

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 5959 OF 2015**

Sanskar Prabodhani Secondary School  
Through its Head Mistress .. Petitioner

**Versus**

The State of Maharashtra and others .. Respondents

Shri Vitthal G. Salgare, Advocate for the Petitioner.  
Mrs. A. V. Gondhalekar, Addl.G.P. for Respondent Nos. 1 to 5.

**CORAM : S. V. GANGAPURWALA AND  
A. M. DHAVAL, JJ.**

**CLOSED FOR ORDERS ON : 27.03.2018**

**ORDER PRONOUNCED ON : 04.05.2018**

**FINAL ORDER (Per S. V. Gangapurwala, J.) :-**

. . Mr. Salgare, the learned counsel for the petitioner submits that, the Government Resolution dated 19.01.2013 dealing with non salary grants is against the statutory provisions contained in clause 88.1 of the Secondary School Code. (for short "S. S. Code"). The learned counsel submits that, the instructions contained in the S. S. Code have statutory force. For the said purpose the learned counsel relies on the judgment of the Apex Court in a case of M. G. Pandke and others Vs. Municipal Council Hinganghat and others reported in AIR

**1993 SC 142.** The learned counsel submits that, the impugned government resolution provides for giving non salary grants on the basis of 5% of the total salary as per the 5<sup>th</sup> Pay Commission that too from 01<sup>st</sup> April, 2008 and from 01.01.2006, 06<sup>th</sup> Pay Commission came into force. The same has to be commensurate with the salary payable under 06<sup>th</sup> Pay Commission.

02. The learned counsel further submits that, as far as building rent is concerned, the same is under different head of grants under clause 87 of the S. S. Code. Under the impugned G. R. the same is included in the non salary grant, which is not permissible.

3. The learned counsel further submits that, because of the development of technology, it would not be possible for the institution to provide for the infrastructure of the latest technological equipments, if such a paltry sum is awarded. The building rent has to be on the basis of actual expenses incurred of the previous year.

4. The learned Additional Government Pleader submits that, the grants are not to be claimed as of right. Even Clause 88.1 of the S. S. Code lays down that the grants would be disbursed subject to availability of funds. The learned A. G. P. relies on the judgment of the Apex Court in a case of **State of Orissa and another Vs. Ashwini Kumar Dash and others** reported in

(1998) 3 SCC 613 and the judgment of the Division Bench of Madras High Court in a case of Mariya Grace Rural Middle School, Venkatarayapuram Vs. Government of Tamil Nadu and others reported in AIR 2007 Madras 52. The learned A. G. P. also relies on the judgment of the Division Bench of this Court in a case of Keraliya Samajam and others Vs. State of Maharashtra and others reported in 2004(2) Mh.L.J. 171.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. By now, it is well settled that the Secondary School Code has a statutory force and is not merely an administrative instruction. The Secondary School Code will have its operation limited to the secondary and higher secondary schools and may not apply to the primary schools. The Government Resolution under challenge is for primary schools also. It deals with the sanction of non salary grants to the aided primary, secondary and higher secondary schools. As per the said G. R. the non salary grants is paid at the rate of 5% of the total salary in consonance with the salary payable as per the 5th Pay Commission and subject to the terms and conditions enumerated therein, such as the teacher should have passed the requisite TET/CET exam. So also the information to be supplied by the institutions. The policy decision is taken for the first time by Government Resolution dated 19.01.2013 and the same is made

payable after introduction of the government resolution. The purpose of the Government Resolution dated 19.01.2013 is to grant 5% non salary grants only. The major thrust of the arguments of the learned Addl. G. P. is that, the Government Resolution dated 19.01.2013 is the policy decision of the State and that receiving non salary grant is not right of any institution. For payment of non salary grant, the State has to consider the budget available with it.

7. Grant in aid is a economic concept. Grant in aid is neither a fundamental right, nor a statutory right. Grant in aid cannot be claimed as a matter of right. It depends upon various factors, such as financial stability, the resources available with the State as well as the discretion.

8. The Secondary School Code prescribes the provision with regard to the payment of non salary grant. Rule 87 and 88.1 of the Secondary School Code reads thus :

#### **SECONDARY SCHOOL CODE**

1. ....
2. ....

#### **Kinds of Grants**

**87** Recognized schools are eligible for the following kinds of grants which may be paid at the discretion of the sanctioning authority subject to availability of funds and subject to the condition that the Societies running these schools are registered under the Bombay Public Trust Act, 1950, as amended from time to time.

- (1) Salary grant;
- (2) Non-Salary grant;
- (3) Building grant; and
- (4) Such other grants as may be sanctioned by Government from time to time.

### **Salary / Non salary Grant**

**88.1** Subject to funds being available, all recognized secondary schools including vocational secondary schools having commercial, agriculture bias, etc., which are under the control of the Directorate of Education (excluding Vocational Secondary Schools and Technical High Schools which are governed by Rule 92), and Night High Schools recognized in the previous academic year, will be eligible for grant during a year as per the following formula :-

(A) (i) Entire anticipated expenditure on "Staff salaries and allowances" vide item (i) with sub-item (a) to (n) thereunder, of Schedule A at sanctioned rates, in respect of its teaching and non teaching staff as per approved scales.

#### **PLUS**

(ii) Entire expenditure of the preceding year on rent as admissible under rules in force.

#### **PLUS**

(iii) Non-Government recognised and aided secondary school shall receive non-salary grant on the expenditure of the preceding year on admissible items other than 'staff salaries and allowances' and rent, on the proportionate percentage of the Developmental Index Calculated as per (c)(iii) below or the actual admissible expenditure other than 'salaries and allowances' of the preceding year, whichever is less.

#### **MINUS**

(B) Total amount of sanctioned tuition fees recoverable from fee paying students only, during the preceding year, pertaining to the months of the preceding year.

(C) (1) Education officers/Educational inspectors Gr. Bombay shall classify all the recognised aided non-Government secondary schools on the basis of Developmental Index allotted to each schools and prepare a list in the following three categories.

| Category | Developmental Index |
|----------|---------------------|
| A        | 0 to 0.50           |
| B        | 0.51 to 0.75        |
| C        | 0.76 to 1.00        |

On the basis of Developmental Index when the list is prepared in three categories as stated above, it is necessary to obtain the sanction of the Deputy Director of Education of the Region. This list of three categories approved by the Deputy Director of Education shall be in the force for three years. In the Second term of the third year Education Officer/Educational inspector should start the process of preparing new list of the schools which will come into force in the fourth years. The approval of the Deputy Director of Education for new list should be obtained in the first term of the fourth years.

**(2) Rate of the Non-Salary Grant :**

|                                   |                                                                                                           |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------|
| Developmental Index<br>the school | Percentage of non-salary of<br>Grant Limited to the<br>expenditure on the Salary of<br>the preceding year |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------|

|                  |     |
|------------------|-----|
| (A) 0 to 0.50    | 6%  |
| (B) 0.51 to 0.75 | 9%  |
| (C) 0.76 to 1.00 | 12% |

**(3) Following five norms should be considered in order to determine the Development Index :**

- (i) Age of the School
- (ii) Size of the School (Total No. of Divisions)
- (iii) Area of the school activities
- (iv) Percentage of Backward Class Students.
- (v) Percentage of girl students.

**Note :** Do not consider percentage of girls only in boys' school.

Five marks each have been allotted to each item mentioned above, on the basis of total marks obtained by the school in all above five heads, the Developmental Index will be determined as per procedure laid down in Rule 88-1 (c) (iv)

**(4) Procedure for determining the Developmental Index :**

Following marks have been allotted to each item in order to determine the Developmental Index of a school

**(i) Age of the School :**

| Year     | Marks |
|----------|-------|
| Upto 10  | 5     |
| 11 to 20 | 4     |
| 21 to 30 | 3     |
| 31 to 40 | 2     |
| 41 to 50 | 1     |
| above 50 | 0     |

**Note :** To determine the age of a school permitted on no-grant basis, the particular year on which the school has been eligible for 100% grant should be considered for the counting the age of the school. The period of no-grant of partial-grant should not be considered while counting the age of the school.

**(ii) Size of the School :**

| Total Number of Division<br>(Std. V to X) | Marks |
|-------------------------------------------|-------|
| Up to 10                                  | 5     |
| 11 to 20                                  | 4     |
| 21 to 30                                  | 3     |
| 31 to 40                                  | 2     |
| 41 to 50                                  | 1     |
| above 50                                  | 0     |

**(iii) Area of School Activities :**

*Region of the School Marks*

|    |                                                                                                 |   |
|----|-------------------------------------------------------------------------------------------------|---|
| a) | Denotified Schedule Area'                                                                       | 5 |
|    | Hilly Region/Rural Area                                                                         |   |
| b) | Rural area/Slum area in the city/'C' grade municipal area in Hilly or denotified scheduled area | 4 |
| c) | 'C' grade Municipal area                                                                        | 3 |
| d) | 'B' grade Municipal area                                                                        | 2 |
| e) | 'A' grade Municipal area                                                                        | 1 |
| f) | Municipal Corporation area                                                                      | 0 |

**(iv) Percentage of Backward Class Students :**

| Percentage of S.C. - S.T./<br>D. T - No T students with the<br>total number of students in<br>the school | Marks |
|----------------------------------------------------------------------------------------------------------|-------|
| More than 50%                                                                                            | 5     |
| 41 to 50                                                                                                 | 4     |
| 31 to 40                                                                                                 | 3     |
| 21 to 30                                                                                                 | 2     |
| 11 to 21                                                                                                 | 1     |
| 0 to 10                                                                                                  | 0     |

**Note :** While calculating the percentage of B. C. students, O.B.C. students should not be taken into consideration.

|                                                               |       |
|---------------------------------------------------------------|-------|
| <b>5) Percentage of Girls :</b>                               |       |
| Percentage of girl students with the total number of students | Marks |
| More than 40                                                  | 5     |
| 31 to 40                                                      | 4     |
| 21 to 30                                                      | 3     |
| 11 to 20                                                      | 2     |
| 0 to 10                                                       | 0     |

**(D) Formula for determination of Development Index**

The Development Index will be determined after taking the sum of total marks obtained by a school under all five heads as follow :

| Item                                           | Maximum Marks | Marks Obtained |
|------------------------------------------------|---------------|----------------|
| i) Age of the school                           | 5             | -              |
| ii) Size of the school                         | 5             | -              |
| iii) Area of the school activity               | 5             | -              |
| iv) Percentage of the Back-ward class students | 5             | -              |
| v) Percentage of Girls                         | 5             | -              |
| Total Marks                                    | 25            |                |

The Development Index shall be from 0 to 1

$$\text{Development Index} = \frac{\text{Total number of marks obtained by a school}}{25}$$

(E) Grant received as per above formula shall be spent in the proportion : 70% on purchase of Educational Material and 30% on school Administration.

9. As per rule 88 of the Secondary School Code, the Code has laid down the criteria to be considered while granting the non salary grants. Of course, payment of non salary grant would

depend upon various facets. It cannot be said that the payment of non salary grant is as of right.

10. Rule 87 of the S. S. Code provides that recognized schools are eligible for the grants enumerated therein at the discretion of the sanctioning authority subject to availability of funds. The provision itself mandates that non salary grant is not as a right and it depends upon the discretion of the sanctioning authority subject to availability of funds. The provision gives discretion to the authority subject to availability of funds to sanction non salary grants. Reading Rule 87 of the S. S. Code, it is manifest that non salary grants cannot be claimed as of right. So also it depends upon various factors enumerated in Rule 88.1 of the S. S. Code. So also the conditions stipulated under Rule 88.3 and 89.1, 89.2 of the S. S. Code.

10. Part I of the S. S. Code has given the scales of basic pay of the Head Masters and teachers. The same is as per the Vth Pay Commission. It is not shown that under the S. S. Code amendment is made with regard to the basic pay scales, which are provided as per VIth Pay Commission. However, amendment appears to be made in M. E. P. S. Act governing pay scale. Rule 88.1 states that, the rate of non salary grant shall be limited to the extent of expenditure on the salary of the preceding year commensurate to the developmental index of the school. Naturally, in case the State Government in its discretion and

subject to availability of the budget is giving non salary grant, it should consider Rule 88.1 of the S. S. Code in its entirety and the criteria as laid down in Rule 88.1 of the S. S. Code that is the percentage of non salary grant would be limited to the extent of the salary of the preceding year commensurate to the developmental index of the school. The manner of considering developmental index of the school is also prescribed under Rule 88.1 of the S. S. Code. The impugned government resolution prescribes payment of non salary grants at the rate of 5% of the payment of the salary as on 01st April, 2008.

11. As stated above, grant of non salary grant is at the discretion of the Government and also depending upon the availability of the funds and as per the availability of funds, the criteria was fixed.

12. We can also suggest that, whenever the Government desires to sanction non salary grant, it shall do so considering Rule 88.1 of the S. S. Code.

13. As the Government Resolution is issued considering availability of the budget as is clear from the G. R. itself, we are not interfering with the said Government Resolution. However, we would suggest that, whenever Government considers grant of non salary grant, it shall consider Rule 88.1 of the S. S. Code in its entirety.

14. In view of the above, the writ petition stands disposed of.  
No costs.

**[A. M. DHAVALA, J.]**

**[S. V. GANGAPURWALA, J.]**

bsb/May 18