
(2013) 08 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58129 of 2012 etc. etc.

Rahul Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) 08 AHC CK 0099

Hon'ble Judges : Arun Tandon, J

Judgement

Arun Tandon, J.

Heard Sri P.N. Saxena, learned Senior Advocate, Sri Ramesh Upadhaya, Sri Neeraj Tiwari, learned counsel on behalf of the petitioners S.P. Gupta, learned Advocate General, assisted by Sri Yashwant Verma, learned Chief Standing Counsel for the State in this bunch of writ petitions.

How arbitrary and discriminatory, the State of Uttar Pradesh can be, is amply demonstrated by the facts, as they exist on record of this bunch of writ petitions.

It is not in dispute that the State Government under the Government Order dated 6th July, 2011, came out with a scheme for providing scholarship and fee reimbursement for the academic session 20112012 to the students obtaining education within the State of Uttar Pradesh from Class I till Graduation level. Students, who were entitled to such scholarship had to be members of Scheduled Caste and Scheduled Tribes category, Other Backward Class Category, Minority Community Category and those belonging to General category but whose family income was less than Rs. 1 lack per annum (hereinafter referred to as those residing below the poverty line).

Copy of the Government Order referred to by the learned Advocate General as well as by the learned Chief Standing Counsel dated 6th July, 2011 is at page 34 of the affidavit filed today by the Acting Chief Secretary of the State.

From a simple reading of the policy decision, it is apparent that the Scheduled

Caste and Scheduled Tribes category students were entitled to the scholarship and fee reimbursement to the extent, as may be fixed by the Secondary Education, Higher Education, Technical Education, Professional Education and Medical Education Departments, for the course concerned. It was provided that information in that regard would be supplied by the department concerned to the State Government and that fee reimbursement shall be provided through the accounts of the institution and students belonging to such category will be admitted at Zero Fee by the institution.

So far as the students belonging to the Scheduled Caste and Scheduled Tribes category are concerned, there is no dispute. It is the case of the State that all such students have to be provided scholarship and fee reimbursement. If any student has any grievance in that regard, he may approach the Secretary of the department concerned, who shall do the needful within reasonable time.

The other Second category of students qua whom there is a serious dispute, as mentioned in the Government Order dated 6th July, 2011 are one belonging to the Other Backward Class Category, Minority Community and students belonging to General category but whose family members reside below the poverty line. In respect of this category of student, it is provided that reimbursement of the fee shall be to students, whose family income is upto the extent of Rs. 1 lac only at the maximum. The amount of the fee reimbursement shall be the one as fixed for the course by the Government institution. Money would be paid in the accounts of the students directly. It was clarified that fee reimbursement would be provided to such students, who are admitted in recognized institutions and in recognized courses only. For the purpose a register districtwise had to be maintained known as Master Data Base, wherein names of the students after verification shall be recorded and through Secondary Education, Higher Education, Technical Education, Professional Education and Medical Education Departments, it would be verified.

Clause 3 of the Government Order dated 6th July, 2011 provides for submission of the Data Base with the National Informatics Centre and for the purpose, time limits at various level has been fixed under Clause 3. It was contemplated that fee reimbursement shall be made on the basis of the demand raised districtwise by various institutions as per the Data feeding, the last date whereof was fixed as 15th October, 2011. Time schedule fixed for the purpose and the procedure for reimbursement of the fee under Government Order is as follows:

(a) for students admitted upto Class X, money shall be allocated districtwise, with reference 80% of the demand of the previous year, under Notional Accounts by 31st July, 2011. If there is any further requirement of the money, then after receipt of the certificate of the utilization of 80%, the request shall be forwarded by the District Magistrate to the concerned department.

(b) for the students admitted to the courses beyond Class X, the fee reimbursement was to be provided by 31st August, 2011 and for the newly

admitted students by 30th September, 2011 positively. For the purpose, a provision was made for money being allocated to the concerned district in advance upto the percentage mentioned in Clause 4 (c).

Under Clause 5, responsibility of various departments of the State Government was fixed for the purposes of reimbursement of the fee. One clause which has relevance for our purposes is Clause 1 (d) (ii), it is also the sheet anchor of the case set up by the State Government before this Court.

Clause 1 (d) reads as follows:

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From a simple reading of the said clause, it is apparent that in the matter of reimbursement of fee to the students belonging to category other than Scheduled Caste and Scheduled Tribes category, the following criteria, in order of preference, was laid down:

(I) Students admitted in Government institutions and Government aided institutions would be entitled to reimbursement of fee in the first preference.

(II) Students admitted in other institutions would be entitled to reimbursement of fee on the basis of income of their parents. The child of a parent having less income had to be preferred over to child of a parent having higher income.

On 29th April, 2013, this Court after noticing that the State Government has not provided the fee reimbursement to the students on the basis of income of their parents, but has chosen to distribute the money on the basis of the demand of each district, with reference to the institutions situate therein, passed a detail order calling upon the State Government to explain.

It would be worthwhile to reproduce the order which was passed by this Court on 29th April, 2013 and which reads as follows:

"The policy framed by the State Government in the matter of distribution of scholarship and fee reimbursement to the students, belonging to the categories of Minority, OBC, SC/ST and General residing below the poverty line, dated 06th July, 2011, enclosed as Annexure 2 to the writ petition, was read out to the Court today by the Additional Advocate General Sri C. B. Yadav in extenso. Relevant portion of Clause 1 of the policy reads as follows:

No other clause could be pointed out which would regulate the manner of selection of students within the category concerned for providing the scholarship/ fee reimbursement.

A statement has been made before the court that scholarship has been distributed to all the SC/ST category of students in respect of whom details had been uploaded on the website of NIC. Students, whose data was not uploaded on the website of NIC have not been provided such scholarship. If any student is left, his claim shall be considered by the department and money shall be

released without any delay. There shall be no denial of scholarship to such category of students in any circumstances.

The issue which remains for consideration before this Court is basically in respect of reimbursement of fee, which the students belong to OBC, Minority and General Category residing below the poverty line claim to be entitled in view of the policy decision of the State Government dated 06th July, 2011.

From the orders, which were passed by this Court on 20.03.2013 and 08.04.2013, it is admitted that the respective departments had provided fee reimbursement, treating the "district" to be an unit. Meaning thereby that fee reimbursement has been provided to the students belonging to general category residing below the poverty line, minority and other backward class category on the basis of the place assigned to them in the list prepared by the NIC, having regard to the income of their family, districtwise.

What has been done is reflected from the following two figures, which have been communicated to the Court by the Addl. Advocate General himself, i. e. (a) All the students with family income up to 30,000/ per annum admitted in an institution situate in district Hardoi have been provided fee reimbursement. While all students upto family income of Rs. 54612/ per annum have been provided fee reimbursement. Meaning thereby that students admitted in a institution situate at Hardoi has not been provided fee reimbursement even if his family income was between 30,000/ to 54612/.

From a simple reading of clause, quoted above, it is apparently clear that the policy decision of the State Government was that fee reimbursement shall be provided on the basis of the criteria that the lower in the poverty line would be given preference to a student with higher family income. The policy does not contemplates determination/application of such criteria districtwise and even otherwise such could not be the policy decision, inasmuch as it would be arbitrary violative of Article 14 of the Constitution of India.

Reference may also be had to Article 15 of the Constitution of India, which provide that the State shall not discriminate amongst citizens on grounds only of religion, race, caste, sex, place of birth or any of them. Logically extending the same would mean that the place, where the institution situate in the State of U.P., cannot be the basis for any discrimination being made by the State in the matter of distribution of fee reimbursement.

The State of U.P. has necessarily to treat the State as a unit. In fact State had to be the unit as per the policy decision, as reflected from the Government Order dated 06th July, 2011.

But the State is not governed by the policy decisions, it is governed by the whims and fancies of the Secretaries of the Department concerned. and the Secretary should means the concerned department. The Secretaries appear to be the law into themselves in the matter of distribution of fee reimbursement. They

deemed to treat the district as a unit worked out that too with reference to the place where the institution is situate.

On what basis such criteria could be applied or could even be thought by the officer concerned is not known. Counsel for the petitioner points out that a Division Bench of this Court in the case of *Meydha (Meritorious Education for Youths Development & Humane Activities) vs. State of U.P. and others* (decided on 29th August, 2011) has already held that any discrimination practiced on the basis of place of the institution within the State of U.P. would be arbitrary and violative of the Constitution of India. It is also pointed out that special leave appeal filed against the said judgment has already been dismissed by the Apex Court.

At this stage the Court is leaving the issue here, inasmuch as in my opinion fee reimbursement must be provided to all students, whose parents had the income of Rs. 54612/ per year or less throughout the State of Uttar Pradesh. This figure shall at this stage be the benchmark and all students, in whatever category they belong with a family income of less than Rs. 54613/ per year, must be provided fee reimbursement so as to avoid the challenge on the plea of Article 14 of the Constitution of India.

Sri C.B. Yadav, learned Addl. Advocate General has made a statement that the State shall workout the amount, which would be payable, so as to take care of all such students and all attempt shall be made to reimburse the fee of the students, who fall within the criteria fixed by this Court, within four weeks.

Let this be done by 27th May, 2013 when the matter will be placed before this Court again.

In pursuance to the order passed by this Court earlier, Sanjeev Dubey, Principal Secretary, Social Welfare, Smt. Leena Johri, Secretary, Minority Welfare & Waqf, and Sri R.P. Goswami, Special Secretary, Backward Class Welfare representing the Principal Secretary, Backward Class Welfare, are present in the Court. They have also filed their affidavit.

None of the Secretary, who are present in the Court, have disputed any of the statements made by Sri C.B. Yadav and have been recorded in this order by the Court.

Sri C.B. Yadav has referred to the Government Order dated 23rd September, 2009 which provided for a detail mechanics including visits by the district authorities for actual verification of the students admitted in the concerned institutions with reference to whom fee reimbursement is claimed. All the three Secretary present before this Court have made a categorical statement that only some reports had been obtained from the District Magistrate or other officers, before actual release of the reimbursement of fee amount.

From whatever material is made available to the Court today it is apparent that public money in the shape of fee reimbursement has actually been paid without

following the policy of the State Government and without actual physical verification in respect of each institution qua which fee reimbursement was being claimed by the student concerned.

This Court has no hesitation to record that fee reimbursement is for a purpose, namely that the student may not suffer in his/her study for want of funds. But it appears that the education has become the last priority for the State. Instead of ensuring that only bonafide students are actually provided fee reimbursement, money has exchanged hands between various players including the State Government.

What action is required in the matter shall be recorded by this Court after an affidavit is filed disclosing as to how many reports are received districtwise by all the three secretaries concerned.

At this stage Sri C.B. Yadav has made reference to Clause 12 of the letter of the Principal Secretary dated 23rd September, 2009, which provided that at least 25% of the institution in the district must be physically verified by the District Social Welfare Officer, 10% of the institution shall be verified by the Deputy Director of Education and 10% shall be get verified by the District Magistrate.

This Court shall deal with the Government Order at the appropriate stage.

The Secretaries are permitted to file their personal affidavit disclosing the number of verification reports received by them in terms of the Government Order referred to above before actually releasing the money for fee reimbursement by 27.05.2013.

For other purposes these matters shall again be listed before this Court on 07.05.2013.

Presence of the Secretaries is exempted."

From the said order, it is apparently clear that while a student whose parents had income of Rs. 54,612/ had been provided fee reimbursement, admitted to an institution in District Lalitpur, while a student admitted in an institution at District Hardoi and whose parents income was of less than Rs.30,000/ had not been provided such fee reimbursement. This is by way of an example only.

The Chief Secretary of the State of U.P. has filed an affidavit dated 11th July, 2013 and for the first time he has come out with a case that as per the budgetary allocations of the year 2011-2012, the total amount allocated for the purposes of distribution of scholarship and reimbursement of fee to the students belonging to the general category living below the poverty line was Rs. 278.05 crores. Similarly for other Backward Class category students, the money allocated was Rs. 202.5618 crores and for the Minority community students, the money allocated in the budget was Rs. 6.50 crores. It is his case that on the basis of Data Base collected by each department, namely, Social Welfare Department, Backward Welfare department and minority welfare department, the

distribution of the money towards scholarship and fee reimbursement has been made, as is depicted in the chart enclosed along with the affidavit as Annexures 2 to 4.

In paragraph 26 of the affidavit filed today by the Chief, he has informed the Court that as against the total allocation for the students belonging to the general category living below the poverty line, falling under the Social Welfare Department, as against total allocated budget of Rs. 278.05 crores, the money allocated towards for fee reimbursement was Rs. 126.066 crores, while the demand as per the uploaded data upto 2nd January, 2012 (wrongly mentioned in the affidavit as 2nd January, 2011) was Rs. 294.76 crores towards fee reimbursement. Therefore, it was decided that 37.7% of the demand could be met and a total sum of Rs. 111.14 crores was allocated to the districts. Upto 7th February, 2012, the uploaded demand of all the districts was Rs. 371.17 collectively and against the said demand a sum of Rs. 14.92 crores has been allocated to the districts, which is 4.02% against the total demand. This has exhausted the budgetary allocation, according to the Chief Secretary.

What follows from the said fact is that as against the total demand of Rs. 371.17 crores in respect of students belonging to the general category living below the poverty line, the State could meet the demand upto 41.02% only. Rest of the students have been left in lurch.

In respect of the Backward Class Welfare Department responsible for fee reimbursement to students belonging to the Other Backward Class category, it has been stated that out of the allocated budget of Rs. 202.56 crores towards scholarship and fee reimbursement for the other Backward Class category students, 50% of the fee reimbursement was distributed in three instalments totalling Rs. 129.29 crores. The total demand raised in respect of this category of students was Rs. 446.004 crores. In the second phase, a sum of Rs. 73.27 crores has been released.

What is surprising to note is that deliberately the Chief Secretary has not disclosed as to upto what cut off date, what amount of demand was uploaded on the data base by each of the districts in the manner it has been disclosed qua the general category students. The facts in that regard are wanting. If these dates had been disclosed, it would have demolished the entire case pleaded by the Chief Secretary.

Be that it may, in respect of other backward class category students also, the State Government has been able to meet less than 50% of the total demand towards fee reimbursement in terms of the Government Order referred to above.

The last department concerned, namely, the Minority Welfare Department has distributed Rs. 3.25 crores to the eligible students towards fee reimbursement. The total demand raised was Rs. 31.08 crores. The money, which has been provided only 11.68% of the demand raised by the districts and this accordingly to the Chief Secretary exhausts the budgetary allocation.

It is the case of the State Government that the State Government has been distributing scholarship and fee reimbursement since 1970 and the districts have always been treated as a separate unit. Accordingly, money has been allocated in respect of scholarship and fee reimbursement for each district separately.

In paragraph 26 it is stated that if this Court insist that fee reimbursement must be provided to all the students, whose family income is less than Rs. 54,612/, it would result in an additional and unforeseen financial outlay of Rs. 272 crores, which on being distributed amongst departments would require an additional sum of Rs. 92.22 crores for social welfare department, and Rs. 162.40 for other backward class welfare department and Rs. 17.15 crores for the Minority welfare department. This additional allocation would be in violation of the relevant rules.

On these pleas, the learned Advocate General on behalf of the State and the Chief Secretary submits that this Court must keep its hands off in the matter of distribution of the scholarship and the State Government should be left free in the matter of distribution of fee reimbursement as it has no further money for fee reimbursement now.

As already noticed above under the policy decision of the State Government, there was no restriction in respect of the number of the students, who were to be provided fee reimbursement. There was no mention in the Government Order that scholarship shall be provided on the basis of the demand raised by the districts with reference to the institutions and not with reference to the income of the parents of the child. This Court fails to understand as to how can the district of an institution, be the determining factor in the matter of preference for fee reimbursement to the students especially when the Government Order dated 6th July, 2011 provides that a child of a parent with lower income shall be preferred over a child whose parents have higher income.

Even if the entire case of the Chief Secretary is accepted that there are different living standards districtwise and for which in paragraph 16 of the affidavit, a chart disclosing the per capita income of various regions and the districts has been reproduced and has been very strongly relied by the learned Advocate General, the Court has no hesitation in holding that such living standard or per capita income has no relevance with regard to the district where the institution is situate for the purposes of preference as per Clause 1 (d) quoted above.

The chart mentioned in paragraph 16 of the affidavit can have relevance for the purposes of determining the poverty etc. of the family qua the district where it resides. But the State cannot bifurcate the allocated budget towards fee reimbursement on the basis of the demand received districtwise from the institutions situate therein.

It appears that the State Government has gone wrong in its very premise of treating the district of the institution as the guiding factor in the matter of bifurcation of the total allocated money for fee reimbursement or else the State wants to protect its arbitrary action in garb of such flimsy excuse.

Nothing can be worst for this State than to tell a student that although he belongs to a poorer family, he will not be provided fee reimbursement because he has been admitted in an institution situate in a district where per capita income is higher. Reasoning so disclosed in the affidavit of the Chief Secretary of the State on the face of it discloses a complete nonapplication of mind to preference Clause 1 (d) of the Government Order dated 6th July, 2011 and the arbitrary manner, in which an attempt is being made to explain illegal acts of the State authorities.

The Court will repeat that in no circumstance, per capita income fixed in respect of a particular district where the institution is situate can be the determining factor in the matter of distribution of scholarship to the students of 2nd category as per the Government Order dated 6th July, 2011 wherein the criteria of preference disclosed is that the students belonging to the lower income family group, would be preferred over a parent having higher income group. Even otherwise, this per capita income of the district is also an imagination of the State for the purposes of deciding as to who is to be treated to be member of poorer family, visavis a student who is to be treated as a member of family having higher income.

It may be recorded that State has not determined the poverty lines on the basis of per capita income of the district, at least no such fact has been disclosed. A person is held to be the resident of the State, and treated to be residing below the poverty line if the total income of the family is below the maximum fixed for the purpose and this has no reference to the per capita income of the district.

Even otherwise, this Court may record that the State as a policy decision had held out an assurance to the students belonging to the Other backward class category, minority community category and general category, whose family members reside below the poverty line, that they will be provided free fee as per the Government Order dated 6th July, 2011. The clause, which has been heavily relied upon by the Advocate General on behalf of the State only provides the preference in the matter of reimbursement of the fee i.e. who is to be provided reimbursement of fee first and and who is to be provided reimbursement of fee later. Said clause cannot be read to mean that the State can at one point of time come with a decision that no further reimbursement of fee shall be provided to the students, although they belong to other backward class category, minority community category and general category whose family reside below the poverty line.

A student whose family may be normal resident of Allahabad on being admitted to an institution at Lucknow/Ghaziabad has been considered for fee reimbursement qua the money allocated for the said district of his institutions and not on the basis of income of his family members. Explanation which is being furnished by the Chief Secretary in his affidavit today runs contrary to its own affidavit, in paragraph 25 wherein detail procedure in respect of the reimbursement of fee and allocation of money has been mentioned. Allocation

has been done on percentage basis of the total demand made in the data base by a particular district and not with reference to the family income of the student belonging to the general category, whose family members reside below the poverty line, other backward class category and minority community category.

The Explanation furnished today is clearly an after thought and an improvement upon the case by the Chief Secretary.

The arbitrariness of the State action can be demonstrated by two examples:

(a) Mr. "X" residing below poverty line at Allahabad has an income of Rs. 54,612/ per annum, he has two sons "A" and "B". Student "A" is admitted in an institution situate in district Lalitpur, while student "B" is admitted in an institution situate in district Hardoi. As per the State action, student "A" will be provided fee reimbursement but student "B" will not be provided fee reimbursement as per capita income of the two districts is different and district had been treated to be the unit for allocation of budgeted amount.

(b) Mr. "X" and Mr. "Y" are two neighbours residing in Allahabad both have same income of Rs. 50,000/ each. Mr. "X" ward is admitted in an institution situate in district Lalitpur while Mr. "Y" ward is admitted in an institution situate in district Hardoi. Mr. "X" ward will be provided fee reimbursement, while Mr. "Y" ward shall be denied the same. The reason for such State action is also as per Example (a).

In the case of Municipal Council, Ratlam, Vs. Vardhichan and others AIR 1980 SC 1622, the Apex Court considered the defence of the Municipality qua nonavailability of funds and observed as under :

"Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under S. 123 of the Act. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, S. 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in selfdefence a selfcreated bankruptcy or perverted expenditure budget. That cannot be."

That apart, the respondents have not shown anywhere as to what efforts they have made to arrange the requisite finance for payment of reimbursement of fee to the students similarly situate.

In the facts of the present case, this Court has no other option but to direct that the State to ensure fee reimbursement to all the students covered by the Government Order dated 6th July, 2011, whose family income is less than Rs. 54,612 per annum and such payment shall be made within one month from

today. Action taken report be filed by the next date. For the purpose, matter shall be put up again on 2nd September, 2013. This disposes of the claim of the petitioners whose family income is less than Rs. 54,612/ per annum finally.

The Court has been informed that against the order which was passed by the Court dated 29th April, 2013 wherein the State was asked to ensure reimbursement of fee to the students whose family income was less than Rs. 54612/, the State had filed an special appeal, wherein no interim order has been granted.

It is surprising that the Chief Secretary of the State has chosen not to disclose this fact in the affidavit filed today before this Court.

So far as current year is concerned, this Court may clarify that the State shall provide reimbursement of fee to the students on the basis of income of their family and not with reference to the district where the institution is situate.

It is also stated on behalf of the institutions that contrary to the assurance held out earlier to the Court by the State, the reimbursement of fee of students belonging to the Scheduled Castes and Scheduled Tribes, who admitted under Zero Fee Scheme in the session 20122013 has not been provided till date, although the academic session itself has come to end.

On 11th July, 2013 this Court had recorded that the State shall take appropriate action to ensure reimbursement of fee of students admitted under Zero Fee Scheme, according to the institutions, their grievance has not been attended to till date.

In such circumstances, this Court further directs that the State Government will not insist upon the private institutions to admit any student under Zero Fee Scheme in the current session 20132014 without ensuring reimbursement of fee of all the Scheduled Castes and Scheduled Tribes category students of the previous year i.e. 20122013. The State may ensure reimbursement of the fee of Scheduled Castes and Scheduled Tribes students to the institutions concerned for previous academic session within one month from today.

List this matter on 2nd September, 2013 for hearing on other issues.