

(2023) 12 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No.12924 Of 2022

Aniket And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Citation : (2023) 12 BOM CK 0034

Hon'ble Judges : Vibha Kankanwadi, J;Abhay S. Waghware, J

Bench : Division Bench

Advocate : ??Kiran M. Nagarkar, V. S. Choudhari, S. K. Kadam

Final Decision : Partly Allowed

Judgement

Vibha Kankanwadi, J

1. Rule. Rule made returnable forthwith. By consent of all the parties, the matter is taken up for final hearing at the stage of admission.

2. The petitioners are the students taking education in LL.B. course in Maharashtra National Law University, Aurangabad for the academic years 2019 to 2024. They are the members of Scheduled Caste. The Government of Maharashtra provides Freeship (free education) benefit to the eligible students belonging to backward class while getting admission to some of the courses. It was informed by respondent No.2 that they are required to deposit entire university annual fees and accordingly, they have deposited amount of Rs.1,60,490/- each for the first year 2019-2020, however, thereafter they have made grievances from time to time to the respondent authorities i.e. respondent No.1 and respondent No.3 by online communication several times to give them the freeship benefit for the academic year 2019-2020. Vide representation, they had specifically stated that despite being eligible, they are not able to fill up the form because the course (B.A.LL.B Hons.) is not listed under the eligible course list on the MAHA-DBT portal, which appears to be due to technical error. There was no mistake on the part of the petitioners, but it is the respondents, who had

not listed the course for the freeship. They had given representations to the concerned departments of Maharashtra National Law University, Aurangabad, Grievance Portal of MAHA-DBT and Mantralaya Portal. They had also made communication to Assistant Commissioner, Social Department, Aurangabad, then cognizance was taken and a letter has been sent on 30/31.12.2019 to the concerned department that since due to technical problem the petitioners could not get access to the freeship form through portal, that should be made available to them, however, there was no immediate response. The petitioners also point out that Assistant Commissioner of Welfare Department, Nagpur has addressed a letter dated 05.06.2018 to Maharashtra National Law University, Aurangabad stating that no fees should be charged from the students of backward class. The Government Resolution dated 31.03.2016 stated that the private unaided educational institutions for professional courses should continue the benefit of freeship and thus, the freeship benefits were continued for the academic year 2019-2020. The Government Resolution issued by the Higher Social Justice and Special Assistance Department dated 08.01.2019 clarify that the benefit for the academic year 2018-2019 should be through the website of MAHADBT and, therefore, the said form was tried to be accessed, but due to the technical error, it has not been accessed. There were no efforts in spite of the representations and complaints to make the same available to the petitioners. The petitioners contend that they ought not to have been charged by respondent No.2 for the fees for the said academic year taking into consideration the fact that the petitioners were entitled to the freeship benefits. The respondent No.3 has then issued letter dated 17.06.2022, whereby it was stated that mapping was not done on MAHA-DBT portal as the said portal runs online. There is no question of granting any concession, as there is no such provision and, therefore, their representation was disposed of. The petitioners therefore prayed for setting aside the said letter and prayed for refund of their fees i.e. Rs.1,60,490/- each along with interest from respondent No.2.

3. In response to the petition, when called upon, Assistant Commissioner, Social Welfare Office, Aurangabad, Shri. Pandurang Gitaram Wabale filed affidavit-in-reply for respondent Nos.1 and 3. It has been submitted that the Government of India had introduced a post matric scholarship scheme for backward class students and the State Government is regulating and disbursing the funds within the State as received by the government. Government of Maharashtra has a freeship scheme in the interest of backward class students, which includes payment of tuition fees and examination fees. The petitioner had prayed the freeship scheme. In fact, petitioners had filed Writ Petition No.7865 of 2020 before this Court and vide order dated 18.03.2021 directed the petitioners to make an application/representation with respondent No.3 for the refund of fees paid by them. Respondent No.3 was directed to take the decision according to policy and rules within the prescribed period. It is contended that with an objective to disburse all individual benefits on DBT (Direct Beneficiary Transfer) basis, the Government vide Government Resolution dated 12.10.2018 developed

MAHA-DBT portal and it is implemented since 2018-2019. By Government Resolution dated 08.01.2019, the mapping of courses over MAHA-DBT portal was conducted by the concerned parent educational departments and competent authorities. The rules and regulations were introduced. It is stated that in the present case it becomes necessary to seek clarification from parent educational department for the steps taken subject to mapping of B.A.LL.B (five years course) on MAHA-DBT portal since 2018-2019, which was basically mapped in the later academic year i.e. 2020-2021, on account of which respondent Nos.1 and 3 were unable to provide benefit to the petitioner, if found eligible unless the course being mapped for the particular year for the year 2018-2019 of which the petitioners are demanding freeship. It has been contended that by Government Resolution dated 31.03.2016, the course LL.B. (Three years and Five years), B.Ed., B.P.Ed., M.Ed., M.P.Ed. were registered as non professional courses over the Maha Eschol portal. Thereafter by Notification dated 21.01.2016 and 24.04.2017, the Higher and Technical Education Department revised and declared those courses as professional courses. It is the main factor that this affiant wanted to say that since the mapping has not been done, freeship cannot be granted. He has given the procedure as to how the portal is required to be operated. It is stated that the impugned letter dated 17.06.2022 is correct and, therefore, the writ petition deserves to be dismissed.

4. Affidavit is also filed by the Registrar, Maharashtra National Law University, Aurangabad, Shri Dhanaji Mukundrao Jadhav contending that the petitioners are the members of Scheduled Caste and were eligible for the freeship. The university was to be mapped by the concerned administrative department on MAHA-DBT portal. In fact, Higher and Technical Education Department of the government is responsible for implementation and mapping of the scheme of MAHA-DBT portal. The petitioners are however deprived of the benefits of the scheme for the academic year 2019-2020, as they could not fill the form online on the portal. As the portal was operated online, the university has not done the exercise of forwarding the applications of the petitioners to the concerned authorities. In fact, mapping has been done and now all the petitioners are receiving and getting benefits of the freeship of the academic year 2020-2021 till date.

5. Again in view of the order passed by this Court, the Registrar, Maharashtra National Law University, Aurangabad has again filed affidavit. It is stated that for the academic year 2019-2020, the petitioners were admitted to the course belonging to the Scheduled Caste category. In all, ten students were admitted from the said category. Out of them seven were found eligible for scholarship, including the petitioners. However, he has reiterated that due to technical error in the portal, the petitioners could not fill the form. He has given the procedure as to how the students should contact the university authorities and how the university can help them in uploading the applications. But he says that as the uploading was not done due to technical error, the university was unable to scrutinize and process the applications further.

6. Joint Director, Higher Education, Aurangabad Region, Aurangabad, Dr. Surendra Gulabsingh Thakur has filed affidavit on behalf of respondent No.4. It has been stated that the course of LL.B. (five years) is prescribed as professional course vide Government Notification dated 11.03.2016. His department has completed the required process from the year 2017 in respect of uploading the fee structure of the course with the approval of concerned authority on MAHA-DBT portal. He has annexed the government notifications and the screenshots of the portal.

7. Heard learned Advocate Mr. Kiran M. Nagarkar for the petitioners, learned AGP Mrs. V. S. Choudhari for respondent Nos.1, 3 and 4 – State and learned Advocate Mr. S. K. Kadam for respondent No.2. For the sake of brevity, it can be said that all of them have made submissions supporting their respective contentions.

8. There is no dispute as regards the purpose for which the freeship was introduced, to whom that is applicable and what are the requirements those are required to be done. For the upliftment and to provide more educational facilities to the backward class, the scheme was introduced and it appears that the said scheme is implemented since the academic year 2006-2007 onwards. In the said process, the government would reimburse the fees to the concerned educational institution. Equal responsibility has been cast on the educational institution to get their courses and institution registered with the MAHA-DBT portal. Equal responsibility has also been cast for the implementation of the said scheme to the Assistant Commissioner, Social Welfare Department. Here, the petitioners have come with a case that they were asked by respondent No.2 to deposit the entire academic fees. In fact, if they were eligible for such scheme, then respondent No.2 ought not to have insisted that they should deposit the fees, but it is a fact that each of the petitioner has deposited amount of Rs.1,60,490/- with respondent No.2. Thereafter, it appears that they have tried to login or upload their form under the said scheme for the reimbursement. Government Resolution dated 31.03.2016, which was then made applicable to provide unaided educational institution for professional courses provides for the procedure that is required to be undertaken. It rather cast a duty on the university, competent officer to update the information by collecting the requisite documents, especially the proof regarding the income of the family and the caste. It is then necessary to mention the Aadhar card number of each student. The Government Resolution dated 08.01.2019 gives guidelines for implementation of the scheme on MAHA-DBT portal. It says that the concerned student should upload an application by using the online form on MAHA-DBT portal as well as to upload the documents, on which he is relying and the list which is given in the Government Resolution itself. It has been specifically stated that for forwarding the said application, the university/college and its principal would be responsible. Here, it appears that the respondent No.2 has not responded properly to the representations those were made by the petitioners. Initially, it appears that the fees have been paid in July-August, 2019 and thereafter from October, the attempt was made to upload the application on MAHA-DBT portal. Ultimately, it appears that father of

petitioner No.3 had given a complaint application to Vice Chancellor, Maharashtra National Law University, Aurangabad on 25.11.2019 informing him all the problem. However, still it appears that there was no response. Along with the affidavit, respondent No.2 has filed a communication issued by Vice Chancellor, Maharashtra National Law University, Aurangabad on 25.02.2020 to Commissioner, Social Welfare Department, stating that the applications for the freeship of the petitioners be accepted, as they have not been accepted due to technical reasons. It further appears that by filing Writ Petition No.7685 of 2020, the petitioners approached this Court and the said petition was disposed of on 18.03.2021, after it was noted that the question is in respect of benefit of freeship for the year 2018-2019. Now, for this year, portal has been opened and then petitioner were directed to make a representation to respondent No.3 for refund of fees and then respondent No.3 was directed to consider the said application. By order dated 17.06.2022, it appears that the said representation by petitioners has been rejected on the ground that the portal is operated online and there is no provision for according scholarship/freeship as a special case. It was also stated that the LL.B. course was not mapped on MAHA-DBT portal for the academic year 2018-2019, 2019-2020 and, therefore, no freeship can be granted. Interesting point to be noted is that as per the recent affidavit filed by Dr. Surendra Thakur, Joint Director, Higher Education, he states that his department has completed required process from the year 2017. He makes a reference to the Government Resolution dated 02.03.2020 issued by the Social Justice and Social Assistance Department directing his department to update the fee structure of the course. Whether he wanted to say that the course was already mapped for the year 2017-2018 onwards or whether it is mapped as per the Government Resolution dated 02.03.2020 later on, itself a question and his affidavit is not clear on that point. He has provided the leaf/page of MAHA-DBT showing that the mapping has been done. On the right hand corner, it is also stated that all the reports last updated on 13.12.2023. Under the said circumstance, it was necessary for him to clarify when the updation was done in respect of present course with respondent No.2. In other words, his affidavit appears to be somewhat contrary to the order dated 17.06.2022 and Government letter dated 06.06.2022.

9. Here, now the petitioners are receiving the freeship. It was the question for the academic year 2019-2020. There is no dispute that they are entitled and, therefore, taking into consideration the purpose for which the scheme was introduced and to be implemented, the students of such category cannot be deprived only for the technical reasons and, therefore, the writ petition deserves to be partly allowed.

10. At the same time, we are also disturbed to see how respondent No.2 University has acted. There should have been proper assistance to their students, if they are in difficulty to receive the benefit under a scheme. It is not expected from the law university that they should not help the students to get the benefit based on the constitutional rights and the scheme implemented by

Government of India and the State Government.

11. For the aforesaid reasons, following order is passed :-

ORDER

I) The writ petition stands partly allowed.

II) The impugned order/letter dated 17.06.2022 issued by respondent No.3 is hereby set aside.

III) Respondent Nos.1, 3 and 4 are directed to make available the freeship/ scholarship in view of the Government Resolutions stated above for the academic year 2019-2020.

IV) The reimbursement of the amount of Rs.1,60,490/- deposited by each petitioner be given to respondent No.2 by respondent Nos.1, 3 and 4.

V) Respondent No.2 to refund the amount of Rs.1,60,490/- to each petitioner within a period of 15 days from the date of this order.

VI) Prayer as regards grant of interest stands rejected.

VII) Rule is made absolute in the above terms.