

(2014) 12 AHC CK 0209

In the Allahabad High Court

Case No : Special Appeal Defective No. 994 of 2014

Paripurna Nand Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 21-A, 45

Citation : (2015) 3 ADJ 567 : (2015) 3 ALJ 563 : (2015) 110 ALR 697 : (2015) 2 ESC 1213 : (2015) 2 UPLBEC 1154

Hon'ble Judges : D.Y. Chandrachud, C.J.; Pradeep Kumar Singh Baghel, J.

Bench : Division Bench

Advocate : B.R. Sharma, for the Appellant; Suresh Chandra Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants are Assistant Teachers in a Primary School. Aggrieved by an order of the State Government dated 10 January 2012, whereby their claim for payment of salary from the State fund has been rejected on the ground that the institution in which they teach does not fulfill the eligibility criteria for grant in-aid by the State, they alongwith other teachers filed a writ petition, (Writ-A No. 39886 of 2004, Om Prakash and others v. State of U.P. and others), which has been dismissed by the learned Single Judge by a judgment and order dated 29 August 2014 affirming the order of the State Government. Hence, the appellants are in appeal against the order of the learned Single Judge. Kisan Adarsh Inter College, Thakur Nagar, District Gorakhpur (the Institution) is an institution recognised by the Board of High School and Intermediate Education, Uttar Pradesh. It receives aid out of state funds. A primary section is also attached to the institution. The parties are not in conflict on the basic facts that the primary section was recognised in the year 1972 and it was attached with the institution by an order of the District Inspector of Schools dated 28 March 1973, but the primary section was not receiving any aid from the State Government. The

liability for payment of salaries of the teachers and other employees was on the Management of the institution.

2. In the year 1989, the State Government took a policy decision to pay salaries to teachers working in primary sections attached to High Schools and Intermediate Colleges out of the state fund subject to certain norms mentioned in the said policy. In furtherance thereof, 393 institutions were found entitled to get the benefit of the said Government order but the appellants' institution was not included in the list of 393 institutions without disclosing any reason. The appellants and the Management made several representations to the State Government which failed to elicit any response from the State. Having no other option, the Committee of Management of the institution instituted a writ petition (Civil Misc. Writ Petition No. 39266 of 1997, Committee of Management and another v. The State of U.P. and others, which was disposed of by a learned Single Judge of this Court by an order dated 21 November 1997 with a direction to the State Government to consider and decide the representation.

3. In compliance of the order of this Court, the State Government has passed an order dated 10 January 2002 rejecting the representation of the Committee of Management for taking the institution on the grant-in-aid list primarily on the ground that the institution does not fulfill certain conditions of the guidelines.

4. The grievance of the writ petitioners is that they are working for more than fifteen years with the approval of the Basic Education Officer but their claim for salaries from the State fund has been rejected on wholly untenable grounds. It is averred by them in the writ petition that they were appointed when one Paras Nath Mishra was Manager of the institution. In compliance of the order of this Court when a hearing had taken place before the State Government, the then Manager had submitted several documents to establish that the institution is a recognised institution and the primary section was validly attached with the institution and the appellants were duly appointed. The State Government has completely ignored those material documents and facts. The State Government had rejected the representation primarily on the ground that the institution was not in the "Pariseeman" list and it was not receiving any "Kshatipurti" grant. It has also been recorded in the order that only two teachers are trained teachers.

5. The writ petition filed by the appellants for challenging the order of the State Government dated 10 January 2002 was contested by the State by filing a counter-affidavit, wherein the grounds mentioned in the impugned order were reiterated. It is also mentioned that the institution was granted recognition in 1972 and 23 sections were approved but at present 25 sections are running. The State Government has doubted the existence of sufficient infrastructure to run 23 or 25 sections. It is also pointed out that only two teachers are trained.

6. The learned Single Judge has rejected the claim of the appellants-writ petitioners recording a finding that the appellants' institution did not even have enough building or space to accommodate the students of the primary section.

The learned Single Judge has dismissed the writ petition by the impugned order dated 29 August 2014 with the following findings:

".....The petitioner's institution did not even have enough building or space to accommodate the students of the primary section. The petitioner also candidly admitted that it has only two trained teachers. The number of students were also not spelt out clearly nor was it established that the students studying there in the primary section have been automatically shifted to the senior classes from 5th to 6th onwards. Even in the present writ petition the petitioners fail to clearly state at any point of time that the institution fulfills all the eligibility criteria, instead the petitioners have made claims that the teachers were working for the long time their training requirement could be dispensed with.

It is not in the larger interest of the education that such institution be allowed to continue where the basic requirements of having trained teachers is not available for students and also where the students are not assured of having a roof under which they sit and be taught. The business of education is not a trade and it cannot be converted into a purely commercial enterprise. Institutions of this kind should not be encouraged to continue where the interest of the students are not kept paramount. The educational authority has rightly turned down the case of the petitioner for grant-in-aid at this juncture."

7. The submission, which has been urged by the learned counsel appearing on behalf of the appellants, is that the learned Single Judge has dismissed the writ petition without disclosing any reason and the claim of the appellants-writ petitioners has been rejected on general observations and against the facts on the record.

8. We have considered the rival submissions.

9. The learned Single Judge has observed that number of students was not spelt out clearly and only two teachers are trained. Learned counsel appearing on behalf of the appellants has drawn our attention to paragraphs 21, 22, 23 and 24 of the writ petition, wherein it is averred that the institution has 25 approved sections in primary wing against which 26 teachers are working and out of them 24 teachers are duly approved by the District Inspector of Schools. In paragraph 23 of the writ petition it is averred that there are 924 students in the primary section which is established from the record filed before the State Government. It is also stated that there are 16 classrooms for primary section in the institution. Insofar as the finding recorded by the learned Single Judge that there are only two trained teachers is concerned, it has been submitted that at the time of appointment of the appellants the minimum qualification for appointment of teachers in the primary section was only Intermediate. The first appellant has obtained L.T. Training and the second appellant is having B.Ed, degree and it was also made clear that the Committee of Management had appointed untrained teachers due to non-availability of trained teachers. The State has taken a decision that if an untrained teacher continuously works for more than ten years,

then such teacher shall be granted exemption from training and accordingly, in the entire State of Uttar Pradesh a large number of untrained teachers, who were appointed, were subsequently exempted from training under the orders passed by the State Government from time to time. Thus, the appellants who are untrained teachers are entitled for the benefit of exemption under the aforesaid Government orders.

10. We find that the submission of the learned counsel appearing for the appellants on the aforesaid issue merits acceptance. This aspect of the matter has not been considered by the learned Single Judge and the finding recorded by the learned Single Judge is against the pleadings of the appellants. We also find that the learned Single Judge has not given any reason in support of various conclusions.

11. Insofar as the submission of the learned counsel appearing for the appellants that children have a right to free education as a fundamental right in view of the law laid down by the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, is concerned, we find that this aspect of the matter has not been considered either by the State Government or by the learned Single Judge.

12. The Supreme Court in *Miss. Mohini Jain Vs. State of Karnataka and others*, for the first time held that the right to education is a fundamental right guaranteed under Article 21 of the Constitution. The judgment of *Mohini Jain (supra)* was affirmed in *Unni Krishnan, J.P. (supra)*. The Supreme Court held that the right to education flows from Article 21 of the Constitution and the right to free education is available only to children until they complete the age of fourteen years. The Department of Education, Ministry of Human Resource Development, Government of India made a proposal to amend the Constitution in the light of the law laid down in *Unni Krishnan, J.P. (supra)*. Pursuant thereto, the Constitution (Eighty-third Amendment) Bill, 1997 was moved to insert a new Article 21-A in the Constitution. Ultimately, by the Constitution (Eighty-sixth Amendment) Act, 2002 Article 21-A was inserted in the Constitution. Article 21-A of the Constitution reads as under:

"21-A. Right to education.--The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

13. The Right of Children to Free and Compulsory Education Act, 2009 (the Act, 2009) was enacted and had received the assent of the President on 26 August 2009 and it came into force with effect from 4 January 2010. The Preamble of the Act, 2009 contemplates free and compulsory education to all children of the age six to fourteen years.

14. The constitutional validity of the Act, 2009 came to be considered by the Supreme Court in *Society for Un-aided Private Schools of Rajasthan Vs. Union of India (UOI)* and *Another*. The relevant part of the judgment, insofar as is

material for this case, is as follows:

"28. To provide for right to access education, Article 21-A was enacted to give effect to Article 45 of the Constitution. Under Article 21-A, right is given to the State to provide by law "free and compulsory education". Article 21-A contemplates making of a law by the State. Thus, Article 21-A contemplates right to education flowing from the law to be made which is the 2009 Act, which is child-centric and not institution-centric. Thus, as stated, Article 21-A provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. The manner in which this obligation will be discharged by the State has been left to the State to determine by law. The 2009 Act is thus enacted in terms of Article 21-A. It has been enacted primarily to remove all barriers (including financial barriers) which impede access to education."

15. In *State of U.P. and Others Vs. Bhupendra Nath Tripathi and Others*, , the Supreme Court held that in view of insertion of Article 21-A in the Constitution, the State is bound to create infrastructure for providing universal quality education. The Supreme Court observed thus:

"15. The State as at present is under the constitutional obligation to provide education to all children of the age of 6 to 14 years. The State by virtue of Article 21-A is bound to provide free education, create necessary infrastructure and effective machinery for the proper implementation of the right and meet total expenditure of the schools to that extent. Right to education guaranteed by Article 21-A would remain illusory in the absence of the State taking adequate steps to have required number of schools manned by efficient and qualified teachers."

16. The same view has been reiterated by the Supreme Court in *Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another*, , while considering the obligation of the State to provide educational facilities at all levels to its citizens, in the following terms:

"21. Thus, in view of the above, it is evident that imparting elementary and basic education is a constitutional obligation on the State as well as societies running educational institutions. When we talk of education, it means not only learning how to read and write alphabets or get mere information but it means to acquire knowledge and wisdom so that one may lead a better life and become a better citizen to serve the nation in a better way. **** * **** * ****

26. In view of the above, education and particularly that elementary/basic education has to be qualitative and for that the trained teachers are required. The legislature in its wisdom after consultation with the expert body fixes the eligibility for a particular discipline taught in a school. Thus, the eligibility so fixed requires very strict compliance and any appointment made in contravention thereof must be held to be void."

17. In the State of Uttar Pradesh, most of the institutions providing basic education have been established by societies registered under the Societies Registration Act, 1860 by private managements. The State Government has framed policy guidelines and has issued executive orders/circulars/administrative orders from time to time laying down standards/norms for providing grant-in-aid to unaided institutions. Unless those conditions are fulfilled by private institutions, the State Government does not take liability for the payment of salaries of the teachers and other employees of such institutions.

18. After the enactment of the Act, 2009 and the law laid down by the Supreme Court in *Society for Unaided Private Schools of Rajasthan (supra)*, *Bhartiya Seva Samaj Trust (supra)* and *State of U.P. Vs. Pawan Kumar Divedi*, we are of the view that the State Government may revisit its age old policy in the light of the constitutional amendment and the law laid down by the Supreme Court on the subject.

19. Undoubtedly, now it is the State's responsibility to provide free and compulsory education to the children of the age of six to fourteen years. Private institutions, which are imparting education to children of the said age group, in fact, are performing and sharing the obligations of the State. Therefore, an obligation is cast upon the State Government not only to provide the grant-in-aid to such institutions but to provide infrastructure also subject to reasonable conditions laid down by it. Providing education to the children of the age of six to fourteen years shall be a mirage unless qualitative education is provided to them.

20. In the State of Uttar Pradesh, the large majority of children of the said age group come from the marginalized sections of the society. Most of the institutions providing primary and basic education are situated in rural and semi-urban areas. To provide quality education it is necessary that trained and competent teachers are appointed and necessary infrastructure is also made available to such institutions. The teachers in private unaided institutions are working in pitiable conditions. No good teacher would like to work in such institutions. Thus, the students will be deprived of quality education.

21. In view of the supervening events, we are of the view that the order of the learned Single Judge dated 29 August 2014 and the order of the State Government dated 10 January 2002 need to be set aside and are, accordingly, set aside. The matter is remitted to the State Government to reconsider it in the light of the law referred to above. The State Government may reconsider its policy of 1989 in respect of the grant of aid to the unaided institutions in the light of the constitutional amendment, the Act of 2009 and the law laid down in the judgments referred above.

22. The special appeal is, accordingly, allowed. Consequently, Writ-A No. 39886 of 2004 also stands allowed in the aforesaid terms. There shall be no order as to costs.