A STATE OF U.P. AND ORS.

v.

COMMITTEE OF MANAGEMENT, M.T.S. VIDYA MANDIR AND ORS.

(Special Leave Petition (C) No. 4630 of 2008)

B DECEMBER 02, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Grant-in-aid: Cut off date – By Notification dated 7.9.2006, C *1000 unaided permanently recognized Junior High Schools were brought on grant-in-aid list but with a condition that only Junior High Schools were entitled to apply and institutions imparting education below or higher than classes 6 to 8 were not eligible to apply – Respondent institutions were* D *recognised as Junior High School and upgraded subsequently to High School and intermediate levels – They were excluded from the grant-in-aid Scheme – Held: It would not be fair to exclude such unaided institutions which were also imparting education, either at the Primary or the Higher* E *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 – Uttar Pradesh Basic Education Act, 1972 – Uttar Pradesh Intermediate Education Act, 1921 – Uttar Pradesh Recognised Junior High Schools (Payment* F *of Salaries of Teachers and other Employees) Act, 1978.*

Uttar Pradesh Recognised Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978: s.13A – Constitutionality of – s.13A was introduced in the 1978 Act as transitory provision to continue to provide aid G *to Junior High School despite their upgradation as High School or intermediate school – The provision was applicable only to the educational institutions which received grant-in-aid prior to 30.6.1984 – High Court held the provision as arbitrary*

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– Held: Justified – Such provision was in violation of the equality clause enshrined in Article 14 of the Constitution – Constitution of India, 1950 – Article 14 – Uttar Pradesh Basic Education Act, 1972 – Uttar Pradesh Intermediate Education Act, 1921.

The Respondent institutions were recognized as Junior High Schools between the years 1983 and 1986. When they were granted recognition as Junior High Schools, they were not brought within the grant-in-aid scheme framed by the State Government, inasmuch as, the cut off date for receiving such grant was fixed as 30th June, 1984 on the basis of seniority prepared in respect of eligible institutions. Not having received recognition, the Respondent institutions did not get the benefit of grant-in-aid for the Junior High School Section. The said institutions thereafter applied for upgradation to High School and Intermediate levels, which was allowed as per the provisions of the U.P. Intermediate Education Act, 1921, but subject to the condition that new and higher upgraded classes would be run on a self-financing basis.

By its notification dated 7th September, 2006, the Directorate of Basic Education, U.P. decided to bring 1000 unaided permanently recognized (A class) Junior High Schools on its grant-in-aid list but included a condition that only Junior High Schools would be entitled to apply. It was categorically indicated that institutions imparting education below or higher than classes 6 to 8 would not be eligible to apply. As a result, the Respondent institutions were completely excluded from the grant-in-aid Scheme. Respondent-Institutions filed writ petitions. High Court allowed the writ petitions and directed authorities to consider the case of institutions. Hence these special leave petitions.

Dismissing the Special Leave Petitions, the Court

A HELD: Admittedly, some of the Junior High Schools were enjoying the benefit of the grant-in-aid Scheme on the basis of seniority having regard to the cut-off date for grant of recognition to Junior High Schools. The Respondent institutions were not considered for the B 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 C virtue of the U.P. Intermediate Education Act, 1921 were disentitled to receive aid at the Junior High School level, the State Government by inserting Section 13A in the U.P. Recognised Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 sought to D 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 was 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 E of the 1978 Act only to educational institutions which received grant-in-aid prior to 30th June, 1984, has 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 F 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 to exclude such unaided institutions which besides imparting G 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. The petitioners are H directed to consider the case of the Respondent

institutions, along with other applicants, for being brought within the ambit of the grant-in-aid Scheme in pursuance of the Government Order dated 7th September, 2006. [Paras 19 and 23] [1287-C-H; 1288-A-B; 1289-B-C]

State of U.P. & Ors. v. Pawan Kumar Divedi & Ors. **(2006) 7 SCC 745;** *Vinod Sharma v. Director of Education (Basic), U.P.* **(1998) 3 SCC 404;** *State of U.P. & Ors. v. District Judge, Varanasi & Ors.* **1981 UPLBEC 336;** *State of U.P. & Ors. v. Ram Charitra Tyagi & Ors.* **(2005) 10 SCC 431;** *State of Punjab v. Joginder Singh* **1963 Supp. (2) SCR 169;** *Ram Lal Wadhwa v. State of Haryana & Ors.* **(1973) 1 SCR 608;** *Life Insurance Corporation & Ors. v. S.S. Srivastava* **(1988) Supp. SCC 1, referred to.**

Case Law Reference:

(2006) 7 SCC 745	**referred to**	**Para 10**
(1998) 3 SCC 404	**referred to**	**Para 10**
1981 UPLBEC 336	**referred to**	**Para 11**
(2005) 10 SCC 431	**referred to**	**Para 13**
1963 Supp. (2) SCR 169	**referred to**	**Para 14**
(1973) 1 SCR 608	**referred to**	**Para 14**
(1988) Supp. SCC 1	**referred to**	**Para 14**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 4630 of 2008.

From the Judgment & Order dated 15.1.2008 of the High Court of Judicature at Allahabad in Special Appeal No. 162 of 2007.

WITH

SLP (C) Nos. 17236 & 19261 of 2008.

A P.P. Rao, P.N. Mishra, Dinesh Dwivedi, Shail Kr. Divedi, AAG, Garvesh Kabra, Shrish Kumar Mishra, Pushkin, Yatish Mohan, Ms. Vinita, Y. Mohan, E.C. Vidya Sagar, Mukesh Verma, M.R. Shamshad, Manish Shankar, Prateek Dwivedi, Vivek Vishnoi, Yash Pal Dhingra, Ambhoj Kumar Sinha, Manoj
B K. Mishra for the appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The Respondent institutions were recognized as Junior High Schools between the years 1983 and
C 1986. Thereafter, between 1987 and 1989, they were granted recognition for imparting education at the High School level and were subsequently upgraded as Intermediate Colleges between 1991 and 1999. It appears that as Junior High Schools which were granted recognition after 30th June, 1984, none of
D the respondent institutions were covered by the grant-in-aid scheme of the State Government to Junior High Schools and at the time of their upgradation as High Schools or Intermediate Colleges, one of the conditions imposed by the Board of High School and Intermediate Education was that for opening and
E running the new (higher) classes, the institutions would have to operate the same on a self-financing basis and would not be provided with any aid by the State Government. There is nc dispute that the institutions imparting education from classes 1 to 5 are governed by the provisions of the U.P. Basic
F Education Act, 1972 (hereinafter referred to as "the 1972 Act"); institutions imparting education from classes 6 to 8 are governed by the provisions of the U.P. Recognized Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978, (hereinafter referred to as "the 1978 Act"); and institutions imparting education from classes 9 to 12
G are governed by the provisions of the U.P. Intermediate Education Act, 1921, (hereinafter referred to as "the 1921 Act") and also the U.P. High Schools and Intermediate College (Payment of Salaries of Teachers and Other Employees) Act 1971, (hereinafter referred to as "the 1971 Act").
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2. The provision for grant of recognition to an institution in respect of any new subject or for a higher class on a self-financing basis was introduced into the 1921 Act, which came into effect from 14th October, 1986. By virtue of the said amendment, Section 7-A of the 1921 Act stood substituted and Section 7-AA was inserted into the parent Act to provide for employment of part-time teachers and part-time instructors and the funds therefor were to be arranged by the institution from its own sources.

3. As mentioned hereinbefore, when the Respondent institutions were granted recognition as Junior High Schools, they were not brought within the grant-in-aid Scheme framed by the State Government, inasmuch as, the cut off date for receiving such grant was fixed as 30th June, 1984 on the basis of seniority prepared in respect of eligible institutions. Not having received recognition prior to 30th June, 1984, the Respondent institutions did not get the benefit of grant-in-aid for the Junior High School Section. The said institutions thereafter applied for upgradation to High School and Intermediate levels, which was allowed as per the provisions of the Intermediate Education Act, 1921, but subject to the condition that new and higher upgraded classes would be run on a self-financing basis.

4. The case made out by the Respondent institutions in their writ petition was that, although, they had earlier been denied the benefit of grant-in-aid for their Junior High School section they were still hoping to be brought within the ambit of the grant-in-aid for the Junior High School Section comprising classes 6 to 8. The expectations of the Respondent institutions were negated when by its Notification dated 7th September, 2006, the Directorate of Basic Education, U.P. decided to bring 1000 unaided permanently recognized (A class) Junior High Schools on its grant-in-aid list but included a condition that only Junior High Schools would be entitled to apply. It was categorically indicated that institutions imparting education

A below or higher than classes 6 to 8 would not be eligible to apply. As a result of the above, the Respondent institutions were completely excluded from the grant-in-aid Scheme. Inasmuch as, a decision had been taken by the State Government not to provide grant-in-aid to educational
B institutions for the Junior High Schools after their upgradation as High Schools or Intermediate Colleges, an exception was made in respect of institutions which had been receiving grant-in-aid for their Junior High School sections despite the fact that the said institutions had been upgraded. Section 13A was
C introduced in the 1978 Act as a transitory provision to continue to provide aid to such institutions despite their upgradation as High Schools or Intermediate Colleges. As a result, a class within a class was created. As a result, one set of educational institutions received maintenance grants at the Junior High
D School level, while other similarly placed institutions were denied the same benefits.

5. In such circumstances, the Respondent institutions filed Civil Misc. Writ Petition No.61343 of 2006, which was disposed of by a learned Single Judge of the Allahabad High Court on
E 4th January, 2007. Accepting the case made out by the Respondent institutions that the creation of a class within a class was not only unfair and unreasonable but also offended the provisions of Article 14 of the Constitution of India, the learned Single Judge of the High Court, by his judgment dated
F 4th January, 2007, upheld the contention of the Respondent institutions and quashed condition No.2(13) of the State Government Order dated 7th September, 2006, as well as condition No.12 of the Advertisement dated 9th September, 2006, issued by the Directorate of Basic Education, U.P. The
G petitioner authorities herein were directed to consider the case of the writ petitioner institutions along with other applicants to bring their Junior High School Sections within the ambit of the grant-in-aid Scheme in pursuance of the Government Order dated 7th September, 2006, upon ignoring the aforesaid
H conditions of the Government Order and the Advertisement.

6. The appeal preferred by the State of U.P. and its authorities in the Education Department, being Special Appeal No.162 of 2007, was dismissed by the Division Bench of the High Court on the ground that no infirmity could be shown in the judgment of the learned Single Judge.

7. This Special Leave Petition and the other connected Special Leave Petitions have been filed against the aforesaid judgment of the Division Bench of the Allahabad High Court in Special Appeal No.162 of 2007.

8. Appearing for the State of U.P. and its authorities, who are the petitioners herein, Mr. P.P. Rao, learned Senior Advocate, submitted that by the above-mentioned notification dated 9th September, 2006, issued by the Directorate of Basic Education, U.P., Allahabad/Lucknow, the State Government was treating Junior High Schools as a separate entity and in view of the decision of the State Government to exclude educational institutions which had been upgraded from the ambit of the 1978 Act, it had to protect those Junior High Schools which were already receiving grant-in-aid. Section 13A was accordingly inserted in the 1978 Act by amendment. By virtue of Section 13A, which was described as a transitory provision, the 1978 Act would continue to apply in respect of certain upgraded institutions which had been provided grant-in-aid for their Junior High School sections. Mr. Rao submitted that having obtained recognition of the upgraded sections subject to the condition that the upgraded sections would have to operate on a self-financing basis, it no longer lay in the mouth of the Respondent institutions to resile from the said position and claim that they too should be included within the scope of the grant-in-aid Scheme for their Junior High Schools.

9. Mr. Rao submitted that the financial implications involved were of such magnitude that a cut-off date had to be fixed to contain the number of schools to which such grant could be provided. Mr. Rao submitted that the same constituted the intelligible differentia between those institutions who were the

A beneficiaries of the grant-in-aid Scheme and those whose cases could not be considered beyond the cut-off date. It was urged that it was because of such very reason that Section 13A had to be introduced in the 1978 Act in respect of a dying class which would be eliminated by passage of time.

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10. In this regard, Mr. Rao referred to the decision of this Court in *State of U.P. & Ors. vs. Pawan Kumar Divedi & Ors.* [(2006) 7 SCC 745], where similar questions fell for determination and another decision of this Court in the case of *Vinod Sharma vs. Director of Education (Basic), U.P.* C [(1998) 3 SCC 404] was referred to and relied upon, in which the submission that the institution was providing education to students from classes 1 to 10 were in effect a single unit and could not be divided into segments was accepted. Mr. Rao, however, fairly submitted that the said view, which had been D accepted in *Vinod Sharma's* case, (supra) did not find favour with this Court in *Pawan Kumar Divedi's* case (supra) and the matter was ultimately referred to a larger Bench for reconsideration, but such reconsideration had not yet taken place.

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11. Mr. Rao also relied on the Full Bench decision of the Allahabad High Court in the case in State of U.P. & Ors. vs. District Judge, Varanasi & Ors. [1981 UPLBEC 336], where the same questions fell for determination and it was, inter alia, F held that the level of a Junior High School could not be the same as that of the High School or Intermediate College. It was held that a Basic School or a Junior High School is different from a High School or an Intermediate College. Accordingly, the same institution could not be called a Basic School or a Junior High School as well as a High School or an Intermediate College. G Each unit had a distinct legal entity. It was further held that on a Basic School or a Junior High School being upgraded as a High School or an Intermediate College, the identity of the institution known as Basic School or Junior High School is lost. It ceases to exist as a legal entity and in its place another

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institution with a new legal entity comes into being. A

12. Mr. Rao submitted that U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978, applies only to Junior High Schools which impart education from class 6 to class 8 and on upgradation as High School or Intermediate College, imparting education from classes 9 to 12, it ceases to be a Junior High School and its status thereafter changes to that of a High School disentitling it to receive any grant-in-aid as a Junior High School. B

13. Mr. Rao reiterated that Junior High Schools which had been upgraded would not be entitled to the said benefit except for those protected under Section 13A of the 1978 Act. Mr. Rao contended that this was the intent and purport of Section 13A of the 1978 Act which was inserted in the parent Act by Act No.34 of 2000 only as a transitory provision. He submitted that the position was the same even prior to the insertion of Section 13A in the 1978 Act as was held in the case of *State of U.P. & Ors. Vs. Ram Charitra Tyagi & Ors.* [(2005) 10 SCC 431]. C D

14. Mr. Rao urged that the provisions of Section 13A being of a transitory nature they were meant to operate only till such time as the teachers and other employees, who were already receiving the benefit of grant-in-aid, continued in service. He urged that such a provision could not be said to be arbitrary having regard to the fact that the employees receiving such a benefit constituted a separate class which was steadily diminishing numerically and that the said proposition was considered and upheld by this Court in (i) *State of Punjab vs. Joginder Singh* [1963 Supp. (2) SCR 169]; (ii) *Ram Lal Wadhwa vs. State of Haryana & Ors.* [(1973) 1 SCR 608]; and (iii) *Life Insurance Corporation & Ors. vs. S.S. Srivastava* {(1988) Supp. SCC 1]. E F G

15. Mr. Rao urged that both the learned Single Judge and the Division Bench of the High Court had erred in holding that the condition in the advertisement dated 9.9.2006 was H

A discriminatory, without appreciating the fact that on upgradation the status of the schools changed from Junior High School to High School or Intermediate College, which were governed by a different enactment, namely, the 1921 Act. Mr. Rao submitted that grant-in-aid could not be claimed as a matter of right and B that it was left to the Government to decide the same on account of the financial implications involved. Accordingly, the decision of the learned Single Judge upheld by the Division Bench of the High Court in Special Appeal No.162/2007, was not capable of being sustained and was liable to be set aside.

C 16. Appearing for the respondents, Mr. Dinesh Dwivedi, learned Senior Advocate, while opposing the submissions made by Mr. Rao, contended that by creating a class within a class, the State Government had not only acted arbitrarily, but in a discriminatory fashion, and, that too, without giving a hearing D to those who were to be adversely affected in the process. Mr. Dwivedi urged that by deliberately excluding Junior High Schools which had been granted recognition after 30th June, 1984, from the benefit of the Notification dated 9th September, 2006, a distinction between two schools of the same category E was created, and while, on the one hand, one category of such schools continued to get the benefit of the grant-in-aid scheme for the Junior High School inspite of upgradation, on the other hand, schools, which had been denied such benefit at the Junior High School level were excluded from such benefit in F perpetuity, which according to Mr. Dwivedi could never have been the intention of the State Government in its Education Department.

17. Referring to Mr. Rao's submissions regarding insertion of Section 13(A) in the 1978 Act, Mr. Dwivedi submitted that G when a decision had been taken by the State Government to include one thousand unaided schools within the ambit of the grant-in-aid scheme a mere technicality that they had been granted recognition after 30th June, 1984, should not be treated as a bar for the respondents to be also considered for grant-

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in-aid for their Junior High School along with other applicants A

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. B C

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 Section 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 D E F G H

A 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 B 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 C 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 D 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 E 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 F 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 G 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 H Division Bench of the High Court and the directions contained

therein. A

23. These Special Leave Petitions are, accordingly, dismissed. As directed by the learned Single Judge of the High Court by his judgment and order dated 4th January, 2007, and upheld by the Division Bench by its judgment and order dated 15th January, 2008, the petitioners are directed to consider the B case of the Respondent institutions, along with other applicants, for being brought within the ambit of the grant-in-aid Scheme in pursuance of the Government Order dated 7th September, 2006, and while doing so ignore Condition No.2(13) of the said Order and Condition No.12 of the Advertisement dated 9th C September, 2006, issued by the Directorate of Basic Education, U.P.

24. There will, however, be no order as to costs.

D.G. SLPs dismissed. D