

(1992) 07 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 5463 of 1991

Jalada Dalang Uchha Bidyapith

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-07-1992

Acts Referred:

Orissa Education Act, 1969 — Section 3

Citation : AIR 1993 Ori 257 : (1993) 1 OLR 77

Hon'ble Judges : S.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : J.K. Rath, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The core question that arises for determination in this case is whether a private educational institution on satisfying the prescribed eligibility criteria for receiving grant-in-aid from the State Government becomes entitled to receive such aid with effect from that date.

2. Jalada Dalang Uchha Bidyapiths represented by the Secretary filed this writ application against the State Government in the Education and Youth Services Department; Director of Secondary Education, Orissa and Inspector of Schools, Balasore Circle, seeking direction to the opposite parties to declare the petitioner's school to be eligible to receive grant-in-aid with effect from the year 1987-88 and to further direct the opposite parties to pay the salary component of the employees of the school with effect from that year,

3. The undisputed factual backdrop of the case is that the petitioner's school was established in the year 1979; it was accorded recognition from the academic session 1980; the first batch of students appeared in the High Court Certificate Examination in the year 1983 and the school has been admitted to the grant-in-aid scheme with effect from 1-4-91. The contention of the petitioner is that in terms of Clause 10(1) of the Government Resolution No. 9760/EYS dated

4-3-1979 (for short the 1979 Resolution) it is entitled to receive aid with effect from 1987-88 and a declaration be made to that effect.

4. In the counter-affidavit filed on behalf of the opposite parties, justification is sought to be provided to the decision to admit the institution to grant-in-aid scheme from 1991 on the basis of criteria laid down in two Government Resolutions, dated 24-9-83 (Annexure-A/3) and dated 7-3-87 (Annexure-D/3). From these Resolutions it appears that it has been generally decided by the State Government that there shall be at least one aided High Court in an area having 6000 population, and the total number of such Schools in the district will be determined by dividing the total population of the district by 6000. Power has also been vested in the State Government to relax the criteria in respect of girls' High Schools and high schools situated within 2 kms. from the State border subject to certain other conditions. According to the opposite parties in terms of these Government Resolutions, the petitioner's school did not qualify for grant-in-aid, but in relaxation of the principles, the petitioner and 36 other schools of Balasore district were admitted to the grant-in-aid scheme with effect from 1-4-1991.

5. In Clause 10(1) of 1979 Resolution it is laid down, inter alia, that a recognised High School will be eligible to receive minimum grant-in-aid after four years from the year of presentation of candidates in the final High School Examination subject to other conditions enumerated therein. Sub-Clause (3) of Clause 10 provides that a school will be considered for the privilege of direct payment of salaries for three years receipt of the minimum grant provided the roll strength does not fall below the roll strength prescribed for the receipt of the minimum grant and the result of the school for the preceding two years is on par with the State average or above, in the Annual High School Certificate Examination and the school satisfies other conditions for direct payment laid down by the State Government from time to time.

6. From the aforementioned provisions it is manifest that what is prescribed under Clause 10 is the eligibility criteria to be satisfied for an institution to qualify for receiving grant-in-aid. It is not provided therein that immediately on satisfying the eligibility criteria the institution is entitled to receive grant-in-aid, This was granted to Sri Rath to ascertain if there is any other provision either in any Rule or in any other executive instruction indicating that way. On security he fairly conceded that he could not find any such rule or instruction. In this connection, it will be helpful to refer to the definition of "Aided Institution" in Section 3(b) of Orissa Education Act, 1969 as amended by the Amendment Act, 1989. As per the definition in the said provision "aided educational institution" means a private educational institution which is recognised by and is receiving aid from the State Government and includes an educational institution covered by the list of educational institutions eligible to receive aid as may be drawn by the State Govt. from time to time under the scheme regulating Government grant-in-aid to educational institutions for payment of teacher's salaries.

Therefore in order to come with the definition in Section 3(b) an institution has not only to satisfy the eligibility criteria prescribed in Rules and instructions, but also the State Government as such institution must be either receiving aid or included in the list of institutions notified by Government for receiving aid. It was not disputed before us that the State Government issues notifications from time to time declaring the eligible institutions entitled to receive aid from it. It was also not disputed that the petitioner-institution has been so declared in 1991.

7. Considering the provisions in Government Resolutions and the provisions noted above, it is our considered view that an institution cannot be said to be entitled to receive grant-in-aid immediately on acquiring/satisfying the eligibility qualifications prescribed in the Government Resolutions noted earlier. It can be said to be an aided institution if the Government notifies it as such, even though actual disbursement of the amount may be later. That is not to say that the State Government cannot grant aid to a private institution immediately after it acquires the eligibility qualifications prescribed under the rule/executive instruction. We are persuaded to take this view that "aid" in the very nature of things can neither be demanded by an institution as a matter of right nor can it be thrust on an institution which is not keen to receive it and that the State Govt. is bound by certain disciplines in financial matters. A situation may arise when it may not be possible for the State Government to provide aid to all private institutions eligible to receive aid. Therefore it is necessary that the State Government or any other authority competent to deal with the matter should take a conscious decision in the matter on consideration of the provisions in the Rule/Executive instruction and other relevant facts and circumstances. The entitlement to receive aid will flow from such order.

8. On the analysis and the discussions in the foregoing paragraphs, we are unable to accept the contention of Sri J.K. Rath that the petitioner's institute is entitled to receive grant-in-aid with effect from 1987-88 session. The writ application is therefore dismissed. There will be no order for costs.

S.K. Mohanty, J.

9. 1 agree.