

(2012) 12 AHC CK 0224

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46282 of 2012

Kumari Sita Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2013) 1 ADJ 348

Hon'ble Judges : Sunil Ambwani, J; Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Siddharth S. Mishra, for the Appellant;

Final Decision : Allowed

Judgement

1. The petitioner is a young girl belonging to the poor strata of society as evidenced by the ration card in the category of persons living below poverty line (BPL) issued to her father Shri Ram Dular. She has filed this writ petition under his guardianship to decide her representation dated 13.8.2012 addressed to the District Inspector of Schools, Allahabad for providing the benefit under "Savitri Bai Phule Balika Shiksha Madad Yojna" (in short the Scheme) for providing financial assistance to poor girl students vide Government Order dated 20.1.2009. The petitioner passed the High School examination in the year 2011 and was pursuing her studies in Class-XI in Jawahar Yadav alias Pandit Balika Inter College (Narayan Nagar) Paigambarpur, Allahabad when she has claimed her entitlement under the Yojna in which the State Government vide Government Order dated 20.1.2009, for one time grant of Rs. 15,000/- and a bicycle for the girl students belonging to BPL category studying in Class-XI, and a further amount of Rs. 10,000/- on being admitted in the next year in Class-XII. The Government Order provided the eligibility for the Scheme, to those girl students, who had passed High School examination in the year 2008 and has taken admission in Class XI in any Government school or any school getting aid from the State Government or has completed Poorva Madhyama examination from

U.P. Madhyamik Sanskrit Siksha Parishad and has taken admission in Uttar Madhyama; her guardian holds a ration card in BPL category; she is unmarried; and she has opened an account in a nationalised bank for receiving the assistance from the District Level Committee.

2. The Scheme provided for constitution of a Committee at the District level with the District Magistrate as its chairman, and the Chief Development Officer, Sub-Divisional Magistrate of the concerned Tehsil, District Inspector of Schools, a Principal of the any Government aided secondary education nominated by the District Magistrate and a Principal of a unaided secondary education nominated by the District Magistrate, as its members. The eligible girl students were required to submit their applications through the Principals of their Schools with the mark sheet of the High School Examination 2008 and the certificate of taking admission in Class XI alongwith a verified BPL card. The applications were required to be forwarded by the Principals of the concerned Schools. The Scheme provided the records to be maintained by the office of the District Inspector of Schools and declared that the financial assistance under the Scheme is in addition to any scholarship or any other benefit drawn by the eligible candidates under any other scheme.

3. The scheme was circulated by the Director of Education (Secondary) U.P. Lucknow on 21.1.2009 to all the Regional Directors of Education and the District Inspector of Schools in the State of UP directing them to select the girl students eligible for the grant upto 2nd February, 2009 and to prepare district-wise list upto 7.2.2009. Para-4 of the circular letter provided that under the Scheme Rs. 15,000/- will be given to such eligible girl students of Class XI and a bicycle and that in Class XII, she will be given Rs. 10,000/-.

4. We have heard Shri Siddharth S. Mishra, appearing for the petitioner. Learned Standing Counsel appears for the State respondents.

5. The petitioner has relied upon an order passed by this Court on 26.3.2012 in Writ Petition No. 14583 of 2012 (Km. Shashi v. State of U.P. and others) in which an usual direction was issued by this Court to decide the petitioner's representation within one month by reasoned order and if any fresh application is needed under the scheme, the same will be filed within one week from the date of obtaining a certified copy of the order.

6. A preliminary objection is raised by the Standing Counsel that the Scheme has come to an end, on which we directed the Standing Counsel to file a counter-affidavit giving the details of the grants received and the benefit given to the eligible girl students.

7. A counter-affidavit of Shri Santosh Kumar Misra, Assistant District Inspector of Schools, Allahabad has been filed giving these details. After narrating the essential conditions of eligibility and the grant under the Scheme vide Government Order dated 20.1.2009 for the year 2008-09, it is stated in paragraph-6 that the petitioner forwarded her application through the concerned

Principal to the office of the District Inspector of Schools, Allahabad. She was found eligible for grant under the Scheme and was found to be studying in Class XI after having passed the High School Examination 2010. Her father is holding BPL Card No. 42757. She, however, could not be given the benefit out of the grants received as out of 7282 eligible girl students in the year 2011, the State Government gave benefit to 6726. The remaining 556 girl students could not be given the benefit as the requisite grant for them was not received. The Scheme was thereafter declared to be closed by the State Government vide Government Order No. 513/15-10-12-47 (1)/09 dated 23.5.2012.

8. In reply to the supplementary affidavit, it is stated in the counter-affidavit of Shri Santosh Kumar Misra, Assistant District Inspector of Schools, Allahabad that in compliance with the order of the High Court dated 26.3.2012 in Writ Petition No. 14583 of 2011 (Km. Shashi v. State of U.P. and others), she could not be given the benefit as only 4648 girls were given assistance from the grant received from the State Government, from which the amount was transferred in their (beneficiaries) bank accounts.

9. In the order dated 21.8.2012 deciding the representation of Km. Shashi in Writ Petition No. 14583 of 2012 the District Inspector of Schools, Allahabad has given the details of the grants received from the office of the Director of Education (Secondary), U.P. Allahabad under the Scheme, for the year 2010-11 for 4648 eligible girl students. The District Inspector of Schools has given the details of five Government Orders from 28.1.2011 to 30.7.2011 by which he had received Rs. 8,13,62,500/- for giving the benefit of the scheme to 4648 girl students, at Allahabad.

10. Learned counsel for petitioner submits that the Scheme vide Government Order dated 20.1.2009 for the year 2008-09, was not contingent upon the grant to be received by the District Inspector of Schools. The Scheme provided the conditions for the grant of benefit to the eligible girl students. Once it is admitted that the petitioner completed the conditions of eligibility and was included in the lists prepared for the benefit, the respondents cannot be permitted to plead the insufficiency of the funds to be made available to the District Inspector of Schools, Allahabad. He submits that the petitioner together with 7282 girl students were short-listed to be eligible for the financial assistance but were not given the benefit on the stated reason of non-availability of the sanctioned amount. He submits that the petitioner has been discriminated in giving the benefit of the scheme as against the other eligible girls in violation of Articles 14 and 15 of the Constitution of India, which guarantees equality in law and equal protection of laws. The petitioner is similarly situate as other eligible girl students, who were short-listed for grant of the benefit. The respondents could not have denied her benefit on the ground that the State Government remitted the amount sufficient only for 6726 eligible girl students as against 7282 selected eligible beneficiaries. He further submits that the Scheme was closed on 23.5.2012, whereas the petitioner was short-listed and was entitled to receive

the amount when she was studying in Class XI in the academic session 2011-2012 and thereafter in the academic session 2012-2013.

11. In our view, once it is admitted that the petitioner was found eligible and was included in the list of the beneficiaries under the Scheme for the year 2009-2010 vide Government Order dated 20.1.2009, she could not be denied the benefit as the Scheme was not dependent upon the availability of funds. The denial of the benefits of the scheme to the petitioner on the ground that sufficient funds were not received, is arbitrary, discriminatory and is violative of Articles 14 and 15 of the Constitution of India.

12. The Scheme floated and declared by the State Government vide Government Order dated 20.1.2009 laid down the conditions of eligibility. The selection of such eligible girl students, belonging to the poor strata of the society and has passed the High School examination in 2008 and had taken admission in Class XI, was not conditional upon the availability and receipt of the grant. The State Government must have been aware of the number of the girl students, who had passed High School examination in the year 2008 and had taken admission in Class XI when the Government Order dated 20.1.2009 was issued and for which the empirical data was necessary to be considered for framing the Scheme. There was no such condition in the scheme that the benefit will be given subject to availability of grants or on first come first serve basis. The applications were invited upto 27.1.2009, and were to be listed to be considered by the Committee under the Chairmanship of the District Magistrate. Once any girl student was found to be eligible and was included in the list, she was entitled to the benefit of the Scheme, even if the State Government did not allocate and transfer the grant to the office of the District Inspector of Schools of the concerned districts. The non-receipt of the sanctioned money by the office of the District Inspector of Schools could not be the reason to deny the benefit of the scheme to the petitioner.

13. We may observe here that the elections to the State assembly were held in April-May, 2012 and that the new Government was elected and took over in the month of May, 2012. The Government Order closing the Scheme was issued by the successor State Government on 23.5.2012, within a few days it took over the governance of the State. The petitioner, however, cannot be affected by the abolition of the scheme as she was already short-listed and was entitled for the grant of benefit in the years 2011-12 and 2012-2013. The writ petition is allowed. The respondents are directed to grant the benefit of the scheme by depositing Rs. 15,000/- in the account of the petitioner and also to provide a bicycle to her or to deposit the cost of bicycle in her account within a period of one month from the date when a certified copy of the order is filed in the office of the District Inspector of Schools, Allahabad. If the petitioner has passed Class XI examination, a further amount of Rs. 10,000/-, in accordance with the scheme, will also be deposited in her account within the same period provided she encloses mark sheet of Class XI and the certificate of the Principal of the

School that she had pursued her studies after her admission in Class XII.