**IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)**

Special Appeal No. 187 of 2011 (M/S)

Decided On: 21.07.2011

Appellants: **Committee of Management, Aditya Birla Intermediate College**
**Vs.**
Respondent: **State of U.P. and Ors.**

**Hon'ble Judges/Coram:**
F.I. Rebello, C.J. and D.K. Arora, J.

**JUDGMENT**

**F.I. Rebello, C.J.**

1. The Appellants, aggrieved by judgment and order dated 19.1.2011 passed in Civil Misc. Writ Petition No. 2840 of 2009 (M/S) by which the writ petition filed by them has been dismissed, have filed the present appeal.

2. The Appellants-Committee of Management, are running an educational institution, namely, Aditya Birla Intermediate College, Renukoot (formerly known as Hindalco Intermediate College), established at Renukoot, District Sonebhadra and which is recognized by the Board of High School and Intermediate Education under the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the 'Education Act').

3. The institution was initially recognized up to the High School level and thereafter was upgraded to the level of Intermediate College in the academic year 1997-1998. The institution is managed by the Committee of Management (Appellant herein) in accordance with the duly approved Scheme of Administration.

4. The said institution is in grant-in-aid list of the State Government and it receives grant up to the High School level for 24 Sections out of 64 Sections. According to the Appellants, during the academic year 2006-2007, the total revenue expenditure of the institution was to the tune of Rs. 2.66 crores, out of which the State funding, by way of grant, was only to the extent of Rs. 68.63 lacs.

5. The Committee of Management of the institution, in its meeting held on 6.11.2006, resolved not to avail the grant-in-aid from the State. Pursuant to the said resolution, the Appellants applied to the State Government for withdrawal of grant-in-aid vide letter dated 20.11.2006 which, according to the Appellants, remained pending consideration before the State Government till filing of the writ petition. The District Inspector of Schools, Sonebhadra (hereinafter referred to as the 'DIOS'), through her letter dated 5.12.2006, sought certain information and documents which were duly provided to her by the institution vide its letter dated 9.1.2007. The DIOS, by further letter dated 18.1.2007, forwarded a representation of the approved teachers of the institution and sought report from the institution on the same. The institution forwarded the report to the DIOS. Further requests were made by subsequent correspondence, and clarifications were sought from the institution on service conditions of the approved teachers vide letter dated 24.4.2007 of the DIOS to make available certain information to the Government through Director of Education in respect of service conditions of approved teachers and non-teaching staff. The institution by its letters dated 26.4.2007 and 12.5.2007, clarified and assured that all the approved teachers and non-teaching staff, would continue to be governed by the provisions of Section 16 of the Education Act. It was further assured that the salary and other allowances would continue to be paid to them in accordance with the Payment of Salaries Act, 1971. It was also clarified that in case any of the approved teachers or non-teaching staff was desirous of transfer to any other aided institution, the institution would have no objection to the same. According to the Appellants, the DIOS submitted the report to the Director of Education, Lucknow through letter dated 28.5.2007.

6. As the institution was receiving no response from the State Government for withdrawal of State grant, a representation dated 11.3.2008 was made to the Secretary, Education, Government of Uttar Pradesh, Lucknow (U.P.) for early decision in the matter. The institution is financially supported by Hindalco Industries Limited, whose Management vide its letter dated 28.11.2006 assured the institution and also undertook that it would meet the entire financial requirement of running the institution. The institution with the support of Hindalco is capable of meeting its requirement without grant-in-aid from the State Government. The institution has 72 Sections of which 48 are without the support of grant-in-aid. The total number of teaching staff in the institution is 101 including the Principal, out of which the approved teaching staff on the grant-in-aid list is 34 teachers. Similarly, in respect of Class-IV employees and non-teaching staff, the strength is 27 out of which only 8 are on the grant-in-aid. Thus, the Management is following a duel system, with partly grant of salary from the State Government and in majority of cases salary is being paid by the institution from its own resources. According to the Appellants, the emoluments of teachers, who are not in the approved list, are more than the teachers on the approved list. Private institutions, it is set out, pay a significant role in dispensing school education. Their role must be recognized and providing quality education should be encouraged, especially when they cater to the less privileged children. The purpose of Aditya Birla Group Schools, is to seek to educate its students. The other averments are not necessary for the purpose of the present discussion.

7. According to the Appellants, owing to the inaction on the part of the Respondents in deciding the aforesaid representations for withdrawal of the grant-in-aid, they filed a writ petition before this Court (principal seat at Allahabad) being Civil Misc. Writ Petition No. 21845 of 2008 Committee of Management v. State of U.P. and Ors.. The Court, by its order dated 30.4.2008 disposed of the writ petition directing the Secretary, Department of Education, U.P. Lucknow to decide their representations dated 20.11.2006 and 11.3.2008 expeditiously within 15 days from the date of receipt of a certified copy of the said order. After the said judgment, various queries had been raised to which the Appellants had submitted their reply. At the time of filing of the said writ petition, according to the Appellants, no decision had been taken.

8. According to the Appellants, even if the grant-in-aid is withdrawn, the institution continues to be recognized under the Education Act. In a case of an institution which has the resources to meet the expenses and is not in need of grant-in-aid, frittering away precious public money by way of grant to such institution, and not diverting the said grant to some needy institution, is wholly arbitrary, unreasonable and volatile of Article 14 of the Constitution of India;

9. Subsequent to the filing of the writ petition giving rise to this appeal, Respondent No. 1 vide order dated 6th August, 2009 rejected the representations of the Appellants dated 20.11.2006 and 11.3.2008. Subsequent events have been incorporated in the petition by way of an amendment. It is the case of the Appellants that the order passed by Respondent No. 1 does not take into consideration the various aspects which the Appellants had pointed out for consideration and the same was passed without application of mind by Respondent No. 1. There is, therefore, total non-consideration of relevant material and documents.

10. It is also set out in the writ petition that the grant-in-aid given by the State Government to the institution has no statutory basis. The grant-in-aid is received pursuant to administrative instructions framed by the State Government and/order Government Orders issued from time to time. In the light of that, the Appellants had prayed to quash the order dated 6th August, 2009 passed by Respondent No. 1 and for a direction in the nature of mandamus to delete the name of Aditya Birla Intermediate College, Renukoot, Sonebhadra from the State Government's grant-in-aid list of the institution.

11. The State Respondents had filed a counter-affidavit wherein it is set out that the teaching and non-teaching staff made a request that they be continued under the provisions of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1972 (hereinafter referred to as the 'Payment of Salaries Act'). It is set out that in case the name of the institution is deleted from the grant-in-aid list, the Appellant's institution would be beyond the control of the State Government and in that event there would be apprehension that the students of weaker Sections of the society or Scheduled Caste or Scheduled Tribe, except the wards of the employees, may not be permitted to get admission in the institution, which would be against the Directive Principles of the State Policy as well as volatile of the spirit of the Constitution of India. The Appellants have failed to make out any case warranting interference by this Court in the exercise of its extraordinary jurisdiction.

12. A counter-affidavit was also been filed by Respondent No. 4 (an employee)), who was sued in the representative capacity on behalf of the employees. It is set out in the said affidavit that the petition, as filed, was not maintainable. It was also set out that, instead of filing a fresh petition to challenge the. order dated 6th August, 2009, the petition was amended. If the petition itself was not maintainable, it could not have been amended. It is also set out that the first petition was filed at Allahabad and the second petition at Lucknow with an object that the same may not be opposed with the material of first writ petition which was available at Allahabad and this amounts to suppression of facts. Respondent No. 4 had raised some contention regarding the functioning of the Committee of Management of the institution. It is set out that by privatization of the institution, the State would not be having any control over the institution. It is further set out that if the aid is withdrawn, the teachers and employees would be left at the mercy of the Management. For all the aforesaid reasons, the petition ought to be dismissed.

13. The Senior Vice President of the Hindalco Industries Limited and Manager, Committee of Management of the institution, by his affidavit dated 6th March, 2010, has reproduced the resolution passed by the Committee of Management dated 4.3.2010, which reads as under:

3. That the Petitioner committee of management vides its resolution dated 4.3.2010 has approved and undertaken that:

(i) Upon withdrawal of the grant-in-aid to the institution and the deletion of its name from the grant-in-aid list of the State the service conditions including retrial benefits as well as the total emoluments and facilities of the approved teachers and staff of the institution shall not be lower or less beneficial than that laid down from time to time by the State Government under the U.P. Intermediate Education Act, 1921 or the U.P. High School and Intermediate Colleges (Payment of Salaries to the Teachers and Other Employees) Act, 1971 or Government Orders for approved teachers and staff of the same grade.

(ii) The approved teachers and staff of the institution shall continue in the service of the institution till their superannuation and their services shall not. be dispensed with except in accordance with the applicable laws. Such of the approved teachers or staff as are desirous and apply for transfer of their services to any other recognized and aided institution shall be granted no objection by the institution.

(iii) The institution shall continue to abide by the applicable laws and Government Orders as a recognized institution and the approved teachers and staff shall continue to enjoy full protection of the applicable laws and Government Orders.

(iv) The admission and tuition fees of the students of the institution shall not be higher than that laid down by the State Government and applicable to all the institutions recognized by the U.P. Board for High School and Intermediate Education. The institution shall continue to accord all facilities and benefits in the matter of admission and fees to wards of the people of weaker Section of the society including tribal. Such facilities and benefits shall never be less than that laid down by the State Government for such students.

(v) The entire infrastructure of the institution including land, building, furniture, laboratories with all apparatus, computers etc. shall continue to be utilized for the institution and shall not be transferred by the institution or Hindalco Industries Limited to any other person or project.

(vi) This undertaking of the committee of management is filed by the manager before Hon'ble the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 2840 of 2009.

A true copy of the resolution of the Petitioner committee of management dated 4.3.2010 is being filed herewith and marked as Annexure SA-1 to this supplementary affidavit.

4. That it is in the interest of justice that the aforesaid undertaking of the Petitioner committee of management be accepted on the record of the instant writ petition.

14. Office Memorandum dated 6th August, 2009, which is under challenge, notes the various points which had been raised. The main finding is that if the grant was withdrawn and the institution was converted into a non-aided category, the same would give rise to legal hurdles. The institution is recognized under the provisions of Section 7(A) of the Education Act and it is mandatory to run the institution as per the prescribed Rules/Service Rules laid down by the Government and in view of that, the representation had been rejected.

15. The learned Single Judge, after considering all the aforesaid contentions and materials on record, has been pleased to dismiss the writ petition by judgment and order dated 19.1.2011 against which the present appeal.

16. An objection was raised on behalf of the teachers contesting the appeal that before the Appellants' representations dated 20.11.2006 and 11.3.2008 had been decided pursuant to the directions of this Court (at Allahabad) on 30.4.2008, the Appellants could not have approached this Court to present a fresh petition. It is submitted that the successive petitions are not maintainable. This aspect was considered by the learned Single Judge and he was pleased to hold that the writ was maintainable for the relief sought in the writ petition particularly against the order passed by the State Government rejecting the Appellants' representations as it was absolutely a new fact which had been brought to the notice of the Court. This objection was once again reiterated before this Court. Reliance was placed on the judgment of this Court in the case of Dr. Khetrapal Singh v. State of U.P. and Ors. 2009 (8) ADJ 355 (DB). In that case, an earlier petition filed was dismissed. Thereafter, for the similar relief, in a camouflaged manner, a second petition came to be filed. This Court, after considering the facts of that case, was pleased to hold that the second petition would not lie. Reliance was placed on Chapter XII Rule 7 of the Rules of this Court. In our opinion, in the instant case, the ratio of that judgment would not apply, considering that in the earlier petition a direction was given to the authority of the State to dispose of the representation. The Appellants moved this Court on failure by the appropriate authority to dispose of the representation within a reasonable time. In our opinion, the objection, as raised, is wholly de void of merit. This Court, in the exercise of its extraordinary jurisdiction, does not non-suit parties on mere technicalities. Failure by the State to dispose of the representations within the time frame would have given rise to various actions-it could be by way of contempt and in the absence of any provision for execution of the order, due to unreasonable delay, the Appellants could have come for the very same relief which this Court had directed the Government to consider and dispose of. Apart from that, subsequently, during the pendency of the writ petition, the representations were rejected. The prayer clause was suitably amended accordingly. In our opinion, therefore, this objection is totally devoid of merits and is, consequently, rejected.

17. Another objection was raised that no writ would lie against a private institution. Again, this contention is misplaced and is rejected. The Appellants are seeking relief against the State authorities for failing to discharge their duties and/or considering the right of the Management to run the institution without aid. A petition against the Respondent authorities, in these circumstances, would be maintainable.

18. The learned Single Judge has noted the undertaking given by the Senior Vice President of the Hindalco Industries Ltd., being Manager of the Committee of Management of the institution, that even after withdrawal of the grant, the service conditions including retrial benefits, as well as total emoluments and facilities of the approved teachers and staff of the institution shall not be lower or less beneficial than that laid down from time to time by the State Government under the relevant Act and Orders, and they shall continue in service till their superannuation and their services shall not be dispensed with, except in accordance with law. The learned Single Judge has noted the contention of the State as also the employee sued in the representative capacity. The Court noted that the grant-in-aid have been given by the State Government in favor of the teachers and other employees of the institution and has ensured the payment of salary to them from the State Exchequer and is still willing to pay from its pocket and, in such circumstances, it would be absolutely inappropriate to put the teachers and other employees under the hands of the Management of the institution particularly in the matter of payment of salary. The Court also observed that so fat as other service conditions are concerned, the Committee of Management is always empowered to take action against the teachers and other employees as and when occasion arises, but due to extension of grant-in-aid from the State Government, that is always subject to approval of the State authorities, which also secures their service conditions in better way. The Court observed that once an institution is taken under the grant-in-aid list, the payment of salary to such employees is ensured under the provisions of the Payment of Salaries Act and, accordingly, their right of getting salary receive statutory strength under the said Act and if the same is withdrawn, they shall have no right to enforce it under the said Act. The Court observed, in these circumstances, that it would not be proper to put them under the private hands to control and govern their service conditions in unfettered manner and, accordingly, dismissed the writ petition.

19. The grant-in-aid to an aided institution is governed by the provisions of Chapter IX of the Education Code ofUttar Pradesh. Under the said Code, no grant is made to an institution, unless it agrees to comply with the conditions laid down, and institution which applies for grant-in-aid from the State Government, or which receives the grant-in-aid, shall be deemed to have accepted the obligation to comply with the various conditions, which have been laid down. One of such conditions is that the conditions of service of every teacher including the Head of Institution, Head Clerk, Clerk and Librarian, appointed substantively on the probation, shall be governed by an approved agreement executed by him and the Management. The other condition is that the payment of a teacher appointed by the Management without the prior approval of the authority concerned shall not be an admissible charge on the assessment of grant-in-aid to an institution. We may reproduce Paragraph 294 of the Education Code of U.P., which reads as under:

294. Grant will ordinarily be withdrawn by the Director, if any member of the managing committee or any teacher (including the head of the institution) acts in a manner or excites and promotes activities by students, subversive of law and order, or if the institution fails to achieve and maintain discipline among them.

Paragraph 297 of the said Code is also relevant, which reads as under:

297. No grant will be finally sanctioned until the manager certifies that the funds provided from other sources are sufficient with the grant to meet all claims and to close the account.

Two other paragraphs, being Paragraphs 309 and 314, which are also relevant, read as under:

309. No grant is made-

(a) to any institution which does not conform to the conditions for recognition laid down by the Government or to any school or department of school or college which is declared to be unnecessary or unsuited to the requirements of the locality;

(b) to any school or college the income of which from all sources is sufficient to maintain it in efficiency;

(c) to any school or college which is conducted for private profits or which is farmed out by the managers to the teachers.

314. If the Inspector reports a school or college to be undeserving of further assistance or that the grant for any Section should be withdrawn, the Department will give formal warning to the manager that if at the next inspection the defects to which attention has been called have not been removed, the grant will be liable to reduction of to be withdrawn altogether.

On a conjoint reading of these Paragraphs, it would be clear that an institution, which is given the grant-in-aid, has to apply with certain requirements. The Code also provides for withdrawal of grant-in-aid, if the institution is found to be undeserving of further assistance. Paragraph 309 sets out that no grant is made to any school or college the income of which from all sources is sufficient to maintain it in efficiency. This Court, in Committee of Management Rohan Singh Shiksha Sansthan Junior High School Maitha District Kanpur Dehat v. State of U.P. and Ors.  : 2004 (1) AWC 248 while dealing with the parameters of the provisions of the UttarPradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, has taken the view that the grant-in-aid Code has no statutory basis. The law is well settled that the matter of grant-in-aid is a matter purely between the institution and the State Government. Teachers and non-teaching staff of the institution have no say in the matter, as has been observed by the Supreme Court in the case of The State of Assam and Anr. v. Ajit Kumar Sarma and Ors.  : AIR 1965 SC 1196. Grant-in-aid is given to fulfill the constitutional objectives to achieve and maintain the required standards of education.

20. In Shiksha Prasar Samiti Babhanan District Gonda v. State of U.P. and Ors. 1986 UPLBEC 477 a learned Division Bench of this Court (Lucknow Bench), was considering whether the provisions of the U.P. Secondary Education Service Commission and Selection Boards Act, 1982 would be applicable to an institution not receiving aid from the State? We may only reproduce the following paragraphs of the said judgment:

9. The contention of the Petitioner that U.P. Act No. v. of 1982 is not applicable to the institution in question is equally without merit. The applicability of the Act is not dependent upon the institution being on the list of grants-in-aid institutions. Whether it receives or does not receive any grant from the Government is immaterial. What is material is that it should be a recognized institution.

10. Under the U.P. Intermediate Education Act, the Board has been constituted to conduct the High School and Intermediate examinations. Only those institutions as are recognized under the Act by the said Board are entitled to send students to examinations conducted by the Board. The word "recognition" has been defined in Section 2(d) which means recognition for the purposes of preparing candidates for admission to the Board's examination. "Institution" has been defined under Section 2(b) as a recognized Intermediate College, Higher Secondary School or High School. The constitution of the Board is provided under Section 3 and the powers of the Board have been specified in Section 7. Clause (3) empowers the Board to conduct examinations at the end of High School and Intermediate courses. Clauses (4) and (5) authorize it to recognize an institution for the purposes of its examination and to admit candidates to such examinations. Clause (g) empowers the Board to call for reports from the Director of Education on the condition of recognized institutions or of an institution applying for recognition. Section 7A provides that an order of the Board giving recognition for the first time shall not have effect until it is approved by the State Government. Section 13 authorizes the Board to appoint various committees including the Recognition Committee. Under Section 15(2)(c) the Board has the power to make Regulations laying down the conditions of the recognition of the institutions or the purposes of its examinations. Section 16A provides that there shall be a scheme of administration in every institution. Section 16E lays down the procedure for selection of teachers and head of the institution. Section 16F deals with selection committee while Section 16G deals with conditions of service of the head of the institution, teachers and other employees and provides that conditions of service may be prescribed by Regulations.

11. It is thus clear that an institution which is a recognized institution would be governed by the provisions of U.P. Intermediate Education Act. Under Section 2(e) of U.P. Act v. of 1982 "institution" means an Intermediate College or Higher Secondary School or High School recognized under the U.P. Intermediate Education Act, 1921. Section 16 of the Act provides that notwithstanding anything to the contrary contained in the Intermediate Education Act or Regulations made there under, every appointment of a teacher specified in Schedule shall on or after July 10, 1981 be made by the management only on the recommendation of the Commission or the Board constituted under the said Act. The Head Master of a High School is a post which is included in the schedule.

12. Since U.P. Act No. v. of 1982 applies to all recognized institutions, the post of the Head Master or the Principal in any such school can be filled only through the selection made by the Commission. Learned Counsel for the Petitioner in support of his contention that U.P. Intermediate Education Act as also U.P. Act No. v. of 1982 apply only to aided institutions, has placed reliance on a decision of this Court in City Montessori Schools v. District Inspector of Schools 1983 UPLBEC 479 (DB)(LB). It has been pointed out by the Learned Counsel for the Petitioner that the decision in City Montessori Schools' case (Supra) has been explained by a Division Bench of this Court in, Committee of Management of Sri Shankaracharya Inter College v. District Inspector of Schools Sultanpur decided on 6.1.84 1984 UPLBEC 281 (DB)(LB). We have looked into both the judgments. The institutions in that case were recognized institutions but they were not receiving any aid from the Government. The services of teachers were terminated without complying with the provisions of Section 16G(3) (a) of the U.P. Intermediate Education Act, under which it was mandatory to obtain prior approval in writing of the District Inspector of Schools with regard to the notice by which services of teachers were proposed to be terminated. Similarly, services of teachers of certain other City Montessori Schools which were governed by the provisions of the BasicShiksha Adhiniyam were terminated without prior approval of the Zila Basic ShikshaAdhikari. The termination orders were declared to be illegal by the District Inspector of Schools and the Zila Basic Shiksha Adhikari who directed the management to re-instate the teachers. The Division Bench comprising of Hon'ble K.N. Goyal and Hon'ble R.C. Deo Sharma, JJ. held as under:

(i) Notwithstanding that the prior approval of the District Inspector of Schools or Zila Basic Shiksha Adhikari was not obtained as to the proposed termination of services of teachers, the said authorities i.e. the District Inspector of Schools and the Zila Shiksha Adhikari who had declared the termination order to be bad and had directed the reinstatement of the teachers, had no jurisdiction either to make a declaration of invalidity of termination or to direct reinstatement of teachers.

(ii) The termination of service was sought to be effected without securing prior approval. Such termination may be good or bad but the jurisdiction of the Inspector or of Basic Education Officer was never invoked by the management. Neither the Inspector nor the Basic Education Officer has been given power to intervene after an invalid termination.

(iii) Even if the mandatory provisions of law are contravened by the management of an institution in not obtaining prior approval of the education authorities, the discretion under Article 226 of the Constitution can still be exercised in favor of the management and the illegal termination orders can be upheld if the order of the education authorities who had directed reinstatement of teachers on finding the termination to be bad, was found to be without jurisdiction. Other points decided by the Division Bench may not be summarized as they are not relevant for the present case. Without subscribing to the view expressed in City Montessori Schools' case (supra) we may observe that the controversy raised in this case is not covered by the decision in City Montessori Schools' case. The judgments in Writ Petition No. 228 of 84: ( 1984 UPLBEC 281 (DB) (LB), which were separately rendered by Hon'ble K.N. Goyal, J. and one of us (S. Saghir Ahmad, J) are also of no avail to the Petitioner, as it was held in that case that the U.P. high Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 would apply to an institution receiving grants-in-aid from the Government. It was not laid down that U.P. Intermediate Education Act or U.P. Act v. of 1982 would not apply to an institution which does not receive grants-in-aid. The question of applicability of Payment of Salaries Act is not involved in the instant case, although Learned Counsel for the Petitioner has contended that the question is very much involved, as the management is free to pay salary to the head of the institution in a scale in which it would like the salary to be paid and not in the scale prescribed by the Government. We would advert to this aspect of the matter later. For the present,' we hold on the basis of the above discussion, that the Petitioner's institution being an institution recognized under the U.P. Intermediate Education Act would be governed not only by that Act but also by the provisions of U.P. Act V of 1982.

21. We may now answer the question which arises for consideration in this appeal. Will withdrawal of grant-in-aid affect the conditions of service of those teachers/staff in respect of which the institution is receiving grant-in-aid?

We have noted the judgment in Shiksha Prasar Samiti (supra). What is the effect on the conditions of service of teachers/staff that are paid salary from the grant of the State? The effect of the grant-in-aid would be that the Management has to comply with the provisions pertaining to grant-in-aid contained in the Education Code of U.P., failing which it will be open to the State to withdraw the grant. Another consequence is that the payment of salary to such teachers would be governed by the provisions of the Payment of Salaries Act. The said Act provides the manner in which salaries are to be paid from the grant-in-aid received.

22. Let us now also look at the provisions of the Education Act. The expression 'institution' is defined under Section 2(d) to mean 'a recognized Intermediate College, Higher Secondary School or High School, and includes, where the context so requires, a part of an institution, and 'Head of Institution' means the Principal or Head Master, as the case may be, of such institution'. Section 7A sets out that notwithstanding anything contained in Clause (4) of Section 7, the Board may, with the prior approval of the State Government, recognize an institution in any new subject or group of subjects or for a higher class. Sub-section (b) of Section 7A provides that the Inspector may permit an institution to open a new Section in an existing class. Once an institution is recognized under the Education Act, then the Act provides for a Scheme of Administration for running the institution. Section 16E of the Education Act, provides for the procedure in respect of selection of teachers and head of the institutions. It sets out that every person employed in the institution shall be governed by such conditions of service, as may be prescribed by the Regulations, and any agreement between the Management and the employees, insofar as they are inconsistent with the provisions of the Education Act or the Regulations, shall be void. Therefore, it is the Education Act that governs the conditions of service, while the payment of Salaries Act only ensures that the grant released in favor of the teachers to whom the salary is paid by way of grant, will receive the salary in the manner prescribed therein. This would not mean that, insofar as the teachers and/or staff of institution receiving grant-in-aid, their conditions of service are different from that of teachers in that institution who are not receiving the grant-in-aid. The conditions of service of teachers/staff of the institution, whether aided or not, are governed by the provisions of the Education Act, and the Regulations framed there under. We have/therefore, no reason to take a view different from the view taken in Shiksha Prasar Samiti (supra). It would, thus, be clear that withdrawal of grant-in-aid will not have any effect on the conditions of service of the teachers and/or staff in any manner.

23. Now, the question for our consideration is that once an institution receives grant-in-aid, is it open to the State Government to withdraw the same at its own instance or at the instance of the Management of the institution which had earlier applied for grant? Grant-in-aid is no bounty. It is largesse by the State to meet a larger constitutional objective of providing education through private institutions, as the State is not in a position to set up its own institutions, but carries on its constitutional duty through the private institutions. One of the most dynamic and fast growing segment, is education at the secondary, higher secondary and at the college level. The Supreme Court in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. 2002 (5) ESC 1 (SC) has recognized the role of private unaided educational institutions, by observing that in the case of unaided private institutions, maximum autonomy has to be given to the Management with regard to the administration, including the right of appointment, disciplinary powers, admission of the students and the fees to be charged. The objectives of an educational institution are to impart quality education to its students. As such, there is a need to maintain discipline and abide by the Rules and Regulations that have been lawfully framed. The teachers and the institutions exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of the educational institutions to perform their duties properly, and for the benefit of the students. Though, ordinarily, the relationship between the Management and the employees is contractual in nature but, considering the provisions of the Education Act, it is governed by the statutory conditions of service. An entire machinery and mechanism has been provided so that teachers and/or staff are not unnecessarily harassed and/or made dependent of the whims and fancies of the Management. This ensures checks and balances so that the institution imparts quality education and at the same time permits the teachers from being victimized by the Management.

24. We had earlier reproduced some paragraphs of the Education Code pertaining to grant-in-aid, as in force in the State of U.P. As we have noted earlier, the grant-in-aid is given to the institutions, which are not in a position to run the schools without the aid from the Government. No grant can be made available to any school or college the income of which from all sources is sufficient to maintain it in efficiency. Though the revenue expenditure of the institution is to the tune of Rs. -2.66 cores, the grant-in-aid received by the institution is only Rs. 68.63 lacs. In other words, it is the Management which has to bear the additional expenditure of Rs. 2 crores. At the High School level, the institution receives grant for only 24 Sections out of 64 Sections. The institution has 72 Sections of which 48 are being run without the support of the grant-in-aid. Out of 101 teaching staff including the Principal, 34 teachers are paid from the grants received from the State. Similar is the fact regarding the non-teaching staff. The institution, therefore, is largely being run by the funds of the Management from its own resources. We have also reproduced the resolution passed by the Management both in the matter of running of the institution as also the protection that would be available to the teachers and staff in terms of the Education Act and the undertaking filed before this Court. Thus, merely because an institution receives aid, that does not prevent the Management from asking the Government to withdraw the aid on the ground of sufficiency of resources to run the institution. In fact, if the institution has sufficient resources, such an institution is not entitled to receive the grant-in-aid from the State. An institution, which receives grant-in-aid, but does not follow the prescribed norms, grant-in-aid to such an institution can be withdrawn. In other words, the grant-in-aid is not something permanent that once given it cannot be withdrawn. We are, therefore, clearly of the opinion that merely giving grant-in-aid, by itself, would not result in holding that it cannot be withdrawn. Once an institution, which is receiving the grant-in-aid, applies for withdrawal of the same on the ground that the institution would be in a position to run the institution without the grant-in-aid, the authority then must apply the test as contained in the Education Code pertaining to grant-in-aid. There is no statutory bar for the Government to consider whether an institution which receives grant-in-aid can be allowed to manage its affairs without grant-in-aid to such institution.

25. The fear, of the teachers and staff who are opposing the reliefs as sought by the management, in our opinion, is unfounded. It is true that this Court cannot perceive of all contingencies in the future. What the Court must do is to promote quality education without, at the same time, compromising on the protection of the conditions of service of the teachers and staff. The provisions of the Education Act become applicable the moment an institution is recognized under that Act. Then irrespective as to whether the institution receives grant-in-aid or not, the teachers/staff would be governed by the provisions of the Education Act.

26. The learned Single Judge was impressed by the fact that the withdrawal of the grant-in-aid may affect the conditions of service. In our opinion, the provisions of the Education Act, as it now stands, are clearly applicable. Once an institution is recognized, to continue recognition, the institution is subject to the terms and conditions as set out in the Education Act.

The learned Single Judge has also, in his judgment, observed that though he has taken notice of the undertaking given by the institution on the breach of the undertaking, the staff of the institution has remedy to receive their salaries. After de-listing the institution from the grant-in-aid list, the remedy will not be available and only the provisions of the Labour Law will apply. Learned Counsel for the Appellants drew our attention to the fact that the provisions of the Labour Enactments would not be applicable to teachers. Our attention is invited to the judgment of the Supreme Court in the case of Miss. A. Sundarambal v. Government of Goa Daman and Diu and Ors.  : (1988) 4 SCC 42 where the Supreme Court observed that, though an educational institution has to be treated as an 'industry', teachers in an educational institution cannot be considered as workmen. It is not that a teacher will be bereft of any remedy. Recourse to ordinary civil Court, is always available. It is open to the Government, considering the power conferred upon it by Regulations, if there be no Regulations to provide for Regulations so that the mode of recovery of salary of unpaid teachers and staff, if not provided for, is so provided.

27. On behalf of the State, learned Standing Counsel has filed written arguments which, in our opinion, need not be elaborated or dealt with. The main submission was about the objection by the teachers who are covered by the grant-in-aid. We have dealt with that aspect and need not further dwell on it. It was further sought to be contended that the State, by Amendment Act 18 of 1987, amended the Education Act, and certain Sections were added, but the definition of the expression 'institution' given under 1982 Act, were not suitably amended to exclude, from its purview, unaided private institution. It is sought to be contended that all statutory restrictions are, however, only for aided institutions and Government schools. This argument must be rejected. The Legislature, in its wisdom, has sought to include all institutions, which are recognized under the protective umbrella of the Education Act. Power has been given by the Legislature to the Government, as a delegate, to make Regulations and other forms of subordinate legislation to carry out the objectives of the Act. What the Courts must examine is the statutory enactments and not what ought to have been or ought not to have been done, as long as the Education Act, as it stands today, covers all educational institutions. The argument, therefore, advanced on behalf of the State is unsustainable. The judgments referred to, in our opinion, do not address the controversy, which has arisen in this case and issues which have been answered.

28. For all the aforesaid reasons, the appeal is allowed. The judgment and order of the learned Single Judge dated 19.1.2011 passed in Writ Petition No. 2840 of 2009 (M/S) is set aside. The undertaking given to this Court by the Appellants, through the Senior Vice President of Hindalco Industries and Manager, Committee of Management, is accepted. In the light of that, the petition is also allowed. The order dated 6th August, 2009 is quashed and set aside. The State-Respondents are directed to delete the name of Aditya Birla Intermediate College, Renukoot, Sonebhadra, from the State Government's grant-in-aid list of institutions.

A copy of this order be placed in the file of Writ Petition No. 2840 of 2009 (M/S).