

(2011) 01 OHC CK 0018

In the Orissa High Court

Case No : Writ Petition (C) No. 2617 of 2005

Chittaranjan Mahapatra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 41, 46

Orissa Education Act, 1969 — Section 3, 7C(1), 7C(4)

Citation : (2011) 1 OLR 732

Hon'ble Judges : S. Panda, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—The case of the Petitioners, as delineated in the writ petition, is as follows:

The Petitioners are the teaching and non-teaching staff of an aided College, namely, Prahallad Mahavidyalaya at Padmabati in the district of Nayagarh. The said College is admitted to be +2 College established in the year 1986 and got the Government concurrence on 5.9.1986. On 4.3.1995 the College submitted application in the prescribed Form-A for release of Grant-in-Aid in terms of the Grant-in-Aid Order, 1994. Ultimately, on 13.3.1997 the Director of Higher Education after verifying the original records and being fully satisfied recommended the case of the Petitioners to the Government for release of Grant-in-Aid under the Grant-in-Aid Order, 1994 vide letter No. 2195 dated 13.3.1997 (Annexure-6). Since no action was taken despite the recommendation of the Director, the Petitioners filed O.J.C. No. 9612/1999 and this Court by order dated 4.8.1999 while disposing of the same directed that if the matter was pending before the Government, a decision be taken within four months. Thereafter, the Government in pursuance of the said order dated 4.8.1999 communicated the decision to the Director that Grant-in-Aid would be released as and when funds would be made available for the purpose. The State Government by its letter dated 1.11.2000 rejected the claim for sanction of Grant-in-Aid to the College on the ground of financial constraint.

The Petitioners against the said order of rejection again approached this Court in W.P.(C) No. 7574/2000, which was disposed of on 1.11.2002 in terms of the judgment rendered Prafulla Kumar Sahoo Vs. State of Orissa and Another, , quashing the impugned notification dated 9.8.2000 issued by the Department of Higher Education with a direction to re-consider the case of the Petitioners for release of Grant-in-Aid strictly in accordance with the Grant-in-Aid Order, 1994. As the order of this Court dated 1.11.2002 was not implemented, this Court directed personal appearance of the Secretary to Government, Higher Education. But a plea was taken that the State Government has filed an application to review the decision rendered by this Court in the case of Prafulla Kumar Sahoo (supra).

2. Thereafter, the State Government moved the apex Court in a Special Leave Petition, which was converted to Civil Appeal No. 4389/2006, challenging the judgment in Prafulla Kumar Sahoo so also several judgments and orders passed by this Court in terms of the decision in the case of Prafulla Kumar Sahoo (supra).

3. It is pertinent to mention here that when the matter was thus pending, the State Government in the Department of Higher Education came up with a Notification dated 5th February, 2004, Annexure-9, notifying "Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 2004 to regulate the payment of Grant-in-Aid to private educational institutions being non-Government Colleges, Jr. Colleges or Higher Secondary Schools. The aforesaid Order, 2004 is an amendment to the earlier Grant-in-Aid Order, 1994. SubClause (2) of Clause-3 of the said Grant-in-Aid Order, 2004 being relevant is quoted hereunder:

3(2)-The block grant payable to the private educational institutions under sub-para (1) shall be a fixed sum of grant-in-aid, which shall be determined by taking into account the salaries and allowances, as on the 1st day of January, 2004, of the teaching and non-teaching employees of the educational institution which has become eligible to receive grant-in-aid by the 1st day of June, 1994 in accordance with the Grant-in-Aid Order, 1994, but the determination of the quantum of such block grant shall be within the limits of economic capacity of Government as mentioned in Sub-section (1) of Section 7-C of the Act and shall have no linkage with the salary and allowance payable to any such employee by the Governing Body from time to time.

The vires of Grant-in-Aid Order, 2004 has been challenged in this case on the ground that it has been purposefully enacted to take away the effect of the judgment in Prafulla Kumar Sahoo (supra). When the State Government had decided earlier that 39 Colleges were eligible to get Grant-in-Aid in terms of the Grant-in-Aid Order, 1994, such colleges cannot be deprived of to get the benefits of Grant-in-Aid in terms of the Grant-in-Aid Order, 2004.

4. But at this juncture, we have to look at the judgment of Prafulla Kumar Sahoo. Paragraphs-10,11,12, 15 & 16 of the said judgment are quoted hereunder:

10. Clause (2) of the Grant-in-Aid Order, 1994 defines the various expressions used In the Grant-in-Aid Order, 1994. The expression "Director" and "Government" as defined in Clauses-2(e) and 2(g) of the Grant-In-Aid Order, 1994, are quoted herein below:

2.(l) In this order, unless the context otherwise requires

(a) to(d)xxxxxx

(e) "Director" means the Director, Higher Education, Orissa and includes any officer not below the rank of Deputy Director who may be Authorised by the State Government in that behalf from time to time by a general or a special order to perform all or any of the functions and exercise all or any of the powers of the Director under this order:

(f) xx xx xx

(g) "Government" means the Government in the Department of Higher Education:

(h) to (i) xx xx xx"

In the Grant-in-Aid Order, 1994 wherever the expression "Director" occurs, it would mean the Director, Higher Education, Orissa or any officer not below the rank of Deputy Director, who may be authorised by the Stale Government in that behalf from time to time by a general or a special order to perform all or any of the functions and exercise all or any of the powers of the Director under the Order and the expression "Government" where ever occurs in the Grant-in-Aid Order, 1994 would mean Government in the Department of Higher Education. Thus, it is only the authorities of the department of the Higher Education who have been vested with the statutory powers and functions with regard to claims to eligibility or admissibility to grant-in-aid. The authorities of the Finance Department, Government of Orissa, have not been vested with any statutory power or function under the Grant-in-Aid Order, 1994 to take any decision with regard to the claims to e1gibi1ity or admissibility to grant-in-aid.

11. Yet, by a circular dated 2.2.2000 annexed to the writ petition as Annexure-7, the Government of Orissa in the Finance Department has imposed some restrictions on the claims to eligibility or admissibility to grant-in-aid. The relevant portion of the said circular dated 2.2.2000 of the Finance Department, Government of Orissa, is quoted herein below:

"xx xx xx

2. As a medium term fiscal reform, steps have already been taken to abolish 50% of the existing vacancies at the base level posts under State Government establishments. Restrictions have also been imposed not to fill up any vacant post without prior concurrence of Finance Department. But it has been noticed that in most of the aided institutions the vacancies are being filled up and there is increase in demand for grant-in-aid.

3. It has, therefore, been decided that the restrictions as indicated below should be made applicable to the aided institutions under your administrative control.

(i) All the base level vacancies in the non-teaching posts as on 1.1.2000 shall stand abolished immediately and Government shall not pay grant -in-aid hence forward in respect of those posts stand abolished:

(ii) The non-teaching posts in the aided institutions that may fall vacant with effect from 1.2.2000 onwards due to retirement/resignation/death or any other reason, shall not be filled up and those posts falling vacant would stand automatically abolished. State Government shall not pay any grant-in-aid in respect of those vacant posts thus abolished.

(iii) The existing vacancies and also future vacancies in the teaching posts shall not be filled up without specific approval of Government with due concurrence of Finance Department.

The aforesaid circular of the Finance Department is the basis of the decision in the impugned order dated 9.8.2000 of the Government of Orissa, Department of Higher Education rejecting the case of the Petitioner for removal and grant-in-aid as would be clear from the very language of the impugned order dated 9.8.2000 quoted above. As the Finance Department, Government of Orissa had no jurisdiction to impose restrictions by an executive order on the claim of any educational institution or any member of its teaching or non-teaching staff to grant-in-aid, the impugned order dated 9.8.2000 of the Government of Orissa, Higher Education Department, which is based on such executive order of the Finance Department, Government of Orissa is ultra vires Sub-section (4) of Section 7-C of the Orissa Education Act and the Grant-in-Aid Order, 1994 and is also without jurisdiction and is liable to be quashed.

12. In Sub-section (4) of Section 7-C of the Orissa Education Act, however, it is clearly stated that grant-in-aid where admissible under the rule or order, as the case may be. "shall be payable from such date as may be specified in that rule or order or from such date as may be determined by the State Government". We have perused the provisions of the Grant-in-Aid Order, 1994 and we do not find therein any mention as to the date from which grant-in-aid would be payable. Clause-16 of the Grant-in-Aid Order, 1994 on which great reliance was placed by Mr. Swain in support of his submission that grant-in-aid would become payable as soon as the eligibility to grant-in-aid is decided by the Director, is quoted herein below:

16.(1) On receipt of a proposal from the Governing Body under para-15, the Director shall examine each case and if he is satisfied that the person proposed by the Governing Body is eligible to receive grant-in-aid against an approved post he shall make an order to that effect. Where the Director is satisfied that a person proposed by the Governing Body is not eligible to receive grant-in-aid his decision shall be communicated to the Governing Body. For the purpose of satisfying himself as to eligibility of a person to receive grant-in-aid, the Director

may call for any information, clarification or document that he considers necessary for the purpose.

(2) No person shall be eligible to receive grant-in-aid against an aided post unless:

(i) he has been lawfully and validly appointed to that post by the competent authority in accordance with the law, rules and instructions in force at the time of his appointment and has been continuing to hold that post on and beyond the date of eligibility of the post to receive grant-in-aid, and

(ii) he possessed educational qualifications and experience required holding that post at the time of his recruitment or on the date of post was admissible to grant-in-aid, whichever is later.

The aforesaid Clause-16 does not specify the date from which grant-in-aid would become payable, but only provides that the Director will communicate his decision on the claim to eligibility to grant-in-aid. After the claim to eligibility to grant-in-aid is decided by the Director, the State Government has to decide the date from which the grant-in-aid would be paid after finding the resources for making such payment. If funds are available under the budget for making payment of the grant-In-aid, the State Government can forthwith issue the order specifying the date from which the payment of grant-in-aid would be made. But if budgetary allocations for grant-in-aid have been exhausted, the State Government will have to wait till such budgetary allocations are made, Thus until the State Government issues an order determining the date from which grant-in-aid is payable to an educational institution or to a member of the teaching or non-teaching staff of the educational institution after finding the resources for the same, grant-in-aid cannot be claimed as a matter of right and no direction can be issued by the Court for payment. But once the State Government issues an order determining the date from which grant-in-aid is payable, a direction can be given by the Court to make payment of grant-in-aid, both current and arrear. This conclusion is in accord with the decision of the Supreme Court in *State of Orissa and Anr. v. Pratap Kumar Nayak and Anr.* (supra) that case of each employee for grant-in-aid has to be considered as per the Grant-in-Aid Order and Section 7-C of the Orissa Education Act, 1969 and it is for the State Government to examine each and every case in accordance with the prescribed procedure for such grant-in-aid. This conclusion is also consistent with the view taken by the Full Bench of this Court in *Laxmidhar Pati and Ors. v. State of Orissa and Ors.* (supra) that mere eligibility to grant-in-aid ipso facto does not confer a right or entitlement on the educational institution or its teaching or non-teaching staff to claim and receive grant-in-aid.

15. Orissa is a State with large sections of people including Scheduled Castes and Scheduled Tribes who are illiterate and backward consistent with the Directive Principles of the State Policy in Articles 41 and 46 of the Constitution, the legislature has imposed a mandate on the State Government under Sub-

section (1) of Section 7-C of the Orissa Education Act to set apart a sum of money annually for being given as grant-in-aid to private educational institutions in the State subject to the limits of its economic capacity. The State Government has also made the Grant-in-Aid Order, 1994 under Sub-section (4) of Section 7-C of the Orissa Education Act clearly indicating the relevant factors to be taken into consideration for deciding the eligibility of an educational institution or a member of teaching or non-teaching staff of such educational institution keeping in mind the educational needs of the State. The State Government cannot ignore such legislative mandate as well as the Directive Principles of State Policy the statutory provisions of the Grant-in-Aid Order, 1994. Unless, therefore, there are other more pressing needs than education, the State Government must set apart sufficient money for making payment of grant-in-aid to educational institutions or their teaching or non-teaching staff in accordance with the Grant-in-Aid Order 1994.

16. For the aforesaid reasons, the impugned order dated 9.8.2000 is quashed and the Director, Higher Education, Orissa and the Secretary, Department of Higher Education, Government of Orissa are directed to reconsider the case of the Petitioner for approval in the post of Junior Librarian and eligibility or admissibility to grant-in-aid in the said post strictly in accordance with the Grant-in-Aid Order, 1994 and the observations in this judgment within a period of four months from today. If such approval is granted and the Petitioner is declared to be eligible to grant-in-aid, the State Government will issue an order specifying the date for payment of such grant-in-aid after arranging the resources for the same in the budget for the next financial years. With the aforesaid directions the writ petition is allowed. But considering the facts and circumstances of the case, the parties shall bear their own costs.

5. On 18.10.2010, the Hon"ble apex Court did not interfere with the impugned judgment and dismissed Civil Appeal No. 4389/2006 (State of Orissa and Ors. v. Prafulla Kumar Sahoo and Anr.) with certain direction. The relevant part of the order is extracted hereunder:

...We have carefully gone through the impugned judgment passed by the Division Bench of the High Court of Orissa. In our considered view, no interference is called for. These appeals are devoid of any merit.

We, however, direct the Appellant to decide the case of the Respondents as expeditiously as possible and, in any event, within four months from the date of communication of this order.

This appeal, is accordingly, dismissed leaving the parties to bear their own costs.

6. Coming back to the facts of this case, we refer to the office order dated 29th November, 2003 passed by the Commissioner-cum-Secretary to Government, Department of Higher Education, relevant portion of which reads thus:

The Petitioner Shri Chittaranjan Mohapatra and others are at present working as

teaching and non-teaching staff of Prahallad Mohavidyalaya, Padmabati, District-Nayagarh. The Director, Higher Education has submitted a proposal to government vide his letter No. 2195 GH dt.13.3.97 to notify the +2 Wing of Prahallad Mohavidyalaya, Padmabati, district-Nayagarh as an Aided College u/s 3(b) of the Orissa Education Act, 1969 and to sanction grant-in-aid in favour of the eligible employees of the College. At present, proposals in respect of 39 (+2) unaided Colleges are pending at Government level for consideration due to resource crunch faced by the State Government.

From the aforesaid, it is crystal clear that the proposal for consideration of Grant-in-Aid Order, 1994 for the college of the Petitioners as well as other 38 Nos. of +2 unaided colleges was pending before the Government and no decision was taken solely on the ground of financial crunch, for which this Court decided the same in Prafulla Kumar Sahoo (supra) negating the plea taken by the Government. So, after the judgment of the Hon'ble apex Court passed in Civil Appeal No. 4389/2006, nothing survived for decision in the present case.

However, so far as it relates to vires of the Notification dated 5th February, 2004 (Grant-in-Aid Order, 2004) under Annexure-9, learned Counsel for the State furnishes the list of 39 Nos. of +2 Colleges, as indicated below:

1. Balasore Colleges, Balasore.
2. Anchilaka M.V., Ajodhya, Dist: Balasore
3. Maa Sarada Devi M.V. Kothar, Dist: Bhadrak
4. S.C. College Kukudakhandi, Dist: Ganjam
5. P.S. College, Polsara, Dist: Boudh.
6. C.T. Women's College, Thoriasahi.
7. Ansupa College of Education & Tech., Banki, Dist: CTC.
8. Anchaika M.V. Pragnya Bihar, Odapada, Dist: Dhenkanal
9. Parimal College, Pandua, Dist: Dhenkanal.
10. Jhadeswarpur Telkoi College, Dist: Jajpur.
11. A.S. Women's College, Alakunda, Dist: Jajpur.
12. Kadambari Pal Women's College, Bari, Dist: Jajpur
13. Dasarathapur H.S.S., Dist: Jajpur.
14. P.A.M.B. Kumarbandha, Dist: Jharsuguda
15. S.M. Panchayat College, Dist: Jharsuguda.
16. P.S. College, Dist: Jharsuguda.
17. Radgaor H.S.S., Dist: Kalahandi

18. J.K.M.V. Kosala, Dist: Kalahandi
19. Charigarh M.V. Telkoi, Dist:Keonjhar
20. Usha Devi Women"s Co11ege.
21. G.B. Women"s College, Athagarh
22. P.B.M. M.V. Mahabirod Dist: Dhenkanal
23. M.S.R. Mahila M.V. Dist: Kendrapara
24. Chitrotpala Women"s College, Dist: Kendrapara
- 25.B.P. College, Dist: Khurda
26. Murga Sasan Co1lege, Nua Diha, Dist: Mayurbhanj.
27. Kaptipada College, Kaptipada, Dist: Mayurbhanj.
28. R.N. College, Dist: Mayurbhanj
29. I.G. Mahila College, Dist: Mayurbhanj.
30. Anla M.V., Dist: Mayurbhanj
31. Prahallad M.V. Padmabati. Dist:Nayagarh.
32. N.S.W. College, Kakatpur, Dist:Puri
33. I.G.M M.V. Nimapara, Dist: Puri
34. Panchayat College, Satpara, Dist: Puri.
35. P.S. College, Dist: Sundergarh
36. P.S. College, Sonapur.
37. Similian College, Dist: Kalahandi
38. Kusum Devi Women"s College, Cuttack
39. A.S College, Balia, Dist: Jajpur

whose cases were considered and found to be eligible for release of Grant-in-Aid in terms of the Grant-in-Aid Order, 1994 but the Grant-in-Aid could not be given due to the reason for financial crunch, as ascribed by the State Authorities, the dispute over which has already been set at rest by the Hon"ble apex Court.

8. In view of such, we dispose of this writ petition in terms of the decisions in Prafulla Kumar Sahoo Vs. State of Orissa and Another, and Chittaranjan Mohapatra and Ors. v. State of Orissa and Ors. (O.J.C. No. 7574/2000 disposed of on 1.11.2002) and direct the State Government to examine the eligibility of each of the Petitioners and release Grant-in-Aid in their favour strictly in accordance with the Grant-in-Aid Order, 1994. The differential salary as well as arrear, if any, shall also be paid to them. The entire exercise shall be completed

within a period four months from the date of communication of this order. No cost.