(1997) 03 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20160 of 1994

Recognised Schools Managements Association APPELLANT

Vs

Govt. of A.P. and Another RESPONDENT

Date of Decision : 19-03-1997

Acts Referred:

Citation : (1997) 3 ALT 166

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : E. Manohar, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The Constitutional validity of the Andhra Pradesh Private Educational Institutions Maintenance Grant (Regulation) Act, 1995 (Act 11 of 1995) and the G.O.Ms. No. 320, Education (PS-2) Department, dated 16-9-1994 have been assailed in this Writ Petition.

2. Initially the Writ Petition was filed challenging the A.P. Ordinance No. 11 /94. But, however after the Rule Nisi was issued, Ordinance was replaced by the Act No. 11 of 1995 and therefore the Act came to be challenged.

3. The petitioner is an Association of Managements of Recognised Schools. It is stated that the schools were admitted to grant-in-aid in full in respect of teaching and non-teaching and staff members. They are also entitled to 10% of the amount paid to staff towards the maintenance grant, which is meant to defray expenses such as rents, repairs, furniture etc. These schools admitted to grant-in-aid were prohibited from charging any tuition fee or collecting any donation from the public or from the students. However, the Secondary Schools are permitted to collect Rs. 5/- per student other than S.C., S.T., and B.C. Communities. Under the relevant Rules under the grant-in-aid scheme, the schools were entitled to 10% grant and the same was reduced to 6% of 1974 Scales of Pay. Against this reduction, the petitioner filed Writ Petition No. 1159/1990 for direction to pay

maintenance grant at 10% of existing pay scales and not 6% of the basic pay of 1974 and the Writ Petition was allowed on 7-3-199" directing the Government to release the grant at 6% on basic pay that is being drawn from year to year. Against the said decision, the matter was carried in appeal by the Government and the same was dismissed on 4-2-1993. Under the said Act, power to fix the quantum of maintenance grant was vested with the Government for each financial year commencing from 1-4-1978. If the maintenance grant so fixed is in excess of the grant already granted to the institution either it is adjusted in future grants or recovered from the institution. The said Act is challenged on the ground that it was brought into effect only to nullify the judgment of this Court and such power is not vested with the Legislature and therefore the Act has to be struck down.

4. The Government filed counter stating that the maintenance grant was released to the Aided Schools as per Rule 27-A of Grant-in-aid Code, which states that in the case of Aided Secondary Schools, the amount of grant payable in the year normally shall comprise of teaching grant equal to the extent of salaries including allowances of the teaching, non-teaching staff basing on the preceding financial year excluding the expenditure. Apart from teaching grant, a maintenance grant equivalent to 10% of the teaching grant is payable. Under Rule 10 of the Code, it is also provided that the Government reserves the right to refuse or withdraw any grant at their entire discretion and such withdrawal shall not be a debt enforceable by suit or any other legal process. The Rules of grant-in-aid are non-statutory rules and they are framed under Executive power of the State. It is their case that management cannot claim grant as of right. In 1974, the Liberalised Pension Rules are made applicable to the Teachers, and staff of the aided schools. Consequently, the Government ordered stoppage of payment of Government contribution of 3% on Teachers Provident Fund Account. The management was required to contribute 3% of the Provident Fund amount, of an individual which was also taken into account as admissible account under 10% maintenance grant. Since the management need not pay the 10% to Teachers Provident Fund, the Director of School Education ordered reduction of maintenance grant payable to schools with effect from 1974-75, and it was fixed at 6%. However, in 1978, the D. A. merged scales were implemented. Since the payment of maintenance grant is linked with the quantum of salaries of both teaching and non-teaching staff, it was getting increased whenever the pay scales are revised resulting in huge expenditure to the Government. Therefore, the Government ordered that any D.A. sanctioned from 1-8-1972 shall not be taken into account for the purpose of computing the maintenance grant. Thus, the maintenance grant was reduced from 10% to 6%. The Government also permitted the aided managements to collect Rs. 5/- per student per month towards building fund. Thus, they are collecting the said amount in the beginning of the academic year in lumpsum. With regard to Writ Petition No. 1159/91, the Government submits that it was disposed of on 7-3-1991 directing the Government to release the maintenance grant @ 6 % duly taking into account

the basic pay that is drawn from year to year. If the maintenance grant is to be released at 6% of the scales revised from time to time, there will be heavy burden on the State exchequer and the expenditure comes to Rs. 78 crores. Therefore, the Government submits that the Act is quite legal and valid and the percentage of maintenance grant fixed under the G.O.Ms. No. 329 (sic. 320), dt. 16-9-1994 also equally sustainable.

5. The learned Senior Counsel Mr. E. Manohar submits that the State Legislature cannot encroach upon the judicial field and cannot be permitted to over-rule the judicial decision binding between the parties by bringing into an enactment and such an Act is unconstitutional. He relies on the judgment of the Supreme Court reported in S.R. Bhagwat and others, Vs. State of Mysore, and Division Bench judgment of this Court reported in the Govt. of A.P. Hyderabad, Rep. by its Secretary, Education Department, Hyderabad v. G.V.K. Girls High Schools, Tadikonda, Guntur District 1966 (3) ALT 820 (D.B.). On the other hand, the learned Government Pleader submits that it is always permissible for State Legislature to remove the basis of the judgment. He relies on the judgment of the Supreme Court reported in Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, , M. Ranga Reddy v. State of Andhra Pradesh and Ors. 1987 (2) ALT 56 (NRC), State of Orissa and Anr. v. Gopal Chandra Rath and Ors. (1957) 6 SCC 242, Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., , State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., .

6. Before adverting to the decisions cited by the learned Counsel, it is necessary to refer to the judgment of the learned single Judge and also the subsequent enactment brought into effect by the State Legislature.

7. The District Educational Officer, Krishna issued directions for payment of maintenance grant in accordance with 1978 pay scales, but not on the pay scales as revised from time to time. The said Circular was challenged by the Writ Petitioners by the very same Writ Petition in Writ Petition No. 1159/91. The learned single Judge of this Court by an order dated 7-3-1991 allowed the Writ Petition with a direction to release and pay the maintenance grant @ 6% of teaching grant duly taking into account the basic pay that is drawn from year to year. Obviously, the said directions were issued keeping in view the Rule 27-A of the Grant-in-aid Code. The Appeal filed by the State was also dismissed on 4-2-1993. Thus, the order in the Writ Petition became final on the inter-partes. The learned Single Judge in the said Writ Petition observed that :

"When the salaries have been increased due to revision to pay scales and the Government has not amended or modified the rules, the teachers are entitled for the salary that was being drawn during that year. There is no basis or nexus that is sought to be explained by the Government that they will pay only on the basis of basic pad in 1974. The Government never expressed that the pay scales that were being paid in 1974 can be taken into account. So long as there is no amendment to the rule and so long as the right to have the grant at 6% on the basic pay is there, the salary that is being paid during that year alone has to be taken into consideration unless and until the rule is amended or modified"

Act No. 11 of 1995 was enacted to regulate fixation and payment of maintenance grant to private educational institutions in the State of Andhra Pradesh and matters connected therewith or incidental thereto. The objects and reasons are as follows:

"Whereas the grant-in-aid Code which is a non-statutory set of rules governs the payment of grant-in-aid to the private educational institutions:

And whereas, under Rule 27-A (ii) thereof, there is a provision for payment of maintenance grant equal to ten per cent of the teaching grant payable to private educational institutions;

And whereas, the payment of maintenance grant as a percentage of the teaching grant results in an unintended hike in the maintenance grant as and when the scales of pay of teachers are revised thus requiring the concerned authorities to pass suitable orders with regard to payment of maintenance grant as and when the scales of pay of teachers are revised: And whereas, accordingly the District Educational Officer, Krishna, in Circular Rc. No. Bl/90, dated the 24th October, 1990 among other things ordered for the payment of maintenance grant according to 1978 pay scales of the teachers;

And whereas, the General Secretary, Krishna District Aided and Unaided Schools Managers, Correspondents Association and others have challenged the said Circular in the High Court of Andhra Pradesh in W.P. No. 1159 of 1991;

And whereas, the High Court of Andhra Pradesh in their Judgment, dated the 7th March, 1991 in W.P. No. 1159 of 1991 directed to release the maintenance grant at six percentum on the basic pay of the teachers that is being drawn from year to year.;

And whereas, Writ Appeal No. 963 of 1991 filed by the Government against the said judgment has been dismissed by the High Court on the 4-2-1993;

And whereas, the High Court of Andhra Pradesh in its order dated the 9th April, 1993 in W.P. No. 14493 of 1992 directed the Government to release the maintenance grant to the petitioners therein at six percentum as ordered in W.P. 1159 of 1991;

And whereas, it is evident from Sections 45 and 46 of the Andhra Pradesh Education Act, 1982 that the private educational institutions cannot claim grant-in-aid as a matter of right;

And whereas, the Government will have to incur a huge expenditure of more than 78.25 crores of rupees if maintenance grant is to be paid at six percentum of the basic pay of the teachers that is being drawn from year to year, thus seriously hampering the developmental activities of the State;

And whereas, on a review of the whole issue it is considered necessary to empower the Government to fix the quantum of maintenance grant retrospectively for each year commencing from the 1st April, 1978 in public interest;

And whereas, the Bill to regulate the fixation and payment of maintenance grant to private educational institutions in the State of Andhra Pradesh and matters connected therewith or incidental thereto has been introduced in the Legislative Assembly of the State, has not been passed by the Legislative Assembly".

The learned Counsel submits that a close reading of the objects and reasons, it is clear that the decision was taken to bring the present Act to circumvent the decision of the High Court in Writ Petition No. 1159/91 as confirmed by the Division Bench, wherein it was directed to release the maintenance grant-in-aid @ 6% on the basic pay of the teachers that is being drawn from year to year. The effect of implementation of the direction of the judgment would be Rs. 78.25 crores and thereby it seriously hampers the developmental activities of the State. Therefore, on review of the whole issue, it was considered to fix the quantum of maintenance (grant) for each year commencing from 1st April, 1978 in the public interest and the percentages of grant of maintenance was fixed under the G.O.Ms. No. 329 (sic. 320), dated 16-9-1994.

8. It is now well settled by the decisions of the Supreme Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power of enacting a Statute or a Provision which in substance over-rules such judgments and not in the realm of a legislative enactment which displaces the basis .or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. The Supreme Court in Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. Vs. State of Karnataka, , observed:

"the principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate Court or Tribunal".

In G.C. Kanungo and D.C. Routray Vs. State of Orissa, , the Supreme Court observed as follows:

"Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act in exercise of the power conferred upon them by that Act itself. When the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State''s judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of Courts, are sought to be nullified by the 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power (See Cauvery Water Disputes Tribunal (1993(1) SCC 96 (II). From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of a basic feature of the Constitution - the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconstitutional having regard to the well-settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial tribunal as the Special Arbitration Tribunal under the 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under the 1984 Amendment Act to decide arbitral disputes to which State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation"

In S.R. Bhagwat''s case (1st cited supra), Mysore State Civil Services (Regulation of Promotion, Pay and Pension) Ordinance No. I of 1973 which culminate into Karnataka State Civil Services (Regulation of Promotion, Pay & Pension) Act, 1973 was under challenge. The petitioners were the Deputy Conservator of Forests in the former State of Bombay and Hyderabad. On States'' Re-organisation, their services were transferred to new State of Mysore u/s 115 of the States Re-organisation Act, 1956. Consequently, the issue arose with regard to the status of the post and also inter-se seniority. In the provisional seniority, the petitioners were placed at junior ranks and the matter was agitated by them at number of levels. Final Seniority List was prepared in which the petitioners became seniors and the said list fixing the Final Seniority List became final. But, in the interregnum, the seniors in the provisional seniority list who became juniors in the final seniority list were promoted. In the above back-ground, the petitioners claimed that they were seniors in the Final Seniority List to many juniors and the juniors got promoted in the meanwhile, on the basis of the higher ranking in the provisional seniority list which was earlier operative till it got superseded by the final seniority list as aforesaid. As their claim for being granted deemed dates of promotions with all consequential benefits was not accepted by the State, the petitioners filed Writ Petitions before the High Court and the Division Bench allowed the same and granted the relief to the petitioners in the following terms:

"We, therefore, make a common order in all these writ petitions that the case of each of these petitioners beconsidered for promotion to the post of next above the cadre of the post he was holding on 1-11-1956 as on the date on which any one of his juniors according to the final inter-State Seniority List was for the first time so promoted and that if he is found fit and promoted, he be given all the benefits consequential thereon including consideration for promotion to higher cadres and financial benefits. Time three months".

The aforesaid decision of the Division Bench became final between the parties and the petitioners were given the deemed dates of promotion. But, however, when they were not granted the consequential benefits of arrears of pay, they filed Contempt Petition. When the Contempt Petition was pending, an Ordinance was brought and subsequently which culminated into Act by which the actual financial benefits directed to be made available to the petitioners, pursuant to the orders of the Division Bench of the High Court, which became final were sought to be taken away. Under these circumstances, the Writ Petitioners filed the Writ Petition under Article 32 before the Supreme Court for a declaration that the impugned provision so far as they have the effect confiscating the financial benefits made available to them by way of Writ of mandamus issued by the Division Bench of the High Court are null and void and the impugned over-ruling of binding judicial decisions to the extent it seeks to deprive of their fundamental rights guaranteed under the Constitution of India. The preamble of Karnataka Act 11 of 1974 was as follows:

"An Act to provide for the prospective promotions of civil servants, and to regulate the pay, seniority, pension and other conditions of service of civil servants in the State of Karnataka including those that are allotted or deemed to be allotted to serve in connection with the affairs of the State of Karnataka under or in pursuance of Section 115 of the States Reorganisation Act, 1956;

Whereas on the basis of the ranking of civil servants in the several inter-State seniority lists prepared in pursuance of Sub-section (5) of Section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) Courts have directed the making of retrospective promotions to statutory and other offices;

And whereas held by the Supreme Court in Ajit Singh Vs. State of Punjab and Another, and in Income Tax Officer, Alleppey Vs. M.C. Ponnoose and Others, , appointments of civil servants to offices in which statutory functions are exercisable cannot be made with retrospective effect;

And whereas retrospective promotions involve payment of sums of money to persons who have not worked in the promotional posts of officers concerned, to the detriment of the finances of the State, besides involving retrospective reversions rendering invalid the statutory functions discharged by the persons reverted;

And whereas retrospective promotions preclude the determination of the suitability of the civil servants to hold the promotional posts or offices and will enable them to continue in such posts or offices only on the ground of their eligibility to promotions, resulting in the continuance of even unsuitable civil servants in promotional posts or offices to the detriment of public interest;

And whereas it is necessary and expedient to provide against the said consequences;

And whereas the Central Government has given previous approval under the proviso to Sub-section (7) of Section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) communicated in letter No. 5/5/73-SR (S) dated 22-2-1973 of the Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms".

The Supreme Court held that at paragraphs 3 and 4 showed the legislative intent to bypass the judgment of the Division Bench of the High Court or any other such final judgment in favour of the parties concerned that they may be given retrospective promotions and all monetary benefits pursuant thereto. Para 18 of the said judgment is extracted below:

" A mere look at Sub-section (2) of Section 11 shows that the respondent State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decree and orders of any Court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of Sub-section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11 (2) therefore, must be held to be an attempt on the part of the State Legislature to legislatively overrule binding decisions of competent Courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had not become final it could rely upon the relevant provisions of the Act which were given retrospective effect by Sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the petitioners concerned deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in other identical matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one''s comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only Sub-section (2) of Section 11 seeks to bypass and override the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting Sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced".

Therefore, the Supreme Court struck down Section 11 Sub-section (2) as unconstitutional which denied the benefit of payment of arrears of salaries consequent on retrospective promotion.

9. The Division Bench of this Court in G.V.K. Girls High School''s case (2nd cited supra) was dealing with the appeal filed by the State against the judgment of a learned single Judge in Writ Petition No. 15879/1990 holding inter alia, that the Respondents School is entitled to arrears of grant-in-aid and the Government Order in G.O.Ms. No. 138 cannot be given effect to. The School was granted grant-in-aid from 1-9-1985 to 28-2-1986 amounting to Rs. 98,400/-. Thereafter, it was stopped that there were some complaints against the Schools for which High Level Committee was constituted to go into the irregularities committed by the various institutions and to identify if any misuse was made by the institutions in respect of the grant-in-aid. The Committee enquired into these aspects and submitted a Report, which was accepted by the Government. Thereafter G.O.Ms. No. 326, dated 17-10-1989 was issued admitting the institutions to grant-in-aid including the said School. However, in para 8, regarding the payment of arrears of salary, it was stated that the orders will be issued subsequently. Thereafter, Government issued G.O.Ms. No. 138, dated 25-4-1994 to the effect that no arrears would be paid to the educational institutions which were admitted to grant-in-aid vide G.O.Ms. No. 326. Against the said order, the Writ Petition was filed by the School Management. The learned single Judge after considering the various provisions of the Act held that the school was entitled for arrears of grant-in-aid retrospectively and the G.O.Ms. No. 138 cannot be given effect. While the appeal was filed by the State, a contention was raised on behalf of the State that Act No. 34 of 1995 was introduced by the State Legislature called A.P. Educational Institutions Grant-in-aid (Regulations) Supplementary Provisions Act, 1995 proclaimed to have come into effect from 17-10-1989. The Preamble of the Act is extracted below:

"Whereas in G.O.Ms. No. 326, Education, dated the 17th October, 1989 orders were issued admitting certain Educational Institutions recommended by the High Level Committee to grant-in-aid with effect from the 1st November, 1989, subject to the fulfillment of certain conditions specified therein;

And whereas in the said G.O.Ms. No. 326, Education, dated the 17th October, 1989 no specific commitment was made that arrears of grant-in-aid would be paid but it was only mentioned that separate orders will be issued in regard thereto;

And whereas vide G.O.Ms. No. 178, Education (SSE.1) Department, dated the 23rd July, 1990 certain schools were admitted to grant-in-aid with effect from 1st November, 1989, subject to certain conditions specified therein;

And whereas in G.O.Ms. No. 138, Education, (PS.2) Department, dated the 25th April, 1994 orders were issued to the effect that no arrears of grant-in-aid to any of the Private Educational Institutions admitted to grant-in-aid with effect from the 1st November, 1989 shall be paid and these orders were in accordance with the right reserved by the Government in G.O.Ms. No. 326, Education dated the 17th October, 1989, to take a separate decision with regard to the payment of arrears of grant-in-aid".

Section 2 provided as follows:

"Notwithstanding anything contained in any judgment, decree or order of any Court or authority or any order issued by the Government or any authority subordinate to the Government, no arrears of grant-in-aid shall or shall ever be deemed to be payable to any private educational institution admitted to grant-in-aid in pursuance of G.O.Ms. No. 326 Education (SSF.1) Department. dated the 17th October. 1989 and G.O.Ms. No. 178, Education (SSE.1) Department, dated the 23rd July, 1990 for the period between the 1st September, 1985 and 31st October, 1989 and accordingly,

(a) no suit or other proceeding shall be maintained or continued in any Court against the Government or any person or authority whatsoever for the payment of any arrears of grant-in-aid for the said period; and

(b) no Court shall enforce any decree or order directing the payment of any arrears of grant-in-aid".

10. The Division Bench after referring to G.C. Kanungo and D.C. Routray Vs. State of Orissa, and also State of Gujarat Vs. Narges K. Panthaky, and Indian Aluminum Co. v. Kerala (1996(1) S.C.C. 78), culled out the test for sustaining the enactment in the following terms:

"Tests finally culled out are as follows:

(i) whether the legislature enacting the validating Act has competence over the subject matter;

(ii) whether by validation, the legislature has removed the defect which the Court had found in the previous law; and

(iii) whether the validating law is inconsistent with the provisions of Chapter III of the Constitution.

If these tests are satisfied, the Act can be held to be valid. Otherwise, it will be something which Judiciary has to do, which the Legislature would be doing and it is impermissible".

The Division Bench keeping in view the principles enunciated by the Supreme

Court held that the enactment (A.P. Act No. 34 of 1995) has in no way aimed at removing the defect in the earlier Government Orders or the enactment which rendered its executive action invalid and the Courts found fault on that score. It was out and out a legislation to nullify the instance judgment or any judgment, decree or order of any Court or authority by a declaration the shape of decree of legislature and the same cannot be sustained and has to be held invalid. The Bench found that grant-in-aid cannot be denied on the ground of paucity of funds. Following the judgment in State of Maharashtra Vs. Manubhai Pragaji Vashi and others, and State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others, , the Bench declared Rt. No. 34 of 1995 to the extent it purported to set aside the impugned judgment as ultra-vires and not binding on the petitioner-respondent. The Appeal was accordingly dismissed. Therefore, it has to be seen whether the enactment as brought into effect to nullify the effect of the judgment, which became final between the parties. The learned Counsel for the petitioner submits that the very recitals in the objects and reasons in Act No. 11/95 are clear in terms to get over the huge payment of Rs. 78 crores (according to the learned Counsel, it is not correct figure), such an enactment would be impermissible.

11. As can be seen that the grant-in-aid was being released to the institutions under A.P. Private Educational Institutions Grant-in-aid Regulation Act, 1988 which was brought into effect on 28-8-1988. This maintenance grant under Rule 27-A of the Grant-in-Aide Code, is correlated to the teaching grant. The decision of the learned single Judge fixing 6% maintenance grant on the basic pay of teachers from year to year became final and to get over such payment of arrears, in my considered view, such an Act was introduced. The facts and the legal position in G.V.K. Girls High School''s case (2nd cited supra) relate to the teaching grant under the Grant-in-aid Regulation Act, while the matter under consideration relate to the maintenance grant, which is inter-linked to teaching grant. Since the Division Bench has clearly held that the enactment was brought into effect to nullify the judgment of the learned single Judge, even though no reference was made on the objects and reasons of the Bill. But, in the instant case, it is clearly brought out that if the judgment in Writ Petition No. 1159/91 is to be implemented that costs ex chequer a sum of Rs. 78.26 crores and seriously hampering the development activities of the State and it is not in the public interest. This is sufficient to indicate that the Act was brought into effect to nullify the effect of the judgment and no other view is possible under the circumstances of the case.

12. But, however, the learned Government Pleader was very much emphatic that the State has got power to make legislation as Legislature can remove the basis of the judgment by bringing the proper amendment to the Law. In Utkal Contractors'' case (3rd cited supra at Page 1459), the Supreme Court held as follows:

"A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail, to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance, "the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of any Act may well indicate that wide or general words should be given a restrictive meaning"

(See Halsbury, 4th Edn. Vol. 44 Para 874)"

13. It was a case where the petitioners therein were holding long term licence from the Government of Orissa for collection of Sal seeds from specified forest division on payment of royalty. The State legislature enacted Orissa Forest Produce (Control of Trade) Act, 1981 with effect from 9-12-1982. Consequently, the Government refused to accept Royalty from the petitioners on the ground that the notification fixing the effective date of the Act has the effect of rescinding the existing contracts. The Supreme Court declared that the notification was not applicable to the forest produce grown in Government forests and therefore the contract cannot be rescinded. However, the Government subsequently promulgated ordinance validating the notification u/s 5. When the Ordinance was challenged, it was upheld in M/s. Utkal Contractors'' case (3rd cited supra at page 2310). In Utkal Contractors'' case (3rd cited supra at page 2310), the Supreme Court held that the validity of the statutory notification cannot be judged merely on the basis of the objects and reasons accompanying the Bill nor could it be tested by the Government policy taken from time to time. The Executive policy of the Government or the Statements of the Objects and Reasons of the Act or Ordinance cannot control the actual words used in the legislation. In The Central Bank of India Vs. Their Workmen, , the Supreme Court

stated that "the Statement of Objects and Reasons is not admissible, however, for construing the section, far less can it control the actual wordslused". In State of West Bengal Vs. Union of India, , it was observed at page 1247.

"It is however well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation. But, we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments'' rights as owner of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute"

The principal issue that falls for consideration is whether the State while purporting to bring the enactment has encroached upon the judicial power and set aside the binding judgment of this Court it was observed in Utkal Contractors'' case (3rd cited supra at Page 2310) thus:

"The legislature may, at any time, in exercise of the plenary power conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of Course, is subject to the legislative competence and subject to other constitutional limitation. The rendering ineffective of judgments or order of competent Courts by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the clauses of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. (See : Hari Singh and Others Vs. The Military Estate Officer and Another, , The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd., , I.N. Saksena v. State of M.P. (AIR 1976 SC 2250), and Misrilal Jain and Another Vs. State of Orissa and Another, "

In that case, having regard to the then existing provisions of the Act, the Supreme Court declared that the notification issued thereunder in relation to sal seeds did not apply to sal seeds grown in Government forests. The Act was suitably amended by the impugned Ordinance by removing the cause of ineffectiveness pointed out by this Court. The new provisions would now cover specified forest produce whether grown or found on land owned by private persons or on land owned by the State Government or in Government forests and the contracts relating thereto. Such contracts shall stand rescinded when a notification u/s 1(3) of the Act was issued. Therefore, it is not a case where the Judgment of High Court or Supreme Court was sought to be nullified. It is only a case where the ineffectiveness pointed out by the Court in Utkal Contractors'' case (3rd cited supra at page No. 1454) was sought to be removed. Therefore, this decision does not help the Government in any way. He also relies on the judgment reported in Govt. of A.P. reptd. by its Secretary, Education (SSE) Department, Hyderabad v. V.S.S. High School, Ramanagar, Visakhapatnam 1989 (2) ALT 151 wherein it was held that:

"once when the very basis is changed with retrospective effect by the Act, the foundation of the judgments is knocked out. If the newly added condition had been there in the G.Os. the Court would not have allowed the Writ Petitions. The Act has, with retrospective effect, altered fundamentally the conditions on which the decisions of the Court are based"

The Court observed that by impugned G.O. additional conditions to the conditions already prescribed in the said G.O. were added. In such a case, the power of legislature to give retrospective effect to an enactment was held valid.

14. In the instant case, the facts are different. As already found by me, with a view to get over the judgment of this Court, the enactment was brought into effect.

15. Another judgment relied on by the learned Govt. Pleader in Gopal Chandra Rath''s case (5th cited supra) wherein it is held that Legislature has power to validate the Act by removing the lacuna pointed out by any judgment and also retrospectively, but they cannot merely set aside or override the judgment of the Court. In the instant case, the Judgment of the Court was merely to the effect that the selection committee not having been constituted by the State Government as required under the Rules, the process of selection was got vitiated and the said infirmity was removed by changing the definition of the selection committee and consequently validating the appointments made by the committee during the period in question. This case is also of no assistance to the Government inasmuch as, no infirmity or lacuna was pointed out by the judgment. There was specific direction to pay the maintenance grant at 6%. In Mc. Dowell''s case (7th cited supra), the Supreme Court was dealing with the provisions of Andhra Pradesh Excise and Prohibition Act. The Supreme Court considering the Federal nature of our Constitution held that

"the power of the Parliament and the State Legislatures restricted in two ways. A Law made by a Parliament or a Legislature can be struck down by the Court on two grounds namely lack of legislative competence, (2) violation of any of the fundamentals guaranteed in Part-Ill of the Constitution or any other constitutional provisions. The grounds of invalidation must fall within the four corners of the two grounds mentioned above".

The Supreme Court further observed:

"It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz. (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (See Council of Civil Service Unions v. Minister for Civil Service (1984 (3) All. E.R. 935), which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue (See the opinions of Lords Lowry and Ackner in R v. Secretary of State for Home Dept., Ex. P. Brind (1991) (1) All.E.R. 720). It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted".

16. The aforesaid observation of the Supreme Court in the present context of the facts need not be gone into inasmuch as in the present case it is clearly established that the enactment was brought into effect only to nullify the judgment of this Court. Therefore, the Court need not go into the aspect whether the Act is violative of Articles 14 and 19 of the Constitution of India. Once, it is held that the Legislature lacks competence to enact a Law to annul or nullify the judgment of this Court, it is sufficient to hold that the Act is unconstitutional. Undoubtedly the Legislature has the power to validate any Act by removing the infirmity indicated in any judgment, even retrospectively. But, it cannot set aside, over-ride or annul a judgment of the Court. It is not a case where the Court identified certain infirmities or ineffectiveness or lacunae in the law and in order to set them right impugned Act was brought into effect.

17. For the foregoing reasons, Act No. 11 /1995 is declared unconstitutional. Consequently the G.O.Ms. No. 320, dated 16-9-1994 is held to be illegal and inoperative.

18. Accordingly, the Writ Petition is allowed. The Respondents are directed to work out the maintenance grant @ 6% as directed by the learned single Judge in Writ Petition No. 1159/91, dated 7-3-1991 and arrange to pay the same within a period of three months from the date of receipt of copy of this order. No costs.