

THE STATE OF GUJARAT & ORS.

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v.

H. B. KAPADIA EDUCATION TRUST & ANR.

(Civil Appeal No. 2837 of 2022)

FEBRUARY 21, 2023

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**[DINESH MAHESHWARI AND BELA M. TRIVEDI, JJ.]**

*Constitution of India – Art.30(1) – Right of minorities to establish and administer educational institutions – Respondent no.1- a minority institution was running a government aided school-respondent no. 2 – Decision of the appellants refusing to provide the aid to the respondents towards the salary of the principal of the respondent no.2 on his attaining the age of superannuation as per the Grant-in-aid Code, if arbitrary or violative of Art.30(1) – Held: As per the Grant-in-Aid Code, the minority educational institutions like the respondents could not continue the employees/teachers beyond the age of 58 years or 60 years, as the case may be – Respondent-institution was bound by the provisions contained in the Grant-in-Aid Code –Thus, if the appellants refused to pay the Grant-in-Aid to the respondents, on the Principal having reached the age of superannuation, it cannot be said that they had interfered with the affairs of the respondents or violated Art.30(1) – High Court erred in holding that the respondent-institute had a right to continue the Principal of its school beyond his age of 60 years – Order of the High Court set aside–Gujarat Secondary Education Act 1972 – Secondary Education Regulations 1974.*

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**Allowing the appeal, the Court**

**HELD: 1.1 As per Regulation 42 of the Secondary Education Regulations 1974, the provisions contained in the said Regulations framed under the said Act prevail over those provisions contained in the Grant-in-Aid Code published under the government notification dated 22.04.1964, insofar as they relate to any matter provided in the said Regulations. It further emerges that as per Regulation 43 of the said Regulations, Regulation 36 pertaining to the age of superannuation is not applicable to the educational institution established and administered by a minority, whether based on religion or**

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- A language. Therefore, the age of superannuation of an employee of a registered Secondary School as mentioned in Regulation 36 would not be applicable to the employee or teacher of an educational institution established and administered by a minority. The combined reading of Regulations 42 and 43 of the said Regulations makes it clear that Regulation 36 would not apply to
- B any educational institutions established and administered by minority, and therefore the matter pertaining to the age of superannuation of the employees of registered Secondary School established and administered by minority, availing the Grant-in-Aid could not be said to have been provided under the said
- C Regulations. The necessary corollary would be that the said Regulation 36 being not applicable to the minority educational institution, the provisions contained in the Grant-in-Aid Code pertaining to the age of superannuation would be applicable to such minority institutions availing the grant from the State Government. [Para 7][493-C-G]
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- 1.2 Now, as per para 81.1 of the Grant-in-Aid Code, a secondary school teacher receiving grant-in-aid would ordinarily retire from service at the age of 58, and the management may grant to the teachers extensions upto the age of 60, in view of
- E para 81.2 of the said Code. Therefore, the minority educational institutions like the respondents could not continue the employees/teachers beyond the age of 58 years or 60 years as the case may be. If an employee or a teacher is continued in service by the management of any registered minority Secondary School receiving Grant-in-Aid from the State-Government, then
- F such school would not be entitled to receive any grant in respect of the expenditure incurred for continuing such employee or teacher beyond the age of 58 or 60 years, as the case may be. The provisions of Grant-in-Aid Code are applicable to all the registered secondary education institutions desirous of receiving or which are receiving the grant from the Government, and such
- G institutions would be subject to the restrictions imposed under the Code, except for the matters provided in the said Regulations. [Para 8][493-G-H; 494-A-C]

- 1.3 The provisions contained in the said Grant-in-Aid Code pertaining to the recognition, eligibility criteria, the procedure
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for making application to the government for receiving Grant-in-Aid etc. are applicable to all the secondary schools whether established and administered by the minority or not and the respondents could not have claimed any right to receive the aid from the Government de hors the provisions of the Grant-in-Aid Code. If the appellants therefore had refused to pay the Grant-in-Aid to the respondents, on the Principal having reached to the age of superannuation, it could not be said by any stretch of imagination that the appellants had interfered with the affairs of the respondents or had violated Article 30(1) of the Constitution. The respondent-institution was bound by the provisions contained in the Grant-in-Aid Code. There is also nothing on record to show that the appellant-State had discriminated against the respondent institution on the ground that it was under the management of a minority, attracting Article 30(2) of the Constitution of India. The High Court therefore had committed gross error in holding that the respondent-institute had a right to continue the Principal of its school beyond his age of 60 years, and in directing the appellants to calculate and pay the requisite amount towards the arrears of grant for the period from 2001 to 2012.[Paras 9, 11][494-D-E; 496-A-B]

*T.M.A. Pai Foundation and Others vs. State of Karnataka and Others* (2002) 8 SCC 481: [2002] 3 Suppl. SCR 587 – followed.

*State of Uttar Pradesh and Others vs. Principal Abhay Nandan Inter College and Others* 2021 SCC Online SC 807 – relied on.

#### Case Law Reference

2002 ( 3 ) Suppl. SCR 587 followed Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2837 of 2022.

From the Judgment and Order dated 02.04.2018 of the High Court of Gujarat at Ahmedabad in LPA No.175 of 2017.

Ms. Archana Pathak Dave, Ms. Swati Ghildiyal, Ms. Devyani Bhati, Ms. Deepanwita Priyanka, Advs. for the Appellants.

P. K. Manohar, Adv. for the Respondents

A The Judgment of the Court was delivered by

**BELA M. TRIVEDI, J.**

B 1. The Appellants-State of Gujarat and Ors., being aggrieved by the judgment and order dated 02.04.2018 passed by the Division Bench of the Gujarat High Court in Letters Patent Appeal No. 175 of 2017, arising out of Special Civil Application No. 3250 of 2001, have preferred the present appeal.

C 2. The Respondent No. 1 (original writ petitioner) a Jain Minority Institution, was running a government aided school in the name of “The New High School”, in which Shri H.H. Kapadia was appointed as the Principal of the school. Mr. Kapadia having attained the age of 58 years on 22.07.1999, the Respondent No. 1-Institute sought a permission from the Government to continue him as the Principal. The DEO granted the permission to continue him as the Principal upto the age of 60 years on the condition that his salary would be paid by the Institution. The Respondent No. 1 thereafter addressed a letter dated 16.04.2001 to the DEO seeking extension of service of Mr. Kapadia beyond the age of 60 years, which came to be rejected by the DEO vide the letter dated 18.06.2001. The said two decisions of the DEO came to be challenged by the Respondent No. 1 by filing the Writ petition being Special Civil Application No. 3250/2001 before the High Court of Gujarat. The Single Bench vide the judgment and order dated 24.06.2016 allowed the said writ petition and held that the action on the part of the Respondents (the appellants herein) in stopping the grant was violative of Article 30(1) of the Constitution of India and that the Writ Petitioner-Institute had a right to continue Mr. Kapadia as the Principal of the school beyond the age of 60 years. It was further held that the respondents (the appellants herein) were obliged to pay the Grant-in-Aid towards his salary. The Single Bench therefore directed the appellant authorities to calculate the amounts towards the arrears of grant for the period between 2001 and 2012 (as the school was no longer functional since the year 2012) and to pay the requisite amount to the management of the school within a period of 3 months of the order. The aggrieved appellants had preferred an appeal being the LPA No. 175 of 2017 before the Division Bench, which came to be dismissed vide the impugned order dated 02.04.2018.

H 3. The short question which falls for consideration before this Court is whether the decision of the appellants in not providing the aid to

the respondents towards the salary of the principal of the respondent no. 2 - school on his attaining the age of superannuation as per the Grant-in-aid Code, could be said to be arbitrary or violative of Article 30(1) of the Constitution of India? A

4. A reference to the relevant provisions contained in the Constitution of India, the Gujarat Secondary Education Act, the Regulations framed thereunder and, in the Grant-in-Aid Code published under the Gujarat Notification dated 22.04.1964, would be beneficial for the purpose of answering the aforesaid question. The relevant part of Article 30 of the Constitution pertaining to the right of minority to establish and administer educational institutions reads as under: - B

**“30. Right of minorities to establish and administer educational institutions. –** C

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. D

(1A) - xxxx -

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.” E

5. The Gujarat Secondary Education Act 1972 (hereinafter referred to as ‘the said Act’) was enacted to provide for the Regulation of Secondary Education in the State of Gujarat and to establish a Board for that purpose. The Board established under the said Act has framed the Regulations, namely the Secondary Education Regulations 1974, (hereinafter referred to as the ‘Regulations’) in exercise of the powers conferred upon it under Section 53 of the said Act, for the purpose of carrying into effect the provisions of the said Act. The Regulations relevant for the purpose of deciding the present appeal, read as under:- F

**“36. Superannuation-** (1) An employee of a registered secondary school shall be compulsorily retired on the date on which he attains the age of 58 years. G

(2) No management shall employ or re-employ any person who has completed the age of 58 years. H

A                Provided however that if the date of superannuation of an employee falls within a term, his service shall automatically be extended up to end of that term,

B                Provided further that re-employment upto the age of 60 years should normally be given to peons and such other menial servants by the management if they are physically fit.

**37. Superannuation of non-teaching staff** - Deleted by G.R. No. E & L.D. No. SER/1074/36379-G dated 2-12-75.

**38. to 41.** - xxxx -

C                **42. Regulations to prevail over Grant-in-Aid Code** -The provisions of these regulations shall prevail over those provisions contained in the Grant-in-aid Code published under Government Notification, Education and Labour Department No.GAC-1064-C dated the 22nd April, 1974 in so far as they relate to any matters provided in these regulations.

D                **43.** Nothing contained in Regulations 19, 20, 21, 22, 24, 25, 26, 27, 28, 30, 31, 32, 33, 36, 37, 40 and sub-clauses (4), (5) and (6) of Regulation No. 41 shall apply to any educational institution established and administered by a minority, whether based on religion or language.”

E                6. It would be also germane to reproduce the relevant provisions contained in the Grant-in-Aid Code for Secondary Schools, published vide the notification dated 22.04.1964: -

F                “**81.1** A secondary school teacher shall ordinarily retire from service at the age of 58.

G                **81.2.** The management may grant to teachers extensions upto the age of 60. If the Inspecting Officers report on the basis of their inspection that any teacher beyond the age of 58 is unable to discharge his duties properly, the teacher will be sent for medical examination and if declared unfit will be compelled to retire.

**81.3. and 81.4** - xxxx -

H                **81.5** No person who has already attained the age of 58 years shall be employed as a teacher or on the non-teaching staff. Retired persons from Government or non-Government Educational

Institutions may however, be re-employed by the Educational Institution provided they are physically and mentally fit. The employment of such retired persons should be subject to the provisions made in clauses 81.2 and 81.3 above and such other terms and conditions not in contravention of these rules and the general service conditions as may be mutually agreed upon between the employer and the employee. Such re- employed persons will not however, be eligible for the departmentally prescribed scales of pay and allowances, etc. and to the Government aided provident fund scheme.”

7. From the above stated provisions, it emerges that as per Regulation 42 of the said Regulations, the provisions contained in the said Regulations framed under the said Act prevail over those provisions contained in the Grant-in-Aid Code published under the government notification dated 22.04.1964, insofar as they relate to any matter provided in the said Regulations. It further emerges that as per Regulation 43 of the said Regulations, Regulation 36 pertaining to the age of superannuation is not applicable to the educational institution established and administered by a minority, whether based on religion or language. Therefore, the age of superannuation of an employee of a registered Secondary School as mentioned in Regulation 36 would not be applicable to the employee or teacher of an educational institution established and administered by a minority. The combined reading of Regulations 42 and 43 of the said Regulations makes it clear that Regulation 36 would not apply to any educational institutions established and administered by minority, and therefore the matter pertaining to the age of superannuation of the employees of registered Secondary School established and administered by minority, availing the Grant-in-Aid could not be said to have been provided under the said Regulations. The necessary corollary would be that the said Regulation 36 being not applicable to the minority educational institution, the provisions contained in the Grant-in-Aid Code pertaining to the age of superannuation would be applicable to such minority institutions availing the grant from the State Government.

8. Now, as per para 81.1 of the Grant-in-Aid Code, a secondary school teacher receiving grant-in-aid would ordinarily retire from service at the age of 58, and the management may grant to the teachers extensions upto the age of 60, in view of para 81.2 of the said Code. Therefore, the minority educational institutions like the respondents could

- A not continue the employees/teachers beyond the age of 58 years or 60 years as the case may be. If an employee or a teacher is continued in service by the management of any registered minority Secondary School receiving Grant-in-Aid from the State-Government, then such school would not be entitled to receive any grant in respect of the expenditure incurred for continuing such employee or teacher beyond the age of 58
- B or 60 years, as the case may be. The provisions of Grant-in-Aid Code are applicable to all the registered secondary education institutions desirous of receiving or which are receiving the grant from the Government, and such institutions would be subject to the restrictions imposed under the Code, except for the matters provided in the said
- C Regulations.

9. The provisions contained in the said Grant-in-Aid Code pertaining to the recognition, eligibility criteria, the procedure for making application to the government for receiving Grant-in-Aid etc. are applicable to all the secondary schools whether established and administered by
- D the minority or not and the respondents could not have claimed any right to receive the aid from the Government dehors the provisions of the Grant-in-Aid Code. If the appellants therefore had refused to pay the Grant-in-Aid to the respondents, on the Principal having reached to the age of superannuation, it could not be said by any stretch of imagination that the appellants had interfered with the affairs of the respondents or
- E had violated Article 30(1) of the Constitution. As held by the Constitution Bench in case of *T.M.A. Pai Foundation and Others vs. State of Karnataka and Others*<sup>1</sup>, the right under Article 30(1) is not an absolute right above the law, and that the provisions for the grant or non-grant in aid to the educational institutions, whether it is majority-run institution or
- F a minority-run institution, have to be uniformly applied. The relevant observations made in para 143 and 144 of the said judgment, which clinch the issue read, as under: -

- G “143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and

H <sup>1</sup> (2002) 8 SCC 481



fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.”

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“144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution..”

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10. In a case involving similar issue as to whether a minority institute receiving an aid is bound by the conditions imposed by the Government, this Court in a recent decision in case of *State of Uttar Pradesh and Others vs. Principal Abhay Nandan Inter College and Others*<sup>2</sup> observed as under: -

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“32. When it comes to aided institutions, there cannot be any difference between a minority and non-minority one. Article 30 of the Constitution of India is subject to its own restrictions being reasonable. A protection cannot be expanded into a better right than one which a non-minority institution enjoys. Law has become quite settled on this issue and therefore does not require any elaboration.

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33. Thus, on the aforesaid issue we have no hesitation in reiterating the principle that an institution receiving aid is bound by the conditions imposed and therefore expected to comply. Once we hold so, the challenge made on various grounds, falls to the ground.”

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11. In light of the afore-stated legal position, we are of the opinion that the respondent-institution was bound by the provisions contained in

<sup>2</sup> 2021 SCC Online SC 807

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- A the Grant-in-Aid Code. There is also nothing on record to show that the appellant-State had discriminated against the respondent- institution on the ground that it was under the management of a minority, attracting Article 30(2) of the Constitution of India. The High Court therefore had committed gross error in holding that the respondent-institute had a right to continue the Principal of its school beyond his age of 60 years, and in directing the appellants to calculate and pay the requisite amount towards the arrears of grant for the period from 2001 to 2012.
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12. In that view of the matter, the impugned order passed by the Division Bench confirming the order passed by the Single Bench allowing the writ petition filed by the respondent institution is set aside. The present appeal filed by the appellants stands allowed accordingly.

Divya Pandey

(Assisted by : Bhavyata Kapoor and Shevali Monga, LCRAAs)

Appeal allowed.