

(2018) 08 UK CK 0223

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1820 Of 2017

**Manavta Higher Primary School, Gandhi Nagar @APPELLANT@Hash State
Of Uttarakhand & Others**

Date of Decision : 06-08-2018

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 3, 7, 29, 38
Uttaranchal School Education Act, 2006 — Section 50
Right Of Children To Free And Compulsory Education Rules, 2010 — Rule 6(1)
Constitution Of India, 1950 — Article 21A

Citation : (2018) 08 UK CK 0223

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Anil Kumar Joshi, Pankaj Purohit

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court is a Committee of Management of a society, which runs a junior high school at Bindukhatta, District Nainital.

The school admittedly has a strength of 92 students and the other nearest junior high school is at a distance of 4.5. kilometers from this school. After

considering all the parameters and requirements and after inspection of the school and verification of the entire records including the verification of the

qualification of the teachers imparting education in said school, which are necessary for brining a junior high school under grant-in-aid, the Government

of Uttarakhand took a decision and placed the school under grant-in-aid programme, for its VIth, VIIth & VIIIth classes. The order was passed on

04.02.2014 by which not only the school was placed under grant-in-aid but one post of Headmaster, three posts of Assistant Teacher, one post of

clerk and a post of peon were also sanctioned. This would mean that the salary

for all these posts were to be made from the State exchequer. The order of approval has been passed in the name of His Excellency, the Governor of Uttarakhand.

2. Although this school is in 'Tarai' area but it is in a remote 'Tarai' area. The children studying in this school and their ward also belong to a lower stratum of the society, as this Court has been informed.

3. All the same, inspite of the recognition granted to the school when the salaries of the teachers were not forthcoming from the State Education

Authorities, repeated representations were made from the side of the management to the State Education Authorities, but all in vain. Subsequently, an order was passed on 23.12.2016, where the Government made a complete somersault on its earlier commitment, and the school was now placed under what is called a 'token grant'!

4. It is again the case of the petitioner that the earlier order dated 4.2.2014 was never recalled. Since, effectively, the Government had not been able

to place the school under grant-in-aid, as promised earlier and declared so vide order dated 4.2.2014 which has been passed by not less than His

Excellency, the Governor of the State Uttarakhand, and which admittedly has not been recalled or cancelled, the same has to be complied with now.

The petitioner has therefore been constrained to file the present writ petition before this Court, seeking a writ of certiorari as well as mandamus

against the State Government.

5. In the counter affidavit, the fact that the school was put under grant-in-aid is admitted by the State Government. All the same, the reason for not

complying with the order dated 04.02.2014 is that subsequently an order dated 23.12.2016 was passed and the school was actually placed only under a

'token grant'!

6. Even on repeated query of this Court seeking explanation as to what is meant by a 'token grant', the learned State Counsel could not give any

satisfactory reply. The most glaring aspect of it all is that there is nothing like a 'token grant' as is now being given to the school vide order dated

23.12.2016. To what purpose this 'token grant' has been given and under which provision has it been given, has not been explained, except that it

is mentioned in the Government Order dated 04.01.2017. In the counter affidavit, it has been said that the school does not fulfill the criteria for

recognition under grant-in-aid for two reasons. The first is that the minimum strength of such school should be 100 students, whereas the school has only 92 students. Moreover, as per the parameters fixed by the Government for grant-in-aid, there should be no other school under grant-in-aid within a radius of 5 kilometers, whereas this school is within 4.5 kilometers from another school, which is under grant-in-aid.

7. These grounds are, however, unacceptable for the reasons that firstly, while giving approval and placing the school under grant-in-aid vide order dated 4.2.2014, all these parameters were already looked into and grant was given by the Government after being satisfied as to the eligibility of the school for such a grant. Now the Government cannot turn on its promise as, *inter alia*, estoppel would also apply. Moreover, the parameters, which are contained in the Government Order dated 4.1.2017 are in any case *post facto* conditions, which are not applicable to a grant which has already been given to the petitioner on 4.2.2014.

8. Most importantly, all this is in total violation of the Right of Children to Free and Compulsory Education Rules, 2010 (from hereinafter referred to as the 'Rules'), which have been framed by the Central Government under the powers conferred to it under Section 38 of the Right of Children to Free and Compulsory Education Act, 2009.

9. In the present case, the school with which we are concerned has been established in a place where there is no Government or semi-government school imparting education for elementary classes which is in the neighbourhood of three kilometers. The nearest school is 'Government Girls Junior High School, Nagla Dairy Farm' is at a distance of 4.5 kilometers from the school being run by the petitioner Committee of Management committee. The school being run by the Committee of Management is a school which is exclusively for girls, and does not admit a boy child upto the age of 14.

10. By the 42nd Amendment of the Constitution of India, education was omitted from the State List and inserted in the Concurrent List of the Seventh Schedule of the Constitution of India. Thereafter vide 86th Amendment of the Constitution of India Article 21-A was made a Part of III of the Constitution of India as one of the Fundamental Rights i.e. Right to Elementary Education. Subsequently, the Parliament enacted a legislation on this,

which is known as the "Right of Children to Free and Compulsory Education Act, 2009" (from hereinafter referred to as the "Act"). Section 3 of

the Act reads as under:

3. Right of child to free and compulsory education. (1) Every child of the age of six to fourteen years shall have a right to free and

compulsory education in a neighbourhood school till completion of elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from

pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and

Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of

Chapter V of the said Act.

11. Under Section 38 of the Act, rule making power has been given to the Central Government as well as the State Government to frame rules in

different areas. The Central Government has framed Rules known as The Right of Children to Free and Compulsory Education Rules, 2010. Sub-rule

(1) of Rule 6 of the Rules, speaks about the area or limits of neighbourhood school. Sub-rule (1) of Rule 6 reads as under:

6. Area or limits of neighbourhood. (1) The area or limits of neighbourhood within which a school has to be established by the appropriate

Government or the local authority shall be, -

(a) in respect of children in classes from I to V, a school shall be established within a walking distance of one km of the neighbourhood.

(b) in respect of children in classes from VI to VIII, a school shall be established within a walking distance of three km of the neighbourhood.

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12. As per sub-rule (1) of Rule 6, for classes I to V, a school has to be established within a walking distance of one kilometer of the neighbourhood

and for classes VI to VIII, a school has to be established within a walking distance of three kilometers of the neighbourhood. Therefore, for the

children who are presently being imparted elementary education from classes I to VIII have no other school in their neighbourhood, but the present school.

13. As we have already stated above, the nearest school imparting education for class VI to class VIII is at a distance of 4.5 kilometers, as admitted

by the respondents themselves in their counter affidavit, therefore, what is being performed by the petitioner Committee of Management by imparting

education, apart from various activities can be called public activity as well.

14. Moreover, the financial constraints being given by the State Government for not placing the school in grant-in-aid also cannot be accepted, chiefly

for the reason that this is now a fundamental right for every child upto the age of 14 years to have free and compulsory elementary education in the

neighbourhood school. Moreover, under Section 7 of the Act, the sharing of financial and other responsibilities is the concurrent responsibility of the

Central Government and the State Government. Section 7 of the Act reads as under:

â??7. Sharing of financial and other responsibilities. (1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-

section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commissioner under sub-clause (d) of clause

(3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide

its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the act.

(6) The Central Government shall â?

(a) develop a framework of national curriculum with the help of academic authority specified under section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.â??

15. Under Section 50 of the Uttaranchal School Education Act, 2006, it is the liability of the State Government to pay salary of teachers and

employees of every institution which is under its grant-in-aid. This Court has absolutely no doubt in its mind that as the present school, with which we

are concerned, has come under grant-in-aid on orders passed by the executive head of the State i.e. the Governor, hence, the State Government

cannot back track on its commitment and its order.

16. In view of the above, writ petition succeeds and is hereby allowed. The school i.e. Manavta Higher Primary School, Gandhi Nagar, Bindukhatta,

District Nainital shall be treated to be a school under grant-in-aid since 04.02.2014. The salary of the teachers and employees of the school which are

already sanctioned have to be given with effect from 04.02.2014. Let the entire arrears be paid and monthly salary be given promptly.

17. It is, however, directed that 50 % of the arrear of each of the employee of the petitioner management committee shall be given to them

immediately within a period of one month from the date of production of certified copy of this order and 1/4th of the arrear shall be deposited in their

GPF account and the remaining 1/4th amount shall be fixed in a fixed deposit account in a Bank, so that it is locked up for a period of one year and be

released in favour of the employees after one year.