

(2025) 09 OHC CK 1034

In the Orissa High Court

Case No : First Appeal Order No. 252 Of 2018

State Of Odisha & Ors

APPELLANT

Vs

Rabinarayan Panda & Ors

RESPONDENT

Date of Decision : 18-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 12, 21, 21A
Orissa Education Act, 1969 — Section 7C(1), 24B

Citation : (2025) 09 OHC CK 1034

Hon'ble Judges : Dixit Krishna Shripad, J

Bench : Single Bench

Advocate : S.B. Mohanty, M.K. Mohanty, M.R. Pradhan, T. Pradhan

Final Decision : Dismissed

Judgement

Dixit Krishna Shripad, J

1. This appeal, by the State and its Director of Higher Education, is filed under section 24-B of the Orissa Education act, 1969 for laying a challenge to the judgment dated 20.10.2017, whereby the State Education Tribunal, Bhubaneswar, having favoured respondents' G.I.A. Case No.720 of 2012, has directed the appellants herein as under:-

"This G.I.A. application is allowed. The order of release of grant-in-aid under Annexure-3 be modified. The Opposite parties are directed to fix the salary. of the applicants in terms of the resolution of the Government in the Education and Youth Department No.9760, dated 17.3.1979 w.e.f. 1.3.1988, The Opposite parties are further directed to release the differential arrear salary in favour of the applicants w.e.f. 1.11.2009 within four months from the date of communication of this order."

2. Learned AGA appearing for the appellants seeks to falter the impugned judgment contending that the Tribunal has ignored the mandate of Section 7-C(1) of the Orissa Education Act, 1969 to the effect that Grant-in-Aid is not a

matter of right, inasmuch as it depends on the purse size of the State; merely because the eligibility conditions are complied with, no right to grant would become choate enough to cast a correlative duty on the Government of the day; the Tribunal wrongly construed the Government Resolution No.9760 dated 17.03.1979, which provides that the eligibility to receive the minimum Grant-in-Aid is four years after the year of presentation of candidates in the final High School Certificate Examination, with minimum pupil strength of 200 or 140, as the case may be; the Tribunal erred in construing the Government Resolution No.400045 dated 23.09.1981 to the effect that the non-Government Aided High Schools are not liable to be subjected to qualitative assessment of the performance, especially when the said resolution was with retrospective effect. Lastly, the Tribunal grossly erred in construing the rulings cited on either side.

3. After service of notice, the private respondents, having entered appearance through their Advocates, resist the appeal making submission in justification of the impugned judgment and the reasons on which it has been constructed. Learned counsel refutes the submission of AGA that the Tribunal wrongly construed rulings cited at the Bar.

4. Having heard learned counsel for the parties and having perused the appeal papers, this Court declines indulgence in the matter for the following reasons:

4.1. The contention of learned AGA that the State is under no obligation to bestow Grant-in-Aid to the Schools even if all criteria are satisfied, appears to be too farfetched a proposition. Firstly, the Grant-in-Aid is regulated by Section 7-C(1) of 1969 Act and therefore, an argument which presupposes absolute discretion, offends the Rule of Law, which is a basic feature of Constitution of India, as held by the Apex Court in *Kesavananda Bharati Sripadagalvaru v. State of Kerala*, AIR 1973 SC 1461. Lord Halsbury in *SHARP v. WAKEFIELD*, (1891) AC 173 in more than a century back observed that discretion means, according to rules of reason & justice and not whims & fancies of the authorities. After all, discretion is not Mogul discretion, ours being a constitutionally ordained Welfare State. Secondly, although it is true that the purse size of the Government of the day limits the grant, no statistical data have been furnished as to adjudge pleaded paucity of funds. Thirdly, right to education partakes the character of fundamental right both under Articles 21 & 21A of the Constitution. Added, there is Right to Education Act, 2009 enacted by the Parliament. Section 7-C(1) of the 1969 Act thus cannot be chanted to justify contention of the kind. Even in the matters of privilege, State & its instrumentalities under Article 12 have to be just, reasonable & non-discriminatory.

4.2. There is no dispute that the School in question was established in the year 1980 and it secured provisional recognition for opening of Class-VIII vide order dated 24.09.1983, regular recognition was granted by the Board of Secondary Education on 19.02.1983 for presenting the first batch of students in the High School Certification Examination-1984. Since then, students are regularly appearing in the said examination. It is also not in dispute that during the

relevant period the School in question was the only High School in the Gram Panchayat. Obviously, it is governed by Resolution dated 17.03.1979 that provides for minimum Grant-in-Aid four years after the presentation of the students in the High School Certification Examination. As on 01.03.1988, it had done it for four consecutive years. The Government, vide Resolution No.400045 dated 23.09.1981, dispensed with the requirement of qualitative assessment. Therefore, the contention as to non-compliance of requisite condition, is liable to be rejected.

4.3. The vehement submission of learned AGA that the Tribunal grossly erred in construing a slew of decisions cited from the side of appellants, is bereft of merits. The Tribunal has considered as many as three rulings of the Apex Court in *Laxman Dundappa Dhamanekar v. Management of Vishwa Bharata Seva Samiti*, AIR 2001 SC 2836, *Union of India v. Tarsem Singh*, (2008) SCC (L&S) 765 & *State of MP v. Jogendra Srivastava*, 2009 (7) Supreme Today 163. What is that actual error the Tribunal has committed in granting relief to the respondents herein has not been demonstrated.

In the above circumstances, this appeal, being devoid of merits, is liable to be dismissed and accordingly it is, costs having been made easy.

Appellants to implement the order of the Tribunal within an outer limit of three weeks, in letter & spirit. If delay is brooked, the respondents may move an appropriate application for taking punitive action against the errant officials, which may include heavy exemplary cost payable by them from their pocket.

Web copy of judgment to be acted upon by all concerned.