

(1996) 01 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 31262 of 1993

Karnataka Vidya Vardhaka Samithi, Alawandi, Koppal Taluk,
Raichur District

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Grant-In-Aid Code for Collegiate Education, 1969 — Rule 16(B)(V)

Citation : (1997) 1 KarLJ 176

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This is a petition under Article 226 of the Constitution of India claiming the issuance of a writ of certiorari or any other appropriate writ order or direction in the nature of writ of certiorari quashing order dated 16-10-1989 passed by respondent 1 vide G.O. No. ED 66 TPU 89 in Annexure-K and for further issuance of writ of mandamus for release of the grant in favour of the petitioner-institution with effect from the date the petitioner-institution became eligible for grant and for which period no grant has been made by the respondents, that is for the period commencing from 3-7-1986 to 16-10-1989.

2. The facts of the case in brief are that the petitioner-institution which is a registered society and which runs a number of educational institutions, that is primary school, secondary school and pre-university college at Alawandi, Koppal Taluk and a practising secondary school and a college of Education at Gadag. This petitioner had started a high school in Alawandi known by name Karnataka Vidya Vardhaka Samithi's High School and vide order dated July 3, 1981, the petitioner's management was permitted to upgrade the above-mentioned school vide Annexure-A to the writ petition. The name of the petitioner-institution is in Annexure-A at Sl. No. 21.

3. The petitioner's case is that vide Annexure-B, petitioner had been awarded approval to start the first two years pre-university course with effect from the academic session 1981-82. The petitioner's case is that one of the conditions

contained in the order was, at Sl. No. 11 of the conditions, that the institution would not be eligible for the grant from the department for a period of first five years and that the no-grants period came to an end on July 2, 1986. that is on the date of expiry of the period of first five years. Petitioner's case is that he started classes and made certain appointments of the staff. The petitioner has further alleged that the opposite party issued letter dated in March 1983, intimating that the new college will be eligible for grants only after completion of 5 years and during this period of 5 years, the concerned management will have to bear all expenditure. The petitioner's further case is that the opposite parties in the process of correspondence between the petitioner and the opposite parties, passed the order dated 21-1-1989 to the effect that the petitioner's institution which was started in 1981-82 had become eligible for salary grant from the Government and after a detailed examination of the Commission of the Public Instructions' proposals and the report of the Review Committee, it had been decided to admit the said college for the salary grant on certain terms and conditions. It was further provided that the sanction was accorded for admitting the petitioner's college to salary grant with effect from the date of issue of the order itself. Condition No. 6 of the grant is that no back arrears of the salary shall be claimed by the management. Thus, the order very specifically stated and provided that the grant would be made with effect from the date of issue of the order and not from the back date. Thus feeling aggrieved from this order whereby petitioner had not been granted really grant-in-aid for the period from July 1986 to the date of issue of the order dated 21-1-1989 namely, Condition No. 6 of the order, petitioner has come up before this Court under Article 226 of the Constitution of India and has prayed for the grant of reliefs mentioned earlier.

4. I have heard Sri Praveen Kumar Raikote, learned Counsel for the petitioner and Sri A.V. Srinivasa Reddy, learned Additional Government Advocate, at length.

5. The petitioner's Counsel contended before me that in view of the Condition No. 11 of the order of recognition contained in Annexure-B and the provisions of Grant-in-Aid Code for Collegiate Education, particularly Rule 16(b)(v) and (vi), the petitioner became entitled to the grant-in-aid immediately on the completion of the period of first five years from the date of recognition and starting of the school, that is with effect from 3rd July, 1986. The learned Counsel submitted that as such, the petitioner's institution had been entitled to the grant being made in favour of the petitioner's institution and by doing so, the authorities have illegally refused to perform their public duty as a result of which, the petitioner's institution has been subjected to the deprivation of its right of grant for the period commencing from July 1986 to October 1989 without any reason. As such, Condition No. 6 of the order dated 5-10-1989 in Annexure-K may be quashed. He further submitted that a further direction be issued to the parties to release the money of the grant-in-aid for the above-mentioned period as well, that is period commencing from July 1986 to October 1989. The above contentions of the learned Counsel for the petitioner have been hotly contested, by the learned Additional Government Advocate Sri A.V. Sreenivasa Reddy, Sri

Reddy submitted that firstly, it is not the right of the petitioner that he can claim to be favoured by mandamus that grant-in-aid should be given to the institution or as per the amount claimed by him. The Government no doubt assists the private institutions and subject to the money available in its purse, it makes grants in favour of eligible institutions after having considered whether they fulfill the necessary conditions. He further submitted that to become eligible is not like that one becoming entitled to claim as of right that the grants should be given to the institution. The eligibility is distinct from being entitled to get. The eligibility only confers a right to be considered for the matter of grant being made in favour of the petitioner. The learned Government counsel also invites my attention in this regard to Rule 2 of the Grant-in-Aid Code of Karnataka Collegiate Education.

6. I have applied my mind to the respective contentions advanced by the learned Counsel for the parties. There is no doubt that the petitioner's institution has been granted the grant-in-aid by order in Annexure-K and beyond doubt, with effect from the date of issue of the order in Annexure-K. There is also no doubt that the institution was started in 1981-82. There is also no doubt that as per Rule 16(b)(v) and (vi), no new college is eligible for grant-in-aid during the five years from the date of its commencement and start. Clause (v) to Rule 16(b) reads as under:

Rule 16(b)(v):- "That no College will be eligible for grant-in-aid during the first five years of its starting".

Rule 16(b)(vi):- "That in respect of Colleges which are otherwise eligible for grant-in-aid on new Courses of study will be admissible only with effect from the date of completion of five years from the date of introduction of such courses".

7. A reading of these rules per se reveals that either a new college or a college which is otherwise eligible for grant-in-aid which starts a new course, it is provided such college or such new course, as the case may be, shall not be eligible for consideration or be admissible for grant-in-aid for a period of five years. It is only after the expiry of that period, such new institution or new course may become eligible for consideration for grant-in-aid. "To be eligible" is distinct from "to be entitled to get". Eligibility for consideration may be there. It means, eligibility is not to be entitled to grant-in-aid, but it is only once becoming qualified to apply or to seek consideration for grant of that relief such as appointment or grant-in-aid. "Eligible" means "qualified for being considered for being admitted to a particular course or situation". In Chambers Twentieth Century Dictionary, "eligible" has been defined to mean "fit or worth to be chosen, or legally qualified for election or appointment, or desirable". In Black's Law Dictionary, Sixth Edition at page 521, it is observed that,

"Eligible:- Fit and proper to be chosen, capable of being chosen, as a candidate for office or qualified".

Expression "entitle" at page 532 of the Black's Law Dictionary, Sixth Edition has

been defined to mean as under:-

"Entitle:- In its usual sense, to entitle is to give a right or legal right to. In ecclesiastical law, to entitle is to give title or ordination as a minister".

Expression "entitlement" has been defined as under:

"Entitlement:- Right to benefits or income or property which may not be abridged without due process".

8. A perusal of these definitions and meanings of the expressions "eligible" and "entitle" or "entitlement" clearly reveals that there is a distinction of degrees in the meanings of the two. In case a person is said to be eligible for some thing or for some post, it means he has become qualified for being considered or chosen, but until he is chosen or appointed to that post or granted that thing, he does not become entitled. At the most, he becomes entitled for consideration and if he passes that consideration, he may be entitled to that very object or office. The rule here only declares that these institutions shall be eligible after five years. It means that the institution will be eligible for consideration for grant-in-aid, but that by itself does not confer a right in the petitioner that he should be of course, be granted. I may put another analogy. Under Constitution of India, qualifications have been prescribed for a person to be appointed as a Judge of the High Court and it is provided that unless a person has been a citizen of India and has atleast held a judicial office in the territory of India or has at least been an Advocate of a High Court or of two or more such Courts in succession, he shall not be qualified for the appointment as a High Court Judge. This does not mean that every officer with 10 years" span of judicial career or career in the judicial office or any advocate who has completed 10 years of practice can claim that he is now entitled to the office of the High Court Judge and the appointment orders should be issued in his favour. It only indicates that person might have become qualified, might be entitled to consideration, but he is not entitled to the office unless he is appointed to that office and the discretion rests with the constitutional authorities prescribed. In the same way, no institution which is recognised and which has completed five years of non-grant career, it cannot, as of right, claim that it should be provided grant-in-aid. Becoming eligible, no doubt, gives him a right for consideration that his case may be considered, but it does not mean that from the very date itself, he should be granted the grant-in-aid. There are many factors which are to be taken by the authorities while making grants including the purse of the State also, the economic factor with the State. So, in my opinion, the learned Counsel for the petitioner has been mistaken in submitting that once the institution completed five years, it has become entitled to the grant-in-aid with effect from the date of completion of five years" period and it was not within the jurisdiction or right of the authority to provide that the grant-in-aid is available from cumulative effect and salary or grant can be ordered to be passed. Really the scheme of Grant-in-Aid Code per se as per Rule 2 provides that "grant-in-aid cannot be claimed as a matter of right". It is within the discretion of the Government to grant it and when to grant

it and from what date it has to grant it.

9. Thus considered in my opinion, there is no illegality or no illegality has been committed by the respondents in issuing the order of grant-in-aid in favour of the petitioner with effect from the date of the order itself and subject to Condition No. 6 that no back salary shall be claimed as grant-in-aid from the management. In my opinion, therefore, the petition appears to have got no merits and deserves to be dismissed.

10. The petition as such, is hereby dismissed. No orders as to costs.