

RESERVED

THE HIGH COURT OF MEGHALAYA

WA No. 46 of 2009

1. The State of Meghalaya, represented by the Commissioner and Secretary to the Government of Meghalaya, Department of Education, Shillong.

2. The Director, Higher and Technical Education, Government of Meghalaya, Shillong.

..... Appellants

-Versus-

1. Raid Laban College Teachers' Welfare Association.

2. Dr. Alicia Gatphoh, d/o Shri H Najir, President of the Raid Laban College Teachers Welfare Association, resident of Motinagar, Shillong, District East Khasi Hills, Meghalaya.

3. Mrs Daiamonti Lyngdoh Nongpiur, d/o (L) Nomiwell Nonkynrih, resident of Jhumor Lane, Laban, Shillong.

4. Ms Grace Mabel Pyrtuh, daughter of Mr Bison Sutnga, resident of Wahingdoh, Shillong-1.

5. Mr Bhalintina Kharphuli, d/o Mr Omarka Lyngdoh, resident of Jhumor Lane, Laban, Shillong-4.

6. Mr Specialbor Thangkhiew, d/o (L) Hoskinson Syiemlieh, resident of Madan Laban, Shillong-4.

7. The Governing Body of Raid Laban College, Shillong, East Khasi Hills District, Meghalaya, through its Secretary.

8. The Principal, Raid Laban College, Shillong, East Khasi Hills District.

9. University Grants Commission (North Eastern Regional Office), Guwahati, Assam.

..... Respondents

Shri KS Kynjing, Advocate General, assisted by Shri ND Chullai, Sr.GA, present for the appellants.

Shri B Bhattacharjee, Advocate, present for respondent No. 1.

Shri D Senapati, Advocate, present for respondents No. 3 and 4.

Date of hearing 28th October, 2013

Date of Judgment and Order 30th October, 2013

HON'BLE THE CHIEF JUSTICE
and HON'BLE MR JUSTICE T NANDAKUMAR SINGH

JUDGMENT AND ORDER

Hon'ble Chief Justice, Prafulla C Pant.

This writ appeal is directed against the judgment and order dated 03.07.2009 passed by the learned Single Judge in WP(C)No. 192(SH) 2008, whereby the writ petition has been allowed with the direction to the respondents No. 1 and 2 (present appellants) to release the arrears of adhoc grant-in-aid of Raid Laban College, w.e.f. 01.01.2007, and the respondents No. 3 and 4 are directed to take amount from adhoc grant-in-aid sanctioned by the Government for payment towards pay and dearness allowances of teaching and non-teaching staff of the college.

2. Heard learned counsel for the parties and perused the record.

3. Brief facts of the case are that the petitioner No. 1 is a registered association of Teachers Welfare of Raid Laban College, Shillong, and the petitioner No. 2 Dr. Alicia Gatphoh is the President of the said Association. It is stated that Raid Laban College, Shillong, started getting adhoc grant-in-aid since 1986-87 from the Government of Meghalaya under Meghalaya Aided Colleges Maintenance Grant-in-Aid Rules, 1986. Under the Grant-in-Aid Scheme, the State Government agreed to bear 75% of the recurring expenditure of pay and dearness

allowances in respect of the sanctioned posts of teaching and non-teaching staff of the college while the remaining 25% was to be borne by the Governing Body of the College. The deed was executed by the Governing Body of the College in compliance of the provisions of Grant-in-Aid Rules. However, the grant-in-aid was required to be given under certain conditions mentioned in the Rules. The college received the adhoc grant year after year till 2006. The Raid Laban College is stated to be recognized by the University Grants Commission (UGC) under Section 2(f) and Section 12(b) of UGC Act, 1956. It has permanent affiliation with the North Eastern Hill University (NEHU), Shillong. The adhoc grant-in-aid was discontinued to the Raid Laban College w.e.f. 01.01.2007, while the other colleges continued to get the same. It is alleged by the petitioners that stoppage of adhoc grant-in-aid by the State Government to the college is arbitrary and discriminatory. As such the prayer was made in the writ petition for quashing the resolution dated 03.04.2008 passed by respondents No. 3 and 4 regarding discontinuance of the adhoc grant-in-aid to the college. A further prayer is made in the writ petition that judgment and order dated 23.04.2008 passed in WP(C)No. 26(SH) of 2008 be reviewed.

4. On behalf of the respondents No. 1 and 2 (present appellants before this Court), a counter affidavit was filed before the learned Single Judge stating therein that there was dispute regarding reconstitution of Governing Body of the College between the two fractions and the term of the Governing Body of the college expired on 01.08.2006. In the circumstances, as

the college was receiving grant-in-aid, the answering respondents (present appellants) had to take over the control and management of the college by appointing a Joint Director of Higher and Technical Education as Administrator but his appointment was challenged by filing WP(C)No. 26(SH) 2008 by the Society running the college, which was allowed vide order dated 23.04.2008, against which WA No. 8/2008 was filed and the same was dismissed by the Division Bench on 15.05.2008. It is further stated in the counter affidavit of the answering respondents (present appellants) that the Governing Body of the College appointed Acting Principal without advertising the post and without seeking approval from the State Government and as such there was maladministration in the college. It is also stated that since the college has now chosen not to be in grant-in-aid of the Government, and it is not claiming grant-in-aid nor ready to fulfill obligations required under the rules, the employees (members of the petitioners association) cannot seek direct financial assistance without compliance of rules by the college. Ultimately, the Government had to discontinue the adhoc grant-in-aid to the petitioner's college. It is also stated that certain conditions are required to be fulfilled for seeking grant-in-aid which were not fulfilled under the Rules.

5. Learned Single Judge after hearing the parties took the view that there was no nexus between the object sought to be achieved and action taken by the State Government in discontinuing the adhoc grant-in-aid to the college. It is also

found that the Raid Laban College was discriminating as against other colleges.

6. On behalf of the appellants, it is pointed out that in the earlier round of litigation, WP(C)No. 26(SH) 2008, was filed by the Governing Body of Raid Laban College, whereby the appointment of Joint Director Higher and Technical Education as Administrator of the College was challenged. It was admitted by the Raid Laban College Society and the Governing Body of the College that they are not contesting the stoppage of grant-in-aid to the College nor they want to challenge the stoppage of adhoc grant-in-aid. It is submitted that the observations made by the learned Single Judge who decided the WP(C)No. 26(SH) 2008 are clear on this point, in his order dated 23.04.2008, and the said judgment was affirmed by the Division bench. It is argued on behalf of the appellants (respondents No. 1 and 2 in the writ petition in question) that when the Governing Body of the College or the society running the college is not ready to give undertaking required under the Rules nor ready to fulfill the conditions for seeking grant-in-aid, the respondents cannot be held responsible for not providing adhoc grant-in-aid to the College. Needless to say that the adhoc grant-in -aid is a year to year phenomenon for which the college has to fulfill the conditions mentioned in the Meghalaya Aided College Maintenance and Grant in Aid Rules, 1986. Rule 4 to Rule 16 provide various conditions regarding adhoc grant-in-aid to the College.

7. The relevant rules from Meghalaya Aided College Maintenance and Grant-in-Aid Rules, 1986 are reproduced below :

“ 4. Eligibility

Not withstanding anything contained in these rules, no college shall claim the grants-in-aid as a matter of right. Subject to availability of funds and the college satisfying the conditions herein after contained and such other conditions as the Director may from time to time lay down, the State Government at its discretion give grants-in-aid to Colleges in the State which are affiliated to a University having jurisdiction over the State of Meghalaya and recognized as such by it;

5.....

6.....

7. Undertaking:- No Grants-in-aid shall be given unless its Governing Body gives and undertaking in writing by a formal resolution passed to the effect that it shall comply with the provisions of these rules and such instructions as may be issued from time to time by the Director with regard to grants-in-aid, and that the breach of any provision of these rules or any instruction issued by the Director in this behalf shall render such College liable to forfeiture of the grant-in-aid (Form ‘G.I’) shall be used for the resolution for this purpose).

8. Conditions for grant-in-aid :-

(1) A College seeking the grants-in-aid shall have a permanent income, whether from endowments or other sources, which when supplemented by grant-in-aid, shall be adequate to discharge its obligation under these rules. This permanent income should amount at least twenty five percent of the approved expenditure excluding the opening balance.

(2) Without the special sanction, previously obtained of the Director or of such officer duly authorized, no Aided College shall undertake any work or incur any expenditure which would involve the reduction of the closing balance below the working balance prescribed under sub-Rule (1).

(3) The College shall also have a Reserve Fund of the amount prescribed in the table below or such as may be specified by the Rules of the Affiliating University whichever is higher

T A B L E

College with pre-University course- Rs. 35,000.00

College with Degree Course -Rs. 50,000.00

Provided that the amount specified in the said table shall be subject to revision under orders of the Director or such other competent authority of the University in this regard.

(4) The Reserve Fund shall be maintained in the name of the College and shall be deposited with any Nationalized Bank or the Post-Office. Savings Bank or any other Scheduled Bank as approved for the purpose by the competent authority of the University, and shall be administered jointly by the Director and the Secretary of the Governing Body of the College concerned. Normally, withdrawal of money out of this fund is not admissible. Provided that in the event of any omission or failure on the part of the governing Body to discharge any claim pertaining to the salaries of the staff or such other obligation due by it under the rules, or in the case of meeting expenditure of an emergent nature for which no money could otherwise be provided necessary amount may be drawn from the Reserve Fund, as a last resort. A resolution to this effect should be passed by the Governing Body, and such withdrawal should be passed by the Governing Body, and such withdrawal should receive prior approval if the Director or any officer authorized by him in this behalf. The amount so drawn shall be utilized specially and solely for the purpose for which it was meant and accounts in this regard duly maintained.

Provided further that the amount so drawn from the Reserve Fund should be replenished within a period to be specified by the Director.

(5) Every Aided College shall be managed by a Governing Body duly constituted for the purpose in accordance with the rules and regulations in force and approved by the Director or such other officer authorized by him in this behalf.

(6) All teaching and non-teaching posts in every Aided College shall be sanctioned by the Director or any officer authorized by him in this behalf on the scales of pay as prescribed by the Government from time to time.

(7) The Governing Body of the Aided College shall make appointment only against the sanctioned posts with the prior approval of the Director or such other authorized officer. The confirmation of an employee of Aided College against a permanent sanctioned post by the Governing Body shall be subject to the approval of the director or such other authorized Officer, who will consider the merit of each case after following the requisite rules and procedures in this regard. The benefit of provident Fund will

be extended only to the confirmed staff of College at the rate fixed and approved by the Government. No employee shall be dismissed or suspended from service without prior approval of the director.

(8) The conditions of appointment including discipline, leave of absence from duty, code of conduct and other service conditions of the employee of the aided Colleges shall be regulated in accordance with the rules and regulations framed by the Governing Body and approved by the Government.

(9) The Governing Body shall arrange for a half-yearly internal audit of the accounts of the College and shall submit a copy of the audit report at the time of submission of the application for sanction of grant or at any other time as directed by the Director.

(10) The account and other records maintained by the College shall be opened to inspection by the Auditor or the Inspecting/Officer authorized by the Director and also by the Examiner of Local Accounts, Meghalaya.

(11) Every Aided College shall levy only such fees and at such rates as may be approved by the Director from time to time.

(12) Proper accounts shall be maintained in respect of all income and expenditure of the College in the form in which such accounts are required to be maintained.

(13).....

(14).....

(15).....

(16).....

(17).....”

8. Shri D Senapati, learned counsel for the Governing Body, of the Raid Laban College, Shillong, categorically stated before this Court that the college is not asking for grant-in-aid to it from the Government. As such the arguments of the learned counsel for the appellants (respondents No. 1 and 2 in the writ petition) can be accepted that the college is not ready to comply the conditions mentioned in the Rules of 1986 for obtaining grant-in-aid from the State Government. In para 19 of the writ petition, the writ petitioners have admitted that on enquiry by the petitioners from the Office of the respondents No. 1 and 2, it

was made clear to the petitioners stoppage of deficit grant-in-aid to college by the Government since 01.01.2007 was primarily on the failure of respondents No. 3 and 4 to meet the requirement of complying with relevant rules and instructions by the Government. In the above circumstances, we are of the view that the learned Single Judge erred in law in directing the respondents No. 1 and 2 (appellants) to sanction grant-in-aid to the college, which is admittedly not ready to fulfill the conditions required under the rules.

9. On behalf of the writ petitioners (present respondents No. 1 and 2 in the appeal) contention of this Court is drawn to para 14 of the judgment under challenge which reads as under :

“ The learned Advocate General who appears on behalf of respondents No. 1 and 2 has fairly submitted that the State Government is not adverse to providing grant-in-aid to the petitioners’ college, in other words, the State Government is not opposed to the contention of grant-in-aid to the Raid Laban College but because of the reasons stated in the affidavit, the same has been discontinued”.

Referring to above para in the impugned judgment, it is contended by the learned counsel for the present respondent Nos. 1 and 2 (writ petitioners) that the admission made by the learned Advocate General cannot be withdrawn. Reliance is placed in support of the above contention in the case of ***Periyar and Pareekanni Rubbers Ltd vs State of Kerala, (1991) 4 SCC 195***, at page 208, in which the Advocate General had made statement before the Court that the market value of the land could be fixed at particular rate. Also reliance is placed in the case of ***SB Sreedhar and others vs KM Munireddy (dead) and others, (2003) 2 SCC 355***, in which it is held that if by

words or conduct a person consents to an act, which could not lawfully have been done without such consent, and others are thereby led to do that which they otherwise would not have done, such person cannot challenge the legality of the act he authorized.

10. In our opinion of the above cases are of no help to the present respondent Nos. 1 and 2 (writ petitioners). From the language of the para quoted above, it is clear that the Advocate General in the present case did not make any admission. Rather, what he stated was that the State was not opposing to continuation of grant-in-aid to the Raid Laban College provided the conditions required under the Rules are fulfilled. The observation made by the learned Single Judge itself shows that the State is not opposed to continuation of grant-in-aid to Raid Laban College but because of the reasons stated in the affidavit (counter affidavit), the same has been discontinued. We are of the view that the statement made by the Advocate General should be read as a whole and it cannot be read in pieces to gather a different meaning.

11. Having considered the submissions of the learned counsel for the parties, we find that unless the College is ready to fulfill the conditions required under the Rules, the State Government is not obliged to make payment of adhoc grant-in-aid to the college. The ***State of Maharashtra vs Manubhai Pragaji Vashi, AIR 1996 SC 1*** is also of a little help to the writ petitioners for the reason that it nowhere says that a College

which is not ready to accept the grant-in-aid should also be provided the same. As such this writ appeal deserves to be allowed.

12. Accordingly, this writ appeal is allowed. The impugned judgment and order dated 03.07.2009 passed by the learned Single Judge in WP(C)No. 192(SH) 2008 is hereby set aside. No order as to costs.

JUDGE
(Hon'ble Mr Justice TNK Singh)
30.10.2013

CHIEF JUSTICE
30.10.2013

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