
(2009) 07 GAU CK 0034

In the Gauhati High Court

Case No : Writ Petition (C) No's. 191 (SH) and 192 (SH) of 2008

Raid Laban College Teachers' Welfare Association and Another	APPELLANT
Vs	
State of Meghalaya and Others	RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 13, 21, 39
University Grants Commission Act, 1956 — Section 12(8), 12(B), 2

Citation : (2010) 1 GLR 328 : (2009) 4 GLT 594

Hon'ble Judges : Asok Potsangbam, J

Bench : Single Bench

Advocate : R.P. Sharma, M.R. Adhikari and T. Das Gupta, for the Appellant; K.S. Kynjign, N.D. Chullai, G.N. Sahewalla and D. Senapati, for the Respondent

Final Decision : Allowed

Judgement

Asok Potsangbam, J.—As both the cases involve common question of law and the subject matter for adjudication being the same, they are heard together and are being disposed of by this common judgment and order.

2. Heard Mr. R.P. Sharma, Learned Senior Counsel assisted by Mr. T. Dasgupta, Learned Counsel appearing for the petitioners. Also heard Mr. K.S. Kynjign, learned Advocate General and Mr. D. Chullai, learned senior Government Advocate appearing for the respondent Nos. 1 and 2 and Mr. G.N. Sahewalla, Learned Senior Counsel assisted by Mr. D. Senapati, Learned Counsel appearing for the respondent Nos. 4 and 5.

3. Though many contentions have been raised by the writ petitioners in both the petitions, i.e., WP(C) No. 192(SH) of 2008 and WP(C) No. 191(SH) of 2008, the Learned Counsel for the petitioners, at the time of hearing, chose and rested his arguments against the decision of the Government to discontinue the ad-hoc grant-in-aid w.e.f. 1.1.2007, which was given to the College for the last about two decades to meet the expenditure on pay and dearness allowances for some of the sanctioned posts, both teaching and non-teaching staff. Affidavits on

behalf of the respondent Nos. 1 and 2 as well as the private respondents have been filed.

4. Facts, which are necessary for disposal of both the writ petitions, are stated, in brief, as hereunder.

5. For the purpose of discussion, only the facts of WP(C) No. 192(SH) of 2008 shall be referred to in this judgment. The petitioner No. 1 in WP(C) No. 192(SH) of 2008 is a registered Association of college teachers of Raid Laban College, Shillong, registered under the Societies Registration Act 1983 and the petitioner No. 2 is the President of the aforesaid Registered Association. According to the petitioners, the College was established in 1984 and was brought under Ad hoc Grant-in-aid system by the Government of Meghalaya in December 1986, allegedly in consonance with the Meghalaya Aided College Maintenance Grant-in-Aid Rules, 1986 (hereinafter referred to as Rules, 1986). There are 10 such ad hoc colleges including the petitioners' college under the Ad hoc Grant-in-aid system in the State of Meghalaya. Under the aforesaid ad hoc grant and assistance, the State Government bears 75% of the recurring expenditure on pay and dearness allowances against some of the sanctioned posts, both teaching and non-teaching staff, while the remaining 25% of the recurring expenditure is borne by the Governing Body of the College concerned. In this regard, a Deed of Acceptance is said to have been executed by the Governing Body as a pre-condition to and in compliance with the provisions of the grant-in-aid Rules. The ad hoc grant-in-aid sanctioned by the Government was/ is subject to the following conditions-

1. That the ad hoc Grant-in-aid covers 75% of the approved expenditure and that 25% thereof is borne by the College.
2. The sanction is purely on ad hoc basis pending finalization of the relevant rules governing sanction of ad hoc grant in aid to colleges in the State.
3. That the statement of expenditure of the grant and the utilization certificate should be furnished to this Office. The amount sanctioned should be utilized for the purpose for which it is sanctioned. Any unspent amount should be intimated to this office for refund.
4. That the accounts of the College shall be opened to audit by the Examiner of Local Accounts or any agency authorized by the Government.
5. That the approved expenditure is the pay and DA only of the sanctioned posts at Government prescribed rules.
6. That the approved expenditure is only for full time staff entertained as per qualification prescribed by the University and for courses for which the University have granted the affiliation.
7. That the College is governed by the Education Department Rules and orders.
8. The sanctioned posts of the College.

6. It is stated that from 1987 onwards, recurring grant and some non-recurring grant have been given to the College right up to 2006 and the figures, on the aforesaid grants, given in paragraph 3 of the writ petition are not disputed by the respondents. It is further stated that pay revision of 1986 as well as 1996 have been extended to the teaching and non-teaching staff of the College and salary of the members of the petitioners Association was fixed at Rs. 6350-225-7700-EB-240-9386-250-11130 in terms of the revised scale of pay of 1996. There is a serious allegation against the Governing Body of the College which is represented by the respondent Nos. 3, for arbitrary deduction of 20% from the monthly gross salary of the non-teaching staff but the issue on the alleged arbitrary deduction is not pressed further by the Learned Counsel for the petitioners at the time of hearing and therefore, no meaningful purpose will be served to dwell and discuss on the issue. It is also stated by the petitioners that Raid Laban College is recognized by the UGC u/s 2(f) and Section 12B of the UGC Act 1956. Further, the Colleges has also been given permanent affiliation with the North East Hill University (NEHU), Shillong, which is a pre-requisite to receive central assistance from the UGC and the College in question was in receipt of central assistance from UGC for books and equipments for the years 2005 and 2006.

7. It is stated that there are four (4) categories of College in the State of Meghalaya and these categories may be noticed as hereunder-

(I) There are three (3) Government Colleges, which are run and managed in all respects by the State Government of Meghalaya.

(II) There are fifteen (15) deficit (non-government) Colleges recognized u/s 2(f) and Section 12B of the UGC Act, 1956. Hundred percent of the expenditure towards the payment of pay and allowances of the staff is borne by the State Government and the Colleges, in their turn, deposit 60% of their income collected as fees from the students, to the Government while retaining 40% of the income to defray other expenses of the Colleges.

(III) There are ten (10) ad hoc (non-Government) Colleges including the petitioners' College and 75% of the recurring grant for pay and dearness allowances against some or all the sanctioned posts are borne by the State Government while the remaining 25% is to be borne by the Governing Body of the College concerned. Such Colleges under the ad hoc grant-in-aid system are also given non-recurring grant for infrastructural development from time to time by the State Government. The petitioners' College being one recognized u/s 2(f) and Section 12B of the UGC Act, 1956 also used to receive central assistance from the UGC for books and equipments for the years 2005 and 2006.

(IV) There are 25 private Colleges, which do not receive any grant either from the State Government or from the UGC.

8. The ad hoc grant-in-aid given to the petitioners' College for the last about two decades, had been discontinued w.e.f. 1.1.2007 without assigning any reason whereas 9 out of the 10 Colleges under the ad hoc grant-in aid system, are still

allowed to enjoy the financial assistance from the State Government. It is submitted that the very fact of singling out the college of the petitioners' Association by the Government-respondents for denial and discontinuation of the financial assistance under the ad hoc grant-in-aid system w.e.f. 1.1.2007 is not only arbitrary and discriminatory but it has also resulted into deprivation of pay and allowances of the members of the petitioners' Association. The above is the gist of the argument of the Learned Counsel for the petitioners, who submits that in the factual matrix, as discussed above, an effective interference from this Court is called for. Thus, the issue to be adjudicated upon in this writ petition is whether the discontinuance of ad hoc grant-in-aid to the College of the petitioners' Association w.e.f. 1.1.2007, in the manner indicated above, is arbitrary, discriminatory, and unjustified so as to warrant an interference from this Court or not.

9. Affidavit on behalf of the respondent Nos. 1 and 2 have been filed on 28.1.2009. The explanation given, in the affidavit, for discontinuation of the ad hoc grant-in-aid to the College w.e.f. 1.1.2007, as it can be ascertained from the pleading of the respondent Nos. 1 and 2, is that there were two parties opposing each other with regards to the reconstitution of the Governing Body of the college, the term of which last expired on 1.8.2006. Another ground is that the appointment of the acting Principal was made without the post being advertised, and without approval of the State Government and this was considered as a mal-administration which have ultimately led the Government to discontinue the ad hoc grant-in-aid to the petitioners' College. In order to appreciate the issues, now being adjudicated, in their correct prospective, it may be pertinent to refer to some judicial pronouncement made by this Court on 24.4.2008 in WP(C) No. 26 of 2008 which was filed by the Governing Body of the Raid Laban College, the College of the petitioners' Association, challenging an order dated 1.2.2008 issued by the Commissioner and Secretary to the Government of Meghalaya, Education Department", for taking over the control and management of the College by appointing a Joint Director of Higher and Technical Education as the administrator for the control and management of the College and also to function as the Principal of the College etc. The writ petition was allowed by this Court by quashing the aforesaid order dated 1.2.2008 issued by the Government and this Court also held that Assam Aided College Management Rules, 1965 was applicable only to the deficit Colleges, mentioned above, but not to the private Colleges receiving only ad hoc grant-in-aid. The Autonomy of the Raid Laban College as a private college was restored and any interference from the Government in the control and management of the college was ruled out till appropriate rules to govern ad hoc grant-in-aid was framed and finalized by the Government.

10. The State Government filed a writ appeal, being No. W.A. No. 8 of 2008, challenging the aforesaid order dated 23.4.2008 passed in WP(C) No. 26 of 2008 but the same was dismissed by a Division Bench on 15.5.2008. The Division Bench further held that if any person or group of persons is aggrieved by the

Constitution of the Governing Body of the college in terms of Article 13 of the Society of the College, it is for the aggrieved party to go to civil court to ventilate their grievances.

11. From the perusal of the judgment of Single Bench and Division Bench as referred to above, it appears that the Government has failed, in their attempt, to take over the control and the management of the College, as discussed above, and interference in the control and management of the College by the Government was not approved by this Court in view of the Autonomy of the College as a private College. Secondly, the appointment of the acting Principal which is only a stop gap arrangement, has nothing to do with the continuation or discontinuation of the ad hoc grant-in-aid to the College. Therefore, this Court is of the opinion that there is no nexus between the object sought to be achieved and action taken by the government respondent i.e., discontinuation of the ad hoc grant-in-aid to the College in question. Mr. Sahewalla, the Learned Senior Counsel appearing for the respondent Nos. 3 and 4 submits that the process for appointment of Principal of the College, on regular basis, has already been initiated and soon a regular Principal is likely to be appointed.

12. There is no doubt that the growing demand of College level education cannot be met only by the Government and the deficit colleges whereas there is a Constitutional obligation on the part of the State Government to impart education to the young citizens of this country in terms of the mandate of the Article 21 read with Article 39 of the Constitution of India and as such the system of recognized college under the ad hoc grant-in-aid and private college came into being, to meet the every increasing demand of the students. The Raid Laban College has come to occupy a unique place in the college education in the State of Meghalaya and this is well established from the number of students enrolled in the college. According to Annexure-6 to the writ petition, highest number of students have been enrolled in the Raid Laban College from among the ad hoc and private colleges and number of students enrolled is also higher than the number of students enrolled in 9 of the deficit colleges and as such the college has become the subject of envy to many vested interest. In the facts situation stated above, it appears that discontinuation of the ad hoc college grant-in-aid to the Raid Laban College w.e.f. 1.1.2007 is arbitrary, unjustified and discriminatory. In support of the above contention, a judgment State of Maharashtra Vs. Manubhai Pragaji Vashi and others, has been pressed into service by the Learned Counsel for the petitioners. In the aforesaid case, grant-in-aid was provided by the Government of Maharashtra to Arts, Science and Commerce Colleges and also to professional colleges like Engineering, Medicine etc. but no grant-in-aid was provided to recognized non-government Law Colleges imparting legal education. The Apex Court came to the conclusion that singling out legal education in recognized private Law Colleges for denial of the grant-in-aid, is an act of hostile discrimination and is against the mandate of the Article 21 and Article 39 of the Constitution and consequently, the State of Maharashtra was directed to accord grant-in-aid to recognized private Law

Colleges. The relevant portion of the direction of the Apex Court is reproduced herein below -

We direct the State of Maharashtra to the following effect:

Government is directed to extend the grants-in-aid scheme to all government-recognized private law colleges on the same criteria as such grants are given to other faculties, viz., Arts, Science, Commerce, Engineering and Medicine from Academic year 1995.

13. It is submitted by the Learned Counsel for the petitioners, Association that the aforesaid case is squarely applicable in the instant case, more so, because, in the case cited above, grant-in-aid was directed to be provided for the first time whereas grant-in-aid already given to the petitioners' college for nearly two decades, was discontinued without assigning any tenable reasons and justification.

14. The learned Advocate General who appears on behalf of the respondent Nos. 1 and 2 has fairly submitted that the State Government is not adverse to providing grant-in-aid to the petitioners' college, in other words, the State is not opposed to the continuation of grant-in-aid to the Raid Laban College but because of the reasons stated in the affidavit, the same has been discontinued.

Admittedly, UGC has framed Regulation under UGC Act and appointment of the Principal, both in Government and private colleges, are to be made in accordance with the procedure laid down in the UGC Regulation from among the candidates having the requisite qualification. Undeniably, the aforesaid Regulation framed by the UGC is holding the field. The officers, from the Directorate of Higher and Technical Education, Meghalaya, who are present before the court, have fairly admitted that none of the Principals of the college in Meghalaya have been appointed in accordance with the procedure laid down in the regulation of UGC. Therefore, the non-appointment of the Principal, which was taken as a ground for discontinuation of the ad hoc grant, is unsustainable in law and government cannot, possibly, insist upon the appointment of the Principal in the college in question, contrary to the procedure prescribed by the UGC Regulation inasmuch as the appointment of Principal in other colleges in term of the UGC regulation is not being insisted upon by the Government.

15. Relying upon the principle laid down by the Apex Court in State of Maharashtra v. Manubhai Pragaji Vashi and Ors. (supra) and keeping in view the fair and reasonable submissions of the Advocate General and the admission made by the Directorate officials as discussed above, this Court is of the opinion that discontinuation of the grant-in-aid from 1.1.2007 to the Raid Laban College by singling out from amongst the 10 ad hoc colleges, is arbitrary and a case of hostile discrimination is also made out. Accordingly, the respondent Nos. 1 and 2 are directed to release the arrear ad hoc grant-in-aid to Raid Laban College w.e.f. 1.1.2007 within a period of three (3) months from the date of receipt of a certified copy of this order and treat the college of the petitioner at par with

other ad-hoc colleges for the purpose of current and future grant-in-aid and other recurring grants, as permissible in law. The respondent Nos. 3 and 4 are also directed not to deduct any amount from the ad hoc grant-in-aid sanctioned by the Government, for payment towards pay and dearness allowances of the teaching and non-teaching staff of the colleges unless members of both teaching and non-teaching staff voluntarily agree to donate a part of their pay and allowances towards the college fund for development. It is also made clear that there shall be no forcible deduction from the pay and allowances of the members of the petitioners' Association and the non-teaching staff of the college.

16. With the above observations and direction, the writ petitions stand allowed.