

(2014) 05 AHC CK 0216

In the Allahabad High Court

Case No : C.M.W.P. No. 3078 of 2014 with several other C.M.W.Ps.

Pt. Ram Nagina Smarak Mahavidyalaya

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(9)

Copyright Act, 1957 — Section 63

Penal Code, 1860 (IPC) — Section 34

Unlawful Activities (Prevention) Act, 1967 — Section 10, 13, 18, 20

Citation : (2014) 11 ADJ 74 : (2014) 5 AWC 5002 : (2015) 1 ESC 343

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Indrasen Singh Tomer, Om Pakash Tripathi, Santosh Kumar Singh, Ritesh Kumar, Shailendra Sharma, Harendra Yadav, Ashwani Kumar Rai, Ashok Khare and Siddharth Khare, Advocate for the Appellant; Ravi Kant, Ajit Kumar Singh, Tanmay Agrawal and Ashok Pandey, Addl. Advocate General, Advocate for the Respondent

Judgement

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Pradeep Kumar Singh Baghel, J.—The petitioners are educational Institutions. In this batch of petitions there is common grievance of all the petitioners that they have admitted the students in Under Graduate and Post Graduate Courses without realising any fee under the Zero Fee Scheme but the State Government has failed to reimburse the fee to them and the University is demanding examination fee of the students from the Colleges/petitioners. It is not permitting the students to appear in examination without examination fee.

2. All the petitioners are Self-Financing Degree College affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur. The writ petition No. 3078 of 2014 is treated as lead petition. There are four petitioners in this writ petition. They have preferred this writ petition for a direction upon the Principal Secretary, Higher Education and Principal Secretary, Social Welfare, Government of U.P. to pay the

examination fee of Scheduled Castes category students directly to the University for the Session 2013-14. A further relief has been sought for a direction upon the respondents to accept examination forms of Scheduled Castes and Scheduled Tribes category students without insisting for the payment of examination fee from petitioner Institutions and to permit the students to appear in the examinations.

3. The essential facts are; the Central Government with a view to upliftment of the students of marginalized section of the society particularly scheduled castes and scheduled tribes students, formulated a scheme whereunder the fee is reimbursed to the undergraduate and postgraduate students. The Central Government provides funds to the State Governments which reimburse the fees to the students through Social Welfare Department.

4. Under the Scheme for the Scheduled Castes and Scheduled Tribes students hundred percent fee is reimbursed by the Government to the Managements of the Institutions. The State Government issued several Government orders from time to time. The State Government later on extended the benefit of fee reimbursement scheme to the students of the O.B.C. category and the General category students, who belong to a family whose annual income is less than Rs. 67,000 per annum.

5. The said scheme provides a detail procedure wherein the students are supposed to fill up scholarship forms online at the particular website and submit also hard copies to their Colleges. The Managements of the Colleges after receiving the said information forward the same to the Social Welfare Officer at District Level. In each District a Three-Member Committee has been constituted by the State Government. The District Magistrate or his nominee is one of the members of the Committee. The concerned District Inspector of Schools, Secretary and the District Backward Classes Development Officer are the other members of the Committee. The details received from the College are scrutinized by the District Level Committee and after verifying the same it is forwarded to the State Level Committee. The Committee, on the basis of the said report of the District Level Committees, verifies the correct facts and authenticity, disburses the necessary fund to each District. Copies of the Government orders dated 11th October, 2010 and 6.7.2011 are marked as Annexures-1 and 2 to the writ petition.

6. After sometime State Government, on the basis of the various reports received from the Districts, found that the procedure provided under the previous Government orders were not satisfactory, therefore, on 26th September, 2012 it framed Uttar Pradesh Scheduled Castes/Scheduled Tribes Post Matric Scholarship Rules, 2012 (for short, "the Rules, 2012). A copy of the said Rules is on the record as Annexure-3 to the writ petition. The Rules 2012 provides a detail procedure for the reimbursement of the fee to the students. The Rules 2012 were again amended by another Government order dated 2 December, 2013.

7. It is significant to mention that the State Government also launched similar scheme for the candidates of the General Category belonging to economically weaker section vide Government order dated 7th January, 2013. By another Government order dated 2.12.2013 it amended the Government order dated 7th January, 2013. Under this Government order another Scheme "Uttar Pradesh Samanya Varg Dashmottar Chhatravratti Yojna, 2012" was issued.

8. By the said amendment it was provided that the scholarship money and reimbursement money to the eligible students shall be paid from Treasury of the District through e-payment within fifteen days directly in the account of the students and not to the Institutions. After the money is received in the student's account, students are required to give "Debit Authority Letter" by which the money may be transferred to the account of the Institution.

9. In this batch of writ petitions, the dispute is with regard to the reimbursement of the fee to the Scheduled Castes and Scheduled Tribes students only.

10. The grievance of the petitioners is that under the Rules, 2012 and the previous Government orders the Colleges are required to admit the students of the Scheduled Castes/Scheduled Tribes sections without charging any fee. These colleges are self-financing Institutions. They do not receive any financial aid from the State. The fee structure of all the courses are determined by the State Government and they are prohibited to charge higher fee than fixed by the State Government. The State Government has failed to reimburse the fee of the students, who have been admitted by the petitioners Institutions under the Post Matric Fee Reimbursement Scheme, which is also referred as Zero Fee Scheme. The present cause of action arose when the concerned Universities have refused to accept the examination forms of the students without payment of examination fee. The University is insisting that it wouldn't allow students of petitioner's College without payment of examination fee.

11. The grievance of the petitioners is in two folds; firstly, that the Institutions receive only tuition fee of the students from the State Government under Zero Fee Scheme which does not include the examination fee, therefore, the examination fee to the University should be paid by the State Government; secondly, the State Government has not disbursed a single penny to the petitioners' Institutions under the said Scheme, therefore, the Colleges do not have any fund from which they can make the payment of the examination fee of each student to the University.

12. The petitioners have relied on a judgment of this Court in Writ-C No. 768 of 2013, Ram Sajeewan Singh Mahavidyalaya Jayantipur and others v. State of U.P. and others, whereby this Court vide its judgment dated 28th January, 2013 has directed the State Government to ensure the payment of the examination fee of all the students under the Scheme to the University within four weeks. The said direction was issued by the court after an instruction was received by the learned Standing counsel from the Principal Secretary, Social Welfare Department-II,

Government of U.P. vide communication dated 24th January, 2013. A copy of the said instruction dated 24th January, 2013/Government order is on the record as Annexure-1 to the rejoinder-affidavit. It is stated by the petitioners that against the order of this Court dated 28 January, 2013 the Chhatrapati Shahu Ji Maharaj University preferred the Special Appeal No. 288 of 2013, C.S.J.M. University and another v. Kamta Singh Girls Degree College and others, which was dismissed with the observation that there is no reason for the University to feel aggrieved against the order of learned single Judge dated 28.1.2013, in fact the State Government is the aggrieved party and it has not challenged the same. A copy of the said order of Special Appeal is Annexure-3 to the rejoinder-affidavit.

13. The State has filed a counter-affidavit in one of the petitions and it has filed Written Submissions and in spite of time granted on several occasions, no detail counter-affidavits have been filed, but instruction received in the matter, was placed before the court, which is taken on record.

14. The stand of the State Government is that under Rule 5(xii) (ka) of the Rules, 2012 the fee includes the examination fee, union fee, library fee etc., therefore, the College in terms of Rule 5(xii)(ka) is liable to pay the examination fee of each student.

15. It is stated that the judgment of this Court in Writ-C No. 768 of 2013, Ram Sajeewan Singh Mahavidyalaya Jayantipur and others v. State of U.P. and others, is based on a wrong premise, in fact the office order dated 24.1.2014 was issued by the Principal Secretary, Social Welfare, Government of U.P., Lucknow, which was communicated alongwith the letter dated 24.1.2014 to the Chief Standing Counsel, Allahabad (Annexure-1 to the rejoinder-affidavit), wherein it has been mentioned that under Clause 5(xii)(ka) of Scheduled Castes, Scheduled Tribes Post Matric Scholarship Scheme, 2012, an approval pertaining to the examination fee has been granted and from the perusal of the same it is apparent that the same does not refer the word "scholarship" as defined under Clause 9 of Rule 5 of the said Rules. It is further mentioned that in another Writ Petition No. 58129 of 2013, Rahul Singh and another v. State of U.P. and others this Court on 7th May, 2013 had directed the State Government to release its part of contribution towards reimbursement of fee of S.C./S.T. students for the academic session 2012-13 to the tune of Rs. 277 crore within 15 days. It is submitted that serious illegal anomalies have occurred pertaining to ensuring payment of amount of scholarship and fee reimbursement in compliance of the judgment dated 28.1.2013 passed in Ram Sajeewan Singh Mahavidyalaya (supra), and Writ Petition No. 58129 of 2012, Rahul Singh and others v. State of U.P. and others, as well as Writ Petition No. 1373 of 2014, R.D.S. Mahavidyalaya and others v. State of U.P. and others, decided on 10.1.2014.

16. The State Government has also filed written submission. It is mentioned in the written submission, submitted on behalf of State respondents, that steps for challenging the validity of the observation made by this Court in judgment and order dated 28.1.2013 passed in writ petition of Ram Sajeewan Singh

Mahavidyalaya (supra), as well as judgment and order dated 10.1.2014 passed by this Court in Writ Petition No. 1373 of 2014, is in active consideration before the respondent No. 2 and as early as possible appropriate legal proceedings would be initiated by the respondent No. 2 after completing necessary formalities and obtaining permission from the Law Department of the State Government.

17. It is stated in the written submission that vide Government order dated 3 April, 2013 issued by the State Government, Guidelines for issuance of debit authority by the authority concerned with the Institution concerned have been provided keeping in view of the interest of the Institution for getting their amount of having reimbursement with respect to Clause 12(1) of the Rules in question. In the said Rule it is stated that eligible students, under the Scheme, admitted by the concerned educational Institution provide that admissible maintenance amount and fee reimbursement amount will directly be transmitted in the saving bank account of the candidate concerned, which is required to open saving bank account in the nearest Bank of the educational Institution.

18. The State Government has further issued an order dated 30th August, 2013 notifying the guidelines pertaining to the S.C./S.T. and General Category Post Matric Scholarship Scheme Rules, 2012 for the financial year 2013-14 with a view to ensure timely disbursement of scholarship/fee reimbursement to the concerned in accordance with law and 15 March, 2014 has been fixed for transmitting the amount to the Bank account of the concerned students directly according to their preference and category and the concerned department has been issued direction accordingly.

19. It is also submitted in the written submissions that the order dated 28.1.2013 passed by this Court in Ram Sajeewan Singh Mahavidyalaya (supra), is not a judgment under the definition of Section 2(9) of the Code of Civil Procedure, 1908 (for short, the "C.P.C.") for the reason that the order dated 28.1.2013 contains direction taking into account the instructions supplied by the State Government, the instruction of the State Government dated 24.1.2013 has been incorrectly incorporated in the order. In the instruction it has clearly been referred that the examination fee is included under the definition of fee, in other words fee includes examination fee. It is nowhere mentioned in the instruction dated 24.1.2013 that the scholarship fee includes examination fee and as such the said order cannot be treated as a precedent to be followed in the subsequent order.

20. The State has also taken the stand that a necessary direction has been issued to ensure timely disbursement of scholarship/fee reimbursement to the concerned in accordance with law and according to which 15th March, 2014 date has been fixed for transmitting the amount to the bank account of the concerned students/boys-girls directly according to their preference and category, and the time scheduled has been required to be ensured by the concerned Department. A photocopy of the said Government order dated 30th August, 2014, enclosed alongwith the written submissions, is on the record.

21. The State has taken further stand that it has received the complaints of grave financial irregularities committed by the educational Institutions, in respect of the said scheme. A Government order dated 23.8.2011 has been issued for entrusting the investigation to C.B.C.I.D. pertaining to years 2009-10 and 2010-11. It is mentioned that the educational Institutions on the basis of the fake accounts have misappropriated huge fund under the said Scheme and the students have not been reimbursed the amount. A copy of some of the first information reports against the Colleges have been brought on the record. The matter is still under investigation by C.B.C.I.D. against a large number of educational Institutions, name of such educational Institutions have been mentioned in a communication of the State Government of October, 2012. The State Government has also directed in its order dated 27th September, 2011 to blacklist such educational Institutions, who were found to be indulged in misappropriation of the reimbursement of funds.

22. From the record it transpires that there are 19 such Self-Financing Degree Colleges alone in one District Mahamaya Nagar. Similar first information reports have been lodged against some of the Educational Institutions of Hathras, Sadabad and other Districts.

23. The respondent Nos. 3 and 4-Veer Bahadur Singh Purvanchal University, Jaunpur, have filed counter-affidavit. It is stated in the counter-affidavit filed by the University that the Commissioner, Social Welfare, Uttar Pradesh vide communication dated 11.10.2010 has directed the University in regard to mode of 100 percent reimbursement to the students of the Scheduled Castes and Scheduled Tribes. It was also mentioned in the said communication that earlier the fee reimbursement given to the Institution should be directly given in the account of the students of Scheduled Castes and Schedule Tribes and under the Scheme the fund would be made available by the Social Welfare Department within 30 days.

24. The earlier Government order dated 23.9.2008 was amended. The State has issued a further guideline on 6.7.2011 in order to facilitate the distribution more efficiently so that benefit may be reached to the beneficiaries.

25. On 19th September, 2012 the Special Secretary, State Government has issued a new guideline. It is stated that under the Rules 2012 the fee includes the word "examination fee".

26. It is averred in the counter-affidavit that the University is an autonomous body and it is being run through its own resources. The examination fee is main source of revenue. A huge amount is being spent by the University in conducting the examinations, to which 478 Colleges are affiliated.

27. The reimbursement of fee by the State Government should be made by 31 January as provided under the Rules that the Institution may submit the examination form of those students who are covered under the Rules 2012 alongwith the examination fee and it is their duty to demand the reimbursement

money and scholarship money from the State. It is further submitted that under the Rules, 2012 the Clause 5(xii) includes the admission, registration, examination, education, sports union, library, magazine and other fee, which are likely to return and it has been included in the fee. Thus the contention of the petitioners" that the examination fee does not include the fee is totally misconceived.

28. A supplementary counter-affidavit has been filed by the University wherein it is stated that in the academic year 2012-13 total 29512 students have appeared in the examination without examination fee of the Districts Mau, Ghazipur, Azamgarh and Jaunpur, and as such the total amount which is to be paid by the State Government to the University is Rs. 3,03,74,700. A chart has been enclosed alongwith the supplementary counter-affidavit showing the name of the Institutions and number of students, who had taken that advantage of appearing in the examination without depositing examination fee in the academic session 2013. It is stated that 44595 students have appeared without payment of examination fee and the State Government is liable to pay a sum of Rs. 7,00,03,150. Giving the said details a chart has been filed as Annexure-SCA-02.

29. It is stated that the liability of the State Government to reimburse the fee, which includes the examination fee to the University, otherwise the University shall suffer irreparable loss and in absence of managing the examinations of 478 affiliated Colleges will become difficult.

30. I have heard Sri Ashok Khare, learned senior advocate assisted by Sri Siddharth khare, Sri Indra Sen Singh Tomar, Sri Om Prakash Tripathi, Sri Santosh Kumar Singh, Sri Kumar Ritesh Kumar, Sri Shailendra Sharma, Sri Harendra Yadav and Sri Ashwani Kumar Rai, learned counsel for the petitioners. Sri Ravi Kant, learned senior advocate assisted by Sri Ajit Kumar, learned counsel for the respondent-University and Sri Ashok Pandey, learned Additional Advocate General assisted by Sri J.K. Tiwari, learned standing counsel for the State functionaries.

31. Learned counsel for the petitioners contended that in view of the judgment of this Court in Ram Sajeewan Singh Mahavidyalaya (supra), the petitioners" Institutions are not liable to pay the examination fee of the students to the University; the State Government is bound by its undertaking before this Court and the special appeal against the order of the learned single Judge has been dismissed. It was strenuously urged that the State Government has not challenged the order in Ram Sajeewan Singh Mahavidyalaya (supra), in spite of the observation made by the Division Bench in its order dated 26.2.2013 passed in Special Appeal No. 288 of 2013, C.S.J.M. University and another v. Kamta Singh Girls Degree College and others. It was also submitted by some of the learned counsel for the petitioners that the fee of the undergraduate students is fixed by the State Government and that is only tuition fee, therefore, the petitioners" Institutions are disbursed only tuition fee by the State Government. It does not include the examination fee, therefore, the Institutions are not liable

to pay the examination fee of the students to the University.

32. Learned Additional Advocate General Sri Ashok Pandey submits that Rule 5(xi) and 5(xii) of Rules, 2012 defines the word "fee", which includes the examination fee also; further the Rule 5(xi) which defines the scholarship. The said Rule provides that the admissible maintenance amount and fee reimbursement amount will directly be transmitted in the Saving Bank Account of the candidate concerned, which is required to open Saving Bank Account in the nearest Bank of the Educational Institution. He further contended that the judgment of this Court dated 28.1.2014 in Ram Sajeewan Singh Mahavidyalaya (supra), is not a judgment under the definition of Section 2(9) of C.P.C. The rule has been laid down in the said judgment and the instruction of the State Government dated 24th January, 2013 has been incorrectly incorporated in the order, therefore, the said judgment is not binding. He lastly urged that Clause 5(xii)(ka) clearly mentioned that the fee includes examination fee and as such issuance of direction contrary to the policy is not permissible.

33. The learned Additional Advocate General has placed reliance on a judgment of the Supreme Court in People's University Vs. State of Madhya Pradesh and Another, ; Union of India and Another Vs. Kirloskar Pneumatic Company Limited, and Union of India (UOI) and Others Vs. Shri G.R. Rama Krishna and Another, , have been referred. In a Full Bench decision in the case of Smt. Sheela Devi and Another Vs. State of U.P. and Others, , it is submitted mentioned that the judgment of this Court is per incuriam as the order dated 28.1.2013 is contrary to the instruction submitted by the State Government and as such it cannot be binding in other cases.

34. The reliance has also been placed on the judgment of Supreme Court in The Secretary, Department of Atomic Energy and Others Vs. M.K. Bawane, .

35. Lastly he urged that the State Government is taking steps to adopt appropriate remedy against the order of the learned single Judge in Ram Sajeewan Singh Mahavidyalaya (supra).

36. Learned counsel for the University Sri Ravikant submits that it is liability of the State Government to reimburse the fee, which includes the examination fee to the University. He has drawn the attention of the court to the chart filed by the University, wherein it is stated that in the academic session 2013-14 the students of Undergraduate and Post Graduate of Scheduled Castes/Scheduled Tribes have been allowed to appear in the examination without examination fee. The total number of the students are 44595 and the examination fee which is to be given to the University by the State Government is Rs. 7,00,03,150. He further submitted that the Uttar Pradesh Scheduled Castes/Scheduled Tribes Post Matric Scholarship Scheme Rules, 2012 is simply a guideline and as it has not been made under any provision of the the U. P. State Universities Act, 1973 or any Statutes, therefore, simply mentioning it as a Rule, does not confer it the status of the Rule.

37. I have heard learned counsel for the respective parties, considered their submissions and also perused the record.

38. The Central Government's policy to provide reimbursement to the S.C./S.T. candidate are in vogue for a considerable long time. Under the policy the Central Government provides fund to the said Scheme to all the State Governments. To implement the said policy the Central Government has entrusted the State Governments for its effective implementation.

39. Learned counsel for the Union of India was directed to seek instruction from the Government of India about the fund provided to the State of U.P. in the academic session 2013-14, which reveals the Central Government has disbursed the following amount:

40. The State Government has issued a large number of the Government orders under this Scheme from October, 1991. In every academic session the Government orders have been issued for reimbursement of the fee. The State Government has also considered the various problems which cropped up in the implementation of this policy of the Central Government, therefore, it has made four separate Rules namely; (i) "Uttar Pradesh Anusuchit Jati/Anusuchit Janjati Dashmottar Chhatravrat Yojna Niyamawali, 2012 on 26 September, 2012, (ii) "Uttar Pradesh Samanya Varg Chhatravrat Yojna Niyamawali, 2012 on 7 January, 2013, (iii) "Uttar Pradesh Anya Pichhra Varg (Alpsankhyak Pichhre Varg Ko Chhodkar) Dashmottar Chhatravrat/Shulk Pratipurti Niyamawali, 2012, on 8 January, 2013 (iv) "Uttar Pradesh Alpsankhyak Dashmottar Chhatravrat/Shulk Pratipurti Niyamawali, 2012, on 14 January, 2013 for the S.C./S.T., General, O.B.C. and Minority category students respectively.

41. In this batch of petitions the dispute is only in respect of the students covered under the "Uttar Pradesh Anusuchit Jati/Anusuchit Janjati Dashmottar Chhatravrat Yojna Niyamawali-2012. The said Rules have been issued as an office memo No. 2207/25-3-2012-4 (358)/07-T.-C.-2 alongwith the Government order dated 26 September, 2002.

42. From a perusal of the said Rules it is discernible that the State Government has made these Rules to make the policy more effective and a detail procedure, eligibility, the method of disbursement have been laid down. Under the said Rules the Committees have also been formed to make the system workable and transparent. It is also evident that the various provisions of the Government orders issued previously, have been incorporated under the Rules.

43. The said Rules have been made effective from July, 2012. All the students of Scheduled Castes category, whose guardians' annual income is less than Rs. 2 lac per annum, have been made eligible for the benefit of the fee reimbursement. The Rules, 2012 defines Scholarship and the fee separately in Rule 5(xi) and Rule 5(xii)(ka) respectively. For the sake of convenience the said Rules are extracted hereunder:

44. A simple reading of Rule 5 (xii)(ka) instantly brings out that fee includes the examination fee alongwith the admission, registration, sports, union, library, journals, medical examinations. The Rule 5(xi) deals with the Scholarship. It includes Anurakshan Bhatta, Adhyayan Dwara Khart, Research Work to typing and expenses of the publication. All students, who are enrolled under the correspondence course, additional allowance to the students, who belong to differently abled class and the nonrefundable fee. Therefore, from the term Scholarship and fee there is no doubt that it includes examination fee accordingly.

45. However, this Court in Ram Sajeewan Singh Mahavidyalaya (supra), on the basis of the instructions submitted by the learned counsel for the State, has issued a positive direction to the State Government for the payment of the examination fee to the Universities. The judgment further directs the State Universities to submit their demand to the State Government for the disbursement of the said amount. It is true that no law has been laid down by this Court in the said order and the order is based on the instruction dated 24th January, 2013, which was placed before the court. The said order of the State Government is on the record, which is marked as Annexure-RA 01 to the rejoinder-Affidavit. The said order needs to be quoted for the proper appreciation of the facts, which reads as under:

Despite order of the court dated 8.1.2013, counter-affidavit has not been filed. It is the case of the petitioner that the State Government has issued an order that the students within the reserved category of scheduled caste have to be provided free admission which would include the examination fee also. Therefore, the University cannot insist on any examination fee being deposited by the students inasmuch as the entire reimbursement has to be made by the State Government.

Counsel for the University submits that there are 700 such institutions and there has to be a uniform decision failing which the entire examination system will fail.

According to the University only the admission fee is to be reimbursed but examination fee has to be deposited by the students.

Matter needs immediate attention of respondent No. 1 (State of U.P. through the Secretary, Social Welfare, Civil Secretariat, Lucknow). Therefore, it is provided that the respondent No. 1 shall take appropriate decision in the matter of payment of examination fee of reserved category students qua whom the Government order dated 11.10.2010 is applicable. He shall inform the University by an order in writing as to whether the examination fee of such reserved category students is to be collected and deposited by the colleges or not.

The decision taken shall be reported to this Court on the next date fixed failing which the respondent No. 1 shall remain present before this Court alongwith his personal affidavit explaining the reasons for decision being not taken by the State as aforesaid.

"Scholars will be paid enrollment/registration, tuition, games, Union, Library,

Magazine, Medical, Examination and such other fees compulsorily payable by the scholar to the institution or University/Board, Refundable deposits like caution money, security deposit will, however, be excluded."

46. The said order refers a guideline dated 1 July, 2010 issued by the Government of India, wherein fee was defined as under:

"Scholars will be paid enrolment/registration, tuition, games, Union, Library, Magazine, Medical Examination and such other fees compulsorily payable by the scholar to the institution or University/Board. Refundable deposits like caution money, security deposit will, however, be excluded."

(Emphasis supplied)

47. It also refers Rule 5(xii)(ka) of the Rules, 2012 and the order concludes that the definition of the fee has already been clarified by the State Government in its Rules, 2012 and the guidelines of the Government of India.

48. This Court in its order dated 28.1.2013, on the basis of the said instruction, issued the direction to the State Government to ensure that requisite money towards examination fee is reimbursed to the University within four weeks.

49. Feeling dissatisfied with the order of this Court dated 28th January, 2014 the C.S.J.M. University, Kanpur preferred a Special Appeal No. 288 of 2013, C.S.J.M. University and another v. Kamta Singh Girls Degree College and others. The appeal was dismissed on the ground that the University is not aggrieved person as the learned single Judge had directed the State Government to make the payment to the University. The relevant part of the order of Special Appeal reads as under:

"The State Government has not challenged the same and the State Government is the only Authority, which can be said to be aggrieved in view of the direction given above."

50. It was strenuously submitted by the learned Additional Advocate General that the State Government is taking steps for appropriate legal proceedings. After completing the necessary formalities and obtaining permission from the Law Department of the State Government. The said fact has also been stated in the Written Submissions in the following words:

"IV. That steps for challenging the validity of the observations made by this Hon"ble Court in the aforesaid judgment and order dated 28.1.2013 passed by this Hon"ble court in Civil Misc. Writ Petition No. 468 of 2013 as well as in the judgment and order dated 10.1.2014 passed by this Hon"ble Court in Civil Misc. Writ Petition No. 1373 of 2014 is in active consideration before the respondent No. 2 and as early as possible, the appropriate legal proceedings would be initiated by the respondent No. 2 after completing the necessary formalities and obtaining permission from the Law Department of the State Government."

51. It is evident from the submissions of learned Additional Advocate General

and the above extracted submission made in the written submission that the order of this Court dated 28.1.2013, which has been upheld in the special appeal, is still operative. Thus no direction can be issued contrary to the order passed by a Coordinate Bench, which has been affirmed in the special appeal.

52. I find it difficult to accept the submissions of learned Additional Advocate General that the direction of this Court dated 18.1.2013 is not binding on this Court as the said order is based on the reading of the instruction dated 24.1.2013.

53. The Supreme Court in the case of S. Nagaraj and Others Vs. State of Karnataka and Another, , has held that if there is any mistake or incorrect statement in the order of the court, the aggrieved person should file an application before the same court for the correction of the said mistake. The said view of Antule case has been consistently followed by the Supreme Court. The observation is extracted below:

"12. Was it so? Could the Government take up this stand? Law on the binding effect of an order passed by a court of law is well-settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In Halsbury's Laws of England (Fourth Edn., Vol. 9, p. 35, para 55) the law on orders improperly obtained is stated thus:

"The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order."

Any order passed by a court of law, more so by the higher courts and especially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding."

54. In the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , the court had occasioned to consider the similar plea, which has been taken by the State. The court held thus:

"5.....It is now settled law that the statement of facts recorded by a court or quasi-judicial Tribunal in its proceedings as regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect

unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the Court/Tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the counsel to say that the proceedings recorded by the Tribunal are incorrect. The further contention that the respondent did not agree to dispense with the adducing of oral evidence and that the report should be the preliminary report cannot be countenanced. Accordingly, we hold that it is no longer open to the respondent to say that it has not consented to dispense with adducing oral evidence and to the Tribunal submitting its final report instead of a preliminary one as directed by this Court. During the pendency of these writ petitions, 16 workmen were retrenched. Shri R.K. Jain, learned counsel appearing for the respondent, has agreed that if there is work and any of these 16 persons report for duty, work shall be provided. This Court further directed to pay the petitioners at the rate of Rs. 25 per day."

55. In the case of Union of India (UOI) and Others Vs. Shri G.R. Rama Krishna and Another, . an Assistant Engineer, who was appointed on ad hoc basis for one year but he continued to work in the said capacity even after without obtaining the approval of the Department of Personal and Training. In the meantime the U.P.S.C. advertised the said post for filling up on direct recruitment basis. The Assistant Engineer challenged the said selection in the Administrative Tribunal. His claim petition was dismissed by the Tribunal, however the Calcutta High Court allowed the writ petition and a direction was issued for his appointment. The Supreme Court set aside the order of the Calcutta High Court as unsustainable and observed that no order should be passed on the basis of personalized justice or sympathy.

The said case has no application in the facts of the present case.

56. In the case of Union of India and Another Vs. Kirloskar Pneumatic Company Limited, , the matter relates to commercial dispute under the Customs Act, 1962. The petitioner therein had imported certain goods and a dispute arose with the Custom Department with respect to the classification of goods. The duty as demanded by the custom authorities was paid by the petitioner and his goods were cleared. It appears that the petitioner therein filed an application for refund of the amount on the ground that a wrong assessment has been made by the custom authorities with respect to the classification of the goods under the provisions of the Customs Act, 1962. The petitioner's application as well as appeal was rejected by the appellate authority and, without filing the further appeal, he preferred a writ petition before the Bombay High Court. The Bombay High Court passed an interim order dated 23rd June, 1995 issuing certain directions. Against the said order the Union of India preferred a special leave petition. The Supreme Court found that the direction issued by the Bombay High Court was contrary to the provisions of the Customs Act. In view of the said fact the Supreme Court held that the High Court cannot issue a direction to the statutory authorities to act contrary to law. There cannot be any quarrel to the said preposition.

The court failed to understand how this case has any application to the facts of the present case.

57. The case in *Subhashree Das @ Milli Vs. State of Orissa and Others*, , arose out of criminal proceeding. A first information report was registered under Sections 120B, 121, 121A and 124A read with Section 34 of the Penal Code, 1860 and under Section 63 of the Copyright Act, 1957 and Sections 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against some alleged "Maoist" and in their vehicle leaflets, "Maoist" literature and cash were recovered. The accused, Subhashree Das challenged her illegal arrest/detention being illegal and she also sought the relief to be adequately compensated. The High Court of Orissa quashed the detention order, however declined the compensation. Feeling aggrieved by the said order she filed special leave petition before the Supreme Court. The Supreme Court dismissed her appeal and upheld the order of the High Court.

This case has also no application to the case in hand.

58. Learned Additional Advocate General has also relied on a judgment of the Full Bench in *Smt. Sheela Devi and Another Vs. State of U.P. and Others*, . The Full Bench held that the order of a Larger Bench or Superior Court is binding only when the principle of law laid down therein are applicable to the case In hand.

59. In the present case, judgment of *Ram Sajeewan Singh Mahavidyalaya (supra)* was based on the instruction issued by the State Government and the statement made by the learned counsel for the State Government.

60. As discussed above, in view of the judgment of the Supreme Court in the cases *S. Nagaraj (supra)* and *Bhagwati Prasad (supra)* the same court or a Superior court can rectify the said mistake. The order of the learned single Judge dated 28 January, 2013 passed in Writ-C No. 768 of 2013, *Ram Sajeewan Singh Mahavidyalaya Jayantipur and another v. State of U.P. and others*, and order dated 26 February, 2013 passed in Special Appeal No. 288 of 2013, *C.S.J.M. University and another v. Kamta Singh Girls Degree College and others*, are binding.

61. Therefore, there cannot be any quarrel to the preposition laid down by the Full Bench but the said judgment is not applicable in view of the aforestated reasons.

62. I find myself unable to accept the submission of Sri Ravikant that 2012 Rules have no legal force as the said Rules have not been framed under any statutory provision. The law in respect of the executive orders are too well-settled to reiterate that the executive instructions can supplement a Statute or cover area to which the Statute does not extend but it cannot run contrary to the statutory provision or whittled down their effect. It is true that guidelines, which do not have any statutory flavour, are merely advisory in nature and they cannot have

the force of Statute. They are subservient to the legislative act and the statutory rules. [Vide State of Haryana Vs. Mahender Singh and Others, ; The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, .

63. In the present case, admittedly there is no statutory rules, therefore, the State Government has power to frame the said Rules. As it is not in consistent with any statutory provision or the rules, the power of the State Government to frame such Rule cannot be doubted. In the case of P.H. Paul Manoj Pandian Vs. Mr. P. Veldurai, , the court has acknowledged the power of the executive in the following words:

"48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue Government orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government order dated 16.11.1951 on the ground that it contained administrative instructions."

64. In view of the law laid down by the Supreme Court it is not possible for the court to ignore the direction of this Court dated 18.1.2013, which has been affirmed in the Special Appeal No. 288/2013, C.S.J.M. University and others (supra).

65. It has come on the record that a large number of educational Institutions, detail whereof has been given in the affidavit filed by the State Government and the instructions, have indulged in misappropriation of the fund provided by the Central and State Government under the said Scheme. The details of those Institutions have been mentioned in the instruction, which has been taken on the record.

66. It is stated that the several first information reports have been filed against the erring Institutions and vide Government order dated 23rd August, 2011 they have been directed to be blacklisted. In the instruction the details of such Institution of three Districts have been mentioned. A perusal of the said instruction, the first information reports and the other documents reveal a shocking state of affairs. A College namely Aligarh City Engineering College was disbursed Rs. 14.50 lac in 2009-10 under the Zero Fee Scheme. However on the inquiry it was found that the said Institution does not exist and on the basis of the fake documents the amount has been misappropriated. In the Government

order there is reference of other Institutions also, who have been found indulged in misappropriation of the fee reimbursement scheme.

67. The allegation of the misappropriation of fee reimbursement of the poor students by the Colleges is a serious matter. The misappropriation of the said funds needs serious attention of the State Government. Simply filing first information reports and blacklisting the Colleges is an empty formality and eye wash. As has been observed in similar matters filing of the first information report against the Management does not lead to any where as in most of the cases the final reports are submitted on the ground of alleged lack of evidence. It is common experience that due to lack of coordination between the concern Department and Investigating Agencies even the charge-sheets are not filed. Moreover the criminal proceedings linger on for indefinite period. As far the order of blacklisting is concerned, as it has been observed it is either cancelled or it is challenged on technical grounds by the Colleges. These Colleges are governed by the provisions of the U. P. State Universities Act, 1973 (Act No. 10 of 1973). Section 37(2) of the Act No. 10 of 1973 deals with the affiliation. Under unamended Section 37 His Excellency the Chancellor was empowered to grant affiliation to the Degree and Post Graduate Colleges. By the Amendment Act i.e., U.P. Act No. 12 of 2007 (w.e.f. 2.6.2007) Section 37(2) Act No. 10 of 1973 has been amended by the State Government and the power has been taken over from His Excellency to itself. From 2007 there is a mushrooming growth of Degree and Post Graduate Colleges in the State of U.P.

68. From the counter-affidavit of the Veer Bahadur Singh Purvanchal University discloses that more than 4000 Colleges are affiliated to V.B.S. University alone there are more than 20 more Universities in the State of U.P.

69. The Supreme Court in the case of Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM B.Ed. College Vs. National Council for Teachers Education and Others, , has noticed the uncontrolled growth of educational institutions in the country. The court observed thus:

"11. Mushroom growth of ill-equipped, understaffed and unrecognised educational institutions was noticed by this Court in State of Maharashtra v. Vikas Sahebrao Roundale. This Court observed that the field of education had become a fertile, perennial and profitable business with the least capital outlay in some States and that societies and individuals were establishing such institutions without complying with the statutory requirements. The unfortunate part is that despite repeated pronouncements of this Court over the past two decades deprecating the setting up of such institutions, the mushrooming of the colleges continues all over the country at times in complicity with the statutory authorities, who fail to check this process by effectively enforcing the provisions of the N.C.T.E. Act and the Regulations framed thereunder."

70. The State Government under Section 37 of the Act No. 10 of 1973 is empowered to take appropriate action of the withdrawal of the affiliation in case

the Colleges are found in violating the terms of their affiliation. It is surprising that the State Government has not taken any steps for the withdrawal of the affiliation against the Colleges, who have been found indulged in misappropriation of the fund. The Central Government provides the fund to the State Government from the public exchequer. Thus the frittering away of the public exchequer must be viewed seriously and guilty persons/Institutions must be dealt with firmly in accordance with law.

71. Accordingly, a direction is issued to the State Government to initiate proceeding for the withdrawal of the affiliation under Section 37 of the Act No. 10 of 1973, against all those Degree and Post Graduate Colleges, who are found guilty of misappropriation of the fund under the Reimbursement Scheme. Merely filing the first information report is not enough.

72. State Government can take action under the provisions of U.P. State Universities Act, 1973 and criminal proceeding simultaneously because both the proceedings are independent of each other. The said proceedings shall be initiated within three months from the date of the judgment.

73. Thus after careful consideration, I am of the view:

(i) Fee includes the examination fee under the Rules, 2012 and the State Government is not liable to make the payment to the Colleges from the academic session 2014-15. However, for the current academic session the State Government is bound by the undertaking given in Ram Sajeewan Singh Mahavidyalaya (supra) and shall make the payment in terms of the directions issued by this Court dated 18.1.2013 in Ram Sajeewan Singh Mahavidyalaya (supra) unless the said order is recalled or modified.

(ii) The State Government shall initiate proceedings against the Colleges, against whom there are allegations of misappropriation of the fund provided under the Zero Fee Scheme. The appropriate action shall be taken against the Colleges under the intimation to this Court.

74. The writ petitions are, accordingly, disposed of.

75. No order as to costs.