

HON' BLE SRI JUSTICE G. SHYAM PRASAD

W.P. No. 3529 of 2001

DATE: 27.08.2016

Between:

Dr.K.Lakshmi Narasamma
and 15 others

.. Petitioners

And

The Government of A.P.
and two others

.. Respondents



ORDER:-

This writ petition is filed for the following substantive relief:

“..to issue a writ of mandamus declaring the action of the 1st and 2nd respondents in not admitting G.T.P. College of Education for Women, Bhimavaram, West Godavari District and the posts of the petitioners in that college to grant-in-aid with effect from the dates of their respective appointments, as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and consequently direct the 1st and 2nd respondents to admit G.T.P. College of Education for Women and the posts of the petitioners in that college to grant-in-aid with effect from the dates of their respective appointments.”

The brief facts of the case are that the petitioners are working in the 3rd respondent - G.T.P. College of Education for Women, Bheemavaram, West Godavari District (for brevity “G.T.P. College”) in different capacities having joined the College on different dates. This is a private college which has applied for grant-in-aid to respondent Nos.1 and 2. It is stated that the Government issued orders in G.O.Ms.No.424, dated 19.09.1985 directing all the unaided private Degree and Junior Colleges (including oriental colleges, colleges of education and colleges of physical education) which were permitted by the competent authority and completed 5/3 years of existence (men and women colleges respectively) as on 01.09.1985 and all other such institutions existing as on 01.03.1985 which will complete the stipulated period of

existence will be admitted to grant-in-aid. The admission of these colleges to grant-in-aid is subject to fulfillment of the following conditions:

- a) There should be sufficient student strength in the classes as per the prescribed norms.
- b) There should be sufficient work load for teachers.
- c) Wherever private colleges are started on the specific assurance and commitments given by local sponsoring agencies regarding provision of facilities like land, buildings, corpus fund, etc. admitting them to aid would be done only after the commitments are fulfilled.”

It is further asserted that G.T.P College has complied with all the conditions stipulated in G.O.Ms.No. 424 as referred in the correspondence made on different dates, and on 01.02.1995, the Management of G.T.P. College had deposited a sum of Rs.8,51,165/-. The Secretary and Correspondent of the G.T.P. College addressed a letter dated 30.06.1995 to the 2nd respondent stating that G.T.P. College has completed 10 years of its existence and has been functioning since 1984-1985 and requested to admit the College to Grant-in-aid from the academic year 1995-996. He addressed another letter dated 19.08.1998 to the Minister for School Education indicating compliance with the conditions mentioned in G.O.Ms.No.424. In response to these letters, the Regional Joint Director of School Education, Kakinada sent a Communication dated 15.10.1999 about the proposals of admission of G.T.P. College to Grant-in-aid and particulars

provided by the College for making it eligible for grant-in-aid for consideration by the Commissioner and Director of School Education, Andhra Pradesh, Hyderabad. On 07.07.2000, the Secretary and Correspondent of the G.T.P. College sent another letter to the Secretary to Government, Department of School Education informing about their plan for grant-in-aid and compliance with the conditions mentioned in G.O.Ms.No.424 and requested to provide grant-in-aid to the college.

The main contention of the learned counsel for the petitioners is that in view of G.O.Ms.No.424, the 3rd respondent - G.T.P. College is entitled to grant-in-aid as it has already complied with all the conditions stipulated in the G.O.Ms.No.424, however this G.O. has not been implemented by the Government by providing grant-in-aid to the college. Therefore, the petitioners, being employees of the G.T.P. College, are deprived of admission to grant-in-aid. He has also submitted that the Government has granted grant-in-aid to D.N.R. College, Bheemavaram which is a private college in the same town having similar facilities, however, the same benefit is not extended to G.T.P. College, as such, the action of the Government is in utter violation of equality before law, and prays for implementation of G.O.Ms.No.424 in respect of G.T.P. College.

On the contra, the learned Government Pleader for School Education appearing for respondent Nos.1 and 2 has submitted that the petitioners are only employees working in G.T.P. College, Bheemavaram and they have no *locus standi* to seek admission to grant-in-aid, but it is the College which has to seek admission to grant-in-aid as per the provisions of the A.P. Private Educational Institutions Grant-in-aid (Regulation) Act, 1988 (Act 22 of 1988) and also in view of the judgment rendered by this Court in M.D.Soujanya v. S.V.V.P.V.M.C. Mahila Vidya Peeth¹. While placing reliance on this judgment in paragraph Nos.9, 19 and 22, the learned Government Pleader has submitted that the petitioners are not entitled to seek relief of admission to grant-in-aid on behalf of the G.T.P. College and in view of the above judgment, the Government has to take steps in the light of the provisions contemplated under Sections 3 and 4 of Act 22 of 1988 for providing grant-in-aid on fulfillment of the conditions stipulated therein.

The 2nd respondent, in his counter affidavit, has submitted that the Government has provided grant-in-aid to the following colleges:

- 1) SPMH College of Education for Women, Machilipatnam
- 2) C.R.R. College of Education, Eluru
- 3) G.T.P. College of Education for Women, Bhimavaram, West Godavari District

¹ 2006(2) ALD 251

- 4) M.M. College of Education for Women, Vijayawada
- 5) Sdhartha College of Education, Vijayawada
- 6) RVRR College of Education, Guntur

and subsequently, they refused to take grant-in-aid, and therefore, the Government is not entitled to provide grant-in-aid even to G.T.P. College.

Now, the points that arise for consideration in this writ petition are;

- 1) Whether the petitioners are entitled to seek grant-in-aid to G.T.P. College?
- 2) Whether there is infringement of G.O.Ms.No. 424?
- 3) Whether G.O.Ms.No.424 is implemented by the Government or not?

Heard the learned counsel for both the parties and perused the material placed on record.

From the above pleadings, it is obvious that the petitioners are the employees of G.T.P. College and seeking relief of grant-in-aid on behalf of the College as their services may be affected if grant-in-aid is not provided to the College. The decision relied upon by the learned Government Pleader clearly reveals that the High Courts, in exercise of their jurisdiction under Article 226 of the Constitution of India, cannot grant writ of *mandamus* in cases of this nature and the legal position held in the judgment is to the following effect:

- 9) “Before examining the rival contentions, it is necessary to take note of the relevant statutory provisions. The A.P. Private Educational Institutions Grant-in-aid (Regulations) Act (Act

22/ 88), came into force with effect from 22.07.1985. Section 3 thereof deals with regulation of grant-in-aid to private educational institutions and thereunder no private educational institution shall be entitled to receive any grant-in-aid unless the committee constituted for the purpose recommends that it may be admitted to grant-in-aid. Under sub-section (2) of Section 3, the college is entitled to such grant-in-aid only from the date it satisfies all the conditions for admission to grant-in-aid as specified in the Andhra Pradesh Education Act, 1982, the rules made thereunder, the grant-in-aid Code and orders, and other instructions, issued by the Government from time to time. Section 4 relates to release of grant-in-aid in respect of certain additional sections and such entitlement is only if the committee recommends release of grant-in-aid in respect of such additional sections and posts. Section 6 gives overriding effect to the provisions of the Act notwithstanding anything contained to the contrary in any other law for the time being in force.

19) A perusal of the provisions of Act 22/ 88 reveals that the entitlement of grant-in-aid is on compliance of the conditions prescribed in the Grant-in-aid Code and other instructions issued by the Government and on the recommendations of the Committee constituted for such purpose. Reference is made in Section 3(2) of Act 22/ 88, to the Grant-in-aid Code, which is non-statutory. In the *State of Assam v. Ajit Kuar Sarma*, AIR 1965 SC 1196, the Supreme Court held thus:

“The main question which falls for decision in this appeal is whether the High Court is right in issuing a writ of *mandamus* to the State through the Director directing it not to give effect to the letter of March 20, 1962. It has not been contended on behalf of the appellants that the Rules have statutory force and the arguments before us have been made on the basis that the Rules have no statutory force and are mere executive instructions given by the Government to private colleges as a condition for the implementation of pay scales, etc., recommended by the University Grants Commission for private colleges, these scales being apparently higher than those existing

from before. It seems to us that the High Court was in error in granting a writ of *mandamus* against the State through the Director once it found that the Rules had no statutory force and were mere administrative instructions for the purpose of giving grant-in-aid to private colleges. *What grants the State should make to private educational institutions and upon what terms are matters for the State to decide.* Conditions of these grants may be prescribed by statutory rules; there is however no law to prevent the State from prescribing the conditions of such grants by mere executive instructions which have not the force of statutory rules.

In the present case, the Rules have been framed in order to give revised grants to private colleges to enable them to give higher scales of pay, etc., to their teachers in accordance with the recommendations of the University Grants Commission. The Rules have been held by the High Court to have no statutory force and that is not disputed before us. In these circumstances, it is clear that the Rules are mere executive instructions containing conditions on which grants would be made to private colleges to implement the recommendations of the University Grants Commission as to pay scales, etc., of teacher of private colleges. Where such conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. If it decides not to accept the instructions it will naturally not get the grant-in-aid which is contingent on its accepting the conditions contained in the instructions. On the other hand, if the college accepts the conditions contained in the instructions, it receives the grant-in-aid. If however having accepted the instructions containing the conditions and terms, the college does not carry out the instructions, the Government will naturally have the right to withhold the grant-in-aid. *That is however a matter between the Government and the private college concerned. Such conditions and instructions as to grant-in-aid confer no right on the teachers of the private colleges*

and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced. It is only for the Governing Body of the college to decide whether to carry out any direction contained in mere administrative instructions laying down conditions for grant-in-aid. Further, it is open to the Governing Body not to carry out any such instruction which is not based on rules having statutory force, and it will then be naturally open to the State to consider what grant to make. But, if the Governing Body chooses to carry out the instruction, it could hardly be said that the instruction was being carried out under any threat. It is certainly not open to a teacher to insist that the Governing Body should not carry out the instruction. The rules for the purpose of grant-in-aid being – as in this case – merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a mandamus asking for the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them because of the grant-in-aid being withheld in whole or in part. Such mere administrative instructions even though called rules are only a matter between the Governing Body and the State through the Director and cannot in our opinion form the basis of a petition for writ under Article 226 by a teacher....”

“.....That decision in our opinion governs the present case also, for it has been found by the High Court, and it is not disputed before us, that the Rules are mere administrative instructions and have not the force of law as statutory rules. They, therefore, confer no right on the Teachers of private colleges which would entitle them to maintain a writ petition under Article 226 for the enforcement of non-enforcement of any provision of the Rules. The Rules being mere administrative instructions are matters between private colleges and the Government in the matter of grant-in-aid to such colleges, and no Teacher of a college has any right under the Rules to ask either for their enforcement or for their non-enforcement. We are

therefore of opinion that the High Court was in error when it granted a writ against the State through the Director, by which the Director was asked not to give effect to its letter dated March 20, 1962, against the Governing Body of the college”.

22) Sri *P.V. Sanjay Kumar*, learned Counsel for the 1st respondent, would however submit that while in *Ajit Kumar Sarma* (supra), the Supreme Court had held that the Teachers had no enforceable right to seek enforcement of the grant-in-aid Code, the Supreme Court had also held that these were matters between the Government and the management of the degree colleges and since the proposal of the 1st respondent is pending with the Government, the Government should be directed to consider the proposal favourably and provide grant-in-aid. If no *mandamus* can be issued, to the Government, to provide grant-in-aid, at the behest of Teachers neither can it be issued at the instance of the management of a private unaided college. The fact that the proposal submitted by the 1st respondent, to provide grant-in-aid to the Science sections of the college, is pending with the Government for more than a decade, cannot however be ignored. The Government cannot keep such matters pending indefinitely and is required to take a decision one way or the other at the earliest.”

In view of Sections 3 and 4 of Act 22/ 88 also, it is obvious that;

- a) no private educational institution other than a college established after the 1st April, 1977 and existing on the 1st September, 1985 and no private college established after the 1st April, 1977 and existing on the 1st March, 1985 shall be entitled to receive any grant-in-aid (unless the Committee concerned constituted in G.O.Rt.No.220, Education (SSE-I) Department, dated the 27th January, 1989 and the Government Memo.No.245/ SSE-1/ 89-I, Education Department, dated the 9th February, 1989 recommends that it may be admitted to grant-in-aid;

- b) It is also obvious that no private educational institution other than a College which has been established after the 1st September, 1985 and no private college which has been established after the 1st March, 1985 shall be entitled to receive any grant-in-aid.

In view of Section 3 of the Act 22/ 88, it is evident that without following Government Orders mentioned therein and the procedure laid down under Sections 3 and 4, no college can be admitted to grant-in-aid. However, in the light of the decision cited supra by the learned Government Pleader and reliance placed thereon, I am of the opinion that the petitioners are not entitled to seek a writ of mandamus under Article 226 of the Constitution of India for the relief claimed by them.

Further, having regard to the contentions put forth by the learned Government Pleader with reference to the averments made in the counter affidavit, his submissions are not reasonable as the very purpose of grant-in-aid is for development of the College, and in view of the provisions of the Act 22/ 88, grant-in-aid has to be granted if the Colleges comply with the conditions stipulated therein. More so, the contention of the learned Government Pleader cannot be accepted on the mere ground that three aided colleges have come out of grant-in-aid after it was granted to them, and it cannot be a ground to reject grant-in-aid to other colleges also. However, in this case, this Court is not inclined to

interfere with the discretion of the Government in providing grant-in-aid, and feels that interest of justice would be met if the Government considers the cases of grant-in-aid where the colleges comply with the conditions as specified in the provisions of the Andhra Pradesh Education Act, 1982 and the relevant G.Os. issued by the Government for providing grant-in-aid.

At this juncture, it is submitted by the learned counsel for the petitioners that the petitioners made representations before the Government for providing grant-in-aid to the 3rd respondent – G.T.P. College and prays that the same may be considered and appropriate orders passed thereon.

Hence, I do not see any merits in this writ petition, and accordingly it is dismissed. However, as submitted by the learned counsel for the petitioners, this Court observes that the Government may consider the representations said to have been made by the petitioners for providing grant-in-aid to G.T.P. College if they comply with all the conditions as specified in the provisions of the Andhra Pradesh Education Act, 1982 and the relevant G.Os. issued thereunder from time to time. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. SHYAM PRASAD, J

27.08.2016
bcj