

(2003) 12 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 4663 of 1995

Keraleeya Samajam and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Secondary School Code — Rule 86.2

Citation : (2004) 1 ALLMR 375 : (2004) 3 BomCR 723 : (2004) 2 MhLj 171

Hon'ble Judges : V.G. Palshikar, J; S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : N.K. Mudnaney, for the Appellant; S.S. Gokhale, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S. C. Dharmadhikari, J.—Can an institution which is permitted to open a secondary school on permanent No Grant Basis claim grant in aid from the Government is the issue which arises for consideration in this petition under Article 226 of the Constitution of India.

2. The petitioner is a society registered under the Societies Registration Act as also Bombay Public Trust Act which is managing and administering the petitioner No. 3, (hereinafter for short referred to as the said "School"). The petitioner seeks a direction from this Court to the respondents to sanction grant in aid for its secondary section. The entitlement of the petitioner depends upon our answer to the aforesaid question.

3. It is not in dispute that the third respondent. Dy. Director of Education, Government of Maharashtra. Nashik by a letter (exh. A) dated 26th August 1975 granted permission to the petitioner to open new secondary school on permanent no grant in aid basis. The said letter reads as under:--

"Under instruction received from the Government of Maharashtra under letter No.

SSN-3874/2003(iii)/E. dated 12th July 1975 permission is hereby granted to you to open New Secondary Schools permanently on no Grant-in-aid basis as shown in statement attached herewith, on fulfilment of usual conditions. It may please be noted that you will not be paid grant-in-aid or E.R.C. concession at any time in future and you are, therefore, requested, to submit through E.O.Z.P. of your District undertaking to that effect that you will not claim any Government Grants or E.R.C. concession on permanent basis. The undertaking must be signed by president and the office bearers of the management. Please note."

4. It is not in dispute that the undertaking as sought by the respondent came to be duly executed by the President and office bearers of the petitioner No. 1.

5. The petitioner further submits that it is imparting education in both primary as well as secondary section with English language as medium of instruction in the said school. The petitioners contend that respondent No. 1 took a policy decision in the year 1975 not to give grant in aid to any school which is started with English as medium of instruction and in pursuance of the said policy no grant in aid has been sanctioned by the respondents to any school imparting education with medium of instruction as English, whether such recognition was granted on or after the year 1975.

6. It is submitted by the petitioners that they have about 3000 students in primary section and about 1110 in secondary section. Teaching strength and the non teaching staff is mentioned in para 6 of the petition. It is contended that at the material time, the Maharashtra Employees in Private Schools (Conditions of Service) Act, (hereinafter for short referred to as "MEPS Act") was not enacted and there were no statutory rules governing scale of pay and allowances payable to the employees of unaided school. It is pointed out that the Secondary Schools Code (for short SS Code) contained administrative instructions from the Government to the departmental staff for guidance and the said provisions were held by the Supreme Court to be mere administrative instructions and confer no right on anybody concerned.

7. It is contended that during the course of time, the petitioners' institution achieved high degree of efficiency and reputation and the members of the teaching and non teaching staff were being paid salary and allowances much more than other private schools in Dombivili area. After referring to the provisions of MEPS Act and Rules framed thereunder, it is contended that the pay and allowances of the teaching and non teaching staff was increased and, therefore, about 54 members of the teaching and non teaching staff filed a writ petition in this Court for an order and direction to the respondents to compel the petitioners herein to make payment of salaries as per the rules framed under the MEPS Act. The result of the petition was that this Court directed the petitioners herein by an order dated 14th February 1995, to make an application to respondent No. 3 who was directed to decide the same after hearing both the sides in accordance with law. In other words, this Court directed the authorities to determine the scales of pay and allowances due and payable to the employees

of the petitioner herein. It appears that in pursuance of the same, direction and order was passed by Respondent No. 3 on 31st August 1995. In this petition we are not concerned with the challenge to the said order. This petition, as stated above, restricts the reliefs to the claim of grant under the grant in aid scheme of the Government.

8. After making reference to the S. S. Code it is contended that the authorities did not permit the petitioners to revise their fee structure. It is contended that by several letters and reminders, addressed to the third respondent, the petitioners prayed that permission be granted to increase tuition fees to enable them to meet the increase expenditure of running the school. Since no permission was granted to revise the tuition fees, the petitioners were left with no alternative but to approach the authorities for release of grant to meet the expenses of salaries of the teachers and non teaching staff. The applications made on 21st May 1988 (Exh. D), 29th July 1988 and 31st March 1995 prayed for release of grant in aid to the secondary section. It is contended that, the applications made at Exhs. D, E and F were accompanied by inspection report of the local education authorities setting out the achievements of the institution. Since there was no response from the authorities to these applications the petitioners were compelled to institute this petition on 25th September 1995. The petitioners have given instance of the respondents sanctioning grant in aid after 1975 to some schools in Kalyan and Dombivili. Thereafter, the petitioners proceed to allege discrimination on the part of the respondents insofar as the sanction of aid to secondary schools on the ground of language and according to them, the classification being arbitrary is liable to be struck down as ultra vires Article 14 of the Constitution.

9. Rule was issued on this petition and it was directed to be heard with Writ Petition No. 4662 of 1995. We are informed that the Writ Petition No. 4662 of 1995 is already disposed of by this Court.

10. Mr. Mudnaney, learned Counsel for the petitioner contended before us that in matters of sanction of grant in aid the State cannot discriminate on the basis of caste, sex, religion and language and such discrimination is violative of Article 14 of Constitution. It is contended that the discrimination made by the State in the policy of 1975 referred to above has no reasonable nexus with the object sought to be achieved and is wholly arbitrary, discriminatory, unreasonable, unfair and unjust. By relying upon the judgment of the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , and in the case of State of Maharashtra Vs. Manubhai Pragaji Vashi and others, it is contended by Shri Mudnaney that withholding of grant in aid or refusing the same to the petitioners is wholly illegal and the petitioners are entitled to the reliefs claimed in this petition.

11. It is further contended by the learned Counsel for the petitioner that right to education is now made a fundamental right vide Article 21(A) of the Constitution. It is contended that if this fundamental right is to be carried to its logical end and

implemented in letter and spirit, the State is obliged to grant aid to educational institutions. It is further contended that right to education being part and parcel of right to life and liberty enshrined in Article 21 of Constitution of India, refusal on the part of the authorities to sanction grant in aid violates mandate of the said Article and even on this count we should issue directions to State for releasing grant in aid in favour of the petitioners.

12. In answer to this petition, an affidavit affirmed by Sitaram Shinde, Under Secretary to Government (Law). Education Department dated 9th February 1996 is filed. In this affidavit this is what is stated :--

"1. I say that prior to the year, 1975, the Government was giving grant to the schools which were recognised by the Education Department and which satisfied the conditions as laid down in the Secondary School Code. However, in the year 1975, the Government took a policy decision by which it has been decided to grant permission for opening of English medium schools, permanently on no grant basis. It is the policy of the State to promote education through the mother tongue and therefore, permission to open Marathi Medium schools as well as the schools through other media on extension of grant in aid except English medium, according to the need of the society. The Government has also laid down certain norms for preparing a Master Plan indicating the places where a secondary school is required to be opened. The Master Plan formulated in the year 1992, continues to be in operation and Government has given permission to about 2500 secondary schools in the State at the places indicated in the Master plan.

The Government has further decided to pay grant-in-aid to these institutions in phases, the schools which initially permitted to be opened on no grant basis, for first three years, the grant is not given by the Government. After completion of three years, if the other conditions as laid down in Government orders issued from time to time as well as the provision of secondary school code are satisfied, the grant in aid is given at the rate of 25% of their admissible expenditure in the fourth year. It is increased thereafter by 25% every year and ultimately, the school is eligible for 100%, grant in the seventh year or its existence, subject to the fulfilment of the prescribed norms.

Prior to 1975, there were very few English medium schools, so the Government could afford to give grants to such schools. However, due to the non-availability or adequate resources, the Government is compelled to restrict the schools which will be entitled to receive grant in aid at the same time keeping with the policy of the Government to promote education through mother tongue and through Indian languages. Now, it has been decided not to give grant in aid to English medium schools due to the dearth of funds, the Government has not been able to fulfil its promise of paying grant in aid even to Marathi medium schools in States, as a result of which the grant in aid due, to about 1200 secondary schools was in arrears for the last two years. In view of this precarious financial situation, and in view of the fact that there are about 1000 Marathi medium secondary schools in the State on the wait list for receiving grant in aid

and therefore, it is not possible for the State Government to consider the request of the petitioner or any other similarly situated English medium schools.

The English medium schools are permitted on permanently no grant basis and are authorised on certain conditions to charge higher rate of fees than the standard rates prescribed by the Government for aided schools to meet their financial deficits. By and large, the parents belonging to a relatively upper class of society and are in a sound financial position, send their children to the English medium schools. The Government has generally not made any exception to the policy of non extension of grant in aid to English medium schools, except in respect of certain girls' schools, the Government has sanctioned grant in aid even though they are English medium schools because such English medium girls' schools were started in the memory of late Prime Minister Smt. Indira Gandhi."

13. The A.G.P. pointed out that the recognition/ permission was granted to the petitioner on permanent no grant basis. The school is a co-Ed school and, therefore, it is not entitled for any special consideration. It is pointed out that the provisions of the MEPS Act are applicable to all the schools irrespective of the fact whether they are aided or unaided. The A.G.P. submits that the provisions in such enactments are for the benefit of the employees and the school authorities are obliged to pay the scales laid down by the Act and the Rules. It is pointed out by the A.G.P. that the petitioners did not pay to their employees the scales laid down as per the Act and the Rules and, therefore, they are in arrears to a large extent. The A.G.P. points out that for the reasons set out in the affidavit as well as in view of the submissions made by him, the authorities were right in refusing to consider the request of the petitioner and release them any grant in aid. It is also pointed out by the A. G. P. that grant in aid is not a matter of right. He points out that right to aid does not flow from the right to establish and administer an educational institution. In other words, there being no constitutional or legal right to grant in aid, the A.G.P. submits that this is not a fit case where we should exercise our jurisdiction under Article 226 of the Constitution of India and the petition be, therefore, dismissed.

14. At the outset, we are not inclined to consider the wider issues as to whether refusal to consider an application for grant in aid violates the mandate of Article 21A of the Constitution or whether the policy not to release grants to schools imparting education in a language other than the regional one amounts to violation of Article 14 of the Constitution. These issues can be decided in an appropriate case. In this case, it is not at all necessary to decide these wider questions and we expressly keep them open.

15. For appreciating the rival contentions a reference is necessary to the relevant provisions of Secondary School Code (for short: SS Code). Chapter IV thereunder provides for Grant In Aid, Section I. Under this heading provides for salary/non-salary grant. Several rules pertaining to administration and eligibility for grant in aid are set out in this Chapter. Rules 86.1, 86.2, 87 and 88.1 read as

under:--

"86.1: Moneys annually granted from public funds for aiding secular education in Maharashtra State are administered under the control of the Director in accordance with the conditions set forth in these rules."

"86.2: Proprietary schools (i.e. schools not registered under either the Societies Registration Act XXI of 1860 or the Bombay Public Trusts Act, 1950 or any other Act that may be specified in this behalf by government), communal schools and schools which have been permitted by Government on non-grant-in-aid basis, will not be eligible for any grant in aid from public funds.

"87: Recognised schools are eligible for the following kinds of grants which may be paid at the discretion of the Sanctioning Authority subject to availability of funds and subject to the condition that the Societies running these schools are registered under the Bombay Public Trusts Act, 1950 as amended from time to time :--

i) Salary grant;

ii) Non-Salary grant;

iii) Building grant; and

iv) Such other grants as may be sanctioned by Government from time to time".

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

Rule 99 is also relevant for our purpose which reads thus :--

"99. Schools charging tuition fees at rates higher than the standard rates prescribed for their areas are not eligible for grant in aid of any kind."

16. From perusal of the aforesaid rules, it becomes at once clear that schools which have been permitted by Government on NO GRANT IN AID BASIS will not be eligible for any grant in aid from public funds. It is pertinent to note from the letter permitting opening of petitioners' institution (secondary school) that the permission is on permanent no grant basis. As stipulated thereunder, the petitioners have executed an undertaking to the effect that they will not claim any government grant or E.R.C. concession on permanent basis. Mr. Mudnaney could not dispute this fact. Further, there is no challenge in this petition to the conditions upon which permission has been granted nor is there any challenge to the above mentioned rules of grant in aid code. We are, therefore, of the view that once the petitioners accept that permission to establish and administer the secondary school is on permanent no grant basis and that such schools are not

entitled to any grant in aid from public funds, then the answer to the issue raised above is in the negative and petition must necessarily fail.

17. Even otherwise, the faint attempt of Mr. Mudnaney to show that petitioner No. 1 being minority institution established by a linguistic minority in the State of Maharashtra and administering the secondary school therefore, it is entitled to grant in aid, will not advance the case of the petitioners any further. No particulars in this behalf are set out in the petition. Neither are the necessary and relevant documents and records annexed thereto. The only statement made in para 3 of the petition will not be of any assistance in coming to a conclusion that the first petitioner is a minority institution. That apart, in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, the Supreme Court in paras 140, 141 and 142 has observed that:

"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."

18. Thus, grant in aid cannot be claimed as of right. There is no legal or constitutional right insofar as grant in aid is concerned. The rules set out above themselves make the aforesaid aspect clear. The rules provide for grant in aid from public funds. All grants are subject to availability of funds and no secondary school can claim the same as of right. Therefore, even if the petitioners are in a position to apply for grant in aid, despite the condition set out in the permission granted to them, yet, there is no enforceable right of the petitioners by which they can compel authorities to either consider their request or grant them aid. This aspect is not at all disputed before us. If there is paucity of funds, which fact is also not disputed, the State cannot be compelled to pay grant, even if the funds are not available to each and every school, more so to the schools who have accepted to open them on permanent no grant basis. It is pertinent to note that the permission is of 26th August 1975. The first application for grant in aid is made in 1988. The petitioners have failed to point out any prejudice of any nature caused to them merely because their application for grant in aid is not considered. Therefore, there is absolutely no necessity of scrutinising the validity or otherwise of the policy of the State as set out in the affidavit. An institution like the petitioner No. 1 is not entitled to claim any equitable and discretionary reliefs from this Court under Article 226 of the Constitution of India.

19. In the view that we have taken, it is not necessary to decide as to whether the ratio in the judgment of the Supreme Court brought to our notice is applicable to the facts and circumstances of the present case. That apart, all the decisions have been considered in the latest Eleven Judge decision of the Supreme Court referred to above. The issue of admissibility of grant in aid to private law college is wholly independent because the claim is considered on the touchstone of Article 21 and 39A of the Constitution of India i.e. Legal Aid. Once the admissibility of grant to private law colleges is held to be a part and parcel of the mandate enshrined in these Articles and duty to provide legal aid then, it becomes at once clear that such tests are wholly inapplicable to the present case.

20. In the result, the petition fails. Rules discharged with no orders as to costs. We, however, make it clear that if the petitioners are in a position to claim the benefit of any subsequent policies or rules in regard to grant in aid, then it will always be open to them to apply to the authorities appointed in that behalf.

C. C. expedited.