Government of Andhra Pradesh and others

Vs

G.V.K. Girls High School

Civil Appeal No. 2422 of 1997

(Mr. M. Jagannadha Rao and Mr. K.G. Balakrishnan, JJ.)

07.08.2000

JUDGMENT

M. Jagannadha Rao, J.:— This is an appeal by the State of Andhra Pradesh against the judgment of the Division Bench of the High Court of Andhra Pradesh in Writ Appeal No. 1745 of 1995 dated 6.8.1996 affirming the judgment of the learned Single Judge of that Court in Writ Petition 15879/90 dated 27.7.1995.

The following are the facts:

The respondent-school was admitted to grant-in-aid in GO.347 (Ed.) dated 1.8.86 w.e.f. 1.9.85 to 29.2.86 under AP. Act I/82. On the ground that there were some complaints against various schools, Government appointed a Committee on 24.2.88 under GO.220 and this was made a statutory committee by Andhra Pradesh Act 22/88. The Committee cleared the respondent-School but still the arrears for the period 1.9.85 to 31.10.89 for the staff were not paid. Hence, the present writ petition was filed. After the writ petition was filed, GO.138 (Ed.) dated 25.4.94 was issued refusing to pay these arrears.

The learned Single Judge allowed the Writ Petition holding that the respondent-school was entitled to payment of 'arrears' of grant-in-aid and quashed G.O.No.138 dated 25.4.94. Then the State came forward with a legislation, - after the said judgment, - by way of Andhra Pradesh Act 34/95 (published in the Gazette on 20.9.95) with retrospective effect from 17.10.89 which permitted denial of 'arrears' of grant-in-aid whenever such arrears were claimed under "any judgment, decree or order of Court or other authority or any order issued by Government". In the Writ Appeal, the State relied upon the said legislation to get over the judgment dated 27.7.95 of the learned Single Judge directing arrears of grant-in-aid to be paid but the Division Bench held that the legislature could not set aside the judgment of the High Court by Act 34/95. The judgment was confirmed and the Writ Appeal was dismissed. It is against the said judgment that this appeal is preferred by the State. During the pendency of this appeal stay of the High Court's order was refused.

For appreciating the points raised in this appeal, it is necessary to refer to the provisions of the three statutes and the various government orders dealing with grant-in-aid to schools in the State of Andhra Pradesh chronologically in so far as they are relevant for the case before us.

Andhra Pradesh Act 1/82

The Andhra Pradesh Education Act (A.P. Act I of 1982) deals with 'grant-in-aid' Chapter VIII (sections 42 to 47). Section 42 states that the Government shall, within the limits of its economic

capacity, set apart a sum of money annually for being given as grant-in-aid to local authority and private institutions recognised for the aforesaid purpose. Section 43 deals with the authorities which may sanction the grant, (section 44 has been omitted in 1983), section 45 deals with the manner of submitting applications for sanction of grant and the conditions to be fulfilled on such sanction. Sub-clause (1) of section 46 gives power to Government to withhold, reduce or withdraw grant, notwithstanding anything in the Chapter, on inquiry, (i) on the ground of non-availability of funds or (ii) because of the conduct and efficiency and the financial condition of such institution. The section provides opportunity to be given. Sub-clause (2) of section 46 states that, without prejudice to the generality of the Act, the Government may, after making necessary inquiry, withhold, reduce or withdraw any grant if the management of the Institution is guilty of various acts specified in the sub-clause. Section 47 deals with the manner of utilisation of funds and movable property of private institution.

GO.238 (Ed). dated 27.5.86 and GO.347 (Ed). dated 1.8.86

Government issued G.O.238 (Ed.) dated 27.5.86 stating that all schools which were validly opened on or after 1.4.1977 and which had completed 5 years in respect of boys' schools and 3 years in respect of girls' schools etc. are to be admitted to grant-in-aid. As already stated, the respondent-school was admitted to grant-in-aid as per G.O. 347 (Ed.) dated 1.8.86 with effect from 1.9.85 to 29.2.86 as permitted by Act I/82.

Complaints and GO.220 dated 24.2.88 appointing Committee.

On 24.2.88, Government issued G.O. 220 stating that Government had received various complaints against several schools which were receiving grant-in-aid even though they did not satisfy the necessary conditions. It was further stated that the Government had, therefore, constituted a High Court Committee in G.O. Rt.No. 220 (Ed.) dated 24.2.88 to look into every cae of grant-in-aid and make specific recommendations.

Andhra Pradesh Act 22/88: Statutory Committee to inquire into complaints:

Soon after 24.2.88, the Government felt that a GO was not sufficient to enable the making of inquiries into complaints and that legislation was necessary. It, therefore, came forward with the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988 (AP Act 22 of 1988) which was published in the Gazette on 29.8.88 and under sub-clause (3) of Section 1 this Act was given effect from 22.7.1985. Section 3 of the Act reads as follows:

"Section 3(1): Regulation of grant-in-aid to private educational institutions:

Notwithstanding anything contained in G.O. Ms. No. 238, Education (SSE) Department, dated the 27th May, 1986 and GO. Ms. No. 424, Education (CE) Department, dated the 19th September, 1985, —

(a) no private educational institution other than a college established after the Ist April, 1977 land existing on the Ist September, 1985 and no private college established after the Ist April, 1977 and existing on the Ist March, 1985 shall be entitled to receive any grant-in-aid unless the Committee constituted in GO.Rt. No. 220, Education (SSE-I) Department, dated the 24th February, 1988 recommends that it may be admitted to grant-in-aid: and

(b) no private educational institution other than a College which has been established after the Ist

September, 1985 and no private college which has been established after the Ist March, 1985 shall be entitled to receive any grant-in-aid.

(2) A private educational institution referred to in clause (a) of sub-section (1) in favour of which the Committee recommends the release of grant-in-aid shall be entitled to such grant only from the date it satisfies all the conditions for admission to grant-in-aid specified in the Andhra Pradesh Education Act, 1982 and the Rules made thereunder, the grants-in-aid Code and the orders and other instructions issued by the Government from time to time in this behalf."

Section 4 of the Act refers to release of grant-in-aid in respect of certain additional sections and posts. Section 5 refers to seeking refund of grant-in-aid if the Committee in G.O. 220 (ed.) dated 24.2.88 determines that the institution wrongly received aid. Section 6 said the Act will have effect notwithstanding anything in any law, judgment etc. Section 7 deals with validation. Section 8 repeals the Ordinance of 1988.

G.O. 124 (Ed.) dated 27.1.89 & GO. 326 (Ed.) dated 17.10.89: The Committee rejects complaints against several schools including respondent-School:

Under A. G.O. 124 (Ed.) dated 27.1.89 a Committee was constituted as stated in the above Act 22/88. It appears that the Committee met and conducted inquiries into complaints and gave various recommendations. G.O. 326 (Ed.) dated 17.10.89 was thereafter issued stating that the Committee had recommended release of grant-in-aid to 59 secondary schools and other specified elementary, oriental schools, sections whose names are enumerated in the Annexure- "subject to various conditions" (i) to (vi) and that Rs. 63 lakhs was being sanctioned to these schools enumerated in the Annexure to this G.O. for the period 1.11.89 to 29.2.90. But para 12 of the G.O. is important and stated as follows:

"Regarding payment of arrears to the schools now admitted to grant-in-aid, orders will be issued separately."

A point has been raised as to whether this para is an admission that arrears are due and will be paid. As to the meaning of the word ‘now’ used in this order, there is again some controversy and we shall explain it a little later.

The Writ petition for arrears and the G.O. 138 (Ed.) dated 25.4.94 refusing arrears:

As the arrears of grant-in-aid were not released, the Ist respondent filed W.P. 15879/90, seeking release of the arrears for the period 1.9.85 to 31.10.89 for the Headmistress and for 1.3.86 to 31.10.89 for the other staff.

As already stated, during the pendency of the Writ petition Government issued a specific order GO. 138 (Ed.) dated 25.4.94 refusing to pay the arrears. In the said GO, Government referred to para 12 of GO. 326 (Ed.) dated 17.10.89 as set out above and said that in that para Government had not made any commitment to pay arrears. It stated:

"It will be seen from the Government Order cited that the Government have not made any specific commitment with regard to the arrears".

Government then said that after examining the matter in detail in the light of "the right of the schools for grant-in-aid or arrears therein" and also the `present financial position’ of the State

Government and taking into account the fact that there will be the extra expense of about 4.5 crores, if arrears are to be paid, the Government decided "not pay arrears". The validity of this GO was, therefore, gone into by learned Single Judge.

Learned Single Judge directs arrears to be paid:

Before the learned Single Judge, apart from relying on sections 42 to 45 of AP Act 1/82 and the retrospectivity given to AP Act 22/88, and the various GOs, the respondent school relied also upon the above para 12 to contended that the entitlement of the schools for arrears prior to 17.10.89 was re-affirmed in this GO.326 but that what the GO meant in para 12 was that the further order contemplated therein was only for working out the mode of payment. The Government, on the other hand, contended before the learned Single Judge that in this para 12 of GO 326 Government had identified these schools as eligible to receive grant-in-aid 'afresh' and it was not a case of re-affirmation of a previous eligibility. Of course, question is whether this contention of the Government can fit into the GO if para 12 refers to payment of arrears. Respondent-school contends that if it was a fresh admission to grant-in-aid, there was indeed no need at all to refer to any arrears. We shall revert to this aspect again.

The learned Single Judge had, therefore, to go into the validity of GO 138 dated 25.4.94 denying arrears. (By that date AP Act 34/95 had not been passed). The learned Judge allowed that Writ petition on 27.7.1995 and directed payment of arrears and declared GO.138 (Ed.) dated 25.4.94 as inoperative, stating that under sections 42, 43 and 45 of the Act 1/82, the statute conferred a right to receive the grant-in-aid and that initially grant-in-aid was released in favour of the petitioner for the period 1.9.85 to 26.2.86 as stated in GO.347 (Ed.) dated 1.8.86, that later on in view of complaints against various schools, Government appointed a Committee in GO.220 dated 24.2.1988, the Committee cleared the case of the writ petitioner, along with other schools in GO.326 dated 17.10.89 and while the Committee was inquiring into the matter, the right to 'arrears' remained in abeyance till the writ petitioner was cleared by the Committee, that once the favourable recommendation by the Committee was given, it was nothing but a retro-active declaration of the right to receive the grant-in-aid from 29.2.86. Learned Judge also held that in para 12 of the GO. 326 dated 17.10.89, the Government had agreed to pay the arrears and, therefore, they could not have issued GO.138 dated 25.4.94 refusing to release the arrears because of 'present financial position' (i.e. in 1994). The writ petition was allowed.

Act 34/95 says arrears need not be paid as per judgment or Government order:

We have already stated that after the above judgment of the learned Single Judge, the Legislature passed Andhra Pradesh Educational Institutions Grant-in-Aid (Regulation) Supplementary Provision Act, 1995 (Act 34/95). It was published in the Gazette on 20.9.95. It was given retrospective effect from 17.10.89. It contains only two sections. There is a long preamble setting out the gist of the various GOs.set out above. Section 1 deals with retrospectively and section 2 of this Act, declares that arrears payable by virtue of "any judgment or decree of Court or other authority or any order issued by Government" need not be paid even if it had become payable to the schools enumerated in GO 326 dated 17.10.89 read with Go 178 dated 23.07.90. We have extracted section 2 lower down in this judgment.

Division Bench says Act 34/95 cannot overrule judgment of learned Single Judge:

It was this Act 34/95 that was relied upon by the Government before the Division Bench in the Writ

Appeal to deny the arrears. The Division Bench, as already stated, held that once the rights of the respondent for release of grant-in-aid got crystallised by way of a judgment, the Legislature could not have set aside the judgment by passing a law and therefore, notwithstanding the new law, the State was bound to honour the judgment of the learned Single Judge. The Writ Appeal was dismissed. However, the Bench did not go into the question whether Act 34/95 removed the basis of the judgment of the learned Single Judge with retrospective effect.

Points arising in this appeal:

In this appeal, we have heard learned senior counsel for the State of Andhra Pradesh Smt. K. Amareswari and learned counsel for the respondent Sri B. Kanta Rao.

The following points arise for consideration:

(1) whether the State can successfully rely on A.P. Act 34/95 to deny the arrears of grant-in-aid if the arrears had become payable under Act 1/82 and Act 22/88, and once the Committee appointed under Act 22/88 had cleared the school?

(2) Whether, in the facts of the case, the arrears of the grant-in-aid could be denied by Legislation even after the right to the same was declared by the learned Single Judge of the High Court?

Point 1:

We have noticed that the period for which the dispute between the parties survives is regarding arrears for the period from 1.9.85 to 31.10.89 so far as the post of Head-Mistress of this school is concerned and for 1.3.86 to 31.10.89 so far as the staff is concerned.

We shall first refer to the affect of Act I/82 on the facts of this case. Section 42 to 45 of Act 1/82 contain the main provisions as to admission to grant-in-aid. In other words, in respect of the schools which satisfy the prescribed eligibility conditions as prescribed in the GOS, a statutory right to receive grant-in-aid is clearly created by sections 42 to 45 of the said Act.

No doubt, section 46 of the Act 1/1982 permits withholding or reduction or withdrawal of the grant-in-aid. We have already referred to the gist of this provision but now we shall extract the same:

"S.46 — Power of Government to withhold, reduce or withdraw grant:—

(1) Nothwithstanding anything in this Chapter, the Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable to an educational institution having regard to the funds at the disposal of the Government or the conduct and efficiency and the financial condition of such institution, after giving an opportunity to the manager of the institution concerned of making a representation against such withholding, reduction or withdrawal.

(2) Without prejudice to the generality of the provisions of sub-sections of sub-section (1) or any other provision of this Act, the Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable to any educational institution if the manager of the institution concerned, —

(1) fails to fulfil or any of the coonditions of grant;

(ii) denies admission to any citizen on grounds only of religion, race, caste, language or any of them;

(iii) allows any employee of the institution to take part in any agitation intended to bring or attempt to bring into hatred or contempt, or intended to excite or attempt to excite disaffection towards, the Government established by law in India;

(iv) directly or indirectly encourages any propaganda or practice of wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class;

(v) is guilty of falsification of registers, of misuse of funds for purposes other than those for which they are collected;

(vi) fails to remedy within such reasonable time as may be specified by the competent authority, the defects in the maintenance of accounts pointed out by the auditors; or

(vii) fails to restore, within the time specified by the competent authority, an employee whose services have been wrongfully dispensed with or fails to pay him any arrears of salary or other benefits when directed to do so by the competent authority.

(3) Subject to the other provisions of this Act, every order passed under this section shall be final and shall not be questioned in any court of law."

It will be seen that the power mentioned in the first part of clause (1)(a) could be exercised after inquiry by the State having regard to the funds at the disposal of the Government. Under the second part of clause (1)(a), this power could be exercised based upon conduct and efficiency or financial position of the institution also after giving opportunity. Under clause (2) of section 46, this power could be exercised based upon conduct and efficiency or financial position of the institution also after giving opportunity. Under clause (2) of section 46 the power could be exercised if the manager had committed certain irregularities as found in an inquiry where the manager is heard. It is clear that when Government appointed a Committee to go into complaints, it was exercising the option under section 46(2). So far as section 46(1) is concerned, there are no proceedings issued under Section 46(1) and no inquiry conducted under that provision.

Right to arrears flows from Act 1/82 and Act 22/88 and Committee;s report and is not created by any Government orders:

It is not in dispute that after Act 1/82, the respondent-school was admitted to grant-in-aid under the said Act in GO 347 (ED.) dated 1.8.86 because the school satisfied the conditions in GO 238(Ed.) dated 27.5.86.

Now, after complaints were received, the grant was kept in abeyance and the cases of the respondent and others were inquired into under section 46(2). Initially, the Government constituted a Committee in GO 220 dated 24.2.88. Later by Act 22/88, the Committee was given statutory status to go into complaints. It will be noticed that the right to receive grant-in-aid for the back years i.e. from 22.7.85 was declared under Act 22/88, contingent upon the recommendation of the Committee. This is clear from section 3(2). It states that if the Committee recommends favourably, then the grant is to be released in favour of an institution, "from the date upon which it satisfies all the conditions for admission to grant in aid specified in the Andhra Pradesh Education Act, 1982 and the Rules made thereunder, or the grant in aid code or orders or other instructions issued by the

Government from time to time". This clause, in our view, therefore directs release of grant-in-aid from the date upon which the school satisfies the eligibility conditions. As already stated sub-clause (3) of section 1 made Act 22/88 retrospective from 22.7.85. Hence it is as if the Committee constituted under Act 22/88 was there from 1985. In our view, once the Committee gave its clearance, the decision would therefore be effective from 22.7.1985 in respect of all the back years from dates anterior to the passing of Act 22/88, and the school would be entitled to release of grant-in-aid from the date on which it satisfies the conditions for receiving grant-in-aid.

It is contended for the State of Andhra Pradesh that section 3(2) is only prospective. It is true section 3 does not expressly say that the recommendation will be retro-active but from the language of section 3(2) referred to above and also because sub-section 3 of section 1 says that the Act "be deemed to have come into force on the 22nd July, 1985", in our view, the right is retrospectively affirmed for the back years. In other words, the Committee's recommendations as to compliance with conditions during various years from 1985 though made after 1988 were to be treated as in existence from various dates after 22.7.1985 and if the institution satisfied the conditions of the Act 1/1982 and also conditions laid down in other GOs in the previous years, the Committee's recommendation in favour of any school would be retroactive and will apply to those back years. That the right to arrears is affirmed by section 3 is also clear from section 5 which relates to an adverse recommendation of the Committee. In cases where the Committee accepted complaints, section 5 requires refund of amounts already paid. Thus, Act 22/88 provided for payment of arrears or for refund of amounts paid. That was the purpose in making the provisions of that Act retrospective w.e.f. 22.7.1985. In our view, these provisions of the Act, therefore, clearly conferred a statutory right on the writ petitioners to receive the grant-in-aid right from 22.7.85 onwards in the various years in which they satisfied the conditions. The right to arrears thus flows from the statutes and the Committee's recommendations and not from any Government orders. In other words, the basic right to receive arrears does not stem from any Government order in respect of the schools enumerated in GO 326 (Ed.) dated 17.10.89 read with GO 178(Ed.) dated 23.7.90. The right stems from Act 1/82 and Act 22/88 and the findings of the Committee. This aspect becomes important when we come to deal with Act 34/95 and as to whether it has removed the basis of the judgment of the learned Single Judge.

We next come to para 12 of Go 326 dated 17.10.89. This Go contained a list of 59 schools like the respondent wherein it was stated that the Committee had given favourable recommendation in favour of the writ petitioner and other institutions. The GO stated that these institutions would be entitled for release of grant-in-aid w.e.f. 1.11.89 to 29.2.90 for the year 1989-90. It, however, contained a note in para 12 as follows:

"Regarding payment of arrears to the school now admitted to grant-in-aid, orders will be issued separately."

In our view, the word "now" used in this GO does not mean that these schools are identified as entitled to grant-in-aid for the first time in 1989 in this GO 326. This is clear from the fact that like section 3 of the Act 22/88, this GO also speaks of arrears. If indeed the previous orders relating to admission to grant-in-aid were intended to be given a go bye as contended before us for the State, the Government would not have referred to the question of payment of arrears in this GO 326. Therefore, the word "now" in our view, is used only to identify those schools etc. referred to in Annexure to the GO. 326 and as cleared by the Committee and was not intended to create a new prospective right to receive grant-in-aid after 1989. Such identification would therefore clearly relate back to 22.7.85 which was the date from which Act 22/88 became retrospective.

Act 22/95: does not retrospectively remove the rights created by Act 1/82 read with Act 22/88 read with the recommendation:

Now we shall finally come to section 2 of Act 34/95. The said Act was published in Gazette on 20.9.1995 after the judgment of the learned Single Judge. But it came into force from 17.10.89, the date of GO 326 which said in para 12 that the orders for arrears would be passed separately. Section 2 of this Act of 1995 reads as follows:

Section 2: No arrears of grant-in-aid payable:

Notwithstanding anything contained in any judgment, decree or order of any Court or other authority, or any order issued by the Government or any authority subordinate to the Government, no arrears of grant-in-aid shall or shall even be deemed to be payable to any private educational institution admitted to grant-in-aid in pursuance of GO. 326 (Ed.) dated 17.10.89 and GO No. 178 (Ed.) dated 23.7.90 for the period between Ist September, 1985 and 31st October, 1989 and accordingly:—

(a) no suit or other proceeding shall be maintained or continued in any Court against the Government or any; person or authority whatsoever for the payment of any arrears of grant-in-aid for the said period; and

(b) no Court shall enforce any decree or other directing the payment of any arrears of grant-in-aid".

The opening part of section 2 refer to the judgment or decree or order of any Court. The second part deals with orders of other authority, or any order of Government or Subordinate authority. The second part deals with rights created by Government orders.

We shall first consider the second part of section 2 as to whether the Act removes retrospectively the right created by Act 1/82 and Act 22/88. For that purpose, we come back to the language of section 2 of Act 34/95.

In our view, what is removed by the Act 22/95 is the right created by the Government orders and not the rights created by Act 1/82 and Act 22/88. If any Government order had conferred any right to the institutions enumerated in the Annexure to GO 326 dated 17.10.89 read with GO 178 dated 23.7.90, it was only those rights that were intended to be removed retrospectively by section 2 from 17.10.89. In other words, the legislature while enacting section 2 of Act 34/95 failed to remove the rights conferred by the Principal Act 1/82 and Act 22/88 read with the Committee's declaratory findings. Further, the Act 34/95 being retrospective only from 17.10.89, it does not go beyond that date into the back years.

So far as the first part of section 2 read with section 46 of Act 1/82, the State has also not placed any material before Court to sustain the order of denial of arrears for want of funds. What budgetary allocations were made in the concerned years were never placed before Court. There is also no proof of any inquiry as required by the first part of section 46(1) of Act 1/82. Thus, under the first and second parts of section 2 of the Act 34/95, there is no removal of the statutory right created by Act I/82 and Act 22/88, read with the recommendations of the Committee. Point 1 is decided accordingly.

Point 2:

Act 22/95 cannot set aside the judgment of the learned Single Judge

Now section 2 of the Act 34/95 also purports to nullify the effect of the judgment of the learned Single Judge. It is well settled that the legislature cannot overrule a judgment by passing a law to that effect unless it removes the basis of the legal rights upon which the judgment is based, with retrospective effect and provided there is no violation of any constitutional provision in such withdrawal of rights retrospectively.

In the present case, we are not going into the question whether any provision of the Constitution is violated while passing Act 34/95 denying arrears of grant-in-aid retrospectively. However, in our view, inasmuch as the rights created by Act 1/82 and Act 22/88 read with the Committee's recommendations have not been nullified by Act 22/95, the judgment of the learned single judge remains effective. The basis of the judgment has not been removed. We have already shown that the rights flowing from the Acts were not touched. Only rights flowing from Government orders were taken away retrospectively. It is therefore necessary to give effect to the judgment of the learned Single Judge. The writ appeal was rightly dismissed.

For the above reasons, which are somewhat different from the reasons given by the Divison Bench, we dismissed this Civil Appeal. The arrears of the grant-in-aid as declared above as per Act I/82 and Act 22/88 and also as directed by the learned Single Judge shall now be released in favour of the writ petitioner. There will be no order as to costs.