



2026:AHC:52-DB

Reserved on 06.11.2025
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AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 213 of 2025

State of U.P. and 3 others

.....Appellant(s)

Versus

Ramesh Kumar Singh and 13 others

.....Respondent(s)

Counsel for Appellant(s) : Tej Bhanu Pandey
Counsel for Respondent(s) : Rajesh Kumar Singh

Along with :

1. Special Appeal No. 214 of 2025:

State of U P and 3 others

Versus

C/M Shree Shivmangal Chaudhari Primary Vidyalaya

2. Special Appeal Defective No. 4 of 2025:

State of UP and 3 others

Versus

Ghan Shyam Chauhan and 10 others

3. Special Appeal Defective No. 7 of 2025:

State of UP and 3 others

Versus

Kiran Yadav and 3 others

4. Special Appeal Defective No. 9 of 2025:

State of UP and 3 others

Versus

Chhote Lal Ram and 4 others

HON'BLE MANOJ KUMAR GUPTA, J.
HON'BLE ARUN KUMAR, J.

(Per: Hon'ble Arun Kumar, J.)

1. Heard Sri Anoop Trivedi, Learned Additional Advocate General, assisted by Sri Tej Bhanu Pandey, Learned Standing Counsel, for the

Appellants Sri Rajesh Kumar Singh and Sri Vivek Kumar Singh for the respondents.

2. SPLA No.213 of 2025, SPLA No.214 of 2014, SPLAD No.4 of 2025, SPLAD No.7 of 2025 and SPLA D No.9 of 2024, arises out of Writ-A No.1659 of 2020, Writ-A No.15455 of 2019, Writ-A No.10873 of 2021, Writ-A No.10962 of 2021 and Writ-A No.3215 of 2021, respectively.

BRIEF FACTS

3. Writ-A No.1659 of 2020, Writ-A No.10962 of 2021 and Writ-A No.3215 of 2021, had been filed by Assistant Teachers of Mahamana Malviya Ansuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, seeking quashing of the order of the respondent-appellant no.1, the State Government, dated 10.05.2019, rejecting their claim for providing recurring grant to their Institution. A further direction was sought to direct the respondent -appellants to take their institution on the grant-in-aid list and pay salary to the petitioners from the state exchequer. The aforesaid Institution was granted recognition by the order of the Zila Parishad, Ballia, dated 31.01.1970. The petitioners of the aforesaid three writ petitions claim to have been appointed in the Institution between 01.07.2000 to 08.07.2017, by the Committee of Management. The petitioners set up their claim for the first time through their representation dated 15.02.2018, before respondent-appellant no.1.

4. Writ-A No.15455 of 2019, had been filed by the Committee of Management of Shree Shigmangal Chaudhari Primary Vidyalay, Bandhawa Kalyan, Manjhanpur, District Kaushambi, seeking quashing of the order dated 22.02.2019, passed by the respondent-appellant no.1, rejecting the claim of the petitioner-respondent for providing recurring grant to its institution from the Department of Social Welfare, Govt. of U.P. The aforesaid Institution was granted permanent recognition by the order of the Zila Basic Shiksha Adhikari, Allahabad, dated 17.07.1987. The petitioner institution had set up its claim by filing its representation dated 13.10.2018, before respondent-appellant no.1.

5. Writ-A No.10873 of 2021, had been filed by 9 Assistant Teachers and 1 Peon, of Sant Ravidas Prathamik Vidyalay, Malap No.1, Yogivir, Ghoghaea, District Ballia, seeking quashing of the order of the respondent-appellant no.1, the State Government, rejecting the claim of the petitioner-respondents, for providing recurring grant to their institution, by the Department of Social Welfare. The aforesaid Institution was granted recognition by the order of the Zila Basic Shiksha Adhikari, Ballia, dated 23.02.1996. All the petitioners have been appointed in the aforesaid institution between 01.07.2005 to 01.07.2015, by its Committee of Management. They had set up their claim for the first time before the respondent-appellant no.1, through their representation dated 07.05.2018.

6. In all the aforesaid writ petitions, the basis of the claim of the writ petitioners were that they are working as Assistant Teachers and Peon in private recognized primary schools, imparting basic education from classes I to V, having more than 50% students belonging to scheduled caste and scheduled tribes, therefore, their institutions are entitled for recurring grant, from the Department of Social Welfare, Government of U.P. It was further contended that in view of the 86th amendment of the Constitution of India, Article 21-A has been inserted, which casts an obligation upon the State to provide free and compulsory education to all children of the age of six to fourteen years. Thus, in view of the law laid down by the Hon'ble Apex Court in its decision in the case of **State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692** and the decision of this Court in **Paripurna Nand Tripathi and another vs. State of U.P. and 20 others, Special Appeal Defective No.994 of 2014**, they are also entitled for salary from the state exchequer, by taking their institutions under grant-in-aid list of the State Government.

7. All the aforesaid writ petitions were consolidated and decided by a common judgment and order of the learned Single Judge, dated **21.12.2022**, quashing the impugned order(s) challenged in it. The respondent-appellants were further directed to accord financial

approval and release the grant for payment of salary to the teaching and non-teaching staff of the petitioner institution by passing appropriate orders.

8. All the connected Special Appeals have been filed by the State of U.P. through Principal Secretary, Department of Social Welfare, Govt. of U.P., Lucknow and others, challenging the judgment and order of learned Single Judge, dated 21.12.2022, passed in Writ-A No.1659 of 2022 (Ramesh Kumar Singh and 13 others vs. State of U.P. and 4 others) alongwith the connected writ petitions, Writ-A No.15455 of 2019, Writ-A No.10873 of 2021, Writ-A No.10962 of 2021 and Writ-A No.3215 of 2021.

The arguments advanced by the Additional Advocate General, on behalf of the Appellants, in the abovementioned Special Appeals

9. The writ petitions filed by the petitioners, who are Assistant Teachers in the unaided recognized Primary Schools, claiming grant-in-aid for the institution was not maintainable, on their behalf.

10. In view of the policy decision of the State Government, by issuance of the Government Order dated 05.10.2006, withdrawing the earlier policy of providing recurring grant to primary schools run by private managements, as incentives, for imparting education to children belonging to scheduled castes/scheduled tribes categories, by the Department of Social Welfare, Government of U.P., the claim of the petitioner-respondents was not sustainable.

11. The decision of the State Government, dated 14.07.2020 (Page 167 of the Special Appeal No. 213 of 2025), taken in pursuance of the direction of this Hon'ble Court, in **Writ-A No.38992 of 2017, Jai Ram Singh and others versus State of U.P. and others, decided on 23.05.2019**, it has been held that, after having established a Primary school at every one kilometer and a Junior High School at every 3 km, the obligation of the Government, contemplated under Article 21-A of the Constitution of India and the provisions of the Right of Children to Free and Compulsory Education Act, 2009, and the Rules framed there

under, have been fulfilled, therefore there is no justification to grant any aid to the private managed Primary Schools.

12. The decision of the State Government, dated 17.12.2020 (Page 161 of the Special Appeal No. 213 of 2025), taken in pursuance of the direction of this Hon'ble Court, in **Writ-A No.14997 of 2019, Committee of Management Harijan Primary Pathshala, Madhopur, Kasia, Kushinagar and others versus State of U.P. and others, decided on 21.10.2019**, an identical claim for grant of recurring aid to a private managed Primary School, has been rejected by the Appellants, therefore there is no justification to grant any aid to the present petitioner-respondents.

13. The Government Orders dated 05.10.2006, 14.07.2020 and 17.12.2020, having not been challenged by the petitioners, no relief as claimed by them, could have been allowed by the learned single judge.

14. The law laid down by the Hon'ble Apex Court in its decision in the case of **State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692** and the decision of this Court in **Paripurna Nand Tripathi and another vs. State of U.P. and 20 others, Special Appeal Defective No.994 of 2014**, relates to entitlement of grant-in-aid for attached Primary sections/schools, to a Junior High School or an High School and Intermediate College, already receiving aid from the Government, therefore, have no application on the facts of the present cases.

15. Relying on the Inspection Report dated 24.01.2024, 26.02.2024 and 05.10.2025, filed as Annexure SA-5, SA-6, SA-7, respectively to the IIIrd Supplementary Affidavit filed in Special Appeal No. 213 of 2025, it has been contended that the Institution Mahamana Malviya Ansuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, does not comply with the norms for being considered to be taken on the Grant-in-aid list. He has drawn attention of the Court to the said reports showing that, against the 352 students allegedly enrolled in the institution only 40 to 65

students are found attending classes, in the academic year 2024-2025. In the academic year 2025-2026, against 466 students registered, 370 are not authenticated by Aadhaar. The building of the institution does have the basic amenities like toilet, staff room, and adequate number of furniture, fans and lights.

16. In discharge of the obligation of the State Government under relevant provisions of the Right of Children to Free and Compulsory Education Act, 2009, (RTE Act 2009, for short), a Primary school at every one kilometer and a Junior High School at every 3 km, has been established, under the control of U.P. Basic Shiksha Parishad. All private institutions affiliated to any Board are directed to admit in class I, at least twenty-five per cent of the strength of that class, by children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education, till its completion. The entire fees of such students are reimbursed by the State Government.

17. The petitioner or any institution imparting education to classes I to V, having more than 50% students belonging to scheduled caste and scheduled tribes, does not acquire any fundamental right for grant-in-aid from the Department of Social Welfare, Government of U.P., in the light of RTE Act, 2009, as held by a Coordinate Bench of this Court in **Special Appeal No.143 of 2008, decided on 31.08.2010**, while rejecting the claim of appellants for recurring grant under the Government Order dated 31.03.1994.

Contention on behalf of the petitioner-respondents

18. Counsel for the petitioner-respondents contended that immediately after issuance of Government Order dated 31.03.1994, the Committee of Management Mahamana Malviya Asuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, moved an application to take the institution on the grant-in-aid list by the Social Welfare Department of State Government. A report dated 09.05.1997 was submitted to the State

Government by the District Magistrate, Ballia to include the said institution on the grant-in-aid list. Subsequently, the District Social Welfare Officer, Ballia submitted a fresh report dated 18.08.1998 to the Director, Social Welfare Department, Government of U.P., annexing a list of Assistant Teachers working in the institution which included one Headmaster and 17 Assistant Teachers. When no action was taken, the Committee of Management of the institution filed Writ-C No.45371 of 1999, which was disposed of with the direction to the State Government or its nominee, to decide petitioner's representation within a period of two months.

19. When the institution was not taken on the grant-in-aid list another writ petition being Writ-C No.48150 of 2004 was filed by the Committee of Management before this Court, which was disposed of vide judgment and order dated 01.10.2004, to decide the claim of the petitioner, in terms of the order passed by this Court in Writ-C No.16522 of 2003 (Committee of Management, Adarsh Shishu Sadan, Basahiya Khurd, District Maharajganj and another vs. State of U.P. and others).

20. In compliance of the order of this Court dated 01.10.2004, the Director, Social Welfare, Uttar Pradesh, issued a letter dated 12.01.2005 to the Secretary, Government of U.P. alongwith recommendation of four institution, including the aforesaid institution in question, to include them on grant-in-aid list of the State Government in pursuance of the direction of the High Court. It is contended by the counsel for the petitioner-respondents that the Committee of Management of the institution continued to pursue the claim for taking the institution on the grant-in-aid list, even though the Government Order dated 05.10.2006, was issued withdrawing recurring grant to all primary schools by the Social Welfare Department. The Director, Social Welfare, Uttar Pradesh, issued a letter dated 17.01.2014, to the Secretary, Government of Uttar Pradesh recommending revival of the policy of grant-in-aid to the institutions, which are imparting primary education to children belonging to scheduled caste and scheduled tribe, for the last 10 years.

21. All the efforts of the Committee of Management went in vain as the State Government refused to take the Institution on the grant-in-aid list, by the Social Welfare Department of the State Government.

22. In pursuance of the order of the High Court dated 03.10.2016, passed in Writ-C No.1351 of 2016 and the order dated 01.05.2017, passed in Contempt Petition No.1910 of 2017, the State Government allowed grant-in-aid to Samaj Kalyan Primary Pathshala, Samogar, Deoria, by the Government order dated 11.12.2017. The petitioner-respondents thereafter moved an application before the State Government for consideration of their Institution on the grant-in-aid list, in view of the Government Order dated 31.03.1994.

23. The State Government in compliance of the order of this Court dated 18.12.2018, passed in Writ-A No.68262 of 2011, by the Government Order dated 16.10.2020, also accepted the claim of Janta Prathamik Vidyalaya, Basthan, Jamilpur, Azamgarh, allowing recurring grant on the satisfaction of conditions contained in the Government Order dated 31.03.1994.

24. The Counsel for the petitioner-respondents argued that in the cases where special appeals have been dismissed and the officers were under the threat of being punished for contempt of this Court, they have accepted the claim of institutions for recurring grant on the condition contained in the Government Order dated 31.03.1994. However, the claim of petitioners-respondents in the present appeals are being contested on the flimsy ground that the State has recalled its earlier policy of allowing recurring grant to institutions, imparting primary education from classes 1 to 5 with more than 50% students belonging to scheduled caste and scheduled tribe, by the Government Order dated 05.10.2006.

25. In compliance of the order of learned Single Judge, impugned in the present appeals, the State Government took a policy decision and

issued a Government Order dated 03.01.2024, to extend the benefit of recurring grant to Mahamana Malviya Asuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia. The said Government Order has been brought on record by an affidavit dated 04.02.2025 filed in Special Appeal No.213 of 2025, as annexed in the Compliance Affidavit filed in Contempt Petition No.4416 of 2023, by the Principal Secretary, Social Welfare, Government of U.P.

26. The ratio of judgments in the case of Pawan Kumar Dwivedi (supra) and Paripurna Nand Tripathi (supra) squarely covers the case of the petitioner-respondents pursuant to which their writ petitions were allowed.

Contention on behalf of Committee of Management, the respondent no.14, in Special Appeal No.213 of 2025

27. Sri Vivek Kumar Singh, learned counsel appearing for the Committee of Management, Mahamana Malviya Asuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia (the respondent no.14 in Special Appeal No.213 of 2025) has accepted the arguments made on behalf of petitioner-respondents. He has further contended that the Committee of Management of the institution had been pursuing the matter for including the Institution on the grant-in-aid list of the State Government since the issuance of Government Order dated 31.03.1994, till 2014, when the Director, Social Welfare, Government of U.P. had sent a recommendation to the State Government to include the similarly situated institutions on the grant-in-aid list. However, due to lack of financial resources, the litigation could not be pursued further, as the institution imparts education to the students from the weaker section of the society belonging to scheduled caste and scheduled tribe category, without charging any fees.

28. Points for consideration in the present Appeals

(i) Whether Article 21-A of the Constitution of India and the provisions of the Right of Children to Free and Compulsory Education

Act, 2009, and the Rules framed there under, makes it obligatory upon the State Government to provide financial aid to all recognized private basic schools imparting education to Classes I to V or I to VIII?

(ii) Whether all private institution imparting education to children of the age of six to fourteen years, have any fundamental right for grant-in-aid from the State Government, in view of Article 21-A of the Constitution of India?

(iii) Whether, the Assistant Teachers of recognized Primary Schools, having been appointed after the enforcement of the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other conditions) Rules, 1975, without following the procedure contained in it, can claim salary from the State Exchequer, under any policy or scheme of the Government?

(iv) Whether, the ratio of the law laid down by the Hon'ble Apex Court in its decision in the case of **State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692** and the decision of this Court in **Paripurna Nand Tripathi and another vs. State of U.P. and 20 others, Special Appeal Defective No.994 of 2014**, create a right in respect of unaided recognized Primary Schools, imparting education to classes I to V only, for grant-in-aid from the Department of Social Welfare, Government of U.P.?

(v) Whether, the decision of the State Government, dated 11.12.2017, taken in pursuance of the judgment and order of this Hon'ble Court passed in Writ A No. 1351 of 2017, Committee of Management Samaj Kalyan Primary Pathshala, Samogar, Deoria versus State of U.P. and others, dated 03.10.2016, allowing recurring grant to the aforesaid petitioner institution, creates any indefeasible right for grant-in-aid, in favour of the petitioner-respondent of the present Special Appeal.?

Discussion

Point- (i) & (ii)

29. The 86th Amendment Act, 2002 amending the Constitution w.e.f. 12.12.2002, substituted Article 45 providing for free and compulsory

education for children to be provided by the State within ten years from the date of commencement of the Constitution, until they complete the age of 14 years. Article 45, as it stood prior to its amendment, was transposed by the same amendment under Article 21A in Part III Constitution of India. The newly inserted Article 21A and the substituted Article 45 by the 86th Amendment Act, 2002 provides:-

"Article 21A- The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine.

Article 45- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

30. The Parliament has finally fulfilled the mandate of Article 45 by including the duty imposed by the Constitution on the State, as a fundamental right under Article 21-A to the children of the age of 6 to 18 years to free and compulsory education. The 86th Amendment to the Constitution, in our opinion, is most significant constitutional amendment made after the Constitution was enacted, for the development of the Country. It serves the goals set forth in the preamble. The fundamental right, given to the children and the corresponding obligation of the State to provide free and compulsory education to the children of the age of 6 to 14 years is now a real and achievable right. The Courts now have an additional constitutional duty to enforce the fundamental right of free and compulsory education for the children of the age 6 to 14, and the obligation of the State, to give it full purpose and meaning.

31. Section 6 of the Right of Children to Free and Compulsory Education Act, 2009 provides for the appropriate government and local authority to establish within such area or limits of neighbourhood as may be prescribed a school where it is not so established within a period of three years from the date of commencement of the Act. The Central Government and the State Government have to share, under Section 7, concurrent responsibility for providing funds to carry out the provisions

of the Act. The duty of compulsory elementary education to every child is placed upon the appropriate government defined under Section 2 (a) of the Act, which in relation to school established, owned and controlled by the Central Government, means the Central Government and other than the schools referred to as above, the State Government or the Union Territory as the case may be.

32. The RTE Act of 2009 defines in Section 2 (f) 'elementary education' to mean the education from 1st class to 8th class. The duty of local authority under Section 9, is to provide free and compulsory education to every child, provided that where a child is admitted by his or her parents or guardian, as the case may, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardians, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school. Section 8 (b) ensure availability of a neighbourhood school in respect of children belonging to weaker section and the child belonging to disadvantaged group. Section 8 (c) and Section 9 (c) in respect of appropriate government and local authority responsible provide liability to ensure that they are not discriminated and prevented from pursuing and completing elementary education on any grounds. The appropriate government and the local authority are also under duty under Sections 8 and 9 to provide infrastructure including school building, teaching staff, learning equipment; and to ensure good quality elementary education in such neighbourhood school. The Act also gives a corresponding liability under Section 10 on the parents and guardians to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

33. Chapter IV of the Act provides for responsibilities of the school to provide free and compulsory education. The school under Section 2 (n) means, (i) a school established, owned or controlled by the appropriate

government or a local authority; (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate government or the local authority; (iii) a school belonging to specified category; and (iv) an aided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. The school, which does not receive aid and grants under Section 12 (2), is required to provide free education. Section 12 is quoted as below:-

"12. Extent of School's responsibility for free and compulsory education-(1) For the purposes of this Act, a school,-

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion;

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of Section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of Section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of if having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation."

34. In the present case the schools are recognised in accordance with law, by the competent Authority. There was no assurance given by the State Government for giving recurring grants to the schools. The salary of the teachers and other expenses were required to be met by the management from its own funds. The obligation of the State to provide free and compulsory education, now enacted as fundamental right, is not to be enforced through such schools for giving recurring grants to meet the expenses of the salary of teachers and other incidental expenses.

35. We do not find any right either under the Government orders issued from time to time or under the Act No. 35 of 2010, enacted to fulfill the rights under Article 21A, to any school for claiming recurring grant-in-aid. The State Government is conscious of its obligation and is making efforts to provide atleast one primary school on a population of 300 within one kilometre area and a junior high school on a population of 800 within two kilometres area under the 'Sarv Shiksha Abhiyan'. Nothing has been brought on record to show, that the area in which the petitioners' schools are being run do not have any school as is defined in Section 2 (n) (i), (ii) and (iii), for education of the children between the age of 6 to 14, in the neighbourhood.

36. Section 12 (2) of the Act of 2009, provides for reimbursement to the extent of per-child-expenditure incurred by the State, to those schools, which are un-aided and are not receiving any kind of aid including land, building, equipment or other facilities recognised for imparting elementary education and are providing free and compulsory education to the children. The reimbursement is to be made in a manner, in which it may be prescribed. The State shall, if there is an established school by the appropriate government or by a local authority, as a neighbourhood school provide free and compulsory education to the

children of the area through such schools. It is only when there is no school in the neighbourhood that the State Government may provide for a reimbursement per child to the school, which is required for such services by the State, in accordance with the rules as may be prescribed.

37. A Coordinate Bench of this Court in **Special Appeal No.143 of 2008, decided on 31.08.2010**, while rejecting the claim of appellants for recurring grant under the Government Order dated 31.03.1994, has held as under:-

“The fundamental rights under Article 21-A, given to the children of the age of 6 to 14 years and the corresponding duty of the State to provide free and compulsory education by law, now provided by the Right of Children to Free and Compulsory Education Act, 2009 w.e.f. 26.8.2009 does not give any right to the managements of the existing unaided schools to receive any kind of aid or recurring grant to meet its expenses from the appropriate government or the local authority.”

38. The Hon’ble Supreme Court, while discussing the right of private institution for grant-in-aid from the government, in **The State of U.P. and others vs. Principal Abhay Nandan Inter Colleges and others, (2021) 15 SCC 600**, has held as under:-

“29. We will first take up the right of institutions qua the aid. A decision to grant aid is by way of policy. While doing so, the government is not only concerned with the interest of the institutions but the ability to undertake such an exercise. There are factors which the government is expected to consider before taking such a decision. Financial constraints and deficiencies are the factors which are considered relevant in taking any decision qua aid, including both the decision to grant aid and the manner of disbursement of an aid.

30. Once we hold that right to get an aid is not a fundamental right, the challenge to a decision made in implementing it, shall only be on restricted grounds. Therefore, even in a case where a policy decision is made to withdraw the aid, an institution cannot question it as a matter of right. Maybe, such a challenge would still be available to an institution, when a grant is given to one institution as against the other institution which is similarly placed. Therefore, with the grant of an aid, the

conditions come. If an institution does not want to accept and comply with the conditions accompanying such aid, it is well open to it to decline the grant and move in its own way. On the contrary, an institution can never be allowed to say that the grant of aid should be on its own terms.

31. We are dealing with a case where aid is not denied in toto but sought to be given in different form. The reason for such a decision is both efficiency and economy. When such a decision is made as a matter of policy and is being applied not only to educational institutions but spanning across the entire State in every department, one cannot question it and that too when there is no express arbitrariness seen on the face of it.”

39. The State Government in fulfilling its obligation has brought on record materials to show that it has established primary school at every one kilometre and Junior High School at every three kilometre. Complete reimbursement of fee is being provided to students of weaker section for studying in private institutions as contemplated under Section 12(2) of the RTE Act 2009. In view of the aforesaid, no indefeasible right accrues in favour of institution to receive recurring grant-in-aid from the State Government for every recognized primary schools imparting education from classes 1 to 5, having more than 50% of the students belonging to scheduled caste and scheduled tribe category.

Point- (iii)

40. Prior to promulgation of the U.P. Basic Education Act, 1972, on 19.08.1972, the responsibility for primary education rested on Zila Parishad and the Municipal Boards. The Kshetra Samitis and Zila Parishad under Sections 32 and 33 of the U.P. Kshetra Samitis and Zila Parishad Adhiniyam, 1961, exercised control over primary education within their territorial jurisdiction. After enforcement of the U.P. Basic Education Act, 1972, all primary school/Junior Basic Schools, imparting education from classes I to V, are being controlled by the Uttar Pradesh Board of Basic Education, constituted under Section 3 of the aforesaid Act.

41. In exercise of powers under sub-section (1) of Section 19 of the U.P. Basic Education Act, 1972, the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other conditions) Rules, 1975, was framed, for appointment of Assistant Teachers in Junior Basic Schools/Primary Schools. Under Section 9 of the aforesaid Act, no person shall be appointed as teacher or other employee in any recognized school unless he possesses such qualifications as are specified in this behalf by the Board and for whose appointment the previous approval of the Basic Shiksha Adhikari has been obtained in writing. The vacancy has to be filled by inviting applications through advertisement in at least two newspapers; one of them being a daily newspaper.

42. After insertion of Article 21-A, in the Constitution of India, providing free and compulsory education of all children in the age group of six to fourteen years as a fundamental right, the Parliament enacted, The Right of Children to Free and Compulsory Education Act, 2009, (RTE Act, 2009, for short) which received the Presidential assent on 26.08.2009, laying down norms and standards for schools imparting elementary education.

43. The provisions of RTE Act 2009 contemplates that, every student shall be imparted education by trained teachers appointed in accordance with law, possessing minimum qualification laid down by the National Council for Teacher Education. In the cases in hand the petitioner-respondents claim to have been appointed by the Committee of Management within the period 2000 to 2017. However, there is nothing on record to show that their appointments were in conformity with the mandatory provisions of the U.P. Recognized Basic Schools (Recruitment and Conditions of Services of Teachers and other Conditions) Rules 1975. There is also no material to show that the petitioner-respondents possess the minimum eligibility and have passed the TET examination, which is *sine quo non*, for being appointed as an Assistant Teacher in a Basic School. In the absence of the aforesaid

material on record, no positive direction can be issued in favour of petitioner-respondents for payment of salaries, even if the institutions existing on the issuance of Government Order dated 31.03.1994, are found to be entitled for recurring grant.

Point- (iv)

44. The Hon'ble Supreme Court in the case of Pawan Kumar Dwivedi (supra) has held that a Junior High School imparting education to classes 6 to 8, and is receiving aid from the State Government, if opens a primary section from classes 1 to 5, becomes integral part of the said junior high school. The teachers of the primary section are entitled for salary as the Assistant Teachers of the Junior High School, under the Uttar Pradesh Junior High School (Payment of Salary of Teachers and other Employees) Act, 1978. Relevant paragraphs of the aforesaid judgment in Pawan Kumar Dwivedi (supra) are reproduced as under:-

“43. It is important to notice here that recognised Junior High Schools can be of three kinds: (one) having Classes I to VIII, i.e., Classes I to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School), (two) a school as above and upgraded to High School or intermediate standard and (three) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school.

*44. As regards the first two categories of Junior High Schools, the applicability of Section 10 of the 1978 Act does not create any difficulty. The debate which has centered round in this group of appeals is in respect of third category of the schools where Classes I to V are added after obtaining recognition to the schools which are recognized and aided for imparting education in Classes VI to VIII. Whether teachers of primary section Classes I to V in such schools are entitled to the benefit of Section 10 of the 1978 Act is the moot question. As noticed, the constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years is beyond doubt now. The note appended to clause (xxvi), para 1 of the Educational Code (revised edition, 1958), *inter alia*, provides that Basic Schools include single schools with Classes I to VIII. In our view, if a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School*

(Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. The expression "Junior High School" in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. We do not think it is appropriate to give narrow meaning to the expression "Junior High School" as contended by the learned senior counsel for the state. That Legislature used the expression Junior High School and not the Basic School as used and defined in the 1972 Act, in our view, is insignificant. The view, which we have taken, is fortified by the fact that in Section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated.

45. *The submission of Mr. P.P. Rao, learned senior counsel for the State of U.P. with reference to the subject School, namely, Riyaz Junior High School (Classes VI to VIII), that the said school was initially a private recognized and aided school and the primary section (Classes I to V) was opened by the management later on after obtaining separate recognition, which was un-aided, the teachers of such primary section, in terms of definition in Rule 2(b) and Rule 4 of the 1975 Rules are not entitled to the benefits of Section 10 of the 1978 Act does not appeal to us for what we have already said above. The view taken by the High Court in the first round in Vinod Sharma I that Classes I to VIII taught in the institution are one unit, the teachers work under one management and one Head Master and, therefore, teachers of the primary classes cannot be deprived of the benefit of the 1978 Act, cannot be said to be a wrong view. Rather, it is in accord and conformity with the Constitutional scheme relating to free education to the children up to 14 years."*

45. Similarly, in the case of Paripurna Nand Tripathi (supra) the Division Bench of this Court while considering the claim of primary section imparting education to classes 1 to 5 attached to an intermediate college was under consideration where the Court accepted the claim of appellants for salary to the Assistant Teachers of the primary section. The observation of the Division Bench of this Court is as under:-

"The learned Single Judge has observed that number of students was not spelt out clearly and only two teachers are trained. Learned counsel appearing on behalf of the appellants has drawn our attention to paragraphs 21, 22, 23 & 24 of the writ petition, wherein it is averred that the institution has 25 approved sections in primary wing against which 26 teachers are working and out of them 24 teachers are duly approved by the District Inspector of

Schools. In paragraph 23 of the writ petition it is averred that there are 924 students in the primary section which is established from the record filed before the State Government. It is also stated that there are 16 classrooms for primary section in the institution. Insofar as the finding recorded by the learned Single Judge that there are only two trained teachers is concerned, it has been submitted that at the time of appointment of the appellants the minimum qualification for appointment of teachers in the primary section was only Intermediate. The first appellant has obtained L.T. Training and the second appellant is having B.Ed. degree and it was also made clear that the Committee of Management had appointed untrained teachers due to non-availability of trained teachers. The State has taken a decision that if an untrained teacher continuously works for more than ten years, then such teacher shall be granted exemption from training and accordingly, in the entire State of Uttar Pradesh a large number of untrained teachers, who were appointed, were subsequently exempted from training under the orders passed by the State Government from time to time. Thus, the appellants who are untrained teachers are entitled for the benefit of exemption under the aforesaid Government orders.

We find that the submission of the learned counsel appearing for the appellants on the aforesaid issue merits acceptance. This aspect of the matter has not been considered by the learned Single Judge and the finding recorded by the learned Single Judge is against the pleadings of the appellants. We also find that the learned Single Judge has not given any reason in support of various conclusions.”

46. The Division Bench of this Court in the case of Paripurna Nand Tripathi (supra) while considering the obligation of the State Government to provide free and compulsory education to the children of age 6 to 14 years has further observed as under:-

“In the State of Uttar Pradesh, most of the institutions providing basic education have been established by societies registered under the Societies Registration Act, 1860 by private managements. The State Government has framed policy guidelines and has issued executive orders/circulars/administrative orders from time to time laying down standards/norms for providing grant-in-aid to unaided institutions. Unless those conditions are fulfilled by private institutions, the State Government does not take

liability for the payment of salaries of the teachers and other employees of such institutions.

After the enactment of the Act, 2009 and the law laid down by the Supreme Court in Society for Unaided Private Schools of Rajasthan (supra), Bhartiya Seva Samaj Trust (supra) and State of Uttar Pradesh and others v. Pawan Kumar Dwivedi and others, we are of the view that the State Government may revisit its age old policy in the light of the constitutional amendment and the law laid down by the Supreme Court on the subject.

Undoubtedly, now it is the State's responsibility to provide free and compulsory education to the children of the age of six to fourteen years. Private institutions, which are imparting education to children of the said age group, in fact, are performing and sharing the obligations of the State. Therefore, an obligation is cast upon the State Government not only to provide the grant-in-aid to such institutions but to provide infrastructure also subject to reasonable conditions laid down by it. Providing education to the children of the age of six to fourteen years shall be a mirage unless qualitative education is provided to them.

In the State of Uttar Pradesh, the large majority of children of the said age group come from the marginalized sections of the society. Most of the institutions providing primary and basic education are situated in rural and semi-urban areas. To provide quality education it is necessary that trained and competent teachers are appointed and necessary infrastructure is also made available to such institutions. The teachers in private unaided institutions are working in pitiable conditions. No good teacher would like to work in such institutions. Thus, the students will be deprived of quality education.

In view of the supervening events, we are of the view that the order of the learned Single Judge dated 29 August 2014 and the order of the State Government dated 10 January 2002 need to be set aside and are, accordingly, set aside. The matter is remitted to the State Government to reconsider it in the light of the law referred to above. The State Government may reconsider its policy of 1989 in respect of the grant of aid to the unaided institutions in the light of the constitutional amendment, the Act of 2009 and the law laid down in the judgments referred above.”

47. Consideration of the aforesaid two judgments shows that the State has an obligation to provide free and compulsory education to children between the age of 6 to 14 years. However, providing grant-in-aid to all

private recognised institutions, imparting education to students between the ages of 6 to 14 years, have not been held to be a fundamental right of such institutions. The junior high schools, high schools and intermediate colleges, run by private managements, which have been brought on the grant-in-aid list, there are separate enactments for providing salaries to the teacher and other employees. However, for institution exclusively imparting education to classes 1 to 5, there is no enactment under which salary is to be paid to its teaching and non-teaching staff. Infact, under Section 4 of the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other conditions) Rules, 1975, it is provided that, in every recognized school adequate financial recourses shall be made available by the management of such school. The decisions in the case of Pawan Kumar Dwivedi (supra) and Paripurna Nand Tripathi (supra) find support to only those Assistant Teachers of primary sections, which are attached to a junior high school or an intermediate college, so that they could be brought under the purview of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and other Employees) Act,1978 or the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, respectively, holding them to be the integral part of the said institution.

Point- (v)

48. The institutions which were existing at the time of issuance of Government Order dated 31.03.1994, ought to have been considered for grant of recurring aid to them. As the institution Mahamana Malviya Asuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia was established in 1970 and was eligible under the Government Order dated 31.03.1994, it was the obligation of the State Government to have considered its eligibility for recurring grant. Despite all efforts by the Committee of Management of the said institution, the State Government did not extend the said benefit, and the aforesaid Government Order was withdrawn by a subsequent Government Order dated 05.10.2006. It is

not in dispute that the State Government has accepted the claim of various such institutions which were pursuing their claim before it under the several orders of this Court on the conditions contained in the Government Order dated 31.03.1994. In compliance of the order of learned Single Judge, impugned in the present appeals, the State Government has already issued a Government Order dated 03.01.2024, extending the benefit of recurring grant to Mahamana Malviya Asuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia.

49. In view of the aforesaid facts, the entitlement of the aforesaid Institution for recurring grant which was pending consideration since 1997 and was in principle, accepted by the Government Order dated 03.01.2024, is not required to be interfered with. However, the Headmaster and Assistant Teachers working in the institution as shown in the report of the District Social Welfare Officer, dated 18.08.1998, are no more employed in the Institution. All the petitioner-respondents have been subsequently appointed, but no documents are on record, to substantiate the veracity of their appointments. In such view of the matter, even though, the institution's entitlement for recurring grant cannot be denied, but the payment of salary to the petitioner-respondents of Special Appeal No.213 of 2025, Special Appeal Defective No.7 of 2025 and Special Appeal Defective No.9 of 2024, cannot be directed unless they establish that their appointments were in accordance with Act of 1975, and they possess the minimum eligibility.

Reliefs

50. The entitlement for recurring grant to Mahamana Malviya Ansuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, has been accepted, by the Government Order dated 03.01.2024, which requires no interference by this Court. However, no positive direction can be issued for payment of salaries to the teachers and other employees of the Institution in absence of any materials on record, to substantiate that they were appointed in accordance with law and possess the requisite qualifications. In view of the aforesaid, the Special Appeal No.213 of

2025, Special Appeal Defective No.7 of 2025 and Special Appeal Defective No.9 of 2024, are **disposed of** with a direction to the State Government to ensure that the petitioner-respondents of the aforesaid Special Appeals are paid salary only if they were appointed strictly in accordance with law, following the provisions of Act of 1975 and possessed requisite qualification, as envisaged under the notifications issued by the National Council for Teacher Education, from time to time.

51. In Special Appeal No. 214 of 2025 and Special Appeal Defective No.4 of 2025, the institution were granted permanent recognition in 1987 and 1996, respectively, and had never claimed for recurring grant till the Government Order dated 31.03.1994 and the policy for providing recurring grant to the institutions run by the Social Welfare Department, were withdrawn by the Government Order dated 05.10.2006. As held above, the institution imparting education to classes I to V, having more than 50% students belonging to scheduled caste and scheduled tribes, does not acquire any fundamental right for grant-in-aid from the Department of Social Welfare, Government of U.P., in the light of RTE Act, 2009, and the Government Order dated 31.03.1994. In such circumstances, the order of learned Single Judge dated 10.05.2019, accepting the claims of the petitioner-respondents of the aforesaid Appeals, being unsustainable, is set aside. The Special Appeal No.214 of 2025 and Special Appeal Defective No.4 of 2025 are accordingly **allowed** and the Writ-A No.15455 of 2019 and Writ-A No.10873 of 2021, are hereby dismissed.

(Arun Kumar, J.) (Manoj Kumar Gupta, J.)

January 05, 2026
Ashok Kr.