

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10714 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 12404 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made there under ?	

STATE MANAGEMENT ASSOCIATION TRUST

Versus

STATE OF GUJARAT & 1 other(s)

Appearance:

MS MAMTA R VYAS (994) for the Petitioner(s) No. 1
 MR DHAWAN JAYSWAL, AGP for the Respondent(s) No.
 1,2

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 07/01/2022**

ORAL JUDGMENT

1. Heard learned advocate Ms. Mamta R. Vyas for the petitioner and learned Assistant Government Pleader Mr. Dhawan Jayswal for the respondent-State through video conference.

2. Facts as well as issues raised in both the petitions are identical. Special Civil Application No.10714/2008 is filed by State Management Association Trust in which all granted/aided schools from the entire State of Gujarat are members of the said Association whereas Special Civil Application No.12404/2008 is filed by the New Education Society which is running Primary, Secondary and Higher Secondary Schools namely, Nutan Vidyalaya, Nutan High School and Gnandeep Kanya Vidyalay in Godhra.

3. For the sake of convenience, facts are recorded from Special Civil Application No.10714/2008.

4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :

“(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the letter

dtd. 1.9.2006 issued by the Resp. No.2 authority.

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction restraining the respondent authorities from recovering the amount of grant which has been paid as per the clarificatory letter dtd. 28.3.2000 and further be pleased to direct the respondent authorities to repay the amount of grant which has been already recovered from the members of the petitioner Association.

(C) Pending admission, hearing and final disposal of this Writ Petition, Your Lordships may be pleased to stay the operation, implementation and execution of the letter dated 1.9.2006 and further be pleased to direct the respondents to pay the maintenance grant as per the clarification made in letter dated 28.3.2000;

(D) Be pleased to pass such other and further reliefs as may be deemed just and proper by Your Lordships in the facts and circumstances of the case."

4.1) The petitioner is registered under the Bombay Public Trust Act having registration no. E/18232/Ahmedabad on 18th October, 2007.

4.2) All granted/aided schools in the State of Gujarat are the members of the petitioner-Association. The petitioner-Association is established for the purpose of

resolving the problem of the management for running Secondary and Higher Secondary schools.

4.3) Respondent no.1-State of Gujarat passed the resolution dated 10th November, 1978 to provide grant to schools under different heads such as salary expenditure, maintenance i.e. building rent, office expenses and other miscellaneous expenses. Thereafter, from time to time various instructions and guidelines were issued governing the grant-in-aid facilities.

4.4) Thereafter by resolution dated 2nd July, 1999, respondent no.1-State of Gujarat introduced a new scheme wherein it was decided to give grant of Rs.1800/- per month per class for Classes 1 to 5; Rs.1500 per month per class for additional 6 to 30 classes and Rs.1000 per month for each class above 31 classes.

4.5) It is the case of the petitioner that respective District Education Officers interpreted the provisions of Government Resolution dated 2nd July, 1999 as per their understanding and thereby decided to pay the grant of Rs.1800/- per month per class in case there are only 5 classes; at the rate of Rs. 1500/- per month per class where there

are more than 5 classes up to 30 classes and Rs. 1000/- per month per class if the classes are more than 30 in the school.

4.6) The petitioner-Association therefore, in view of such interpretation made by the District Education Officers made a representation before respondent no.2 - Commissioner, Mid-day Meals and Schools, Gandhinagar on 22nd January, 2000 and thereafter, the meeting was held under the chairmanship of the then Education Minister on 7th March, 2000 wherein it was clarified that the grant be paid at the rate of Rs. 1800/- per month per class for classes 1 to 5 and that for additional 6 to 30 classes at the rate of Rs.1500/- per month per class and thereafter for other classes above 31 classes each at the rate of Rs. 1000 per month. Respondent no.2 issued a clarificatory letter dated 23rd August, 2000 to District Education Officers to pay the grant towards maintenance in the manner decided in the meeting held on 7th March, 2000 as per the Government Resolution dated 2nd July, 1999.

4.7) It is the case of the petitioner that the grant was paid to the members of the petitioner-Association in aforesaid manner as per Government Resolution dated 2nd July, 1999 and accounts of the school were audited and

no objection was raised by the respondents at any point of time.

4.8) Thereafter, contrary to the resolution dated 2nd July, 1999, respondent no.2 informed the District Education Officers by letter dated 1st September, 2006 to pay the maintenance grant at the rate of Rs.1800/- per month per class in case there are only five classes; at the rate of Rs. 1500/- per month per class where there are more than five classes up to 30 classes and at the rate of Rs. 1000/- per month per class if the classes were more than 30 in the school. It was also directed not to implement the letter dated 28th March, 2000 till further orders.

4.9) The petitioner has therefore, preferred this petition being aggrieved by the letter/order dated 1st September, 2006 issued by respondent no.2-Commissioner of Mid-Day Meals and School.

5. After filing of the petition, the District Education Officers issued orders for recovery of excess grant paid as per letter dated 1st September, 2006 from the members of the petitioner-Association. The petitioner has therefore, amended the petition against the order of recovery.

6. Learned advocate Ms. Mamta Vyas submitted that the Government Resolution dated 2nd July, 1999 clearly provides that maintenance grant is required to be paid as per number of classes in school i.e. to say for classes 1 to 5 maintenance grant is to be paid at the rate of Rs. 1800/- per month per class; from classes 6 to 30 at the rate of Rs.1000/- per month per class and from classes 31 onwards at the rate of Rs.1000/- per month per class. It was submitted that the schools which are having more classes would get less amount towards maintenance if the impugned letter/order dated 1st September, 2006 is to be implemented and the schools which are having less number of classes would obviously get more amount on an average.

6.1) It was submitted that this aspect was pointed out during the meeting held on 7th March, 2000 and after discussion and deliberation in the said meeting, clarification was issued on 28th March, 2000 and thereafter without there being any meeting or discussion with the petitioner-Association, respondent no.2-authority issued letter dated 1st September, 2006 after 6 years to put a cut on the maintenance grant and thereafter ordered to recover the amount paid excess as per letter dated 1st September, 2006

to the members of petitioner-Association.

6.2) It was submitted that the State Government has provided payment of maintenance grant in the Government Resolution dated 2nd July, 1999 slab wise, whereas by letter dated 1st September, 2006, respondent no.2 has passed the order contrary to the Government Resolution dated 2nd July, 1999. It was therefore, submitted that the impugned letter/order dated 1st September, 2006 is required to be quashed and set aside and no recovery should be effected against the member schools of the petitioner.

7. On the other hand learned Assistant Government Pleader Mr. Dhawan Jayswal for the respondent-State submitted that the respondents have considered the case afresh as per the existing policy pursuant to the order passed by this Court on 15th February, 2018 and thereafter the decision is taken by the Education department and by Finance department after detailed re-consideration of the grievances raised by the petitioner and by order dated 16th February, 2019, it was concluded that the members of the petitioner-Association are entitled to grant as per the Government Resolution dated 2nd July, 1999 only and not as per the letter dated 28th March, 2000. It was concluded by the

authorities that if there are 5 classes in a school, grant would be paid at the rate of Rs. 1800/- and if classes are from 6 to 30 per class Rs. 1500/- per month grant would be paid and if there are more than 31 classes, grant would be paid at the rate of Rs. 1000/- per month per class and not as slab-wise as per clarificatory letter dated 28th March, 2000. It was therefore, submitted that the members of the petitioner-Association are entitled to grant which is decided as per the order dated 16th February, 2019 by the Education department and Finance department whereby impugned letter/order dated 1st September, 2006 is reiterated.

8. Considering the submissions made on behalf of the respective parties, it appears that after the Government Resolution dated 2nd July, 1999 was passed, clarificatory letter dated 28th March, 2000 was issued to implement Government Resolution dated 2nd July, 1999 on a slab-wise manner as under :

For example if there are 6 classes then for class 1 to 5, grant would be paid at the rate of Rs. 1800 i.e. Rs. 9000/- and for remaining classes, amount of Rs. 1500/- would be paid i.e. total Rs. 10,500/- would be paid.

Similarly, if there are 35 classes in a school then for classes 1 to 5 grant would be Rs. 9000/- at the rate of Rs.1800/- per month per class and grant would be Rs. 37,500/- from class 6 to 30 at the rate of Rs. 1500/- per month per class and for classes 31 to 35, Rs.5000/- would be payable and thus total monthly grant payable would be Rs. 51,500/-.

9. However as per the impugned letter dated 1st September, 2006 if there are 6 classes, grant would be payable at the rate of Rs. 1500/- i.e. Rs. 9000/- per month, if there are 35 classes, grant would be payable at the rate of Rs. 35,000/- at the rate of Rs. 1000/- per month. Thus, there was excess payment of grant as per letter dated 1st September, 2006 to the schools and hence, there is a recovery of the excess grant paid from the year 2000-2006.

10. It is true that Government Resolution dated 2nd July, 1999 provides for maintenance grant per month per class to the school and three types of grants are mentioned in such resolution i.e. for classes 1 to 5 Rs. 1800/- per month per class; if the school is having classes 6 to 30 Rs. 1500/- per month per class and if classes are more than 31, Rs. 1000/- per month per class. Therefore, interpretation made by the impugned letter

dated 1st September, 2006 read with letter dated 16th February, 2019 of the Education department, it appears that letter dated 28th March, 2000 is issued without considering the purport of the Government Resolution dated 2nd July, 1999. It appears that Government Resolution dated 2nd July, 1999 was issued to meet with maintenance expenditure of the schools and accordingly, schools having less number of classes were given higher amount of the grant whereas schools with more number of classes were given less amount of grant. It was therefore, a Government policy to provide more incentives to the small schools so as to meet with fixed costs which would be more than the schools having more classes. In such circumstances, letter dated 28th March, 2000 has misinterpreted the Government Resolution dated 2nd July, 1999 and the member schools of the petitioner-Association have been paid more grant from year 2000-2006 till the impugned letter/order was passed by respondent no.2.

11. This Court (Coram : Hon'ble Mr. Justice Rajesh Shukla, As His Lordship was then) passed the following order on 15th February, 2018 directing the respondent-State to reconsider the decision dated 1st September, 2006.

"1. During the course of hearing, as it

transpires, the issue involved is with regard to the allocation of maintenance grant and some clarification with regard to the circular/resolution issued by the State Government. However, without expressing any opinion, it may be desirable if the respondent Nos.1 and 2 are directed to reconsider and revisit the issue with regard to the allocation of maintenance grant in principle considering the relevant factors.

2. Learned Additional Advocate General Shri P. K. Jani may also put across the suggestion for consideration and respondents may take appropriate decision, which may be conveyed through learned Additional Advocate General and placed on record on the next date.

3. The Court is conscious about the aspect of the policy or the financial implications. However, as it is a matter of education, the State is also under obligation for promoting the education, it is thought desirable that it may be considered by the respondents. The respondents may consider this within a period of four weeks and the decision may be placed on record of this matter for consideration of this Court. The matter is adjourned to 22.03.2018.

4. A copy of this order may be made available to both the learned advocates for the petitioners as well as learned Additional Advocate General Shri P. K. Jani for appropriate measures."

12. Pursuant to the aforesaid order, the Education department and Finance department

has reconsidered the issue and by letter dated 16th February, 2019 it was communicated to respondent no.2 about confirming his decision dated 1st September, 2006 and it was concluded that the schools to which more grant is paid from 2000-2006 is liable to be recovered.

13. In view of above Government policy, no interference is required to be made by this Court while exercising jurisdiction under Article 226/227 of the Constitution of India. However, there is no fault on part of the members of the petitioner-Association who have received grant pursuant to the letter dated 28th March, 2000 interpreting the Government Resolution dated 2nd July, 1999 resulting into excess payment of grant and therefore, no recovery can be made from members of the petitioner-school for the excess payment of grant as it was the due to the misinterpretation of the Government Resolution dated 2nd July, 1999 that letter dated 28th March, 2000 was issued.

14. The Apex Court in case of **State of Punjab & Ors. v. Rafiq Masih** reported in (2015) 4 Supreme Court Cases 334 for recovery of excess amount paid to the workman by the employer for no fault on part of the workman held that the same cannot be recovered as

under:

"(12.) It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

15. Applying similar analogy in the facts of the case when members of the petitioner-Association have received grant as per letter

dated 28th March, 2000 issued by respondent no.2 and subsequently, when it was pointed out during audit in the year 2006 that excess payment of grant is made interpreting the Government Resolution dated 2nd July, 1999, members of the petitioner-Association are not at fault nor they have committed any mischief or fraud to receive excess amount of grant-in-aid. In such circumstances, the recovery proceedings initiated by the respondents are not tenable.

16. For the foregoing reasons, the petitions are partly allowed. So far as challenge to the letter/order dated 1st September, 2006 of respondent no.2 is concerned, the petitions fail. However, so far as consequential order of recovery of payment of excess amount of grant-in-aid to members of the petitioner-Association is concerned, the same is quashed and set aside.

17. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR