

PETITIONER:
DISTRICT PRIMARY EDUCATION OFFICER, MEHSANA ETC. ETC.

Vs.

RESPONDENT:
VIDOTEJAK MANDAL & ORS. ETC.

DATE OF JUDGMENT 04/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 AIR 2397 1995 SCC (5) 324
1995 SCALE (4) 707

ACT:

HEADNOTE:

JUDGMENT:
THE 4TH DAY OF AUGUST, 1995

Present:

Hon'ble Mr. Justice K.Ramaswamy
Hon'ble Mr. Justice B.L.Hansaria
Mr. Narayan Shetty, Sr. Adv. and Mr.S.C.Patel, Adv. with him
for the Appellant in C.A.No. 7091/95
Mr.S.K.Dholakia, Sr. Adv. Mrs.H.Wahi, Adv. with him for the
State of Gujarat.
Mr.R.P. Bhatt, Sr. Adv. and Mr.M.N. Shroff, Adv. with him
for the Respondents.

O R D E R

The following Order of the Court was delivered :

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7091 OF 1995

(Arising out SLP [C] No.18381 of 1995)

District Primary Education Officer,
Mehsana etc. etc.

V.

Vidotejak Mandal & Ors. etc.

AND

CIVIL APPEAL Nos. 7092-93 of 1995
[Arising out of SLP (c) Nos.9626, 14744/95]

O R D E R

Delay condoned. Leave granted.

These appeals by special leave arise from the Judgment of the Division Bench of the Gujarat High Court dated March 3, 1994 made in L.P.A. No. 129/93 and batch. Respondent No.1 is a Trust which is a recognized Institution running primary education schools. It claimed for grant-in-aid for one clerk and one peon, i.e., non-teaching staff. The appellants rejected the claim. When they approached under Art. 226, the High Court interpreted sub-rule (3) of Rule 115 of the Bombay Primary Education Act, 1949 holding that while a institution running more than one school is given grant-in-

aid to non-teaching staff the refusal thereof to a single school is violative of Art. 14. Direction, therefore, was given to accord grant-in-aid to the non-teaching staff of the respondent's school.

The question, therefore, is whether the Institutions running single school are entitled to grant-in-aid for the non-teaching staff like clerk & peon. Rule 115 (1) and (3) reads thus:

Sub-rule (1). "Normally the grant paid to an approved private school in any year is the grant paid for that year and shall be calculated on the number of pupils in average attendance in the school during the preceding year.

Provided that :-

(i) grant to an approved private school during the first year of its existence shall be based on the number of pupils in average attendance in the school during the first half of the school year. Such grant shall not, however, exceed three fourths of the estimated expenditure of the school of the pay of its teacher, during the year; and

(ii) no grant to an approved school shall be paid in any year unless the average attendance of pupils is 25 and above during the year.

Explanation - In the case of two or more approved schools conducted by an Association or Society, the average daily attendance shall be calculated by adding together the actual number of daily attendance of pupils of all the schools conducted by the Association or Society and dividing the total by the number of schools so conducted."

Sub-rule (3). "Subject to the instructions that may be issued by the Director from time to time educational bodies or associations conducting a number of approved schools shall be entitled to grant on overhead expenditure at three fourths of their approved expenditure under that head."

When a doubt has arisen whether the rule will be applied to the teaching staff as well, we directed the Government to clarify its stand. An additional affidavit has been filed on July 11, 1995 in which Dr. I.M. Patel, the Director of Primary Education stated in paragraph 2 thus :

"That the controversy involved in this case is limited to the payment of grant payable to non-teaching staff only. As far as grant towards salary expenses of teaching staff is concerned, it is being paid to all the teacher of private schools irrespective of the fact whether an institution or trust runs one school or more than one school. The percentage of grant payable towards Salary expenses to teaching staff varies from 85% to 95%. The copy of the resolution of Education Department of Govt. of Gujarat dated 11th October, 1977 is annexed herewith and marked as Annexure "B". It

is further submitted that even in Govt. Primary School there is no such practice of appointing non-teaching staff like a clerk or a peon. On the other hand if there are more than 200 students then one extra teacher is permitted to be appointed. Moreover in such schools clerical work is very less. The salaries of teachers are directly paid by Govt. through cheque. Moreover additional teachers as aforesaid over the strength of 200 students undertake the responsibility of administrative, clerical and other misc. kind of work if necessary. Even where the institution runs more than once school, the grant towards the salary expenses of non-teaching staff is not being paid. There is not a single primary school in the state of Gujarat where grant for such expenses incurred under the overhead of Non-teaching staff is paid."

It would thus be clear that they being not only as a matter of rule and also practice, no money is being paid by way of grant-in-aid or otherwise to any school either maintained by the Municipality or any statutory body. The administrative work is being got done by the appropriate persons including teachers even in Government Primary Schools as averred in the additional affidavit. We are of the opinion that the High Court was, therefore, not right in holding that there is a discrimination in denying the payment of grant-in-aid to the respondents for the non-teaching staff.

The appeals are accordingly allowed. No costs.