

(2010) 09 AHC CK 0523

Allahabad High Court

Case No: None

Committee of
Management and
Another

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Sept. 1, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Intermediate Education Act, 1921 - Section 13A

Citation: (2010) 2 UPLBEC 1046

Hon'ble Judges: Sunil Ambwani, J; Kashi Nath Pandey, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. We have heard Shri Adarsh Bhushan, holding brief of Shri Ashok Khare, learned Counsel appearing for the petitioner-appellant. Learned Standing Counsel appears for the State respondents.

2. The Committee of Management of "Chandra Sekhar Azad Inter College, Rupaudha, District Mirzapur through its Manager has filed these Special Appeals against the judgment of learned Single Judge dated 04.2.2005 in Writ Petition No. 54390 of 1999, by which he dismissed the writ petition for relief of grant-in-aid to the Junior High School section of the College, and the order dated 8.4.2005 rejecting the review petition.

3. Learned Judge upheld the order of the Secretary, Basic Education, Government of U.P. rejecting the application for extending grant-in-aid to the Junior High School section, on the ground that the school has been upgraded upto the level of High School and thereafter Intermediate class. Learned Judge further held that there was

nothing on record to show that the petitioner has ever approached the authorities for being taken in grant-in-aid list in the Intermediate College.

4. Learned Counsel appearing for the appellant submits that originally the institution was a recognised Junior High School. An order was passed on 12.2.1987 by the State Government giving sanction for the institution to be granted recognition upto the High School level in Arts subject for preparing students to appear in the Board examination 1988, and subsequently by an order dated 8.2.1993 the institution was also recognised for imparting instructions at Intermediate level. The recognition at Intermediate level was, however, granted as "Vitt Vihin" (without grant-in-aid) under the U.P. Intermediate Education Act, 1921, amended w.e.f. 14.10.1986 by U.P. Act No. 18/1987.

5. Learned Counsel submits that since the institution was not receiving grant-in-aid, and that the recognition for High School and Intermediate level could be granted, even after receiving the grant-in-aid to Junior High School, the institution applied for grant-in-aid to Junior High School section. Since no action was taken, the institution filed a Writ Petition No. 12696 of 1998, which was disposed of on 02.5.1998 to decide the matter. On 16.12.1998 the State Government issued a Government Order, whereby 220 Junior High Schools were considered for grant-in-aid and for payment of salaries from the Government grant. The petitioner's institution was not included in the list on the ground that during the pendency of the application, the recognition has been granted for High School and Intermediate Classes.

6. In State of U.P. and Ors. v. Committee of Management, M.T.S. Vidya Mandir and Ors. (2010 (2) AWC 2079 (SC)), the Supreme Court, hearing the matter against the judgment of learned Single Judge directing the grant-in-aid to be considered to be given to the Junior High School Section of the College upgraded as High School, and the Division Bench judgment, upholding the judgment of learned Single Judge, dismissed the Special Leave Petitions holding that the refusal of grant-in-aid to Junior High School, which was upgraded to High School, is discriminatory. While dismissing the SLPs the Supreme Court observed as follows:

18. From the submissions made on behalf of the respective parties, it is clear that the dispute in this case is confined to the question as to whether Junior High Schools, which had previously not been brought within the ambit of the grant-in-aid Scheme, but had been allowed to upgrade their institutions to impart education at the High School and Intermediate College level, would stand disentitled to benefit of the said scheme in view of Clause 2(13) of the Government Order dated 7th September, 2006.

19. Admittedly, some of the Junior High Schools have been enjoying the benefit of the grant-in-aid Scheme on the basis of seniority having regard to the cut-off date (30.6.1984) for grant of recognition to Junior High Schools. The Respondent institutions were not considered for the grant-in-aid Scheme as they had not been

granted recognition as Junior High Schools prior to the said cut-off date. Since most of the Junior High Schools had subsequently been upgraded and granted recognition to conduct higher classes from classes 9 to 12 and by virtue of the 1921 Act were disentitled to receive aid at the Junior High School level, the State Government by inserting 13A in the 1978 Act sought to protect their interests by continuing the application of the 1978 Act to those institutions which had been upgraded, but were already receiving grant-in-aid for the Junior High School section. It is by virtue of the amended provisions of Section 13-A that a class within a class was being sought to be created in perpetuity. The application of the 1978 Act only to educational institutions which received grant-in-aid prior to 30th June, 1984, has, in our view, been rightly held to be arbitrary by the High Court. Such provision is in violation of the equality clause enshrined in Article 14 of the Constitution. If it was the intention of the State Government to extend the benefit of the grant-in-aid Scheme to 1000 unaided permanently recognized (A Class) Junior High Schools by its advertisement dated 9th September, 2006, then it would not be fair, as has been rightly held by the High Court, to exclude such unaided institutions which besides imparting education at the Junior High School level were also imparting education, either at the Primary or the Higher Secondary level, from the grant-in-aid scheme, inasmuch as, they too continued to have Junior High Schools imparting education for classes 6 to 8.

20. We entirely agree with the reasoning of the High Court that if it was the intention of the State Government to extend aid to unaided institutions at the Junior High School level for improving the quality of education at the said level, it ought not to have excluded those institutions who continued to run Junior High Schools, but had been upgraded for the purpose of imparting education at the High School and Intermediate College level. In other words, the object sought to be achieved by the notification of 9th September, 2006, has no intelligible nexus with the object it wishes to achieve.

21. We are unable to accept Mr. P.P. Rao's submissions that the said Notification was protected by the transitory provisions of Section 13-A inserted into the 1978 Act to provide assistance to those institutions which had already been covered by the grant-in-aid Scheme, although, they had also been upgraded subsequently. The only fault of the Respondent institutions, as has been pointed out by the High Court, is that on account of the cut-off date for grant of recognition, they had not been brought within the ambit of the grant-in-aid Scheme on account of their seniority position. Subsequently, when 1000 educational institutions were to be provided such benefit, the exclusion of the respondent institution from being considered for grant-in-aid for the Junior High School section is wholly unjustified and cannot be sustained. The decisions cited by Mr. P.P. Rao do not address the special facts of this case.

22. We, therefore, have no hesitation in upholding the orders passed both by the learned Single Judge and the Division Bench of the High Court and the directions contained therein.

7. The reason given by learned Single Judge, that the institution can be given grant-in-aid, even if it has been recognised as High School and thereafter upto Intermediate level, was found by the Supreme Court to be correct. The Supreme Court observed that if it was the intention of the State Government to extend aid to the unaided institution at Junior High School level, it ought not to have excluded those institutions to continue to run Junior High School, but had been upgraded for the purposes of imparting education at the High School and Intermediate level. The Government adopted a discriminatory policy.

8. The matter is squarely covered by the judgment of Supreme Court in *State of U.P. and Ors. v. Committee of Management, M.T.S. Vidya Mandir's* case (supra).

9. The Special Appeals are consequently allowed. The judgment of learned Single Judge dated 4.2.2005 dismissing the writ petition and the order dated 8.4.2005 rejecting the review petition are set aside. The State Government will decide the application for grant-in-aid with effect from the date of recognition of the Junior High School, afresh, in the light of the judgment of Supreme Court within a period of three months from the date a certified copy of the order is produced before the Director of Basic Education, U.P.