

(2022) 08 UK CK 0049

In the Uttarakhand High Court

Case No : Special Appeal No. 166 Of 2019

State Of Uttarakhand Through Secretary Primary Education &
Others

APPELLANT

Vs

Manavta Higher Primary School

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Uttarakhand School Education Act, 2006 — Section 24

Citation : (2022) 08 UK CK 0049

Hon'ble Judges : Vipin Sanghi, CJ; Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : Anil Kumar Bisht, Anil Kumar Joshi

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1) The present Special Appeal is directed against the judgment dated 06.08.2018, passed by the learned Single Judge in Writ Petition (M/S) No. 1820 of 2017. The learned Single Judge has allowed the said writ petition preferred by the respondent Manavta Higher Primary School, Gandhi Nagar, Bindukhatta, District Nainital, and directed the appellant to treat the said school for grant-in-aid since 04.02.2014, when the said school was brought under grant-in-aid.

2) The admitted position is that the State Government issued an order on 04.02.2014, in respect of several schools, including the respondent school, thereby bringing the said school under grant-in-aid. The order dated 04.02.2014 itself records that the respondent school was a recognized school. Despite being brought under the grant-in-aid, actually, the grant-in-aid was not released to the respondent school. On 01.02.2016, the Government issued another order, whereby granting token grant to several institutions, including the respondent school for the year 2015-16. This was on the premise that there were certain deficiencies in respect of the institution to which token grant was issued. The

deficiency pointed out qua the respondent school was that it was situated on forest land. We may observe that there were other schools as well, situated in the same village, which were also granted token grant on the same premise that they were situated on forest land. One such institution is Janta Purva Madhyamik Vidyalaya, Chitrakut, Tiwari Nagar, Bindukhatta, Nainital. Once again, a token grant was granted to the respondent school on 23.12.2016, for the year 2016-17.

3) Aforesaid being the position, the respondent preferred the writ petition in question to seek a direction to the authorities to include the respondent school's name in the list of aided schools. The writ-petitioner sought parity with other similarly situated schools. The petitioner pointed out in the writ petition that the Janta Purva Madhyamik Vidyalaya, Chitrakut, Tiwari Nagar, Bindukhatta, Nainital had, in fact, been granted full aid vide communication dated 04.01.2017, even though the said school was also situated on forest land.

4) The appellant defended the writ petition on the ground that the Government has issued an order on 04.01.2017, laying down the conditions which the schools had to fulfill to be entitled to receive grant-in-aid. The conditions, inter alia, laid down were that the Junior High School – which the respondent is, should have at least 100 students (since it is situated in plain area); the land whereon the school is situated should be registered in the name of the institution or there should be an agreement in favour of the institution in respect of the land where the institution is running; the construction of the building should be in terms of the regulations prescribed and lastly; there should be no other Junior High School within a distance of 5 kms. The appellant claims that these conditions were not satisfied by the respondent school and, therefore, it was not entitled to receive grant-in-aid. The learned Single Judge has, however, rejected the submissions of the appellant by the detailed impugned judgment. The learned Single Judge has rejected the reliance placed by the appellant on the order dated 04.01.2017 by observing that the same cannot have retrospective effect. The respondent school had been sanctioned grant-in-aid way back on 04.02.2014, and that order had not been recalled. The learned Single Judge also took note of the fact that Right to Elementary Education had been elevated to a fundamental right and, consequently, the "Right of Children to Free and Compulsory Education Act, 2009" was passed by the Parliament, which vested every child of the age of six to fourteen years with a right to free and compulsory education in a neighbourhood school till completion of elementary education. Under the Act, every child was entitled to free and compulsory education from classes VI to VIII in a school situated within a walking distance of 3 kms. of the neighbourhood. The learned Single Judge also took note of the fact that the closest school in the neighbourhood, to that of the respondent, was at a distance of 4.5 kms., and that too, was a only girls school which did not admit boys. The learned Single Judge held that the respondent school was, in fact, discharging the responsibility of the Government to provide free and compulsory elementary education. Consequently, the writ petition was allowed.

5) The submission of learned counsel for the appellant is that the learned Single Judge erred in rejecting the appellant's reliance on the Office Order dated 04.01.2017. Learned counsel submits that the primary conditions laid down in the said Office Order dated 04.01.2017 were also laid down as conditions for recognition under the School Education Regulations 2009, framed under Section 24 of the Uttarakhand School Education Act, 2006. In this regard, learned counsel has drawn the attention of the Court to the conditions for recognition of Junior High School which, inter alia, lay down that the land should be registered in the name of the school. It further provides that the school should have its own building. The said Regulations also lay down the requirements that the constructed school should meet, namely, that each school room should have an area of 7 meter x 6 meter. Thus, the submission of learned counsel for the appellant is that since the respondent school did not own the land on which it was situated, which was forest land, the appellant was not obliged to release grant-in-aid to the respondent school as, to be entitled to grant-in-aid, a school should firstly, meet the requirements of the Regulations for recognition of the school.

6) In response to our query, learned counsel submits that though in the counter-affidavit there is no explanation as to how the Janta Purva Madhyamik Vidyalaya, Chitrakut, Tiwari Nagar, Bindukhatta, Nainital has been granted grant-in-aid permanently, the learned counsel submits that presumably the forest land has been transferred in favour of the said school. He further submits that a similar application has also been moved by the respondent school.

7) Having heard learned counsels and perused the record, including the impugned judgment, we are not inclined to interfere with the same. Firstly, the respondent school was granted recognition, which recognition has not been withdrawn or recalled. Secondly, on the basis of the said recognition, the State Government has passed the order dated 04.02.2014, sanctioning grant-in-aid in respect of the respondent school. Even that order has not been recalled till date, and continues to remain in force. Only in the year 2016, the appellant sought to grant token aid to the respondent school on the premise that the land on which it is situated is forest land. This position was continued in the subsequent order as well. Pertinently, the Janta Purva Madhyamik Vidyalaya, Chitrakut, Tiwari Nagar, Bindukhatta, Nainital was also in the same boat. However, the said school has been given permanent grant-in-aid vide order dated 04.01.2017. There is no explanation by the appellant as to why the respondent has been discriminated against when it was similarly situated as the Janta Purva Madhyamik Vidyalaya, Chitrakut, Tiwari Nagar, Bindukhatta, Nainital. The objection with regard to the school being situated within a distance of 5 kms. of another school, namely, Government Girls Junior High School Nagla Dairyfarm, in our view, has no merit for the reason that the said school is only a girls school and it does not cater to the educational need by boys. We also find force in the reasoning adopted by the learned Single Judge that under the Right to Education Act, the State is obliged to provide free and compulsory elementary education in a neighbourhood school

within a distance of 3 kms. Admittedly, there is no other Government School situated within a distance of 3 kms. of the school being run by the respondent. Therefore, the respondent school is, in fact, fulfilling the constitutional and legal obligation of the appellant State by running the said school.

8) For the aforesaid reasons, we are not inclined to interfere with the impugned judgment. The learned Single Judge has directed release of the grant-in-aid from 2014 onwards when the order dated 04.02.2014 was issued bringing the respondent school for grant-in-aid. It goes without saying that the appellant shall be entitled to, firstly, adjust the token grants granted to the respondent school and, secondly, the arrears shall be disbursed after due verification of the records of the respondent school with regard to the teachers and other employees employed by it in respect of whom the grant-in-aid would be issued.

9) The Special Appeal stands disposed of in the aforesaid terms.

All pending applications stand disposed of accordingly.