

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO. 244 OF 2009**

Shri Raju Babu Kole

..Petitioner

vs

The State of Maharashtra & Ors.

..Respondents

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Mr. Sagar Mane i/b. Mr.N.V. Bandiwadekar for the Petitioner.

Mr. A.B. Vaganyi, AGP for Respondent Nos.1 to 3.

Mr.M.L. Patil for Respondent Nos.4 to 6.

Mr.Tejpai S. Ingale for Respondent No.7.

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**CORAM : DR.D.Y.CHANDRACHUD, AND
S.C. GUPTE, JJ.****28 JUNE 2013****P.C. :**

The Fourth Respondent conducts four recognised and aided secondary schools of which three, Respondents five to seven, are before the Court. In these proceedings which the petitioner claims to have instituted in the public interest, the grievance is that an excess grant-in-aid was paid to the Fifth, Sixth and Seventh Respondents on the basis of a bogus strength of students. It has been alleged that on the basis of this bogus claim of student enrollment, an appointment of excess teachers was made and consequently, sanction was obtained for divisions and teaching staff to which the schools would not be entitled. Directions were issued by the Court from time to time on different dates for conducting a verification and in particular, for ascertaining whether the grant-in-aid paid to the school is commensurate with students actually found pursuing their studies.

Officer (Secondary) Zilla Parishad, Kolhapur stating that in pursuance of the order of the Court dated 7 October 2011, he had inspected the Fifth, Sixth and Seventh Respondent schools and had verified the attendance of the students with the actual record maintained. Exhibit-1 thereto is the report of verification. In pursuance of a second order passed by a Division Bench on 21 March 2013, an additional reply has been filed by the Deputy Education Officer (Secondary). The reply states that no funds were made available by the Government, and hence, non-salary grants was not released to these schools from 2004-5. However, it had been stated that grants were paid for 2008-9, 2009-10, 2010-11 and 2011-12 in respect of students who are found to be continuously absent. Details have also been furnished of the break-up of the grant-in-aid allotted to the students from the economically backward strata. The affidavit concludes with the observation that the excess grant which has been paid to Adarsh Vidyalaya, Kothli is recoverable and expeditious steps will be taken by the department for the recovery of the excess which has been paid by way of grant-in-aid for the economically backward students.

3 The petitioner is not satisfied with the explanation which has been tendered on affidavit. During the course of the hearing, Counsel appearing on behalf of the Petitioner has drawn the attention of the Court to the report of the inspection which was carried out on three occasions on 7, 10 and 12 December 2011. Counsel highlighted, on the basis of the inspection report, that one student who was shown to be in standard 9 in 2006 is still in the same standard in 2011-12. Similarly, certain other instances were highlighted to indicate that there is a serious doubt on to whether the students were at all genuine and bonafide students. We find merit in the contention that the last affidavit which has been

filed, does not deal with the main grievance of the Petitioner which is to the effect that the salary grant was made available on the basis of a strength of teachers which was not commensurate with the actual number of students genuinely attending the school.

4 The management has serious grievances about the bonafides of the Petitioner which have been questioned in the reply. We have considered it appropriate to keep that issue aside for a moment because quite independent of the lapses of the Petitioner it was necessary for the Education Department to ensure that the grants which are made available are not misutilised by showing a false enrollment of students. This is a matter which affects the revenue of the State and it is necessary that grants to aided institutions are actually utilised for genuine purposes. At the same time, it is apparent that a factual inquiry has to be made. In the very nature of things it may not be possible for the Court to undertake that exercise in the exercise of its jurisdiction under Article 226 of the Constitution of India. Hence, we are of the view that the interests of justice would be served if the actual task of verification of facts of the case is entrusted to the Deputy Director of Education, Kolhapur. We see no purpose in keeping the petition pending since the Deputy Education Officer has stated on affidavit before the Court that the excess grants which have been paid would be recovered in accordance with law. The only point which has to be verified is as regards the excess amount which has been paid. We direct the Deputy Director of Education, Kolhapur to conduct a proper verification after furnishing to the management an opportunity of being heard. If it is found that an excess amount is paid, necessary steps for recovery shall be made in accordance with law. We clarify that the present order should not be regarded as the expression of a

conclusive opinion by the Court on the merits of that determination.

5 It may be noted that at one stage, it was stated before the Court by the Education Inspector, that even if it is admitted, that there was a bogus enrollment in the three schools, after deducting the bogus enrollment, the remaining enrollment in 2008-9 was sufficient to maintain the sanctioned divisions. We leave it open to the Deputy Director of Education, Kolhapur to consider all aspects and to pass a comprehensive order within a period of three months of the receipt of an authenticated copy of this Order.

6 The Deputy Director of Education, Kolhapur shall furnish to the management an opportunity of being heard and for producing its records for verification.

7 The Petition is accordingly disposed of. There shall be no order as to costs.

(Dr. D.Y.Chandrachud, J.)

(S.C. Gupte, J.)