

(2015) 03 BOM CK 0316

In the Bombay High Court

Case No : Public Interest Litigation No. 69 of 2011

Bapu Supadu Thorat

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 26(a)
University Grants Commission Act, 1956 — Section 16, 17, 3

Citation : (2015) 03 BOM CK 0316

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : V.A. Thorat, Senior Advocate, Vaibhav Sugdare and Manorama Mohanty i/b S.K. Srivastava and Co., for the Appellant; S.N. Patil, AGP, Advocates for the Respondent

Judgement

Abhay Shreeniwas Oka, J—The Government of Maharashtra has formulated a policy for granting reimbursement of fees payable by the students belonging to socially and economically backward classes who are studying in professional courses in Government recognized unaided and permanently unaided educational institutions. The issue is whether the benefit of reimbursement of fees to the said category students studying in professional courses in the colleges affiliated to the deemed universities under the University Grant Commission Act, 1974 can be denied the benefit of policy of reimbursement of fees. The other issue is whether the State Government can deny the benefit of centrally sponsored scheme to post-matric scholarships to the students belonging to the Scheduled Castes and scheduled Tribes in the colleges of deemed Universities.

2. On 28th October 2014, a notice for final disposal at admission stage was issued by this Court.

3. The Government of India formulated a scheme of post-Matric scholarships to the students belonging to Scheduled Castes and Scheduled Tribes. The Regulations governing the award of the said post-Matric scholarships (applicable

from 1st April 1988) annexed as Exhibit-B to the petition show that the post-Matric scholarships are available for the students of all recognized post-Matriculation or postsecondary courses pursued in recognized institutions. Few courses such as Aircraft Maintenance Engineers' courses and Private Pilot's License Courses, the Courses of training at Military College, Dehradun and the Courses at Pre-examination Training Centres of all India and State Levels have been expressly excluded from the benefit of the post Matric scholarships. Under the Regulations which were brought into force with effect from 1st April 1998, the value of the said scholarships include Maintenance Allowance, Reader Charges for Blind Students, Reimbursement of Compulsory Non-Refundable Fees, Study Tour Charges etc. The scheme is being implemented through the State Governments.

4. On 1st November 2003, the State Government issued a Government Resolution (for short "GR") which records that the said post-Matriculation scholarships scheme was transferred to the State Government from the year 1959-60 from the Central Government. The said GR makes it clear that the scheme is applicable to the Scheduled Castes students in Government and recognized affiliated aided Junior Colleges and other Colleges. The Government Resolutions were issued by the State Government for implementation of the post Matric scholarships scheme.

5. The State Government issued a Government Resolution dated 27th July 2009. The said Government Resolution provided for a scheme for reimbursement of the education fees payable by the students belonging to Scheduled Castes. The said Government Resolution was made applicable to the students belonging to Scheduled Castes who have secured admission in the academic year 2006-2007 to the professional courses (except B. Ed and D. Ed) in the Government recognized unaided and permanently unaided institutions. It records that the said scheme which was brought into effect by the State Government on 9th February 2007 will continue to apply even to the students securing admissions to the academic year 2009-2010. However, the said GR provides that the benefits thereunder will not extend to the students of deemed universities under the University Grants Commission Act, 1956 (for short "UGC Act"). In the Government Resolution dated 6th November 2010, there is a recital that a separate Government Resolution was being issued by the Social Justice Department for reimbursement of the fees payable by the students of the Scheduled Castes, Nomadic Tribes, Special Backward class and other backward class. It is stated that a Government Resolution for reimbursement of fees payable by the students belonging to Scheduled Tribes is being issued by the Tribal Development Department. The said Government Resolution dated 6th November 2010 was issued providing for reimbursement of fees to the students belonging to the category of economically backward class who have secured admissions in the year 2010-2011 to the professional courses under the higher secondary and technical education department of the State Government in private unaided and permanently unaided recognized colleges. The Government

Resolution provides that the same will apply to the degree courses in Engineering, Pharmacy, HMCT, Architecture, Diploma Courses in Engineering, Pharmacy HMCT as well as post graduate degree courses of MBA and MCA. The Government Resolution provides that the scheme will apply only to those who have secured admission through a common entrance test conducted by the State Government. The Government Resolution further provides that the scheme will not apply to the deemed universities under the UGC Act. It provides for the reimbursement to the extent of 50% of the fees payable by economically backward class students. The Government Resolution imposes a condition of having an income up to Rs.1,00,000/.

6. The challenge to the Government Resolutions dated 27th July 2009 and 6th November 2010 in this PIL is to the extent to which the said Government Resolutions exclude the students who have secured admissions to the professional courses in deemed universities. A writ of mandamus is prayed for directing the State Government to extend the benefits under the said Government Resolutions to the to the deemed universities. Another prayer in this petition is for issuing a writ of mandamus for extending the post-Matric scholarships scheme even to the courses conducted by the deemed universities. We must note here that the learned AGP did not dispute that the schemes incorporated in the Government Resolutions of 27th July 2009 and 6th November 2010 still continue on the basis of the subsequent Government Resolutions. A copy of the Government Resolution dated 3rd March 2014 which provides for reimbursement of fees payable to the students admitted in the academic year 2013-2014 has been placed on record. The said scheme provides reimbursement to the extent of 50% fees payable by the students belonging to the economically backward class in the professional courses in the private unaided and permanently unaided educational institutions subject to terms and conditions incorporated therein. Even the said Government Resolution provides that the scheme of reimbursement will not apply to the students of deemed universities.

7. The learned senior Counsel for the petitioner submitted that as far as the post-Matric scholarship scheme is concerned, the State Government is merely an implementing agency and, therefore, the State Government will have to implement the scheme of the Central Government as provided therein. He urged that the affidavit of Shri Kanhaiya Lal, the Under Secretary, Ministry of Social Justice and Empowerment, Department of Social Justice & Empowerment, Government of India makes it clear that the scholarships are to be given to the students the studying in recognized post Matriculation or post secondary courses pursued in recognized institutions subject to the limited exceptions set out in paragraph 6 of the affidavit. He pointed out that the students studying in deemed universities have not been excluded. He, therefore, urged that the State Government is not entitled to deny the benefit of post Matric scholarships to the students enrolled in deemed universities.

8. He submitted that as far as the schemes of the State Government for

reimbursement of the fees payable by the students who have been admitted to the professional courses in private unaided and permanently unaided recognized institutions are concerned, there is no reason to exclude the students of deemed universities. He submitted that the intention is to provide benefit of reimbursement of fees to the students of a particular class enrolled in recognized unaided colleges. He urged that there is no difference between an unaided recognized educational institutions in the State and deemed universities in the State who are conducting professional courses with the approval of all concerned Authorities in accordance with law. He urged that there is no intelligible differentia between students of professional courses in the deemed universities and recognized private unaided colleges having regard to the objects sought to be achieved. He relied upon the UGC (Institutions Deemed To Be Universities) Regulation 2010 and pointed out that the fee structure of various courses of students studying in deemed universities is also controlled and regulated. It is provided in the said Regulations that the deemed universities are under an obligation to ensure that there is no commercialization of education and that the level of fees charged for a particular course shall have a reasonable relation with the cost of running the course. He, therefore, submitted that the exclusion of deemed universities cannot stand the test of reasonableness provided under Article 14 of the Constitution of India.

9. The learned AGP submitted that the policy decision taken by the State Government is on a rational basis. He pointed out that none of the deemed universities are participating in the common entrance tests or centralized admission process conducted by the State Government. He also relied upon the affidavits filed by Shri Kishor Punjo Narkhede, the Assistant Director (Tech.), Directorate of Technical Education, Maharashtra State, Mumbai and Dr. Rajeev, the Assistant Director (Technical) Directorate of Technical Education, Maharashtra State, Mumbai. He contended that the deemed universities are not monitored by the State Government and they are not participating in the centralized admission process. He submitted that deemed universities are admitting the candidates at their level and, therefore, the State Government has excluded the students of the deemed universities. He urged that there is no discrimination.

10. The learned senior counsel for the petitioner invited the attention of the Court to the list of the deemed universities set out in the Exhibit-I to the petition. He pointed out that all prestigious institutions like Gokhale Institute of Politics and Economics, Tata Institute of Fundamental Research, Tata Institute of Social Sciences figure in the said list. He urged that the said institutions are world known reputed institutions. He urged that by keeping out the students of the said institutions, the State cannot indulge in discrimination which is violative of Article 14 of the Constitution of India.

11. We have carefully considered the submissions. The first issue is regarding post-Matric scholarships. The said scheme is fully funded by the Central Government which is being implemented by the State Government. On this

aspect, it will be necessary to make a reference to the affidavit of Shri Kanhaiya Lal, the Under Secretary, Ministry of Justice and Empowerment, Government of India. Paragraphs 3 to 6 of the said affidavit read thus:

"3. That the financial assistance under centrally sponsored scheme of Post Matric Scholarship (PMS) for Scheduled Caste students & Scheme of Post Matric Scholarship for OBC student is released by the Government of India through the Ministry of Social Justice & Empowerment to the State Governments/UT administrations, for disbursing scholarship to the eligible students. (hereto annexed and marked as Annexure I & R2 is copy of the said Scheme of Post matric scholarship for Scheduled Caste students & Scheme of PMS for OBC students respectively.

4. That the objective of the Centrally Sponsored Scheme of Post matric Scholarship for Scheduled Caste students and Scheme of PMS for OBC students is to provide financial assistance to the Scheduled Caste students studying at post matriculation or postsecondary stage to enable them to complete their education. The financial assistance includes maintenance allowance, reimbursement of nonrefundable compulsory fee charged by the educational institutions, book bank facility and other allowances. The scholarship is to be paid to the Scheduled Caste and OBC students whose parents/guardians' income from all sources does not exceed Rs.2,00,000/- (Rupees two lakhs only) per annum and Rs.1,00,000/- (Rupees one lakh only)

5. That the scheme is implemented by the State Governments/Union Territories, who are provided 100% Central assistance for expenditure incurred under the scheme, over and above their respective committed liability. The committed liability for a year is the total actual expenditure incurred on the scheme during terminal year of the last five-year plan. The North-Eastern states are exempted from concept of committed liability. The scholarships are available for studying in India only and are awarded to the Government of the States/Union Territories to which the applicant actually belongs.

6. That the scholarships are to be given for the study of all recognized post-Matriculation or post secondary courses pursued in recognized institutions with the following exceptions:

" Scholarships are not awarded for training courses like Aircraft maintenance Engineers' Courses and Private Pilot's Licence Courses. Courses at Trainingship Dufferin (Now Rajendra), Courses of training at the Military College Dehradun, courses at Pre-examination Training Centres of all India and State levels."

(underline supplied)

12. Thus, the affidavit makes it clear that the students of deemed universities are not at all excluded from the benefits under the said scheme and, therefore, the State Government cannot deny the benefits of the said centrally funded scheme to the students of the deemed universities.

13. The other issue is regarding the exclusion of the students of the deemed universities from the benefits under the schemes of the State Government for reimbursement of the fees payable by the students of socially and economically backward classes who have been admitted to the professional courses in private recognized unaided institutions. The students of deemed universities have been excluded from the said schemes as evidenced by the impugned Government Resolutions. It will be necessary to make a reference to the affidavit-in-reply of Dr. Rajeev Vishwanath Shetkar, Assistant Director (Tech.), Directorate of Technical Education, Maharashtra State, Mumbai filed on behalf of the State Government. In paragraph 3 of the said affidavit, he has stated thus:

"3. I say that the Deemed to be Universities are approved by the University Grants Commission (UGC), New Delhi and are periodically monitored by the duly constituted committee (s) of the UGC. As per the UGC Notification [UGC (INSTITUTIONS DEEMED TO BE UNIVERSITIES) REGULATIONS, 2010] dated 21st May, 2010 published in the gazette of India, Extraordinary, the funding to the institutions declared as Deemed to be Universities shall receive the funds from the same funding sources which have been funding them prior to such declaration (Refer clause 10.0 regarding FUNDING). Accordingly, the private unaided institutes are not receiving any funding from the State of Maharashtra. The fee structure for various programmes of study in the deemed to be Universities shall also be fixed in accordance with Fee Regulation framed by the Central Government or by the UGC in this behalf from time to time."

14. In the said affidavit he has further stated thus:

"I further say that the deemed to be universities are not monitored by the State Government and these institutes are not participating in the Centralized Admission Process. The deemed to be universities are admitting the candidates at their level. Therefore, candidates who have taken admissions in the deemed to be universities are not entitled for the aforesaid fee reimbursement scheme of Government of Maharashtra. I crave leave to refer to and rely upon the documents submitted as and when produced."

(underline added)

15. Thus, the reason given for the exclusion by the State Government appears to be that the deemed universities are not being monitored by the State Government and that they are not participating in the centralized admission process conducted by the State Government. The stand of the State Government seems to be that in view of the decision of the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481, the State Government has a control over the fee structure of the unaided professional colleges.

16. During last two decade, large number of unaided and permanently unaided professional colleges have been established in the State. There are reservations provided in all these colleges. The Government was conscious of the fact that

though fee structure can be controlled, the fees payable in such colleges will be higher than the fees payable by the students of the aided or Government colleges. That is the reason why the State Government came out with a policy of reimbursing the fees payable to the students belonging to socially and economically backward class who secure admission in professional courses (Except B. Ed. And D. Ed.) in recognized unaided and permanently unaided colleges in the State. In the case of economically backward class students, the policy provides for reimbursement of fees to the extent of 50%. The object sought to be achieved is to extend financial help to socially and economically backward class students who are taking education in professional courses in recognized unaided institutions.

17. The State is seeking to make a distinction between the students enrolled in a private unaided educational institutions and the students of professional courses enrolled with deemed universities on two grounds. Firstly, the Deemed universities are not participating in the centralized admission process conducted by the State Government and secondly, there is no control of the State Government over the deemed universities in terms of its fee structure.

18. As far as the fee structure is concerned, in case of deemed universities, the same is governed by the UGC (Institutions Deemed To Be Universities) Regulations, 2010. Clauses 6.4 to 6.6 of the said Regulations read thus :

"6.4 The fee structure for various programmes of study in the deemed to be universities shall also be fixed in accordance with the Fee Regulations framed by the Government or by the Commission in this behalf from time to time.

6.5 The level of the fees charged for the courses offered in deemed to be universities shall have a reasonable relation to the cost of running the course. The fee structure shall be displayed in the prospectus and on the institution's website.

6.6 Every institution declared as a deemed to be university, public or private, shall ensure that there is no commercialization of education. Further, every such institution shall provide for equity and access to all deserving students."

(underline added)

19. It will be also necessary to make reference to clause 6.1 of the same Regulations which reads thus:

"6.1 Admission of students to all deemed to be universities, public or private, shall be made strictly on merit based on an All India examination as prescribed by the Regulations and in consistence with the national policy in this behalf from time to time."

20. The aforesaid clauses of the said Regulations show that the admission process and the fee structure of the deemed universities is not free from any control. The control may not be of the State Government but the said

Regulations do provide for control of the Government of India or the Commission in terms of the clause 6.4. Even the admission process has some control.

21. Thus, the distinction sought to be made by the State Government between the deemed universities and recognized private unaided institutions has no rational basis. For achieving the object of assisting the the socially and economically backward class students taking education in professional courses, the private unaided colleges and deemed Universities do not form different classes.

22. The Apex Court in the case of *Dhirendra Pandua Vs. State of Orissa and Others*, AIR 2009 SC 163 : (2008) 10 JT 347 : (2008) 12 SCALE 612 held thus:

"27. Before closing the case, we may mention that in this appeal, a new ground has been urged, namely, that the provisions of Sections 16 and 17 of the Act are discriminatory and, thus, violative of Article 14 of the Constitution. During the course of hearing, without much elaboration, learned counsel for the appellant faintly referred to the said ground. In our opinion, this contention is also untenable. It is well settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. Nonetheless, that classification should not be arbitrary but must rest upon some real and substantial distinction bearing reasonable and just relation to the things in respect of which the classification is made. To satisfy the constitutional test of permissible classification, two conditions must be satisfied, namely: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that such differentia must have a rational relation to the object sought to be achieved by the statute in question. (See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, AIR 1958 SC 538 : (1959) 1 SCR 279 , *Pathumma and Others Vs. State of Kerala and Others*, AIR 1978 SC 771 : (1978) 2 SCC 1 : (1978) 2 SCR 537 , *Javed and Others Vs. State of Haryana and Others*, AIR 2003 SC 3057 : (2003) 3 CTC 620 : (2003) 6 JT 283 : (2003) 135 PLR 531 : (2003) 5 SCALE 602 : (2003) 8 SCC 369 : (2004) SCC(L&S) 561 : (2003) 1 SCR 947 Supp : (2003) AIRSCW 3892 : (2003) 5 Supreme 371)"

(emphasis added)

Even assuming that there is some basis for this intelligible differentia between the private unaided colleges and deemed Universities, we must note that the object sought to be achieved by the State Government is to grant benefit of reimbursement of fees to the socially and economically backward students. Therefore, the differentia has no relation to the object sought to be achieved. The distinction sought to be made by the State has no rational relation to the object sought to be achieved of extending the financial help to the socially and economically backward class students.

23. The learned senior counsel for the petitioner relied upon the Judgment and order dated 9th September 2014 of this Court in Writ petition No. 5190 of 2013

(Association of Management of Unaided Engineering Colleges (Mah.) and others vs. State of Maharashtra and others. The issue was again of providing reimbursement or fees in respect of the students in professional courses. In the relevant Government Resolution, certain classes of students were excluded. The challenge was to clause 14 of the relevant Government Resolution which reads thus:

"14. The Institutes which are recognized by this Government Resolution who has applied directly to All India Council of Technical Education instead of submitting proposal through State Government as well as those institutes which are negatively recommended by the State Government such institutes will not be eligible for fee reimbursement scheme as implemented by State Government for approved courses, Director, Directorate of Technical Education, State of Maharashtra, Mumbai, is direct to act in accordance with this condition."

24. The Division Bench relied upon the observations made by the Apex Court in paragraphs 50, 53 and 61 of the decision in the case of T.M.A. Pai Foundation and others which read thus:

"50. The right to establish and administer broadly comprises the following rights:

(a) to admit students;

(b) to set up a reasonable fee structure.

53. With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilised for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefits of the students.

61...The State say that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the State has to provide the difference which, therefore, brings us back in a vicious circle to the original problem viz the lack of State funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of Staterun schools and in subsidizing the fees payable by the students there."

25. The Division bench held that the aforesaid clause No. 14 is discriminatory and, therefore, violative of Article 14 of the Constitution of India.

26. Thus, we hold that the decision of the State Government to treat the socially and economically backward class students in professional colleges run by the deemed universities differently from similar students in the recognized unaided and permanently unaided colleges for the purposes of reimbursement of education fees is arbitrary and violative of Article 14 of the Constitution of India. They form a part of the same class for the object of providing assistance to them in the form of reimbursement of education fees. We hasten to add that depending upon the fee structure, the State Government may, as a matter of policy, can restrict the reimbursement to a particular amount.

27. Therefore, the State Government will have to modify the relevant Government Resolutions. We, however, propose to grant the relief prospectively.
28 Hence, we pass the following order:

(I) We declare that the benefits under the centrally sponsored scheme of post-Matric scholarships cannot be denied to the students of deemed universities who are otherwise eligible to post-Matric scholarships under the scheme;

(II) We direct that for the grant of reimbursement of fees to the students of professional courses, the State Government shall not discriminate between the students of professional colleges run by the recognized nonaided or permanently nonaided institutions and the students of the professional courses of deemed universities under section 3 of the UGC Act;

(III) We direct the State Government to make necessary modifications in terms of the above direction to the Government Resolutions dealing with grant of reimbursement to the students of socially and economically backward class from the academic year 20152016. Modified Government Resolutions shall be issued within a period of two months from today;

(IV) Rule is made partly absolute on above terms with no order as to costs.