabad Public School, as his/her parent may not be in a position to bear the burden of the high school fees even if he started earning more than the stipulated minimum after the initial sanction.

This Court therefore finds that the action of the State in reviewing the eligibility of the second petitioner to avail the scholarship, in the context of his parental income, in the year 2010 was without legal foundation and the consequential cancellation of his scholarship was arbitrary, illegal and wholly unsustainable.

The writ petition is accordingly allowed setting aside the impugned proceedings dated 15.02.2010 (signed on 18.02.2011). The State shall remit the fee arrears due to Hyderabad Public School, Begumpet, expeditiously and in any event, not later than one month from today. The Hyderabad Public School, Begumpet, the third respondent, shall immediately release all the certificates of the second petitioner without awaiting disbursal of the fee arrears due to it by the State, so that he may continue with his education. It shall also be open to the Hyderabad Public School, Begumpet, to take recourse to all remedies available to it, including by way of contempt proceedings, in the event the State fails to abide by this order within the time stipulated. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

12TH OCTOBER, 2015

<u>Note:</u> L.R. copy to be marked

B/o PGS/SVV