

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 563 OF 2015

1. Aadarsh Shikshan Prasarak Mandal,
Osmanabad.
Through its Director,
Shri. Sudhir S/o Keshavrao Patil,
Age : 51 Years, Occ. Service,
R/o. Tambri Vibhag, Osmanabad,
Tq. & Dist. Osmanabad.
2. Shripatrao Bhosale Secondary and
Higher Secondary School at Osmanabad
Through its Headmaster.

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralya, Mumbai-32
2. The Director of Education,
Secondary and Higher Secondary,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

..RESPONDENTS

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Advocate for the Petitioners : Mr. R. N. Dhorde i/b Mr. V.R.Dhorde
 Special Counsel appointed by the State : Mr. Deelip Bankar Patil
 A.G.P. For the Respondent Nos. 1 to 4 State : Mr. A. B. Chate

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**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

JUDGMENT RESERVED ON :08.02.2019
JUDGMENT PRONOUNCED ON :21.02.2019

JUDGMENT(PER T.V. NALWADE, J] :-

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. The petition is filed to challenge the Government Resolution of the State Government dated 30.04.2014, by which direction is given to release the grant, in respect of the staff permissible for 37 additional divisions sanctioned to the petitioner's School but with effect from the academic year 2013-2014 and the grants would be 20% for that year. The petitioner who is running secondary school is claiming the grant from the year 2007-2008 and so relief is claimed for declaration that it is entitled to get the grant-in-aid from that year and as per the scheme of the Government declared in Government Resolution dated 14.07.2000. By making amendment a direction is sought against the Government to release the arrears of the salary grant of Rs. 1,19,77,312/- (Rupees One Crore Nineteen Lakh Seventy Seven Thousand Three Hundred and Twelve) as per Government Resolution dated 30.04.2014.
3. The petitioners is a registered trust and it is running secondary-School in Osmanabad since the year 1962. The State Government started giving grant-in-aid to this Schools from the year 1965 and from the beginning it had the classes of standard 5th to 10th.

4. It is contention of the petitioners that under Government Resolution dated 14.07.2000, the Government sanctioned few additional divisions as strength of the students in respective standards had increased. It is contended that as the grants were not released, the first proceeding, Writ Petition No. 5742 of 2004 was filed by the petitioners and in that proceeding the relief was claimed for giving direction to sanction additional divisions from the year 1999-2000 to 2002-2003 and also release the grant-in-aid in respect of those divisions. It is contended that direction was given by this Court in the said proceeding to take decision on the proposal made by the institution, for giving more divisions on the basis of strength of students. It is contended that the Government then increased the divisions on 06.07.2005 with retrospective effect and subsequently on 20.12.2007, the Government granted permission for three more additional divisions for the year 2003-2004 to 2004-2005. It is contended that for the increase of such divisions there was recommendation of the Education Officer, (Secondary). It is contended that on 29.04.2009, the Education Officer granted approval in respect of the appointment of teaching staff made by the petitioners for the aforesaid additional divisions.

5. It is case of the petitioners that on 29.08.2009, the State Government granted approval to further increase the divisions for aforesaid standards due to natural growth. It is contended that in

respect of those divisions also the Education Officer granted approval to the appointments made of teaching staff.

6. It is the contention of the petitioners that on 10.07.2009, petitioner made representation for releasing the grant as per the Government Resolution dated 14.07.2000 in respect of the additional divisions sanctioned from the year 2003-2004 and another representation was made on 21.09.2010. It is contended that for the additional divisions sanctioned in the year 2005-2006, 2006-2007, 2007-2008 also grants were claimed but they were not released and so Writ Petition No. 834 of 2012 was filed by the petitioners for giving direction to release the grant in respect of additional divisions sanctioned from the year 2003-2004 till 2007-2008. It is the case of the petitioners that in the said proceeding reply was filed by the State Government that the proposal for sanction was forwarded to the Director of Education and that was in respect of 22 additional divisions. It is contended that in the reply filed by the Respondent-State dated 06.05.2013, it was contended that two proposals were received by the Government and those were in respect of previous 22 additional divisions and new 15 additional divisions and they were pending with the Government. It is contended that in view of such reply, this Court disposed of Writ Petition No. 834 of 2012 on 20.08.2013 with the direction against the State Government to see that the proposals of

release of grants in respect of 37 divisions are decided within six months. It is the contention of the petitioners that the petitioners supplied copy of the order to the Government and Dy. Director also took steps to inform the Government about the decision.

7. It is the contention of the petitioners that on 08.10.2013, the Education Officer submitted proposal to the Dy. Secretary for doing needful as there was the order of High Court in Writ Petition No. 834 of 2012. It is contended that the Government issued Government Resolution dated 30.04.2014 under which it was held that 37 divisions were eligible for getting grants of 20% but from the year 2012-2013. This decision was informed to the petitioners on 30.05.2014. It is contended that the petitioners then made representation on 18.06.2014 to the Government with a request to release grant in accordance with the Government Resolution dated 14.07.2000.

8. In short it is case of the petitioners that as per the Government Resolution dated 14.07.2000, after completion of first four years the petitioners were entitled to get 20% grant for the 5th year and accordingly grants needs to be given in respect of each additional division and so the petitioners are entitled to get the grants in respect of few divisions from the year 2007-2008 and accordingly grants needs to be given in respect of other additional divisions also. It is the

contention that there is denial of giving of grants in respect of those divisions for the period between 2007-2008 to 2012-2013 and similarly there is refusal to give grants in respect of subsequent divisions also for that period. The learned special counsel appointed to represent the State submitted that it is up to the Government to decide whether and when grant can be given to any School, though as per the Scheme the School can claim grants. The learned counsel submitted that there is no vested right as such in the institution running the School to get the grants-in-aid and it is given as per the policy decision taken by the State which needs to be taken every year and many circumstances are required to be considered for taking such decision. Learned special counsel submitted that for consideration of giving of grants there are two stages viz. Inquiry to ascertain as to whether the School has infrastructure, the School has followed the proper procedure for appointment of the teaching staff and whether the School is satisfying the conditions for getting grants and then declare that the School is fit to get the grants and after making the aforesaid declaration the Government takes decision as to when and whether grant is to be given to aforesaid School and that is the second stage.

Such decision depends on various factors including the financial conditions of the State at the relevant time.

9. There cannot be a dispute over the proposition made by the

learned Special Counsel for the State that no vested right as such is there in the institution which runs the School to get the grant-in-aid and when the Government is in financial crises the Government may refuse to give the grant-in-aid. However, if the State Government has taken a policy decision to give grant-in-aid for a particular year and as per that decision, grant-in-aid is given to some Schools, it become necessary for the State to explain as to why similar benefit is not given to similarly situated other Schools. If the Court finds that there is discrimination and due to that the employees of such other Schools are deprived of the benefit of the grant, the Court can step-in and give direction to the State to do justice. In such a case, the Court can use the provisions of Articles 14, 16, 19(1)(g) of Constitution of India. This Court had asked to make out case from the aforesaid angle. On one hand the learned special counsel for the State submitted that no such discrimination was done and for that he took this court through some Government Resolutions issued in favour of some institutions. On the other hand the learned senior counsel for the petitioners institution submitted that the circumstances as to when there was entitlement also needs to be kept in mind and if the decision was not taken by the State at the time when there was entitlement, inference can be drawn that the decision was withheld and on that basis also the discrimination can be inferred. The learned senior counsel further submitted that the Government Resolutions on which the special counsel is relying are not applicable to

the additional divisions and those Government Resolutions are in respect of the Schools which had become entitled to get benefit of the grants in respect of the first divisions of the respective standards of the School. It was also submitted that there is no specific denial of discrimination and there are few Government Resolutions at present on record to make out the case of discrimination. To ascertain the truth in aforesaid contentions and submissions this Court has carefully gone through the record referred by both the sides.

10. The petitioners are heavily relying on Government Resolution dated 14.07.2000. This Government Resolution was issued by the Education Department of the State Government. The background of the Government Resolution is mentioned in the Government Resolution and it shows that prior to the date of Government Resolution, by making assessment of the strength of students as on 1st August of that academic year, the Education Officer and Dy. Director of Education were ascertaining the necessity of the additional divisions. This was done on the basis of information supplied by the School and to verify the things, officers of the Education Department were visiting the School and were verifying as to whether the strength given by the School was correct. Only after that, the Education Officer was forming opinion about the necessity of additional divisions for each standard in the particular School and he was sending the report to the Dy. Director of Education.

The Deputy Director was then preparing priority for sanction of additional divisions on the basis of the strength of the students and that was also being done on the basis of the Budget already made available for such purpose. At that time the Dy. Director was also taking into consideration the additional divisions from the other Schools which were required to be closed due to decrease in the strength of the students. The Director of Education was then preparing the list on the basis of merits of the claim for sanction of additional divisions and along with report he used to send the list to the Education Officer. The Education Officer was then making allotment of the additional divisions but first on the basis of the number of additional divisions which had become available due to closer of additional divisions in other Schools. The officers of the department were expected to wait for administrative approval of Director of Education in respect of more additional divisions and also for the budgetary provision by the State in respect of those additional divisions. In this Government Resolution, the permissible strength of the students of first division and for every additional division is given. Thus, the power to the Director, Dy. Director and Education Officer was limited for sanctioning additional divisions and only those divisions of other Schools which were closed due to decrease in the strength could have been allotted to other Schools prior to the Government Resolution dated 14.07.2000.

11. After mentioning the background of the Government Resolution, the decision taken by the Government is there and the decision shows that the Government wanted to see that the delay caused in sanction of the additional divisions was removed or at least curtailed. There were also complaints from the institution that there was favoritism as sufficient number of divisions were not becoming available from the Director of Education at the first stage and only few institutions were getting additional divisions in the beginning. The decision in respect of approval of additional divisions of the second stage was taken in the past during October to December. Due to these circumstances new schedule was given by the Government in this Government Resolution which was as follows :-

- (a) **1st July**- for discussion of additional divisions the Headmaster, the Block Development Officer and the Dy. Education Officer to hold a meeting.
- (b) **15th July**- the Headmasters of the respective Schools to submit information regarding strength of students for each standard. The Head-masters to give undertaking that as on 14th July the strength of the students was in accordance with the information supplied to the education officer and in case the information was found to be false he can be held personally liable for giving such information and in the result he can be hold responsible for the expenses incurred and that amount can be deducted from his salary.

(c) **16th July to 19th July**. The Block Development Officer to inspect the Schools of his block to verify the aforesaid information supplied by the respective Schools. On the basis of inspection he was to prepare report about the number of divisions which were already sanctioned in the previous academic year and number of additional divisions if any, permissible on the basis of strength of students as on 14th July. This inspection report was also to be signed by the Block Development Officer- Deputy Education Officer and they were to be held responsible if the information was found to be incorrect.

(d) **20th July to 31st July**

On the basis of aforesaid information, supplied by the Block Development Officer, the Education Officer to ascertain the number of additional divisions permissible for each standard of each School. He was expected to consider the infrastructure available for sanction of the additional divisions he was to prepare merit list for sanction of additional divisions.

(e) **1-August to 15th August** During this period the Dy. Director of the Education to give 2-3 days for each district and in the presence of the Education Officer, to examine the report prepared by the Education Officer. Then the Dy. Director of the Education was to ascertain number of additional divisions permissible for each standard of each School and he was expected to prepare his own merit list on the basis of examination of the record made by him.

(f) **16th August to 20th August** During this period the Education Officer to display the list of the Schools which were shown in the report prepared by the Dy. Director of Education as entitled for additional divisions and to publish that information through district information officer in Newspapers.

(g) **21st August to 25th August**

During this period the Department was to collect information in respect of strength of the students, shown on record and number of students actually attending the School.

(h) **26th August** The Education Officer to give report of the information collected between 21st August and 25th August to Dy. Director of Education.

(I) **27th August to 12th September**. During this period the Dy. Director of Education to prepare merit list of the Schools district-wise and to computerize the information for each School in respect of each standard and about the additional divisions.

(J) **15th September** The director of education to make proposal to the Government.

(K) **30th September** The secretary of the Department to take decision on the proposal submitted by the Director of Education.

12. In the same Government Resolution the Government declared that no grant-in-aid will be given in respect of additional divisions if the

permission was given to the institutions to start the School on permanent no grant basis. Thus giving of grant-in-aid was possible in respect of additional divisions sanctioned to other Schools like the present School. The scheme shows that for first four years, the Government would not give grant to such additional divisions. In the 5th year the Government would give 20% grant and by increasing the grant by 20% every year in the 9th year 100% grant would become available to the additional divisions and after that for every year such divisions will start getting 100% grant-in-aid. The Government Resolution also shows that as per the aforesaid time schedule given, the officers like Education Officer, Dy. Director were to supply their proposal, report to Director of Education prior to 12th September and the Director was to submit his report to the Government before 15th September.

13. The aforesaid time schedule and the scheme prepared by the Government shows that opening of the additional divisions, on the basis of strength of students before permission of Education Officer as mentioned above was not possible though admission of additional students than the capacity of the previous divisions (70 students for first division and second additional division for strength of students of 71 to 120 and so on) was permissible. The scheme also shows that the entitlement of the School to open additional divisions was to be

declared between 16th August and 20th August and the decision about the sanction of the such additional divisions to the School was to be taken by the Secretary on 30th September on the basis of the reports prepared by the Block Development Officer, Education Officer, Dy. Director of Education and Director of Education.

14. In the year 2004, the petitioner had come to this Court first time by filing petition No. 5742 of 2004 for similar reliefs. The petitioner had claimed that in view of the strength of the students, 11 additional divisions ought to have been sanctioned for academic year 1999-2000, 14 additional divisions ought to have been sanctioned for 2000-2001, 14 additional divisions ought to have been sanctioned for the year 2001-2002, and 17 additional divisions ought to have been sanctioned for the year 2002-2003. After considering the reply of the present respondents and the rival submissions made in the Court and after considering the scheme of the State Government published in aforesaid Government Resolution, dated 14.07.2000, regarding additional divisions and also subsequent policy decision of the State Government published in Government Resolution dated 24.11.2001, some directions were given by this Court. In Government Resolution dated 24.11.2001 the State Government had made it clear that future additional divisions will be sanctioned only on permanent no grant basis. This Court observed that the subsequent decision of the State Government mentioned in this

Government Resolution of 2001, cannot affect the divisions which were or could have been sanctioned prior to that Government Resolution. This Court made distinction in additional divisions and expressed that the additional divisions which become available due to natural growth cannot fall in the restriction created by the Government Resolution on 24.11.2001 and in respect of those divisions the benefit of the scheme mentioned in Government Resolutions of 14.07.2000 needs to be given. This Court observed that if other additional divisions are sanctioned and which were not available due to natural growth, to those divisions additional divisions only the restrictions mentioned in the Government Resolution of 24.11.2001 will be applicable. This Court has already quoted entire portion of Government Resolution dated 14.07.2000 and that also shows that restrictions of Government Resolution dated 14.07.2000 were not to apply against the divisions which become available due to natural growth. After making these observations, this Court gave direction to the respondent to take decision on the proposals made by the School for sanction of additional divisions for the academic year 1999-2000 and 2000-2001. The Court had given direction to take decision on the subsequent proposals also as it was only matter of creation of additional divisions. The Court formed opinion that School had good reputation and that is why the strength of the students had increased and it was increasing every year. The Court granted reliefs as under :-

" (I) We direct the Principal Secretary in the School Education Department (Secretary referred in the last column of time table as contained in Government Resolution dated 14th July 2000), to consider the proposal of the petitioner-institution for additional divisions for the academic year 1999-2000, 2000-2001, 2001-2002 and 2002-2003 which are already submitted with the recommendation of the Education Officer, on merits.

(ii) In view of the fact that the decisions of the Government to allow additional divisions only on permanent non-grant basis has come in the Cabinate meeting dated 24th November, 2001, the Secretary shall consider grant of additional divisions on grant-in-aid basis, on merits, for academic years 1999-2000, 2000-2001, 2001-2002. Additional divisions for the academic years 2002-2003 and onwards may be on permanently non-grant basis in the light of the decision of the Cabinet. Additional divisions, now, sanctioned in the year 2003-2004 will have to be reconsidered for merger on grant in aid basis, if any additional divisions for earlier academic years allowed on grant-in-aid basis, by natural growth indicate no necessity of grant of additional divisions into 2003-2004.

(iii) In view of the fact that academic year 2004-2005 is nearing and, we believe the Secretary to take a decision on merits, in any case, by the end of May 2006 and communicate the decision to the petitioner-institution."

2004 dated 03.03.2005, some steps were taken by the respondents. The correspondence of the Education Officer (Secondary) dated 03.03.2008 shows that the Government had sanctioned 13th division for standard 9th for the academic year 2003-2004, 11th division for standard 10th for the academic year 2004-2005 and 12th additional division for the year 2004-2005 and these three divisions were sanctioned as they had become available due to natural growth. This correspondence dated 03.03.2008 shows that 13th division for 10th standard for the academic year 2006-2007 was sanctioned but it was sanctioned due to increase of strength of students and this division was sanctioned on permanent no grant basis. Thus, from the academic year 2003-2004 to 2004-2005, three additional divisions were sanctioned by the Government due to natural growth. It can be said that as the Government had sanctioned 13 divisions for the standard 9th for the academic year 2003-2004, 13th division for standard 10th could have become available due to natural growth for the standard 10th as already 11th and 12th additional divisions were sanctioned for the standard 10th due to natural growth. It can be said that 13th additional division was sanctioned on permanent no grant basis for the year 2006-2007 could have been treated from that year as 13th division which had become available for 10th standard due to natural growth. The submissions made show that the strength of the students was continuously increasing.

16. The letter of Joint Secretary, Education dated 29.08.2009 addressed to the Divisional Deputy Director of Education, Latur gave particulars of additional divisions sanctioned to the petitioner's institution. The information in tabular form is as under :-

सन		२००५-२००६	२००६-२००७	२००७-२००८	एकूण
इयत्ता	पुर्वीच्या मान्य	वाढीव	वाढीव	वाढीव	वाढीव
इयत्ता ५ वी	८	२	१	२	५
इयत्ता ६ वी	८	४	—	१	५
इयत्ता ७ वी	८	२	१	३	६
इयत्ता ८ वी	१३	३	१	२	६
इयत्ता ९ वी	१३	२	२	१	५
इयत्ता १० वी	१३	—	१	३	४

17. The information given in the aforesaid tabular form about the sanction of additional divisions shows that from the year 2005-2006 till the year 2007-2008, 31 additional divisions were sanctioned by the State Government. If the divisions which were in existence including the additional divisions sanctioned prior to 2005-2006 are considered, it can be said that 63 divisions for standard 5th to stanard 10th were sanctioned prior to the academic year 2005-2006. In addition to those divisions, 31 more divisions were sanctioned by the State Government in the manner mentioned in the communication dated 29.08.2009. In the year 2005-2006, 13 additional divisions were sanctioned, in the year 2006-2007, six additional divisions were sanctioned and in the year 2007-2008, 12 additional divisions were sanctioned. This chart needs to

be kept in mind as this information plays important role to ascertain as to whether and as to how many additional divisions could have become available to the petitioners institution due to natural growth after 2005-2006.

18. If the communication of Education Officer dated 03.03.2008 already quoted is considered again and the scheme given in Government Resolution dated 14.07.2000, is applied to ascertain the additional divisions which had become available to the petitioners institution due to natural growth, then it can be said that in respect of the additional divisions sanctioned in the year 2003-2004 which were at least two in numbers, grant-in-aid could have been paid of 20% from the year 2007-2008. At the cost of repetition, it is mentioned that for the first four years no grants are available and in the 5th year 20% grants can be released as per the Government Resolution of the year 2000. These circumstances show that in the year 2007-2008 itself the petitioners had become entitled to claim 20% grant in respect of the two divisions shown to be sanctioned with effect from the year 2003-2004, in the communication dated 03.03.2008. Similarly it can be said that the petitioner institution became eligible to get 20% grant from the year 2008-2009 for the third division mentioned in the communication dated 03.03.2008 and in ordinary course, in respect of 4th division also mentioned in this letter the grant could have been claimed from the year

2008-2009, though the year of sanction of division is mentioned as 2006-2007, for the reason already given. There is copy of letter of the Headmaster of the School addressed to the Education officer bearing endorsement as 'received' on 13.07.2009. This letter shows that the School had demanded the release of grant in respect of the three additional divisions mentioned by the Education Officer in his letter dated 03.03.2008. Thus, it cannot be said that there was no demand of grant made by the petitioners institution in respect of the additional divisions which were sanctioned.

19. Writ Petition No. 834 of 2012 was filed by the petitioner institution as no steps were taken by the respondents for release of the grants. The order dated 20.08.2013 by which the petition came to be disposed of shows that similar relief was claimed by the petitioners in that proceeding. The reply affidavit was filed by the present respondents in that proceeding. In the reply, present respondents had informed to the Court that there were two proposals of the petitioners pending for the approval and both were under consideration. The relevant portion of reply was quoted and order was made as under :-

"3. I say and submit that, the Petitioner society has filed this petition seeking directions to consider the claim of the petitioner for release of salary grants for the academic year 2003-2004 to 2007-2008 in view of additional

divisions granted to the petitioner. Affidavit in reply is already filed in this petition. The position of sanction of posts under the institution is informed to the Hon'ble Court. Vide communication dated 27.12.2011, the Dy. Director of Education forwarded the proposal to the Director of Education, Pune for necessary action in respect of 22 divisions. Thereafter, on 6th May, 2013, the office of the deponent has forwarded additional proposal for 15 divisions of the petitioner school along with other institutions. In view of this, there are two proposals forwarded by the office of the deponent since 27.12.2012. The earlier proposals consists of 22 divisions and subsequent proposal of 15 divisions that means proposal of 37 divisions is pending with the higher authority. Copies of relevant extract of the proposals submitted to the Director of Education is annexed herewith and marked as Exh.R-1."

In view of the contentions raised in the affidavit-in-reply, the grievance of the petitioner stands redressed. Respondent No.1 State is directed to take decision in respect of the proposals forwarded for release of salary grants, considering number of divisions to be 37, as expeditiously as possible and preferably, within a period of six months from today.

In the event the State Government decides to hold entitlement of the petitioner to claim salary grants, the amount shall be released within the time stipulated above.

The Writ Petition stands disposed of. "

20. The aforesaid order shows that as on 20.08.2013, the proposal was pending with the Government for sanction of the staff in respect of 37 additional divisions and also for release of grant in respect of the staff appointed for additional divisions. From the discussion made above, it can be said that the proposals were in respect of the additional divisions which were created right from the year 2003-2004 as the grants in respect of all those additional divisions were not released. Order made by this Court in Writ Petition No. 834 of 2012 was supplied by the petitioners to the Government and copy was also sent to the Dy. Director of Education. (Communication dated 07.09.2013.) It appears that immediately after receiving copy of the order from the petitioners, additional secretary of Education Department wrote to the Director of Education on 03.09.2013 and directed him to scrutinize the matter and give clear opinion about the matter.

21. The record produced and the submission made show that in response to the direction given by the additional Secretary of the State Government, the Education Officer submitted the report dated 08.10.2013 to Dy. Director. This correspondence shows that the

Education Officer had already submitted the proposal with the letter dated 06.05.2013, and that was for recommending the release of grant-in-aid. The Education Officer made similar submissions again in the letter dated 08.10.2013. Along with the letter there are particulars of the proposals prepared by the Education Officer for giving grant-in-aid in respect of each additional division of each standard year wise. This report shows that not only in respect of 9th standard and 10th standard the decision was not taken by the respondents but the proposal in respect of even 5th and 6th standard were also pending till that day. This proposal shows that in respect of 8th additional division for standard 5th which was sanctioned in the year 2002-2003, grants were not released and there was entitlement to get the grant of 20% for these additional divisions from the year 2006-2007. In respect of 8th additional division of 6th standard which was created in the year 2003-2004, it was proposed that 20% grant be released from the year 2007-2008. In respect of 13th division of 9th standard which was sanctioned in the year 2003-2004, as per the record already mentioned, proposal was made to sanction 20% grant from the year 2007-2008. Similar proposal was in respect of 11th division which was sanctioned in the year 2003-2004. All remaining proposals mentioned in the chart were as per the scheme prepared by the State Government under aforesaid Government Resolution of the year 2000.

22. The proposal submitted by the Education Officer (Secondary) along with covering letter dated 08.10.2013 further shows that the School had appointed teaching staff of 57 approved teachers which includes 38 graduate teachers and 19 under-graduate teachers. The information was given that out of 57 approved teaching staff, 11 were from Scheduled Caste, 4 were from Scheduled Tribe, 1 was from N.T.B, 1 was from N.T.C, 1 was from N.T.D, 9 were from Other Backward Community and 29 were from open/general category. The proposal shows that the roster point was approved by the Commissioner on 01.11.2010 and as per that roster of the academic year 2012-2013 there was backlog of 22 posts. However, the Education Officer had written that 25 posts of teachers were vacant and on those posts the candidates from the reserve category can be appointed and so there was no hurdle in releasing the grants.

23. The copy of letter dated 26.12.2013 of the Deputy Director of Education shows that he approved the proposal made by the Education Officer submitted with report dated 08.10.2013 and recommended the matter to the Director of the Education. There is copy of correspondence made by the Desk Officer of this Department with Director of Education dated 05.02.2014. This correspondence shows that the Desk Officer made queries and asked the Director to give particulars about many things like strength of the students, total number

of Secondary Schools available in Osmanabad city, the reasons for increasing the strength of students in this particular School, permission, if any, obtained by this School for admitting more students than the capacity, the approval, if any, given to the additional divisions and the record to shows that at what stage or who had given the approval, the record of inspection made to verify the infrastructure, etc. and also verify as to whether the Right of Children to the Education Act, 2009 the provisions are complied with. It was also asked as to whether in the assessment made in the past whether the school had become eligible for receiving grants. In view of the voluminous record which is already mentioned and other record which this Court is mentioning, it can be said that all this record was already available with the Government and for that the scheme prepared by the Government in the year 2000 needs to be kept in mind. After the letter of the Desk Officer, the Director of Education by his letter dated 11.02.2014 asked the Dy. Director to collect the information required by the Desk Officer. In turn, the Dy. Director wrote to the Education Officer to collect that information. In the letter dated 25.02.2014, the Education Officer gave information in respect of all the Schools of Osmanabad city. He gave reason for increase in strength of the students that the educational and other activities of the Schools were better, its performance in the examination and Scholarships was also better. The percentage of the students who had passed from this School in 10th standard was given

and it was always above 84.36% . In the year 2013, this percentage had reached to 92.79%. Out of the students who passed in the 10th standard in the year 2013, 351 students passed in first class and 530 students passed in first class with distinction. In the previous year, 359 students had passed in first class and 411 students had passed in first class with distinction. The particulars of the number of students who had passed scholarship examination and the students who were receiving Scholarship were also given by the Education Officer. The Education Officer stuck with the recommendation already made by him in the letter dated 08.10.2013. The report of the Education Officer shows that this School was having all the necessary facilities and it was complying all the conditions, requirement given for getting the grants-in-aid. In the letter dated 02.04.2014, the Dy. Director also recommended the Government to hold that aforesaid 37 additional divisions were entitled to receive grant-in-aid.

24. The Government Resolution dated 30.04.2014, which is impugned shows that the Government declared that from the academic year 2012-2013 for 37 additional divisions in respect of 5th to 10th standards, 56 posts of teachers were sanctioned for receiving grant-in-aid [18 posts of under-graduate trained teachers and 38 posts of graduate trained teachers]. However, in this Government Resolution it is made clear that there was no right to this School to get grant-in-aid only

due to such declaration of eligibility. In the Government Resolution it is mentioned that the grant-in-aid will not be made available with retrospective effect. It is mentioned that as per the availability of the funds the Government will give grants and the arrears of the grants will not be payable. Other routine conditions for getting grants like proper procedure followed for appointment of teachers etc. are also mentioned. The learned special counsel appointed by the State stressed much on the wording of this Government Resolution and submitted that even if the Government Resolution was issued on 30.04.2014 and it was held that 37 additional divisions were eligible for getting grant-in-aid, no vested right was created in the School to get grant-in-aid and so it was open to the Government to take further decision and refuse to pay arrears of grant-in-aid. Thus, on one hand, according to the special counsel Government had held that 37 additional divisions had become eligible for receiving grant-in-aid but on the other hand according to the learned special counsel no vested right was created in the School to get the grants even from the academic year 2012-2013 more particularly since June 2012.

25. On 30.05.2014, the Education Officer (Secondary) of Osmanabad wrote a letter to this School to inform that from June 2012, in respect of 56 additional divisions 20% grants was made available and that amount will be released only after verification of the things like strength

of the students, the approval obtained for appointment of teachers etc. On 18.06.2014, the School sent letter to the Secretary of the Education Department to raise grievance that release of 20% grants in respect of all the 37 divisions from the academic year 2012-2013 was not proper, as many additional divisions were approved from the year 2003-2004 and the School was entitled to get the grants as per the scheme of the Government declared in Government Resolution of the year 2000.

26. It appears that the Education Officer (secondary) of Osmanabad in letter dated 18.06.2014 informed to the School that he was releasing 20% grants from June, 2012 in respect of 56 teachers whose appointments were already approved. List of those 56 teachers was given by the Education Officer in this letter. On 01.08.2014, some amount in respect of these teachers which was Rs. 10,98,660/- was released from the treasury. There are more similar authority letters of the treasury showing that amount of Rs. 24,28,356/- was made available on 16.08.2014. The amount of Rs.17,84,526/- was made available on 26.08.2014, etc. There is correspondence made with the Director of Education by the Education Officer dated 03.12.2014, showing that total grant-in-aid payable to this institution till February 2015 was around Rs.2,09,73,668/-. (Rupees Two Crores, Nine Lakh Seventy Three Thousand Six Hundred Sixty Eight). He had prayed for making provision of such grants. Prior to that, some amount was

already made available as per the aforesaid record.

27. Present petition came to be filed on 08.01.2015. On 01.09.2015 this Court asked the Government to make clear the stand in view of the submissions made for the petitioners that to other Schools like a School situated in Raigad district, when additional division for 6th standard was sanctioned in the year 2003-2004, the State Government had released the grant of 80% in the year 2010-2011. It was asked as to why the present School was not given similar treatment. The order dated 17.10.2015 of this Court shows that submissions were made for the petitioners that at least, as per the Government Resolution dated 30.04.2015, the Government needs to release the grants of 20% from the year 2012-2013 and that amount for the period ending May, 2014 was around Rs. 1,19,77, 312/-. As no decision was taken by the Government till then, this Court granted interim relief in terms of prayer clause 'E' of the petition by which direction was given to the Government to pay such amount for the period ending May, 2014.

28. After aforesaid order also adjournments were obtained for the State to file reply. It appears that as per the interim order made by this Court for the period ending April, 2015, from the academic year starting from June, 2012 the grants were released but further grants were not released and so amendment was made in the petition to seek

direction in respect of the remaining period. As submissions were made for the petitioners that to similarly placed Schools grants were released in the year 2015 also, the learned Assistant Government Pleader was asked to explain this circumstance. On 19.09.2018, the learned A.G.P made submissions that in respect of 12 Schools including the present School the payment of the salary was stopped by the Finance Department.

29. It appears that in view of the interim relief granted by this Court vide order dated 27.10.2015, the Education Officer had taken some steps and he had made the disbursement of some part of the salary grants for the period starting from June, 2012. It is case of the respondent State that the Education Officer had no such authority and the Government had not given permission to make such disbursement of the amount. The correspondence in that regard made by the Director of the Education with the Secretary dated 23.05.2016 is there. It shows that at the district level the amount of Rs. 1,19,77,312/- was disbursed to see that there is no contempt of Court committed by the respondents. He had requested to Principal Secretary of the department to see that provision is made in Budget under 'Non Plan Expenditure' to make the payment of grants-in-aid to the School of the petitioners for complying interim order made by this Court. Some part of the interim order is complied by the respondents. Some notices issued by Mantralya in this

regard are produced and they are of July, 2016. It was expressed that by the officers of the Mantralya that the stand of the Government was not properly and competently placed before the Court and that is why such order was made. The Deputy Secretary informed to the Director and Dy. Director and also to the Education Officer that the Education Officer ought not to have made disbursement of the aforesaid amount from the Budgetary provision made available for this district and it was irregularity. Explanation of these officers was also called by the Dy. Director in the correspondence dated 27.07.2016.

30. The Government Resolution dated 19.09.2016 of the State Government shows that it took decision in respect of 1628 Schools and 2452 divisions which were declared as eligible for getting the Government grants that 20% grant-in-aid was to be given to them. It was submitted by the learned special counsel for the Government that only as per this Government Resolution, 20% grants could have been given to the School of the petitioners and that too subject to the conditions mentioned in this Government Resolution. He submitted that only after this Government Resolution the disbursement of the grants and only to the extent 20% could have been made.

31. Some record is produced by the petitioners like Government Resolution dated 04.03.2011 in which some Schools and their divisions

were declared eligible for getting grant-in-aid. The attention of this Court was drawn to record in respect of *Sumati Pragati Shikshan Mandal School from Tahsil Alibag*. For 6th standard one division was sanctioned in the year 2003-2004 but to this division 80% grants was declared for academic year 2010-2011. However, for the first division of 7th standard which was sanctioned in the year 2004-2005, 60% grants was declared from academic year 2010-2011. For the School of Aajmi Charity Trust from Mankhurd Mumbai, for the first division of 5th standard which was sanctioned in the year 2001-2002 100% grants was declared from the year 2010-2011, and for first division of 6th standard which was started in the year 2002-2003, 100% grants was declared for the academic year 2010-2011. Thus, in this Government Resolution also the declaration was not made in uniform way. For ascertaining the possibility of discrimination, it is necessary for the Government to give reason first for not declaring the division as eligible for Government grants and then for not taking decision on releasing of the grants after holding that the division had become eligible to get the grants. This Court holds that only because the State Government has the power to take such decision, it cannot be allowed to seat on the file and take time in some cases to take the decision of the declaration and then take time for actual release of the grants. When the decision of the declaration is taken then it become more necessary for the Government to say as to why after such declaration immediately the decision was not

taken to release the grants. The circumstances like making some queries by higher ups at the time of declaration of eligibility cannot be taken lightly and those queries also need to be substantiated by the State Government. When a specific procedure is given in the Government Resolution of the year 2000 which is already quoted, it becomes necessary for the State Government and its officers to expedite the things and take the decision. It can be said that the institution needs to admit additional students and then the sanction additional divisions is given on the basis of necessity. It cannot be ignored that at the time of admission of such students the institution is under belief that in future as per the Government scheme it will start getting grant-in-aid. For the period of first four years no grants is payable and the institution will have to bear the expenses in respect of salary of the teachers for such period, but after that if there is no hurdle in making declaration or in actual release of grants, the Government cannot withhold such decisions. In the present matter, the relevant facts are already mentioned and they show that the School of the petitioners is reputed institution and students of that region were attracted to this School due to the result this School was giving. There was nothing adverse against this School as per the record already discussed and such statements were made in this Court by the officers of the Government.

32. In spite of the aforesaid necessity, the State Government

first issued Government Resolution dated 19.11.2016 and then on 01.02.2017 and released the grants for the School of the petitioners for the period starting from September, 2016 which is only 20%. The learned special counsel submitted that when this decision was taken, the School of the petitioners was not only the School which must have suffered but there were many other Schools which are mentioned in the various Government Resolutions which were issued in the past. As many as 23 Government Resolutions are mentioned in Government Resolution dated 01.02.2017 which includes the Government Resolution dated 30.04.2014 in respect of the present institution. Thus, as per the stand of the Government only 20% grants is payable to the School of the petitioners in respect of aforesaid 37 additional divisions and that too from September, 2016. There is Government Resolution dated 18.01.2014 of the State Government showing that a direction was given to release the grants in respect of the standards and divisions from January, 2104, as per the stages given in the Government scheme in respect of the School covered by as many as 15 Government Resolutions and those Government Resolutions were from 08.09.2011 to 25.06.2013. This Court had asked the learned senior counsel representing the petitioners to see that copies of those 15 Government Resolutions are made available to ascertain the year in which those standards were started and those divisions were sanctioned but unfortunately no such record came to be produced and submission was

made that already some record was produced. The record is sufficient to infer that for similarly situated Schools and divisions grant in aid was not made available at the same time and there was no uniformity.

33. The Government Resolution dated 17.02.2003 shows that the criteria is fixed by the Government for declaration that particular school or particular division has become eligible for government grants. For each criteria or condition particular marks are given and if the School of category like not functioning in tribal area get 75% or more marks the declaration can be given that it is eligible to get government grants. In the present case, on the basis of record, it can be said that as per the scheme of the year 2000 the present School was entitled to such declaration after completion of the initial period of four years mentioned in the Government Resolution of the year 2000. As per this Government Resolution the processing of the matter was done and there is record showing that recommendation was made by the Education Officer, Dy. Director and Director of Education to the Government to declare that the divisions had become eligible for getting government grants. It is already observed that so called minor discrepancies which can be found in the correspondence made by the Desk Officer of the Government which is already mentioned cannot be given much weight as such record was already available with the Government but only to kill the time and protract the decision, such correspondence was made

by the officers of Mantralya. When specific criteria are laid down by the Government for the assessment and the officers make recommendation after assessment of the School, in ordinary course the department of the Education, the Government needs to accept that recommendation and take further steps. If that is not done, inference of the discrimination is easily available against the Government. This Court has already mentioned the circumstances like Writ Petition filed by the petitioners bearing Writ Petition No. 574 of 2004 and subsequent Writ Petitions for seeking directions. The correspondence of Education Officer made with the School dated 03.03.2008 shows that Government had sanctioned the divisions, at least three divisions due to natural growth from the year 2003-2004 to 2004-2005 and the letter dated 29.08.2009 shows that the Additional Secretary of the State Government of the concerned department had informed that from the year 2005-2006, 2007-2008 as many as 31 additional divisions were sanctioned though on no grant basis (not on permanent no grant basis) and this circumstance needs to be kept in mind. As per those sanction orders, the staff came to be appointed and the Education Officers had given approval as already mentioned though on the year to year basis. Only after the filing of the petition in the year 2012 steps were taken by the Government to consider the matter as per its case that first eligibility needs to be declared but for that also much time was taken.

34. Government Resolution dated 07.04.2016 was issued by the State Government to make correction in the Government Resolution dated 30.04.2014. This Government Resolution shows that for additional divisions approved in the year 2003-2004, like 11th division of 10th standard the State declared that this additional division was eligible for getting 20% grants-in-aid from the year 2008-2009 i.e. 100% Grants from the year 2012-2013. Thus, the scheme given by the State Government in the Government Resolution of the year 2000 was applied to show the eligibility in respect of various additional divisions in the Government Resolution dated 07.04.2016. In respect of most of additional divisions the eligibility was decided accordingly. However, in this Government Resolution also it is mentioned that the declaration of eligibility does not vest any right in the School to get grants from the year for which eligibility is declared in the Government Resolution. It was made clear by the Government that the grant-in-aid would be payable as per the formula which the Government may fix in future for releasing the grants and further the grants will be released as per the availability of the money by the Government. It was also made clear that grants will not be payable with retrospective effect and arrears of the grants in respect of the period prior to the date of the availability of the funds will not be paid.'

35. For the consideration of practical benefit which the

petitioners may get, if the petitioners contention that it is entitled to get grant-in-aid as per the scheme prepared by the Government in the year 2000 is accepted, it will become necessary to see as to how many posts of teachers could have been sanctioned, as to how many teaching staff was appointed after approval by the department etc. For that there is some record like communication of the Education Officer made with the Director of Education on 08.10.2013 which is already mentioned. As on 08.10.2013, 57 posts of teaching staff were approved but 56 posts were found to be filled. This correspondence shows that roster for reservation was got approved on 01.11.2010 from the Commissioner, Backward class community. As per the said assessment, there was backlog of 22 reserved posts as on 2012-2013. The approval to all the previous appointments made against the aforesaid posts were given by the Education Officer (Secondary) on year to year basis and that can be seen in the correspondence dated 29.04.2009, dated 01.01.2010 and five other letters dated 01.01.2010 of the Education Officer.

36. The aforesaid correspondence shows that the record is produced to the effect that there was approval in respect of 43 appointments which included approval to 24 open candidates (containing two handicapped candidates) and approval to 19 appointments of reserved candidates. The other record in respect of remaining posts viz. 13 posts showing the approval given from time to

time separately is not produced and for that one has to go through the letter dated 08.10.2013 only.

37. As per the record, prior to year 2003-2004, there were many additional divisions of standard 5th to standard 10th classes. If from the year 2003-2004, 56 posts of teachers had become available, it needs to be first confirmed that while making appointment as against the posts which had become available, the reservation policy was followed. This is because the government will be required to pay grants in respect of those teachers and only in accordance with the reservation policy. ***In Letters Patent Appeal No. 149 of 2011 in Writ Petition No. 1169 of 1003 (Mr. Shaikh Mohammad Abbas Vs. The Divisional Controller Maharashtra State Road Transport Corporation Ahmednagar)*** decided on January 14, 2019 this Court has made it clear that appointment as against reserved post from the open category candidate is not possible. So the appointments need to be verified from that angle first.

38. A proposition was made by the learned special counsel for the State Government that unless and until staff is sanctioned, the staff does not become available even under the scheme prepared by the Government Resolution of the year 2000. It is already observed that due to natural growth, additional divisions become automatically

available and the Government Resolution of the year 2000 shows that after addition of the division, it was necessary to get sanctioned posts of the teachers for said additional divisions. A question arises as to whether the State Government is bound to reimburse the salary paid to the teachers by institution appointed on additional divisions, even before getting sanction of the posts as appointments were necessary for making available teaching staff to the additional divisions. The answer to this question lies in the procedure that prescribed appointment of teaching staff. Procedure involves approved by the Education Officer

39. Government Resolution dated 14.7.2000 giving scheme for sanction of grant in aid to additional divisions of the schools is not changed till today. Thus, in ordinary course, every additional division which has become available due to natural growth becomes eligible to get 20% grant in aid after completion of initial period of four years from its addition to the school. The factual aspect of this matter is already discussed. Various G.Rs. including G.R. dated 3.3.2008 is quoted more than once in this decision showing that the Education Officer, Deputy Director and even Director of Education were satisfied about the eligibility of the school of petitioner institution to get grant in aid as per the scheme prepared by the Government in G.R. dated 14.7.2000. The other record shows that only the officers from Mantralaya made query that too when, when the dispute started, when the proceeding came to

be filed in this Court. The files created subsequent to the year 2012 were shown and copies of noting are produced on the record. In any case, in the Government Resolution dated 7.4.2016 the Government had expressed that all the 37 divisions had become already eligible to get grant in aid as per the aforesaid scheme. In spite of these circumstances and when in previous Government Resolution the Government had made grant-in-aid available from June 2012 (academic year 2012-13), G.R. dated 6.2.2019 came to be produced before this Court when this Court started hearing the matter. The Deputy Secretary of the Government has filed the affidavit to give justification for this G.R. and in this G.R. now the Government has expressed that 20% grant will be paid with effect from 1.12.2018 in respect of 56 teaching staff. The reason for this change of approach is given that the grant was illegally disbursed by the Education Officer for the period from June 2012 to February 2015. There are various orders made by this Court in the present matter and it appears that the Court had keep questioning as to why the Government was not releasing the grants. This Court does not want to go into the powers of Education Officers or for that matter, Director of Education to make order of disbursement of grants from the budgetary amount made available for that year. Though the learned Special Counsel has submitted that these officers had no power to make order of disbursement, there are various G.Rs. on record in this regard, but that dispute need not be decided in the present matter as apparently

the power of disbursement was given to Director of Education and when the budgetary provision is there which is shown after making assessment of the requirements, in respect of additional divisions, it can be said that the Director gets the power to make disbursement. Nothing was produced on record to show that budgetary provision was for particular institution. In any case, when the matter was pending since many years, it was duty of the State Government to consider the claim of the petitioner and make budgetary provision. Whether or if the State Government takes action against the aforesaid officers is different matter but this Court is taking decision on the duty which the State is expected to discharge. The decision of this matter will automatically take care of Government Resolution dated 06.02.2019 which is apparently issued with revengeful attitude and to create complications.

40. The learned Special Counsel specifically harped on the entitlement of the State Government to take policy decision in the matter like present one. He submitted that the institution like petitioner has no fundamental or Constitutional right and even the statutory right or legal right is not there and so, this Court is not expected to interfere in the matter. He placed reliance on the observations which were used by this Court in the case reported as **2004 (2) Mh.L.J. 171 [Keraleeya Samajam and Ors. Vs. State of Maharashtra and Ors.]**. The matter was with regard to the grant in aid claimed by the secondary school. The

application was made for seeking grant in aid. This Court referred the observations made by the Apex Court in the case reported as **(2002) 8 SCC 481 [T.M.S. Pai Foundation and Ors. Vs. State of Karnataka]** and specifically para Nos. 140, 141 and 142 were considered by this Court and they are as under :-

“140. We have now to address the question of whether Article 30 gives a right to ask for a grant or aid from the State, and secondly, if it does not get aid, to examine to what extent its autonomy in administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo Indian community for a specified period of time. If no aid is granted to anyone, Article 30 (1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30 (1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337, what then, is the meaning, scope and effect of Article 30 (2)? Article 30 (2) only means what it states viz., that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or

linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognises that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution."

41. Though the ratio of *pai foundation* case is in respect of minority institution, it shows that discrimination cannot be allowed.

There cannot be any dispute over the law laid down by the Apex Court in aforesaid matter. In that case, State had come with the specific defence that there was paucity of funds and it was also contended that the State cannot be compelled to give grant in aid to each and every school and there was circumstance that many schools had accepted sanction on permanent no grant basis. This aspect of running institution on permanent no grant basis is no more available as Government itself has come with the policy that the schemes which were applicable in the past like year 2000 will be applicable to the schools which were sanctioned on permanent no grant basis and the word 'permanent' used in previous policy is deleted. In any case, present school was receiving grant in aid when additional divisions were sanctioned and when additional divisions had become available due to natural growth.

42. The learned Special Counsel for respondents placed reliance on the observations made by Madras High Court in the case reported as **AIR 2007 MADRAS 52 [Maria Grace Rural School, Venkatarayapuram Vs. Government of Tamil Nadu and Ors.]**. At para 45 the observations are as under :-

“45. With regard to the contention relating to the violation of Articles 30 (1) and (2) of the Constitution it is the definite case of the State that it has in no way infringed the right of minorities to establish and administer educational institutions of

their choice under Article 30 (1). As rightly argued by the learned Advocate General, it is not correct to say that the right to establish and administer educational institution of their choice includes the right to receive grant-in-aid for such establishment and administration as it would amount to reading too much into the provision. Grant-in-aid is an economic concept that would always depend upon the subjective satisfaction, financial stability and resources as well as the discretion of the State Government. It is also a matter of policy decision within the domain of the executive and not a matter of principle to be laid down by the legislature.”

43. There cannot be any dispute over aforesaid proposition also. Reliance was placed on the observations made by the Apex Court in the case reported as **(2001) 3 SCC 635 [Ugar Sugar Works Ltd. Vs. Delhi Administration and Ors.]** and this Court was taken through some portions of para Nos. 18, 19, 20, 24 and 25. The matter was regarding the executive policy to regulate trade in liquor in Delhi. This single circumstance is sufficient to presume that the policy was uniform and it was applicable as against every trader and the policy was in the interest of health welfare and morals for benefit of the citizens of Delhi and the decision was not in favour of big industrial houses. This Court has already observed that there cannot be any dispute that in the matters like present one also, the State Government is entitled to have a

particular policy and relevant factors about that are already quoted by this Court. However, this Court has already mentioned that the State Government cannot be allowed to discriminate while implementing the policy. In the present matter, there is no specific case of the Government that the funds were not available in any particular year starting from the year 2008-09 which are relevant years. It is not the case of the State Government that grant in aid was not given to any school during this period to Schools which were started in the year 2003-04 and when the additional divisions were sanctioned during the year 2003-04. Some illustrations are already quoted to show that in respect of schools started in the year 2003-04 and additional divisions sanctioned in the year 2003-04 and even in respect of schools which were started on permanent no grant basis, the State Government had taken decision to release the grant in aid and accordingly, the grant in aid was released. The relevant G.Rs. are already quoted by this Court and in one such G.R., the specific amount which was made available as grant in aid is also mentioned which is G.R. dated 4.3.2011 and the schools were of Raigad, Mumbai North, Nashik and Nandurbar. Along with this G.R., copy of the recommendation made by Education Officer Pune with regard to these schools is produced and it is not the case of Government that to these schools, grant in aid was not given as mentioned in this Government Resolution. In G.R. dated 21.3.2013 which is in respect of schools from Thane (for additional divisions), Nashik (for additional

divisions), Dhule (for many additional divisions) and even Aurangabad (for many additional divisions) and this G.R. shows that the Director of Education was expected to issue orders with regard to the disbursement of grant though that was to be done only after confirmation that the school was satisfying the conditions and the appointments were made by following the reservation policy. As usual, in this G.R. also, it was mentioned that it was only a declaration about the eligibility of the divisions and schools to get Government grant, but there is mention of the power of the Director of Education with regard to disbursement of grant in aid.

44. It can be said that more concrete instances could have been made available by the petitioner. However, there is no specific denial of the State Government with regard to the allegations that to other similarly situated additional divisions and schools grants were released from prior to year 2010-11. Due to these circumstances, this Court holds that the inference that the school of the present petitioner has been discriminated and the State Government has denied the benefit to the petitioner institution improperly, when there was no justification for denial of such benefit is possible. Though the decision is in view of the facts of the present matter, on the basis of the aforesaid facts it needs to be observed that everything cannot be left to the executive. When the State takes policy decision, the executive needs to give justification for

denying the benefits of the policy decision to institution like present one. Ordinarily the Court is expected to go with the presumption that the State Government has acted fairly and the same policy was used against all similarly situated persons, institutions. When there are circumstances leading to inference of discrimination, the Court needs to step in. In the past, such institutions were started by social workers and in those days, they were not relying on the Government for aid. They had kept themselves away from politics. That is not the situation at present. It is practical experience that in most of the cases the management of the institution has inclination towards a particular political party. The management cannot remain away from such party politics and it has to go to at least one side, to one political party. Due to such change in the working of the Government executive, discrimination has crept in. Such institutions help the political parties during elections and that is why such approach get developed and the powers are misused by the executive. If in such cases the Court does not interfere, the sufferers are not those persons in management, but the employees of the school and also the students receiving education in that school. Due to these circumstances, this Court holds that interference is necessary in such matters. It is also necessary to observe that in such cases satisfaction of the officers working on the field like Education Officer, Deputy Director and Director is important and due weight needs to be given to the opinion formed by them. Unless that is done, the discrimination cannot

be ruled out. In such cases, it will be necessary for the State Government to show to the Court that particular officer had formed such opinion for ulterior motive and there was no justification for such opinion. There is no such case of the State in the present matter. Due to the policy of reservation and the possibility that the policy was not strictly followed, this Court is giving some directions to the State Government to see that grants are released only after confirming that the reservation policy was followed in letter and spirit by this institution. The decision given by this Court on that point is already quoted. It is never open to the institution to say that it will fill the reserved posts in future. The backlog increases due to this conduct of the management and many a times the officers join hands with the management for making such illegal appointments. The circumstance that there is backlog of 22 posts is itself indicative that the reservation policy was not followed in letter and spirit. In the result, following order.

ORDER

- (I) The petition is allowed.
- (II) As per the proposal made by the Education Officer in his letter dated 08.10.2013 the Government is to give the grant in aid to the school of petitioner in respect of the additional divisions sanctioned from the academic year 2003-04.
- (III) The grant in aid is to be given only in respect of teaching staff actually appointed after following due procedure and not in respect

of the vacant posts.

(IV) It is to be ascertained that no appointment was given to open category candidate as against the post which was available to reserved category candidate and if that is done by the institution, grants in respect of that post are not to be given.

(V) Amount already given is to be adjusted accordingly and for the remaining amount the management will be responsible to the staff.

(VI) The process of ascertaining that proper procedure was followed, is to be completed within six months.

Civil Application is disposed of.

Rule is made absolute in those terms.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/