

(1995) 12 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 8548 of 1994

Laxmidhar Pati and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Constitution of India, 1950 — Article 41
Orissa Education Code — Rule 315

Citation : (1996) 81 CLT 487 : (1996) 1 OLR 152

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; S. Chatterji, J; R.K. Patra, J

Bench : Full Bench

Advocate : K.K. Swain, for the Appellant; S.P. Misra, Additional Government Advocate, for the Respondent

Judgement

S. Chatterji, J.—A Division Bench of this Court while disposing of the present writ application made an order on 16-3-1995 to request the Hon'ble the Chief Justice for constitution of a larger Bench in resolving the apparent inconsistencies between two decisions of this Court, one reported in *Jalada Dalang Uchha Bidyapith Vs. State of Orissa and Others*, wherein a Division Bench of this Court has taken the view that since the entitlement to receive aid flows from the order of the Government, until and unless an order is passed no right is accrued and on mere satisfying the eligibility qualification an institution cannot claim the grant-in-aid, and the second one by another Division Bench reported in *Kartik Ch. Mohanta and Others Vs. State of Orissa and Others*, wherein it has been held that a school when satisfies the pre-conditions contained in the grant-in-aid principles would become entitled to grant-in-aid and, therefore. Government must release grant-in-aid with effect from that date.

2. The aforesaid two decisions are apparently in direct conflict with one another. To resolve this conflict, the present larger Bench has been constituted. The point of reference is as to whether the teaching and non-teaching staff of an aided High School are entitled to receive the minimum grant-in-aid from the State

Government from the date of their eligibility or from the date of the order of release by the State Government.

3. In 1993(1) OLR 77 (supra) Jalada Delang Uchha Bidyapith represented by its Secretary filed the writ application against the State Government impleading the departmental head of the Education and Youth Services Department, the Director of Secondary Education of Orissa and the Inspector of Schools, Balasore Circle seeking direction to the opposite parties to declare the petitioner-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. The undisputed facts of the case indicated inter alia that the petitioner-school was established in the year 1979. Recognition was accorded to the school from the academic session 1980, The first batch of students appeared in the High School Certificate Examination in the year 1983. The school was admitted to the grant-in-aid scheme with effect from 1-4-1991. The contention of the petitioner was that in terms of Clause 10 (1) of the Government Resolution No. 9760/EYS dated 4-3-1979, it was entitled to receive aid with effect from 1987-88 and a declaration be made to that effect.

4. Clause 10 (1) of the 1979 Resolution provides 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 after receipt of the minimum grant provided that the roll strength does not fall below the roll strength prescribed for 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 further the school satisfies the other conditions for direct payment as laid down by the State Government from time to time.

5. The Bench decision took the 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 resolution noted earlier. It can be said that to be an aided institution if the Government notifies it as such even though actual disbursement of the amount may be later, but 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. The view taken by the Division Bench was that "aid" in the very nature of thing 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 the State Government is bound by certain discipline in financial matters. The Division Bench further visualised that 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. It was therefore found 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. It was categorically made clear that entitlement to receive aid would flow from such order only.

6. The subsequent decision reported in *Kartik Ch. Mohanta and Others Vs. State of Orissa and Others*, was by another Division Bench of this Court considering the writ application in OJC No. 5735 of 1994. The petitioners in that case were the employees of an aided educational institution in the district of Keonjhar. Their salary for some intervening period not having been released, they had approached this Court for issuance of a writ of mandamus. The detailed facts as disclosed therein are that the school became eligible to receive minimum grant-in-aid from the State Government with effect from 1-3-1987. Accordingly the Inspector of Schools called upon the Headmaster of the High School to submit the staff position and the connected records for approval of the Inspector. The Headmaster of the school submitted the staff position as well as the other relevant documents, but the Inspector of Schools by his letter dated 28-12-1989 approved the appointment of different employees and further indicated that the untrained teachers would acquire B. Ed. qualification within two years. As the Inspector of Schools did not approve the appointment of one peon of the High School, the latter approached this Court by filing the writ application which was numbered as OJC No. 2404 of 1990. Pursuant to the direction given by this Court in the said writ application, the Inspector of School approved his appointment by order dated 10-4-1991. It was alleged that though the approval was with effect from 1-3-1987, yet when bills were sent, the Inspector released grant-in-aid only with effect from 1-3-1988. The petitioners claimed that they were entitled to minimum grant-in-aid for the period from 1-3-1987 to 28-2-1988. The second Division Bench recorded that the Government of Orissa has been evolving the principles of grant-in-aid to non-Government A ded High Schools from time to time by issuing resolutions in the Education and Youth Services Department. During the period when the petitioners' institution became eligible to receive grant-in-aid, the resolution of the Government in the Education and Youth Services Department dated 17th March, 1979 was in force. Thereafter on 5-9-1985 the Government of Orissa in the Education Department issued a direction to the Director of Secondary Education, Orissa, Bhubaneswar indicating therein that the minimum grant admissible to teaching and non-teaching employees of non-Government High Schools should be paid directly in accordance with the procedure laid down in the said letter. Under the resolution of the Government dated 17th of March, 1979, a recognised High School becomes eligible to receive the minimum grant-in-aid after four years of presentation of candidates in the Final High School Certificate Examination subject to certain terms and conditions mentioned in the said resolution. The rate of minimum grant has also been indicated in the resolution. It was recorded by the Bench that the question of approval of the teaching staff of a non-Government High School crops up only when the school becomes eligible to receive minimum grant-in-aid. Since the Inspector of Schools by order dated

28th December, 1989 approved the appointment of the teaching staff with effect from 1-3-1987, the employees of the school were entitled to receive the minimum grant-in-aid with effect from the date of approval and there was no reason why the grant-in-aid was released only with effect from 1-3-1988.

7. Recording such reasons, the Bench directed the Inspector to pay the minimum grant-in-aid in respect of the approved employees of Malda High School for the period from 1-3-1987 to 28-2-1988 within a stipulated period.

8. Looking at the facts of the case and the points of conflict between the aforesaid two Bench decisions of this Court, this larger Bench has to answer whether the teaching and non-teaching staff of an Aided High School are entitled to receive the minimum grant-in-aid from the date of their eligibility as per the scheme and/or whether the State Government has any discretion to issue or release grant-in-aid to eligible schools on attainment of certain eligibility criteria and the date of release of grant-in-aid has nothing for retrospective effect, having nexus to the date of eligibility and/or the date of approval. More simply the question is that a school unless eligible to receive grant-in-aid cannot receive the same. Is it true that immediately on attainment of eligibility and on such approval an institution is entitled to receive grant-in-aid irrespective of the actual release by the State Government ?

9. A lengthy argument has been advanced before us in support of the view taken by the subsequent Bench decision reported in *Kartik Ch. Mohanta and Others Vs. State of Orissa and Others*, .

10. Attention of the Court is drawn to various schemes framed by the State Government from time to time regulating grant-in-aid and the eligibility of the institutions to receive grant-in-aid. Specific attention has been drawn to Article 315 of the Orissa Education Code and the Government resolutions dated 17-3-1979, 31-10-1979, 23-9-1981 and 7-3-1987, Government circular dated 5-9-1985 and grant-in-aid order of 1994. It is strongly contended that upon notification by the State Government, grant-in-aid is to be released in accordance with the grant-in-aid scheme.

11. Article 315 of the Orissa Education Code deals with grant to High Schools and provides that Government will pay as grant-in-aid 2/3rd of net deficit of the preceding year subject to minimum of Rs. 75/- per month and the managing committee of the aided institution shall be responsible to bear the remaining and 1/3rd of the net deficit. Government will bear the additional financial liability as a result of the introduction of the revised scale of pay for the employees of the Aided High Schools to the extent of the 3/4th and the managements should bear 1/4-th of the increase. The High Schools may be eligible for grant-in-aid after two years of completion of enjoying recognition of Class XI by the Board of Secondary Education, Orissa. There is a Note that a Girls' High School in the old districts of the State will be eligible to receive grant-in-aid as soon as a class is recognised provided there is really demand for starting such a class.

12. The aforesaid Government resolutions dated 17-3-1979, 31-10-1979 and 23-9-1981 refer to various schemes providing eligibility criteria of the schools to obtain grant-in-aid. Similarly, Government circular dated 5-9-1985, Government resolution dated 7-3-1987 and the grant-in-aid order of 1994 also indicate the conditions and eligibility criteria to receive the minimum grant-in-aid. These schemes and/or circulars at no point of time spell out retrospective nature of release of the grant having the nexus to the date of approval and/or the date of acquiring the necessary qualification as to eligibility criteria. There is an emphasis to the point as to whether irrespective of the date of notification of approval of the schools, the date of release cannot stand as a bar to get the schools and/or (he teaching and non-teaching staff to receive grant-in-aid from the date of their eligibility to receive the grant. Two aspects are there. One is that unless the schools and/or the teaching and non-teaching staff are eligible to obtain grant, they cannot receive the same. Mere eligibility ipso facto cannot enable them or make them entitled to receive grant notwithstanding the order of release made by the State Government on a subsequent date.

13. It is to be remembered and/or reckoned that no grant-in-aid can be asked as a matter of right. It is to be interpreted and/or the scheme has got to be construed as to whether the right to receive grant-in-aid emanates from the date of reaching the eligibility criteria or the eligible schools and/or the teaching and non-teaching staff are entitled to receive the grant-in-aid from the date of actual release by the State Government in terms of the scheme.

14. This Court has taken pains to go through each and every resolution and/or circular as indicated above. By reading in between the lines, nothing is found out that the schemes indicate that the Government is bound to release grant-in-aid from the date of acquiring the eligibility criteria by the schools concerned and/or the teaching and non-teaching staff of the schools concerned.

15. Attention of the Court has been drawn to Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon, wherein the guideline has been given as to interpretation of statutes and construction of section. It has elaborately been discussed therein that construction of a section is to be made of all the parts together and not of one part only by itself, and phrases are to be construed according to the rules of grammar.

16. In Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, the apex Court observed that where the statute's meaning is clear and explicit, words cannot be interpolated. What is true of the interpolation of an ordinary statute is not any the less true in the case of a constitutional provision, and same rule applies equally to both. But if the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the Court would be justified in construing the words in a manner which will make the particular provision purposeful. That, in essence, is the rule of harmonious

construction.

17. In *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, similarly it was found that the scheme of the Act would show that the certified standing orders have more or less a statutory flavour. If that be so, ordinary canons of construction of a statute would be attracted where a dispute arises about the construction or interpretation of a certified standing order. No canon of construction of a statute is more firmly established than this that the purpose of interpretation is to give effect to the intention underlying the statute and therefore unless the grammatical construction leads to an absurdity, it is safe to give words their natural meaning because the framer is presumed to use language which conveys the intention. If two constructions are possible, it is equally well-established that the construction which advances the intention of the legislation, remedies the mischief to thwart which it is enacted for ameliorating the conditions of the workers and therefore conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.

18. We have noted the other decisions cited by the Bar reported in *Madhab Chandra Mishra and Others Vs. State of Orissa and Others*, where the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 was considered. This Rule came into force from 1-4-1975. According to this Rule every employee of an aided educational institution shall draw same pay, clearness allowance and subsistence allowance as is admissible to his counterpart in the Government educational institution. Where college received Government concurrence from 1977-78 session, it was held that the employees are entitled under the Rule.

19. The next decision is 1987 (I) OLR 645, 63(1987) CLT 480 (*Assistant Personnel Manager (G), Hindustan Steel Ltd. v. Elias Minz and Ors.*). There Section 3 (b) of the Orissa Education Act, 1969 was considered. It was found that two conditions must be satisfied before an educational institution can be called an aided one, i. e., (i) it must be recognised by the State Government and, (ii) it must be receiving aid from the State Government.

20. The next decision is reported in 66 (1988) CLT 293 *Arjun Charan Jena v Director of Secondary Education, Orissa, Bhubaneswar and Ors.*). In this case Section 2 (b) of the Orissa Education Act, 1969, Section 10-A of the same Act and Article 287 (28) (as amended by Regulation 34) regarding discharge of permanent teacher of a private school procedures were considered. By making proper construction of Section 2 (b) of the Orissa Education Act, 1969 it was found that the school was a private educational institution managed by a Managing Committee till it was communicated with the decision of the authority dated 30-10-1983, Prior to 30-10-1983 there was no communication to the Managing Committee regarding payment of grant-in-aid. As such, it has to be taken that the institution continued to be a privately managed institution till 30th of October, 1985.

21. In Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., the right to education has been found to be meaning that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. The apprehension that reading of the right to education into Article 21. would enable each and every citizen of this country to approach the Courts to compel the State to provide him such education as he chooses is therefore unfounded. Article 41 of the Constitution has been considered as to provide that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

22. The ratio of the aforesaid decisions is not in doubt or in dispute in any manner whatsoever. By construing and interpreting the Government resolutions and the Government circular as indicated above, we shall have to consider whether the scheme as framed by the State Government entitles the recipients to receive grant-in-aid from the date of their achieving the eligibility criteria and/or from the date of notification to indicate that such eligible schools or their teaching and non-teaching staff are eligible to receive grant-in-aid by approving their eligibility, or whether the date of release of grant-in-aid to eligible schools and/or their teaching and non-teaching staff from the date of actual order of release having no nexus to the date of approval of the eligibility criteria/Looking at the scheme and in particular the provision of law that there is no absolute right to claim grant-in-aid and the financial capacity, the economic potentiality and other development work of Government have to be considered in interpreting Article 41 of the Constitution of India. We are of the considered view that the Bench decision of this Court reported in Jalada Dalang Uchha Bidyapith Vs. State of Orissa and Others, is correct. The view taken by the subsequent Division Bench as to entitlement to grant-in-aid from the date of approval and/or from the date of achieving the eligibility criteria does not appear to be good law. The reference is answered accordingly.

We hasten to add here that we may not be understood to have laid down the law that the Government is a free-lancer in ordering release of grant-in-aid arbitrarily and denying fairplay and by encouraging favouritism. Its decision/order in the matter of grant/refusal of grant-in-aid must be based on sound principles and should not be whimsical or arbitrary.

The pending matter be placed before the appropriate Bench for disposal as per the facts of the said case and following the ratio of the decision as indicated above.

D.P. Mohapatra, A.C.J.

23. I agree.

R.K. Patra. J.

24. I agree.