

**(2016) 06 BOM CK 0024**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 4321 of 2015**

Mrudul

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision :** 27-06-2016

**Acts Referred:**

**Citation :** (2016) 4 ALLMR 923 : (2016) 5 MhLJ 359

**Hon'ble Judges :** B.P. Dharmadhikari and Kum. Indira Jain, JJ.

**Bench :** Division Bench

**Advocate :** Mr. Rohit Joshi, Advocate, Mr. A.A. Naik, Advocate, Mr. A.A. Naik, Advocate. in Writ Petition No. 5308 of 2015, for the Appellant; Mr. A.A. Naik, Advocate, in W.P. No. 4321 of 2015 in W.P. No. 989 of 2016, Mr. B.M. Lonare and Ms. P. Rane, Asstt. Govt. Ple

**Final Decision :** Disposed Off

## Judgement

B.P. Dharmadhikari, J.(Oral)&mdash;A common question has been raised in all these Writ Petitions filed by the students, and hence we have heard these matters together. The said question is - Whether facility of fee reimbursement can be declined to the students who are admitted at Institute level, though their admissions are duly approved by the Admission Regulatory Committee (Pravesh Niyantran Samiti)?

2. The basic facts are not in dispute. As per Government Resolution dated 04.03.2014, a reimbursement scheme has been extended to all students, who have taken admission to degree course in any of the Health Sciences in First Year after competing in Common Entrance Test (CET), through Association of Management of Unaided Private Medical and Dental Colleges of Maharashtra. The Scheme is applicable to such a student till he completes the Course.

3. On 30.03.2015, a proviso has been added to this Clause and it stipulates that students who are admitted on seats remaining vacant after completion of common admission rounds and at institute level shall not get its benefit though

their admissions are duly approved by Pravesh Niyantrayan Committee. According to the petitioners, this clause introduces partial discrimination.

4. It is not in dispute that 85% of the sanctioned seats are filled in through Common Admission Process after conducting Common Entrance Test in two rounds and the remaining 15% are to be filled in as Management quota, by respective institutes.

5. According to the petitioners, when purpose or object of extending such benefit and for providing such scheme is looked into, denial of such a welfare measure to the students who have cleared CET, have participated in common admission process only on the ground that they have been admitted after two rounds of admission by the respective institutes at their level against the available vacancies, is violative of Article 14 of the Constitution of India. They submit that as such students also belonging to backward classes face same degree of difficulty, requirement of getting admitted only in two rounds of common admission process inserted by Government Resolution dated 30.03.2015 is irrelevant. The classification is without any basis and also has no nexus with the object sought to be achieved.

6. They have relied upon certain judgments to which we will be making reference during the course of this judgment.

7. In Writ Petition No. 4321/2015, the learned Counsel appearing for the petitioners has pointed out that two petitioners namely petitioner Nos. 2 and 5 satisfy the requirement of income limit. In Writ Petition No. 5308/2015 the learned Counsel for petitioner has pointed out that two petitioners i.e. petitioner Nos. 41 and 42 are admitted against the management quota.

8. The respective learned Counsel appearing for the respondents submit that the entitlement has been restricted only to those students who get admission in two rounds of common admission in common process and it has been declined to others, who thereafter get admission against the remaining vacancies by approaching the respective colleges. Ms. Chandurkar, learned Counsel appearing on behalf of Union of India, submits that funds are made available for the scheme approved by the Central Government to the State Government and State Government only administers the scheme. She also points out that the Central Government has also prescribed the income limit of Rs. 2.5 lakhs per annum for that purpose. She further points out that scheme is known as "Post Matric Scholarship to the students belonging to Scheduled Castes." A distinct scheme by name "Post Matric Scholarships for Other Backward Classes in studying in India", is also pointed out by her. She adopts the line of arguments advanced by the respective learned Assistant Government Pleaders.

9. The first Government resolution to which our attention is invited is issued by the State Government on 04.03.2014. It is on the subject of reimbursement of tuition fees to S.C., V.J./N.T., S.B.C. and O.B.C. Students, taking admission in approved private unaided and permanently unaided educational institutes in

professional courses. A Information Brochure for Asso CET 2014 has been made available as part of record. It is for admission to unaided private medical and dental colleges in Maharashtra. Clause 13 therein speaks of Selection Process. That clause shows that consequent to orders dated 08.05.2012 passed by the Hon"ble Supreme Court of India in Civil Appeal No. 4318/2012, the selection procedure has been prescribed. It has been stipulated therein, that it will be of two rounds for M.B.B.S., and B.D.S. Course and only of one round for B.A.M.S., B.P.Th. both B.Sc. Nursing. As per Clause 13.4 after these two rounds, vacant seats out of 85% are to be filled in by respective college at their own level, on the basis of merit of Asso CET 2014.

10. Petitioners submit that benefit of reimbursement scheme should be extended even to these students who are admitted at college level. Thus, proviso introduced vide Government resolution dated 30.03.2015, is questioned by them.

11. The orders passed by the Division Bench of this Court on 22.06.2015 in Writ Petition No. 4915/2014 show that the said order was passed during motion hearing. Petitioners there had sought a relief of fee reimbursement. The order does not show that the petitioners had cleared CET and were seeking reimbursement thereafter. Perusal of the orders dated 08.01.2016 in Writ Petition No. 6110/2014, delivered at Aurangabad Bench, show that there a clause which restricted benefit of reimbursement claim only to those who had secured admission through CET, was looked into. In the light of said clause and restriction, the Division Bench at Aurangabad rejected the prayer to release scholarship to the petitioner. Facts therein show that the petitioner was admitted directly without CAP round in academic year 2012-13.

12. Judgment dated 18.07.2014 delivered at Nagpur in Writ Petition No. 4822/2013 shows that there similar clauses in Government resolution dated 02.02.2012 and 11.10.2012 by which Government had restricted the scholarship to the students securing admission only through centralised admission process was looked into. Writ Petition No.3848/2013 filed by the Management seeking a direction to release scholarship amount and refund of tuition fees, was dismissed, while Writ Petition No. 4822/2013 filed by two students who had secured admission in M.B.A. Course in earlier academic years 2012-13 and 2011-12, was partly allowed. The Division Bench found that the circulars could have been given retrospective effect.

Division Bench of this Court in a judgment reported at 2015 (2) Mh.L.J. 370 (Association of Management of Unaided Engineering Colleges and others v. State of Maharashtra and others), has quashed and set aside the denial of benefit of fee reimbursement to the students of those colleges whose applications to AICTE were not routed through State Government. The restriction imposed is found without any logic. The distinction there was on the strength of a differentia which distinguished the colleges and not the students who were similarly placed.

Division Bench of this Court at Bombay in a Public Interest Litigation No.69/2011

decided on 20.03.2015, has extended the benefit of said scheme to students taking education in deemed Universities. The contention of State Government that admission therein are not regulated by any legal provisions is, found incorrect. Again norm did not distinguish between the students.

13. Before us, the question is whether any artificial discrimination has been made while denying the benefits of tuition fees reimbursement to the students who have been given admission at college level on the seats remaining vacant after the common rounds of admission in CET ? It is not in dispute that though the admissions are made at Institute/College level, merit and performance of such students in CET is the only consideration.

14. Holding of CET and performance of students therein is first scrutinised in two or three rounds of admissions, commonly called as Centralised Admission Process. Generally more meritorious students secure admission in these rounds. 85% of the vacancies are to be filled in through central entrance test, and after these rounds, if any seats are left vacant, the respective colleges or institutes are permitted to fill in the same. Students approach such institutes and on the basis of their merit in CET they are given admission.

15. Thus, every year there are students belonging to various backward classes who secure admission in common admission rounds and others who do not get such admission in open rounds, secure it on the basis of their performance in CET in respective colleges where seats in 85% are lying vacant. That State Government has in its own wisdom, restricted the benefit of tuition fees only to the students who are more meritorious i.e. who secured admission in 2 rounds or 3 rounds of CET. It has not extended that benefit to those others.

16. Thus, there are two distinct classes of backward class students available and State Government, depending upon its resources has extended the benefit to only one group out of them and made it eligible for grant of reimbursement. The petitioners have not pointed out that all of them constitute one class in terms for such Government resolution in terms of any Constitutional or Statutory provision. It is not their contention that the State Government is duty bound to provide free education to all of them. In absence of this contention or other material on record, we find that decision of State Government of not extending the benefit of tuition fee reimbursement to those who are admitted at institute level or college level cannot be said to be violative of Article 14 of the Constitution of India. Restriction of such benefit to more meritorious backward class students is not shown to be impinging upon the rights of petitioners. Petitioners wish to procure that benefit or work out a right to it by alleging breach of Article 14.

17. At this stage of dictation. When prayer clauses are seen, it needs to be mentioned that though in Writ Petition No. 4321/2015, there is a prayer to release scholarship for petitioners, relief sought is of release of tuition fees reimbursement for petitioner Nos. 1, 3, 4 and 7. For petitioner Nos. 2 and 5 relief sought is of release of scholarship. Both the schemes are different and relevant

clauses of scholarship scheme or eligibility thereunder are not explained to us by the petitioners. Petitioners draw support from communication dated 06.02.2016, sent by the Commissioner, Tribal Development to Regional Deputy Commissioners and Assistant Commissioners. Ms. Chandurkar, and learned A.G.Ps., have pointed out that there is no specific prayer in this respect, qua petitioner Nos. 2 and 5. The petitioners can not normally derive any legal right through such internal letter sent by one officer to another. Whether such a letter can supersede or amend legally any Government Resolution or decision is the moot question. Considering this position and said communication as also the nature of controversy, we grant leave to petitioner Nos. 2 and 5 to make appropriate representation to respondent No. 2 raising said grievance. If such grievance is made within two weeks, respondent No. 2 shall consider the same as per law in furtherance of communication dated 06.02.2016, within a further period of two weeks.

18. Petitioners in Writ Petition No. 4321/2015 are admitted in the academic year 2014 15. Their education is being affected due to rider added vide Government resolution dated 30.03.2015. Thus, reasons which promoted this Court to allow Writ Petition No. 4822/2013 partly on 18.07.2014, apply in case of these petitioners. It therefore, follows that the said rider added on 30.03.2015, can not be attracted and apply to the admissions given prior to it and petitioners admissions continue and shall be regulated by Government resolution dated 04.03.2014.

19. In Writ Petition No. 5308/2015, though prayer in relation to freeship cannot be allowed qua petitioner Nos. 41 and 42, other 14 petitioners whose names are mentioned at its AnnexureH in Scheduled Caste category at Sr. Nos. 5 to 18 and at Sr. Nos. 3 to 8 in Other Backward Classes, are given leave to make representation to respondent No. 2 raising all the grievances based on communication dated 06.02.2016 (supra). If such grievance is made within two weeks, respondent No. 2 shall consider the same in manner as already directed supra, within a further period of two weeks.

20. Petitioner in Writ Petition No. 989/2016, have secured admission to B.D.S. Course in the academic year 2014-15. Thus, Government resolution dated 30.03.2015 shall not apply. Again reasons which promoted this Court to allow Writ Petition No. 4822/2013 partly on 18.07.2014, apply in case of the petitioner here also. It therefore, follows that the rider added by Government resolution dated 30.03.2015, shall not be attracted to the admission of petitioner here and her admission shall be regulated in terms of the Government resolution dated 04.03.2014.

21. In view of above discussion, with aforesaid directions, We dispose of all the challenges and the writ petitions. No costs.