

document or to present it for registration. We do not have the power of attorney before us. Petitioner has not been able to even allege that his cousins or any one of them have raised some dispute regarding dealing with their shares on the sale deed, as could not be done in exercise of the power. As such we presume that the official act of the Sub-Registrar in registering the document (sale deed) was pursuant to satisfaction obtained that the power of attorney produced was a good and valid one, to enable respondent no.3 to also deal with the shares of respondent nos. 4 and 5. Clearly, **Jugraj Singh** (supra) is not applicable.

10. In **S.P. Velayutham** (supra) the Supreme Court said that where a party questions only the failure of the registering authority to perform his statutory duties in the course of third step i.e. failure of the registering authority to perform his statutory duty, the High Court's jurisdiction to interfere under article 226 in the Constitution of India cannot be said to stand completely ousted. The declaration has to be read like a demurrer. For a party to challenge the act of the registering authority, he must accept, inter alia, statements in the power of attorney empowering the person(s), to execute and present the document for registration since he is only challenging the discharge of statutory duty of the registering authority. In that case there was a sale made by the constituent attorney on strength of a power of attorney that specifically excluded power to sell. In such facts the Supreme Court said, action of the authority was amenable to writ jurisdiction. It reinforces our view that, to challenge the official act there must be reliance on the documents presented for registration. As aforesaid, petitioner has not even taken inspection of the power of attorney. Here, petitioner disputes the power of attorney and he is seeking to render the compulsorily

registerable sale deed, on the registration, if cancelled, to be a document of little or no consequence. We will not, in this way exercise our writ jurisdiction to usurp that of the civil Court. It follows, **S.P. Velayutham** (supra) does not come to aid of petitioner.

11. We see the underlying controversy between petitioner and unnoticed private respondents to be civil in nature. Petitioner must find his remedy.□ As aforesaid, we will not be drawn into exercising our writ jurisdiction.

12. The writ petition is **disposed of**.

13. Registry will communicate website copy of this order to respondent nos. 3 and 6 as we have not noticed them in dealing with the writ petition.

(2025) 5 ILRA 1510
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.05.2025

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.

Writ C No. 31912 of 2018

C/M Janhit Madhyamik Vidyalaya & Anr.
....Petitioners

Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Ashok Khare (Sr. Adv.), Siddharth Khare

Counsel for the Respondents:
C.S.C., Pankaj Kumar Singh

Civil Law - U.P. Basic Education Act, 1972
- Inclusion in Grant-in-Aid List -
Government Order dated 07.09.2006 -
Government Order dated 14.07.2020 -

Petitioner's institution granted permanent recognition in 1986 – Claim for grant-in-aid wrongly rejected firstly on non-existent ground of suspicious signature and thereafter on unsustainable grounds including appointment of two Class-IV employees – Petitioner's earlier writ petition No.66902 of 2009 allowed with categorical positive direction that if there is some optimum limit the petitioner shall be adjusted against such institution or alternative arrangement shall be made – Despite that, respondents again rejected claim which was quashed in Writ Petition No.48835 of 2011 and special appeal dismissed. Held : Claim was rejected on grounds not sustainable in law, right of petitioner crystallised under Government Order dated 07.09.2006 and subsequent Government Order dated 14.07.2020, which provided that it was not feasible to open a new institution or to establish a new institution on grant-in-aid, could not defeat such crystallised right, rejection on pretext of new policy misconceived – Once State Government had extended benefit of grant-in-aid to similarly placed institution denial to petitioner was arbitrary and violative of Article 14 of the Constitution. Impugned order set aside, Special Secretary, Basic Education, U.P. directed to take petitioner's institution on grant-in-aid and provide full financial aid forthwith – Writ petition allowed.

Allowed. (E-5)

(Delivered by Hon'ble Saral Srivastava, J.)

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Aditendra Singh, learned counsel for the petitioner and Sri Jitendra Narayan Rai, learned Additional Chief Standing Counsel for the State-respondents.

2. The petitioner by means of the present writ petition has assailed the order dated 13.10.2018 passed by the respondent no.1-Special Secretary, Basic Education,

Government of U.P., Lucknow rejecting the claim of petitioner for taking the institution of petitioner on grant-in-aid.

3. The facts in brief are that there is a Junior High School run under the name of Janhit Madhyamik Vidyalaya Machha, District Kanpur Dehat (hereinafter referred to as 'institution'). The said institution was granted temporary recognition as a Junior High School by order dated 18.06.1981 followed by permanent recognition granted by an order of the Assistant Director (Basic), 4th Region, Allahabad.

4. The respondent no.2-Director of Education (Basic), U.P., Lucknow issued a notification inviting applications from the desirous institutions for taking 1000 recognised Junior High Schools on grant-in-aid. The Management of the institution also applied in pursuance to the aforesaid notification. The State Government on 02.12.2006 issued a Government Order whereby 1000 Junior High Schools were brought on grant-in-aid. However, the name of petitioner's institution was not included in the list appended to the said Government Order. According to petitioner, the Regional Assistant Director of Education (Basic) issued an order dated 04.01.2007 specifying the reasons for not including the petitioner's institution on grant-in-aid which contained recital that signature on the order granting permanent recognition appeared to be suspicious.

5. The petitioner further states that the reason so assigned in the order dated 04.01.2007 was non-existent as the Secretary, Basic Shiksha Parishad, U.P. Allahabad vide communication dated 17.01.2007 verified the order dated 24.10.1986 granting permanent recognition to the petitioner's institution.

6. The petitioner's institution, thereafter, filed a representation on 19.01.2007 before the Director of Education (Basic). When the aforesaid representation was not paid heed to by the authority, the petitioner's institution preferred a Writ Petition No.30719 of 2008 which was disposed off by this Court by judgement and order dated 04.07.2008 with a direction to the Director of Education to decide representation of the petitioner dated 19.01.2007.

7. Pursuant to the aforesaid judgement, the Director of Education (Basic) proceeded to pass an order dated 31.12.2008 holding the institution entitled to be included in the list of grant-in-aid and forwarded the papers to the State Government for final orders.

8. When the matter remained pending at the level of State Government without any order being passed, the petitioner's institution preferred another Writ Petition No.37081 of 2009 which was disposed off by this Court by judgement and order dated 27.07.2009 directing the State Government to take a decision. When the judgement of this Court dated 27.07.2009 in Writ Petition No.37081 of 2009 was not complied with, the petitioner preferred Civil Misc. Contempt Petition No.3947 of 2009. The said contempt petition was disposed off by this Court by judgement dated 04.11.2009.

9. The State Government, thereafter, proceeded to pass an order dated 13.11.2009 rejecting the claim of petitioner for being brought on grant-in-aid. The petitioner, thereafter, preferred Civil Misc. Writ Petition No.66902 of 2009 challenging the order dated 13.11.2009 which was allowed by this Court by

judgement and order dated 18.02.2011. This Court set aside the State Government's order dated 13.11.2009 and remanded the matter to the State Government for fresh consideration.

10. The State Government after remand proceeded to pass fresh order on 11.07.2011 and rejected the claim of petitioner for being brought on grant-in-aid list which led the petitioner to file Civil Misc. Writ Petition No.48835 of 2011. The said writ petition was decided by this Court by judgement and order dated 27.08.2013 alongwith bunch of other writ petitions.

11. Perusal of the judgement dated 27.08.2013 discloses that this Court categorised the writ petitions into two categories. The Writ Petition No.48835 of 2011 was categorised in the first category. This Court recorded a finding in favour of petitioner with regard to validity of appointment of certain staff.

12. The judgement dated 27.08.2013 was assailed in Special Appeals before the Division Bench of this Court leading of which was Special Appeal Defective No.542 of 2014.

13. The judgement in the case of petitioner in Writ Petition No.48835 of 2011 was subject matter of challenge in Special Appeal Defective No.546 of 2014. All the special appeals were jointly heard and dismissed by the Division Bench by judgement dated 11.09.2014.

14. The petitioner further stated that after the judgement of the Division Bench affirming the judgement of learned Single Judge, the State Government by order dated 03.01.2017 had taken another institution in the name of 'Junior High

School Roopan Chapra, Village & Post Roopan Chapra, District Deoria' on grant-in-aid.

15. When no decision was taken in respect of petitioner's institution, the petitioner preferred a representation before the State Government. However, no action was taken on the representation of the petitioner.

16. The petitioner, thereafter, preferred Writ-C No.16477 of 2017 which was disposed off by this Court by judgement and order dated 24.05.2017 directing the State Government to decide the representation of the petitioner within a period of three months from the date of production of certified copy of the order.

17. When the State Government did not decide the representation of the petitioner, the petitioner preferred Contempt Application (Civil) No.3417 of 2018 on which notices were issued by this Court on 07.08.2018.

18. After issuance of notice in the aforesaid contempt petition, the State Government on 13.08.2018 rejected the claim of petitioner by placing reliance upon a judgement in Special Appeal Defective No.994 of 2014. The order dated 13.08.2018 further referred to a policy decision of the State Government notified by office order dated 13.07.2017 and rejected the claim of petitioner on the ground that under the existing policy, it was not feasible to establish a new institution or to take a new institution on grant-in-aid.

19. In the counter affidavit, the State Government stated that in the light of the order dated 05.12.2014 passed in Special Appeal

Defective No.994 of 2014 (Paripurna Nand Tripathi and Another Vs. State of U.P. and Others) and in compliance of the order dated 05.11.2015 passed in Writ-C No.62182 of 2015 (Gram Vikash Sewa Samiti and Another Vs. Union of India and Others), a new Policy has been fixed vide Order No.1143/79-6-2017-Bha.Sa-27/2017 dated 13.07.2017. It is further stated that the Policy dated 13.07.2017 was challenged in Writ Petition No.38992 of 2017 (Jairam Singh and Others Vs. State of U.P. and Others).

20. The aforesaid writ petition alongwith other writ petitions was decided by this Court vide order dated 23.05.2019, and in compliance thereof, for taking the recognised institutions being run in the State of U.P. on grant-in-aid list, the Government Order No.499/Arsath-3-2020 Lucknow dated 14.07.2020 was issued and under the said policy, it is provided that it is not feasible to take institution on grant-in-aid.

21. Challenging the impugned order, learned Senior Counsel for the petitioner has contended that petitioner's institution was entitled to be taken on grant-in-aid under the Government Order dated 07.09.2006. It is contended that the petitioner's institution was not taken on grant-in-aid on invalid grounds due to which, the petitioner had to approach this Court seven times, five times by filing writ petition and two times by filing contempt petitions. It is submitted that respondent had earlier passed an order dated 13.11.2009 rejecting the claim of petitioner which led the petitioner to file the Writ Petition No.66902 of 2009 which was allowed by this Court by judgement and order dated 18.02.2011 and the matter was remitted to the State Government to consider the claim of petitioner afresh.

22. It is contended that respondent again by order dated 11.07.2011 rejected

the claim of petitioner for being taken on grant-in-aid on invalid grounds which again led the petitioner to file Writ Petition No.48835 of 2011 and thus, petitioner was entitled for being taken on grant-in-aid under the Government Order dated 07.09.2006. It is further contended that since rights of the petitioner are governed by earlier judgement passed by this Court on 18.02.2011 in Writ Petition No.66902 of 2009 and judgement dated 27.08.2013 in Writ Petition No.48835 of 2011, therefore, rejection of claim of petitioner for taking the institution on grant-in-aid on the ground of Government Order dated 14.07.2020 is not sustainable in law.

23. It is contended that rights of petitioner to be taken on grant-in-aid accrued under the Government Order dated 07.09.2006 and because of arbitrary action of respondent-State in rejecting the claim of petitioner on flimsy grounds, the petitioner had to approach this Court seven times, five times by filing writ petitions and two times by filing contempt petitions.

24. Thus, in view of the aforesaid fact, it is submitted that claim of petitioner is to be considered under the Government Order dated 07.09.2006, and it does not lie in the mouth of respondent to reject the claim of petitioner on the basis of Government Order dated 14.07.2020 since the said Government Order is not applicable in the case of petitioner.

25. It is further submitted that action of respondent in denying the claim of petitioner for taking the institution on grant-in-aid is arbitrary and discriminatory and is violative of Article 14 of the Constitution of India inasmuch as the institutions who were juniors to the petitioner's institution had been taken on

grant-in-aid whereas petitioner's institution had been denied the benefit of grant-in-aid under the Government Order dated 07.09.2006.

26. It is further contended that even after the judgement of this Court dated 27.08.2013 in bunch of writ petitions, the State Government has granted the benefit of grant-in-aid to one institution namely, 'Junior High School, Roopan Chapra, Village & Post Roopan Chapra, District Deoria', therefore, the action of respondent in rejecting the claim of petitioner is arbitrary and discriminatory and cannot be sustained in law.

27. Per contra, learned counsel for the respondents would contend that State Government framed a policy by issuing a Government Order dated 14.07.2020 in pursuance to the judgement dated 23.05.2019 passed by this Court in Writ Petition No.38992 of 2017 under which, the Government had taken a decision that it is not feasible to open a new institution or to establish a new institution on grant-in-aid. It is submitted that in such view of the fact, there is no illegality in the impugned order.

28. I have considered the rival submissions of the parties and perused the record.

29. The facts of the case have been delineated above, therefore, they are not being reiterated to unnecessarily burden the judgement.

30. So far as the first submission of learned Senior Counsel for the petitioner that rights of petitioner's institution accrued in the year 2006 as the institution was wrongly denied the benefit of grant-in-aid

under the Government Order dated 07.09.2006 is concerned, it is pertinent to note that the Assistant Director of Education (Basic), Kanpur Division, Kanpur by letter dated 04.01.2007 informed the petitioner that claim of petitioner was not accepted under the Government Order bearing शासनदेश संख्या-2010/79-6-7(2) 2006 dated 07.09.2006 on the ground that signature on the order granting permanent recognition appeared to be suspicious. However, the record reveals that the said ground was non-existence inasmuch as the Secretary, Basic Shiksha Parishad, U.P. Allahabad by communication dated 17.01.2007 verified that petitioner's institution was granted permanent recognition by Divisional Assistant Director of Education (Basic), Kanpur Region, Kanpur. The relevant extract of the order dated 17.01.2017 is reproduced herein below:-

“उक्त के सम्बंध मे अवगत कराना है कि जनहित माध्यमिक विद्यालय मांचा कानपुर देहात को मान्यता मण्डलीय सहायक शिक्षा निदेशक बेसिक इलाहाबाद द्वारा प्रदान की गयी है। जिला बेसिक शिक्षा अधिकारी कानपुर देहात द्वारा परिषद कार्यालय को प्रस्तुत सूची जो परिषद कार्यालय को मान्यता प्रमाण पत्र निर्गत करने हेतु प्रेषित की गयी है उक्त सूची के क्रमांक 43 पर जनहित माध्यमिक विद्यालय मांचा कानपुर देहात का नाम अंकित है तथा पत्रांक 4962-96/86-81 दिनांक 24.10.86 को मान्यता निर्गत दिखायी गयी है।

कृपया उक्त के अनुसार आप स्वयं अपने स्तर से मान्यता के सत्यापन के सम्बंध मे नियमानुसार आवश्यक कार्यवाही करें।”

31. After the verification by the Secretary, Basic Shiksha Parishad, U.P. Allahabad, the petitioner approached the authorities for taking the institution on grant-in-aid and when no heed was paid, the petitioner approached this Court by filing Writ Petition No.30719 of 2008

which was disposed off by this Court with a direction to the authority to consider the claim of petitioner.

32. Thereafter, the Director of Education (Basic) proceeded to pass an order holding that institution is entitled to be included in the grant-in-aid list and forwarded the papers to the State Government to take final decision. When the State Government did not take any decision, petitioner again approached this Court by filing Writ Petition No.37081 of 2009.

33. Thereafter, the State Government considered the claim of petitioner by order dated 13.11.2009 and rejected the same on the ground that after promulgation of Government Order dated 02.07.1990, there can be only one post of Class-IV employee in Junior High School and since appointment had already been made, therefore, subsequent appointment on 16.07.1992 contravenes the State Government's Order, therefore, petitioner is not entitled for grant-in-aid as it violates the terms of recognition and involves financial complications.

34. The Order dated 13.11.2009 was challenged by the petitioner in Writ Petition No.66902 of 2009. This Court did not find the grounds of rejection in the order dated 13.11.2009 sustainable in law and set aside the same by judgement dated 18.02.2011 with further direction to the State Government to consider the claim of petitioner. Relevant extract of the order dated 18.02.2011 is being reproduced herein below:-

“The institution has been in existence for the last almost 30 years. The date of permanent recognition has been

verified and there is no invalidity on that score. Had the petitioner been considered for award of grant-in-aid the petitioner should have been included in accordance with the date of grant of permanent recognition and the petitioner was entitled to the said benefit.

It is also urged that this discriminatory attitude violates Article 14, inasmuch as, the petitioner was non-suited on an erroneous ground which stood removed and then subsequently a new ground has been raised.

The issue relating to appointment of two Class IV employees in 1992 has been taken as an excuse for non-suiting the petitioner as noted above whereas the recognition of the petitioner is of 1986 when the said Government Order was not in existence. There is therefore no occasion to construe that the recognition order has been violated. At the best the two appointments made in 1992 would not be entitled for the benefit of grant-in-aid but the same cannot be a ground to deny the availability of such a benefit. The Recognition of the petitioner still stands and if the institution continues to be recognized then there is no reason as to why the claim of the petitioner cannot be considered. Accordingly, the writ petition is allowed and the order dated 13th November 2009 is quashed.

While deciding the dispute again the respondent no.1 shall take into account the fact that if there is some optimum limit provided for the number of institutions entitled for such benefit then the petitioner will have to be adjusted as against such an institution which has been extended such a benefit in place of the petitioner or any alternative arrangement shall be made.”

35. The State Government, thereafter, again passed an order dated 11.07.2011 which was again challenged by the petitioner by filing Writ Petition No.48835 of 2009. The said writ petition was allowed by this Court by judgement and order dated 27.08.2013.

36. Against the judgement and order dated 27.08.2013, the Special Appeal Defective No.546 of 2014 was preferred which was dismissed by this Court by judgement dated 11.09.2014.

37. Now, from the aforesaid facts, it is evident that the petitioner had been pursuing his claim for being taken on grant-in-aid since the issuance of Government Order dated 07.09.2006, and claim of petitioner was firstly rejected on invalid ground that signature on the recognition order was suspicious. The Secretary, Basic Shiksha Parishad, U.P., Allahabad, thereafter, verified the order dated 24.10.1986 granting permanent recognition to the institution and issued a communication order dated 17.01.2007 that the petitioner's institution was granted permanent recognition. The relevant extract of the communication dated 17.01.2007 has already been extracted above.

38. Thereafter, second time by order dated 13.11.2009, the claim of the petitioner was rejected on a new ground that since there can be only one post of Class-IV employee in Junior High School, therefore, subsequent appointment on Class-IV employee contravenes and violates the term of recognition order and also involves financial implication. The said ground was also not found sustainable by this Court in Writ Petition No.66902 of 2009. Accordingly, this Court set aside the

order dated 13.11.2009 by judgement and order dated 18.02.2011.

39. It is pertinent to note that this Court while remanding the matter to the authority categorically in the underline portion of the judgement dated 18.02.2011, extracted above, directed the authority that if there is some optimum limit provided for the number of institutions entitled for such benefit, then the petitioner will have to be adjusted as against such an institution which has been extended such a benefit in place of the petitioner or any other alternative arrangement shall be made.

40. The aforesaid fact reveals that in the judgement dated 18.02.2011, this Court categorically recorded a positive finding in favour of petitioner that petitioner's institution shall be adjusted against such an institution which has been extended such a benefit in place of petitioner or any other alternative arrangement shall be made.

41. Despite the aforesaid positive direction of this Court, the respondent proceeded to again reject the claim of petitioner by order dated 11.07.2011 which order came to be challenged by the petitioner in Writ Petition No.48835 of 2011 which writ petition was allowed and special appeal against the same was dismissed.

42. So before passing the order dated 13.11.2018, the claim of petitioner was rejected on one or other ground which was not sustainable in law.

43. If the claim of petitioner had not been rejected on the grounds not sustainable in law, the petitioner's institution was entitled to be taken on

grant-in-aid earlier and thus, petitioner cannot be denied its claim for taking the institution on grant-in-aid on the pretext of introduction of new Policy vide Order No.1143/79-6-2017-Bha.Sa-27/2017 through Government Order dated 14.07.2020 as the petitioner's right to be taken on grant-in-aid crystallised under the Government Order 07.09.2006.

44. In this respect, it would be apt to refer to a judgement of this Court in Writ-C No.44284 of 2011 (Uma Maheshwar Primary Pathshala Vs. State of U.P. and Others). Paragraph nos.16 and 17 of the said judgement are reproduced herein below:-

"16. Having considered the submissions of the learned counsel for the parties as also on perusal of the record, this Court is of the view that there are two relevant aspects on which the impugned order is silent. The first aspect is whether the institutions that were earlier brought under grant-in-aid list by order dated 31.03.1994 have been removed from the grant-in-aid list pursuant to the Government Order dated 05.10.2006 or not. If, by subsequent Government Order dated 05.10.2006, only fresh inclusion of private institutions under the grant-in-aid was stopped, but the earlier inclusion already made continued to subsist, then the cause of action for the petitioner-institution to pursue its claim in terms of the earlier order dated 21.09.2010 passed in Writ C No. 15429 of 1994 survives, because it was dependent on the alleged discrimination on the part of the State Authorities in not bringing the petitioner-institution under the grant-in-aid list when those other institutions, though similarly placed but established after the petitioner-institution, were brought under the grant-in-aid list.

The Government Order dated 05.10.2006 has been brought on record as Annexure CA1 to the counter affidavit dated 20.12.2011. A perusal thereof, prima facie, reveals that it does not seek to stop the grant in aid to the institutions already brought under the grant in aid list, but only seeks to stop fresh induction of private institutions under the grant in aid list. Therefore, the above aspect was a relevant consideration which has escaped consideration of the respondent no.1 while passing the impugned order.

17. *The other aspect which requires consideration is dependent on the determination of the first aspect. If the institutions that were brought under the grant-in-aid list by order dated 31.03.1994 continue to receive grant-in-aid, then, if it is found that the petitioner's institution was wrongly deprived of being brought under the grant-in-aid even though it was eligible and was established prior to the establishment of those institutions that were brought under the grant-in-aid, the respondent No.1 was required to provide the benefit to the petitioner institution in terms of the order dated 21.09.2010 passed in Writ-C No.15429 of 1994. Therefore, while rejecting the representation of the petitioner-institution a specific finding ought to have been returned whether any institution which was brought under the grant-in-aid, vide order dated 31.3.1994, was established after the petitioner-institution or not or that its claim for some reason was higher in priority than that of the petitioner-institution at the time when the earlier government order dated 31.03.1994 was issued. The impugned order fails to record such finding.”*

45. Similarly, in Writ Petition No.17883 of 2008, this Court allowed the

writ petition in an identical circumstances where though petitioner was eligible to be taken on grant-in-aid under the Government Order dated 06.09.2006, but was refused to be taken on grant-in-aid on flimsy grounds. This Court approved the right of petitioner for being taken on grant-in-aid and directed the authorities to take the new institution on grant-in-aid. Relevant extract of the order dated 03.11.2017 passed in Writ Petition No.17883 of 2008 is reproduced herein below:-

“Having heard the learned counsel for the parties and after going through the record, I am of the definite view that the grant-in-aid should be made available to the petitioners. From the record, it is evident that ever since 2006 when the notification to bring certain institutions under the Aid list was advertized, the petitioners were refused the grant for virtually non-existent reasons. On 4.1.2007, the grant was refused because the petitioners were running in addition to the Junior High School Intermediate Classes. When this confusion was cleared and the writ petition challenging the order dated 4.1.2007 was allowed on 6.10.2007 then the petitioners was refused the financial aid on 28.2.2008 without considering the report of the Basic Siksha Adhikari which was dated 26.2.2008 and was in favour of the petitioners and, therefore, the Court had directed, on 11.4.2014, the respondent no. 1 to pass fresh orders after looking into the report dated 26.2.2008. When the respondents on 16.7.2014 have again passed the order saying that the petitioners could not be granted the financial aid as one thousands Schools which were to be granted the Aid had already been granted the same and that there was no further budget available for giving the petitioners’

institution Financial assistance then the order was again challenged. It is apparent that when the order dated 16.7.2014 has been passed, the respondent no. 1 had not seen the report of its own official dated 16.4.2012 which said that 7 more institutions could be brought under the grant-in-aid list.

Be that as it may, even if all the one thousand Institutions had been granted the financial aid, the petitioners' institution cannot be deprived of the financial aid. It was very much eligible to be granted the aid in the year 2006 itself. For reasons which were absolutely not in existence the petitioners were refused the aid on 4.1.2007 and on 28.2.2008. Now in the year 2014 it did not lie in the mouth of the respondents to say that all the one thousand institutions had been granted the aid and therefore the petitioners could not get the aid.

From the record, it is absolutely clear that the petitioners have been vexed for absolutely non-existent reasons. The petitioners have been forced to challenge three orders before this Court i.e. the orders dated 4.1.2007, 28.2.2008 and 11.4.2014 and all because the respondent no. 1 was passing orders without any application of mind. Definitely, the respondents are under an obligation to grant aid to the petitioners as the Right of Children to Free and Compulsory Education Act, 2009, promises free education for all children up to the age of 14. Article 21-A of the Constitution of India also recognized right to free and compulsory education to all children up to the age of 14 as a Fundamental Right under the Constitution of India and thus the petitioners deserve to be provided the financial aid.

Under such circumstances, I quash the order dated 26.2.2008 and the order dated 16.7.2014 and also issue a writ of mandamus directing the respondent no. 1 to provide full financial Aid to the petitioners forthwith. Since the petitioners have been made to run to this Court and indulge in litigation ever since 2006, I feel that that they should be compensated by the respondent no. 1 by paying to them a sum of Rs. 25,000/- within a period of one month from the date of presentation of a certified copy of this order.

The writ petition is allowed with costs.”

46. Similarly, in Writ-A No.12733 of 2020, this Court while placing reliance upon the judgement of this Court in Writ Petition No.17883 of 2008 allowed the writ petition and directed the institution to be taken on grant-in-aid.

47. Thus, from the aforesaid fact and in view of the law laid down in the aforesaid judgements, this Court finds substance in the submission of learned Senior Counsel for the petitioner that since the petitioner's right for taking the institution on grant-in-aid had crystallised under the Government Order dated 07.09.2006, and there was a positive direction of this Court while deciding the Writ Petition No.66902 of 2009 that if there is some optimum limit provided for the number of institutions and petitioner is entitled for such benefit, the petitioner will have to be adjusted against such institution which has been extended such benefit in place of petitioner, therefore, rejection of claim of petitioner on the ground that in view of the Government Order 14.07.2020, the petitioner cannot be extended the benefit of grant-in-aid is misconceived

more so when, there is no recitation in the order dated 13.10.2018 that petitioner is not eligible for being taken on grant-in-aid under the Government Order dated 07.09.2006.

48. So far as the other contention of learned Senior Counsel for the petitioner that action of respondent is arbitrary and discriminatory is concerned, learned Senior Counsel for the petitioner has placed reliance upon the assertions made in paragraph nos.9 and 23 of the writ petition, which are being reproduced herein below:-

“9. That on 02.12.2006 the State Government issued a Government Order whereby 1000 Junior High Schools were brought on the grant-in-aid. In the list appended to the said government order the name of the present institution was however not included. This is despite the fact that institutions having date of permanent recognition on much subsequent dates than the petitioner institution stood included in the Government Order.

23. That a certified copy of the aforesaid judgement was filed before the State Authorities. However, no orders have been passed with regard to the petitioners institution till date. This is despite the fact that in pursuance to the same judgement of Single Judge as affirmed by Division Bench State Government has by order dated 03.01.2017 taken on grant-in-aid an institution under the name of Junior High School Roopan Chapra, Village & Post Roopan Chapra, District Deoria on the grant-in-aid.”

49. Paragraph nos.9 & 23 of the writ petition have been replied by the respondents in paragraph nos.10 and 25

of the rejoinder affidavit, which are reproduced herein below:-

“10. That the aforesaid Writ Petition along with other Writ Petitions were decided by this Hon'ble Court vide order dated 23.05.2019 and in compliance thereof, for taking the recognized institutions being run in the State of U.P. into grant in aid list, vide Government Order No.499/Arsath-3-2020, Lucknow, dated 14.07.2020, following policy has been determined/fixed:-

“प्रस्तर-8 "प्राथमिक शिक्षा के मान्यता प्राप्त असहायिक विद्यालयों के संबंध में विगत वर्षों की स्थापित नीति का पुनर्विलोकन किया गया। सम्यक् विचारोपरान्त पाया गया कि सम्प्रति प्राथमिक शिक्षा की गुणवत्ता में सुधार किये जाने एवं जो विद्यालय से पूर्व में स्थापित है उन्हें आधारभूत सुविधायें उपलब्ध कराते हुए विकसित किया जाना आवश्यक है जिससे विद्यालयों में शैक्षिक गुणवत्ता में सुधार हो सके। इस हेतु छात्र संख्या के आधार पर अध्यापकों की तैनात (समायोजन), छात्रों एवं अध्यापकों की नियमित उपस्थिति, पठन-पाठन का नियमित अनुश्रवण किया जाये, जिससे छात्र-छात्राओं के अधिगमस्तर में वृद्धि हो सके। यदि नये विद्यालयों को अनुदान पर लिया जायेगा तो निश्चित रूप से राज्य सरकार पर वित्तीय व्यय भार पड़ेगा और पूर्व संचालित विद्यालयों में आधारभूत सुविधाएं व शैक्षिक गुणवत्ता के सुधार हेतु अन्य योजनाएं प्रभावित होंगी। अतः नये निजी विद्यालयों को अनुदान पर लेना उचित नहीं है। अतः प्राथमिक शिक्षा में नवीन परिषदीय विद्यालय स्थापित किया जाना अथवा निजी विद्यालयों को अनुदानित किया जाना समीचीन नहीं पाया गया है।”

25. That the contents of paragraph no.23 of the writ petition are matter of record and hence do not call for any reply. In the Letter No.18/79-6-2017, dated 03.01.2017 issued by the Special Secretary, Government of U.P., there is a clear direction that the above order shall not be treated to be the example for other matter.”

50. From the contents of paragraph nos.10 & 25 of the counter affidavit, it is evident that respondents have not denied the specific averments made by the petitioner that institution junior to the petitioner have been granted benefit of grant-in-aid. Further, the respondent in paragraph no.25 of the counter affidavit admits that the institution namely 'Junior High School Roopan Chapra, Village & Post Roopan Chapra, District Deoria' has been granted recognition. However, the only excuse which they have taken is that there is clear stipulation in the Government Order 03.01.2017 that above order shall not be treated to be the example for other matters.

51. This Court may note that such direction in the order dated 03.01.2017 cannot be sustained in law inasmuch as the State Government has no right to discriminate two identically placed persons. In the present case, once State Government has granted the benefit of grant-in-aid to similarly placed institution namely, 'Junior High School Roopan Chapra, Village & Post Roopan Chapra, District Deoria', the State Government cannot deny the said benefit to the petitioner's institution on the pretext that the Special Secretary, Government of U.P. in the order dated 03.01.2017 has stated that this shall not be treated as an example for other cases.

52. Thus, it is evident that the action of the respondents in not taking the petitioner's institution on grant-in-aid is arbitrary and is violative of Article 14 of the Constitution of India, therefore, impugned order cannot be sustained in law for this reason also.

53. Normally this Court would have remanded the matter to the authority to consider the claim afresh, but in the instant case, as already stated above that petitioner had been contesting since 2009 and had to approach this

Court for seven times prior to filing of present writ petition, therefore, this Court does not find it appropriate to remand the matter to the authority concerned to take a fresh decision.

54. It is also pertinent to note that this Court has already held above that petitioner's right to be taken on grant-in-aid has crystallised under the Government Order dated 07.09.2006, and the impugned order has not been passed on the ground that petitioner is not eligible to be taken on grant-in-aid under the Government Order dated 07.09.2006 rather a new ground has been set up that petitioner cannot be extended the benefit of grant-in-aid on the pretext of new Government Order dated 14.07.2020, therefore, in such view of the fact, it would not be appropriate to remand the matter to the authority concerned.

55. Thus, for the reasons given above, this Court set aside the impugned order and directs the Respondent no.1-Special Secretary, Basic Education, Government of U.P., Lucknow to take petitioner's institution on grant-in-aid and provide full financial aid to the petitioner forthwith.

56. The writ petition is *allowed* with no order as to costs.

(2025) 5 ILRA 1521
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.05.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1000570 of 2001

**Laxmi Objection Filed Appropriate Bench
& Ors.Petitioners**

Versus

**U.P. Zila Adhikari/ Sub-Divisional Officer
Misrikh Sitapur & Ors. ...Respondents**