

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.3449 OF 2003

ORDER:

This writ petition under Article 226 of the Constitution of India is filed by the petitioner, challenging the inaction of the respondents in not paying the maintenance grant at the rate of 6% of the basic pay of the Teaching Grant as arbitrary, illegal, discriminatory and violative of Articles 14 and 19 of the Constitution of India and consequently, direct the respondents to pay the Maintenance Grant at the rate of 6% of the teaching grant.

2. The brief facts of the case are that, the petitioner is an Educational and Rural Development Academy established in 1973 and registered under the Societies Act. The petitioner started Telugu medium in 1973, whereas, it started English Medium at Yemmiganur in the year 1982. The avowed object of the petitioner is to impart free education to the children in rural areas. Grant-in-aid to Telugu medium and English medium sections was admitted in the years 1978 and 1993 respectively. Further, the schools admitted to grant-in-aid have been receiving grant-in-aid in full to the teaching and non-teaching eligible staff members and also 6% of the amount paid to the staff for the maintenance of the schools, called the maintenance grant. The maintenance grant is for meeting expenditure relating to expenditure on menial staff, rent, taxes, repairs, maintenance of buildings, furniture, equipment,

postage, stationary, audit charges, travelling expenditure, chalks, blackboards, maps, teaching aids, electricity & water charges and other day to day miscellaneous expenditure. The schools admitted to grant-in-aid either in full or part are prohibited from charging any fee or donations from the students, as such the education is being imparted at free of cost.

3. It is the petitioner's case that, under the relevant rules, though the schools are entitled to receive the maintenance grant at 10%, the government reduced the same to 6% of 1974 pay scales. This Court in W.A.No.963 of 1991 directed the Government to release the grant at 6% of the basic pay of the teaching grant that is being drawn from year to year. However, the Government has reduced the maintenance grant from 6% to 2% by virtue of G.O.Ms.No.320 Education (PS.2) Department dated 16.09.1994, on the ground that payment of maintenance grant as a percentage of teaching grant results in an unintended hike in the maintenance grant as and when the pay scales are revised. In normal situation, hike in pay revision takes place once in every five years for uniformity in fixing maintenance grants at a particular percentage of teaching, in order to meet the inflationary tendencies in the market. It is the case that the schools are not being paid the entire expenditure incurred, but it is restricted to 6% of teaching grant and if actual expenditure is below 6% than the amount actually expended is being paid and not 6%. To avoid further implications

of law, the Government has enacted Act. 11 of 1995 to nullify the judgment of this Court and directed the institutions to send proposals for the maintenance grant at prescribed rate. In **Recognised Schools Managements Associations, A.P. v. Government of A.P., Education Department and another**¹, the Court held that Act No.11 of 1995 is no more applicable and declared the Act as unconstitutional. Therefore, it is urged that the petitioner is entitled to claim maintenance grant-in-aid at the rate of 6% in terms of the judgment referred supra.

4. It is specifically contended that the petitioner was admitted to grant-in-aid, but on fulfilment of certain conditions laid down by the Government. According to Article 45 of the Constitution of India, the State is under an obligation to provide free and compulsory education for all the children until they complete the age of fourteen years. The Apex Court in **Unni Krishnan J.P & others v. State of Andhra Pradesh & others**² held that a childhood has a fundamental right to free education up to the age of 14 years.

5. As the aided schools are imparting free education in regional languages, the State is under a constitutional obligation for proper, healthy and smooth running of the schools, apart from teaching and non-teaching staff, for meeting expenditure relating to expenditure on menial staff, rents, taxes, repairs, maintenance

¹ 1997 (3) ALD page 40

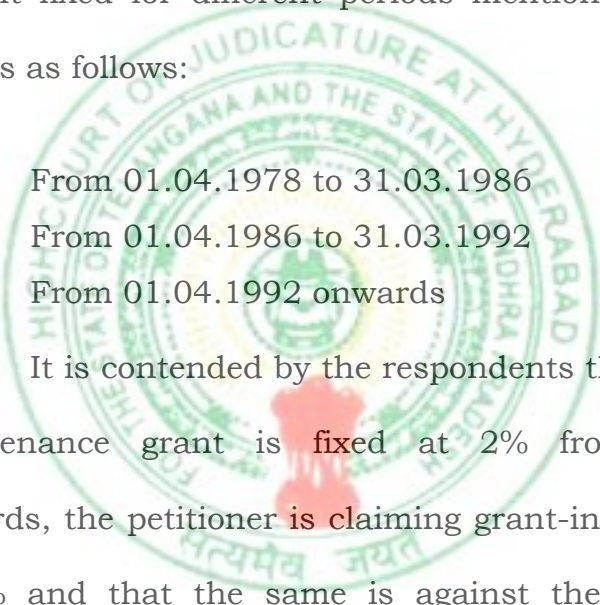
² 1993 AIR 2179

of buildings, furniture, equipment, postage, stationary, audit charges, travelling expenditure, chalks, blackboards, maps, teaching aids, electricity & water charges and other day-to-day miscellaneous expenditure, which are *sine quo non* for running a school. The grant-in-aid is only to meet the contingencies and the teaching grant is only to meet the above contingencies. Therefore, it is contended that the respondents are liable to pay grant-in-aid to the petitioner.

6. It is the case that, the petitioner has been sending proposals for maintenance grant, as required by the respondents, but the respondents have not released the maintenance grant, despite the directions given by this Court in different writ petitions. As per G.O.Ms.No.320 dated 16.09.1994, the petitioner is entitled to the maintenance grant of Rs.36,481/-. Out of the entitled amount, an amount of Rs.10,048/- was already paid and balance of Rs.26,433/- is yet to be paid. But, on account of failure to release the maintenance grant, the petitioner is not in a position to meet necessary expenditure to maintain the school. Despite repeated requests and demand, the respondents did not release the maintenance grant and withhold the amount for the reasons best known to them. Therefore, the petitioner filed the present writ petition praying for the above said reliefs.

7. The respondents filed counter affidavit denying material allegations and raised several contentions which are as follows:

- a) It is contended that the Government is the competent authority to prescribe percentage of teaching grant as maintenance grant payable to the private educational institutions for receiving grant-in-aid from the State Government. Accordingly, the Government issued G.O.Ms.No.320 Dated 16.09.1994 and based on the said G.O, the Government fixed the percentage of teaching grant as maintenance grant payable to private educational institutions. The percentage of Maintenance Grant fixed for different periods mentioned in the G.O. reads as follows:



From 01.04.1978 to 31.03.1986	4.5%
From 01.04.1986 to 31.03.1992	3% and
From 01.04.1992 onwards	2%

It is contended by the respondents that, though the maintenance grant is fixed at 2% from 01.04.1992 onwards, the petitioner is claiming grant-in-aid at the rate of 6% and that the same is against the orders of the Government in G.O.Ms.No.320 dated 16.09.1994.

- b) Further, it is asserted that, According to Section 41 and 46 of A.P. Education Act, 1982, private educational institutions cannot claim grant-in-aid as a matter of right. Section 45 of the Education Act further prescribed that the order passed by the Government refusing to sanction

grant shall be final and shall not be questioned in any Court of law. Therefore, the Government has power to withhold, reduce or withdraw any grant under Section 46 of the Act.

- c) The respondents contended further that, an amount of Rs.51,494/- and Rs.33,665/- towards maintenance grant was released on 21.07.2006 to the to the petitioner's schools for the years 1978 to 2005 vide proceedings Rc.No.1836/A.IV/2006-07 dated 02.06.2006 by the Director of School Education A.P., Hyderabad, duly implementing the orders of this Court issued in WPMP.No.4525 of 2003. Thus, as the respondents released grant-in-aid to the petitioner's institutions in terms of G.O.Ms.No.320 dated 16.09.1994, they are not entitled to claim any grant-in-aid in excess of the amount fixed by the Government in G.O.Ms.No.320.
- d) It is contended in the counter affidavit that the Government has issued Ordinance No.9/2007 dated 19.09.2007 which has become an Act No.34 of 2007 bringing amendments to Andhra Pradesh Private Educational Institutions Maintenance Grant (Regulation) Act, 1995, by which, in Section 3(1) the amendment has been made which states that, provided that no arrear claim for Maintenance Grant shall be allowed beyond a

period of 3 years from the date on which it has become due and all such arrear claims shall lapse.

Therefore, the petitioner is not entitled to claim any arrears for the earlier periods and prayed to dismiss the writ petition.

8. During hearing, learned counsel for the petitioner Sri Kasa Jaganmohan Reddy contended that when G.O.Ms.No.320 was struck down by this Court, the petitioner is not entitled to claim benefit under G.O.Ms.No.320. That apart, a direction was issued by this Court in W.A.No.963 of 1991, directing the respondent to pay grant-in-aid at 6%. Similarly in W.P.No.20160 of 2014 i.e. **Recognised Schools Managements Association's** case (referred supra) Act No.11 of 1995 was declared unconstitutional, and consequently, G.O.Ms.No.320 was held to be illegal and inoperative and the same was struck down and directed to pay grant-in-aid at the rate of 6% on the basic pay of teaching staff grant. Aggrieved by the said judgment, W.A.No.526 of 1997 was preferred and the Division Bench of this Court confirmed the order passed by in the writ petition by the learned Single Judge and held that G.O.Ms.No.320 is no more in operation and thereby, the respondents are not entitled to take shelter under the said G.O.Ms.No.320. Further, it is contended that Act No.11/1995 was also declared as unconstitutional and thereby the respondents are not entitled to deny grant-in-aid at the rate of 6%. It is alleged that, Amendment to Section 3(1) of A.P. Educational

Institutional Maintenance Grant (Regulation) Act, 1995 as on the date of filing the writ petition, was not in existence and no limitation was prescribed, but the amendment which brought the Act on 19.09.2007 will have no retrospective effect, thereby, the right of the petitioner to claim arrears of grant-in-aid cannot be taken away on account of such amendment and therefore, prayed to declare inaction of the respondents in not releasing the grant-in-aid as illegal and arbitrary and directed to issue a consequential direction to release grant-in-aid at the rate of 6% to the petitioner on the pay scale of the teaching staff.

9. Per contra, the learned Government Pleader for Education would contend that, as per G.O.Ms.No.320, it is not possible to pay grant-in-aid at the rate of 6%, as it was reduced from 4.5% to 3% and then to 2 % for different periods commencing from 01.04.1978 to 31.03.1986, 01.04.1986 to 31.03.1992 & 01.04.1992 to onwards respectively by G.O.Ms.No.320. Even otherwise, the respondents released grant-in-aid to the petitioner by proceedings dated 14.07.2006 and receipt of the same has been acknowledged while accepting to furnish certificate of utilization in due course, as per letter dated 30.08.2006 issued by the petitioner. Therefore, the petitioner having accepted release of grant-in-aid at the rate of 2%, based on the percentage fixed in G.O.Ms.No.320, the petitioner is now cannot go back and claim grant-in-aid at the rate of 6%. Even otherwise, as per the amended Act 11/1995, the petitioner is not

entitled to recover arrears at the rate of 6%, as claimed by the petitioner and prayed to dismiss the writ petition.

10. Considering rival contentions and perusing the material available on record, the point that arises for consideration is ***“whether the petitioner is entitled to claim arrears of grant-in-aid of the pay scales of teaching staff at the rate of 6% on the pay scales of teaching staff. If so, the inaction of the respondents in releasing grant-in-aid at the rate of 6% amounts to violation of fundamental right guaranteed under the Constitution of India and the same be declared as arbitrary and illegal and consequential direction be issued to the respondents for release of grant-in-aid at the rate of 6%, as claimed by the petitioner.”***

POINT

11. Undisputedly, the petitioner was admitted into grant-in-aid, both for Telugu and English medium in grant-in-aid scheme in different years and they have received grant-in-aid prior to filing of the writ petition at the rate of 6% and by G.O.Ms.No.320, the Government refused grant-in-aid assigning its own reasons and fixed the rates of teaching grant as maintenance grant payable to private educational institutions for the following financial years, which are as follows:

Period	Percentage
From 01.04.1978 to 31.03.1986	4.5%
From 01.04.1986 to 31.03.1992	3%
From 01.04.1992 onwards	2%

12. But G.O.Ms.No.320 was challenged by the **Recognised Management Schools Association** (referred supra) in W.P.No.20160 of 1994 and this Court by its order dated 19.03.1997, struck down the said G.O. declaring the same as unconstitutional and the same was affirmed by a Division Bench of this Court in W.A.No.526 of 1997, while directing the Government of Andhra Pradesh, Education Department and others to release grant-in-aid at the rate of 6% on the pay teaching staff grant. Therefore, G.O.Ms.No.320 is no more in existence and the respondents cannot take advantage of the G.O and reduce the grant-in-aid to 2% to the petitioner. However, it is brought to the notice of this Court by the learned Government Pleader for the respondents that in the judgment in writ appeal the order was passed on the concession of the then Government Pleader to the effect that the provision of the impugned and shall not apply to the case of the petitioner and in so far as money already paid or required to be paid to the respective claims for the period before enactment. But, that does not make any difference regarding applicability of the G.O to the present petitioner. A Division Bench of this Court also adverted to the provisions of A.P. Private Educational Institutions Maintenance (Regulation) Act, 1995 (Act 11/1995) and upheld the judgment of the single Judge declaring the action of respondent as arbitrary in view of the concession, the nullity of Act 11/1995 was not decided in the writ appeal at all. But, ultimately, the Division Bench held that the declaration in the

impugned judgment that Act No.11 of 1995 is not *ultra vires*, but affirmed the direction that the appellants would carry out the orders of W.P.No.1159 of 1991 which were affirmed in W.A.No.963 of 1991. Thus, in view of the law declared by the Division Bench of this Court, the respondents are liable to release grant-in-aid at the rate of 6% in view of the declaration of G.O.Ms.No.320 as unconstitutional. Therefore, the respondents are bound to pay grant-in-aid at such rate to the petitioner.

13. Learned Government Pleader for Education drawn attention of this Court to Sections 43,45 & 46 of the A.P. Education Act, 1982, and would contend that the order passed by the Government to deny grant-in-aid is final and the same cannot be questioned.

14. According to Section 43, the Government may in such cases as they think fit, by order, sanction grant to any recognised local authority educational institution or private educational institution subject to such conditions as they may impose in the order relating to such grant; every grant sanctioned under sub-section (1) shall be disbursed by the Director or such other officer subordinate to the Director as the Government may, by a general or special order, authorise in this behalf, in such manner and subject to such conditions as may be prescribed; the manager of every recognised institution which is receiving any grant out of State Funds shall be responsible for the fulfilment of all the conditions subject to which such grant has been given. Thus Section 43 deals with the power

of the Government to the present facts of the case. Therefore, taking advantage of Section 46 of A.P. Education Act, the petitioner cannot be denied payment of grant-in-aid at the rate of 6%.

15. Yet, the learned Government Pleader for Education for the State of Andhra Pradesh would contend that, in view of the amendment made to Section 3(1) by Act 34 of 2007, A.P. Educational Institutions Maintenance (Regulation) Act, 1995, with effect from 19.09.2007, the petitioner is disentitled to recover arrears of grant-in-aid. By the date on which the Act came into force, the writ petition is filed challenging the inaction of the respondents and the subsequent change in law will have no effect on the claim made by the petitioner, since, the respondents denied grant-in-aid at the rate of 6% in terms of G.O.Ms.No.320, despite declaring the G.O. as unconstitutional by this Court in the judgments referred supra and it is not the case of the petitioner to recover arrears of grant-in-aid and he is seeking a direction against the respondents for release of grant-in-aid at the rate of 6%, as ordered by this Court in the judgments referred supra. In such a case, Amendment to Act 34 of 2007 will have no effect on the claim of the petitioner. Accordingly, this contention of the learned government pleader for education is rejected.

16. Learned Government Pleader further contended that the respondents released grant-in-aid for the financial year 2005-2006 by proceedings dated 14.07.2006 and the petitioner acknowledged

the receipt of maintenance grant arrears of Rs.51,494/- and while accepting the amount, the petitioner obligated to submit utilization certificate in due course. But, that does not mean that the petitioner waived his right to claim of maintenance grant at the rate of 6%, since it does not amount to reserving right to claim maintenance grant at the rate of 6%. Therefore, the subsequent events, accepting maintenance grant at the rate of 2% by letter dated 30.08.2006 by the petitioner would not take away the right to claim maintenance grant at the rate of 6%.

17. The petitioner is an educational institution established with an objective of imparting free education to the children and the Government is under an obligation to provide maintenance grant to meet the contingencies. But, suddenly, the Government reduced maintenance grant to a minimum extent of 2% by issuing G.O.Ms.No.320 which was struck down by this Court declaring as unconstitutional by this Court. Therefore, it is the obligation of the government under Article 45 of the Constitution of India to make every effort to provide early child care and education for the children until they complete age of 6 years. But denial of grant-in-aid at the agreed rate of 6% on the pay scales of teaching staff would deprive the petitioner an opportunity to provide free education to the children in the rural areas and that apart, in judgment in **Unni Krishnan's** case (referred supra), the Supreme Court upheld the obligation of the government to provide free

education. Article 45 is only a directive principle. The Constitution of India is amended by Eighty Sixth Amendment Act, 2002, and by amending Article 21-A, recognising the right to education as a fundamental right and it is as follows:

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

18. Similarly, Article 45 is also suitably amended. Article 51-A is also amended Clause (J), which obligates that who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. The amendments to various provisions of Constitution of India was brought only with a avowed object to provide free and compulsory education to all the children up to the age of 14 years. As the State could not achieve the goal even after 50 years of adoption of the provision, the task of providing education to all children in this age group gained momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, has made strenuous efforts to fulfil this mandate and, though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled. That would not fulfil this goal and declaring the right to education as a fundamental right to free and compulsory education as a

fundamental right by incorporating Article 21-A of the Constitution of India for the children between 6 to 14 years for their upliftment and similarly, enacted the Right to Free Education Act, to achieve the same objective, in view of the amendment to Constitution of India. But the respondents instead of allowing the petitioner to provide such free education incurring minimum expenditure of 6% as grant-in-aid on the pay scales of the teaching staff and denied the opportunities to the petitioners to provide free education in the rural areas like Yemmiganur and the action of the respondents is contrary to Article 21-A, which is a fundamental right.

19. The earlier order in writ appeal was passed on the concession of the learned Government Pleader. Even otherwise, W.P.No.20160 of 1994 was filed by Recognised Schools Managements Associations, in which, most of the committees of the schools are the members. Even assuming for a moment that the order in W.A.No.526 of 1997 was by concession, if the benefit is extended to one aided school and denied to another school, it amounts to discriminating the equals and the Government is not supposed to give concession to one and deny the benefit to others. Such approach of the Government would amount to discrimination of equals.

20. As the judgment of the learned single Judge in W.P.No.20160 of 1994 was not set-aside by the Division Bench of this Court in W.A.No.526 of 1997 Appellate Court, still it holds

good. Therefore, the contention of the learned Government Pleader for the respondents is without any substance and it is nothing but applying to one yardstick to the association in the writ appeal and different yardstick to the petitioner herein in releasing grant-in-aid. Therefore, the act of the respondents is discriminatory and violative of the order passed by this Court in **Recognised Schools Managements Associations** case (referred supra). Hence, the inaction of the respondents is declared as illegal and arbitrary.

21. In any view of the matter, the contention of the learned Government Pleader is that the petitioner is not entitled to maintenance grant in view of G.O.Ms.No.320, which was struck down by this Court in the judgments referred supra. Even otherwise, the discriminatory attitude of the Government giving concession to one educational institution and denying benefit to the petitioner's educational institution cannot be encouraged by the Courts, since it is arbitrary and discriminatory in not releasing grant-in-aid to the petitioner's association whose object is to provide free education. In those circumstances, this Court has no option except to hold that the inaction of the respondents is arbitrary in not releasing the maintenance grant-in-aid to the petitioner's educational institution and consequently, I hold that the petitioner is entitled to all the benefits as decided in **Recognised Schools Managements Associations** case. Hence, the respondents are directed to work out maintenance grant @ 6%

and arrange to pay the same within a period of three months from the date of receipt of copy of this order to the petitioner's educational institution, on par with other schools.

22. With the above direction, the writ petition is allowed.

22. Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:30.09.2016

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