

(2020) 07 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 190 Of 2016

Sinhgad Technical Education Society And Ors

APPELLANT

Vs

Directorate Of Technical Education

RESPONDENT

Date of Decision : 16-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 07 BOM CK 0007

Hon'ble Judges : S.S.Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : V.P.Sawant, Nitin S. Dhumal, M.M.Pabale

Final Decision : Dismissed

Judgement

V.G.Bisht, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the parties at admission stage.

2. By this petition under Article 226 of the Constitution of India, the petitioners have claimed following reliefs in terms of prayer clauses (a) and (b) :

(a) that the Government decision dated 22.1.2007, permitting Respondents to charge and collect penalty on the basis of fees not actually collected is

bad in law;

(b) that this Honourable Court may be pleased to issue an appropriate writ, order or direction declaring that the Petitioner No.2 college is not liable to

pay penalty in excess of Rs. 63,00,000/-(i.e. 150 x Rs. 21000/- x2) for admitting 150 students for the academic year 2007-08 for second shift without

obtaining approval from the AICTE as per Government Resolution Dt. 22.01.2007 and direct the respondents to refund the excess amount of fine paid

of Rs. 2,00,000/- to the petitioners.

3. We refer the facts and pleadings.

4. Petitioner No.1 is a registered public trust. Petitioner No.2-polytechnic college was established in 1993. Pursuant to the directions given by

Honâ??ble Supreme Court in Islamic Academy of Education and Anr. V/s. State of Karnataka & Ors., the State Government issued a Government

Resolution dated 24th September, 2003 whereby Pravesh Niyantran Samiti (PNS) and Shikshan Shulka Samiti (SSS) were formed. After formation of

aforementioned Shikshan Shulka Samiti, the professional colleges are mandatorily required to first get their fees approved and then only they are

permitted to collect the same fees from the students.

5. According to petitioners, as per procedure, they approached Shikshan Shulka Samiti and after detailed scrutiny the said Samiti finalized the fees

structure for the academic year 2007-08. As far as new courses are concerned, the fees are required to be collected as notified by Shikshan Shulka

Samiti on ad-hoc basis and after Shikshan Shulka Samiti has fixed the final fees after due scrutiny, respective institutes were permitted to demand

difference between the ad-hoc fees and final fees so determined by Shikshan Shulka Samiti.

6. The petitioners next contend that for the academic year 2007-08, the AICTE (All India Council of Technical Education) took a decision as a

national policy to permit second shift of polytechnic courses in existing engineering colleges and accordingly after complying with the minimum

requirements as stipulated in the approval process book of the AICTE, the petitioners submitted a complete application/ proposal to respondent No.1

and a copy of the same was also submitted to Western Regional Office of AICTE.

7. The State Level Committee on its part recommended grant of permission and forwarded a positive recommendation to the AICTE for starting the

diploma courses in second shift in petitioner No.2 - polytechnic college from the academic year 2007- 08.

8. However, in the meanwhile, the admission process of the diploma level courses for the academic year 2007-08 commenced and petitioner No.2-

polytechnic college under bonafide impression and legitimate expectation that the AICTE will grant its approval for starting new diploma level courses

in 5 new branches from the academic year 2007-08, admitted 150 students

against 300 seats of new diploma level courses in the second shift. The concerned students were also specifically informed about the ad-hoc fees @ Rs. 21,000/- per head and that this being on ad-hoc basis in case of increase or decrease in the final fees fixed by the Samiti, either party would have to bear the difference as the case may be.

9. The petitioners then contend that to their utter shock and surprise, AICTE vide letter of approval dated 1 October, 2007 granted its approval for conducting new diploma level courses in second shift from the academic year 2008-09 instead of 2007-08. They immediately approached the office of respondent No.1 and pointed out that in anticipation of the grant of formal approval for the academic year 2007-08, petitioner No.2 -polytechnic college has admitted 150 students and requested to approve the admission in the interest of students.

10. Vide communication dated 2nd November, 2007, the State of Maharashtra communicated to respondent No.1 to regularize additional 150 students in second shift on payment of penalty @ 200% of the amount so deposited by those students towards tuition fees with petitioner No.2- polytechnic college. Petitioner No.2- polytechnic college has already deposited total amount of Rs. 65,00,000/- towards penalty with respondent No.1.

11. In the meantime, the Shikshan Shulka Samiti on 29th April, 2008 declared final fee structure for higher and technical institutes / colleges applicable for academic year 2007-08 and in the said declaration the final fees for petitioner No.2- polytechnic college has been finalized @ Rs. 37,625/- (i.e. Tuition fee of Rs. 35,875 + Development fees of Rs. 1750).

12. To their utter shock and surprise, In-charge Director of Technical Education vide their communication dated 3rd December, 2008 directed the Joint Director, Technical Education, Pune to recover an amount of penalty by considering fee @ Rs. 37,625/- as finalized by the Shikshan Shulka Samiti on 29th April, 2008 and further directed to recover the differential amount of penalty on that basis from them.

13. On petitionersâ?? representation to the Honâ??ble Minister, Higher and Technical Education, officials were directed to verify the actual amount of fees paid by the students and submit their report. Two member committee was formed to verify the actual amount of fees paid by the students and they submitted their report that petitioner No.2-polytechnic college had collected

fees @ Rs. 21,000/- only from the said 150 students. The petitioners grievance is that despite finding of the said committee, vide communication dated 24th November, 2015 respondent No.1 directed the petitioners to forthwith pay the differential amount of penalty of Rs. 42,62,500/-which is ex-facie perverse, without any just reasons and therefore, liable to be interfered with by this Court.

14. We have perused the affidavit of respondent Nos. 1 and 2. According to them, at the beginning of each academic year, Shikshan Shulka Samiti decides the interim fee structure for the academic year of the institutions who approached samiti and finalize the fee structure subsequently. Similarly, interim fee structure for new institutions is also fixed for the academic year by Shikshan Shulka Samiti.

15. As per Shikshan Shulka Samiti letter dated 29th April, 2008 final fee structure of petitioner No.2- polytechnic college for the academic year 2007-08 was declared and tuition fee was Rs. 35,875/- plus development fee was Rs. 1750/- i.e. total fees was Rs. 37,625/-.

16. It is then seen that a proposal to start second shift in 5 existing courses was submitted by petitioner No.2 -polytechnic college to AICTE in July

2007. The committee recommended to start five existing courses in second shift for the academic year 2008-09 in petitioner No.2- polytechnic college.

The report was sent to the State of Maharashtra and accordingly, AICTE, New Delhi vide its letter dated 1st October, 2007 gave its approval for

conducting the existing five diploma level courses in second shift from the academic year 2008-09 vide Government Resolution dated 25th August, 2008.

17. It is then further seen that petitioner No.2 -polytechnic college collected Rs. 21,000/- interim fee from each of 150 students on the basis of letter of

Shikshan Shulka Samiti dated 13th June, 2007. Actually that letter, according to respondents, is for interim fee structure for all new institutions

commencing their courses from the academic year 2007-08 and not for petitioner No.2- polytechnic college which is an existing institute established in 1993.

18. According to respondents, as the petitioners had admitted 150 students without there being any approval from the AICTE, the same was to be

regularized with penalty of 200% of tuition fees of the institute approved by

Shikshan Shulka Samiti for that year. Approved tuition fee of petitioner

No.2- polytechnic college for the academic year 2007-08 was Rs. 35,875/-. Thus, for 150 students the penalty @ 200% worked out to the tune of Rs.

1,07,62,500 whereas the institute has paid only Rs. 65,00,000/-. Thus, difference of Rs. 42,62,500/- is yet to be recovered from petitioner No.2-

polytechnic college. There being no merit in the petition, the same deserves to be dismissed, concluded respondents.

19. Mr.Sawant, learned Senior Counsel, for the petitioners vehemently submitted that the respondents cannot be allowed to charge penalty and collect

the same on the basis of fees which was not actually collected or received by petitioner No.2- polytechnic college. Despite there being findings of the

two member committee appointed by State Government that the concerned students had paid Rs. 21,000/- only each, there was no reason much less

the satisfactory reason for the respondents to saddle the petitioners with the penalty @ Rs. 35,875/-. In such circumstances, the impugned order is

liable to be quashed and set aside, argued learned Counsel.

20. Mr.Pabale, learned AGP for respondent Nos. 1 and 2, on the other hand, refuted the submissions of learned Senior Counsel for the petitioners by

pointing out the letter of Shikshan Shulka Samiti dated 13th June, 2007 and emphasized that the said letter in fact relates to the fee structure for all

new institutions commencing their courses from the academic year 2007-08 and was not meant for petitioner No.2- polytechnic college which is

already in existence since 1993. Rather, according to learned AGP, the approved tuition fee for petitioner No.2- polytechnic college for the academic

year 2007-08 was Rs.35,875/- per student and to substantiate the submissions invited our attention to letter dated 29th April, 2008 issued by Shikshan

Shulka Samiti.

21. In the circumstances, according to learned AGP, the respondents are justified in demanding the differential amount of Rs. 42,62,500/- from the

petitioners.

22. Beginning with the factual aspect of the case, there is no dispute to the fact that petitioner No.2- polytechnic college was established in the year

1993. There is also no dispute to the fact that at the beginning of each academic year, Shikshan Shulka Samiti decides the interim fee structure for the

academic year of the institutions who approach samiti and finalize the fee

structure subsequently.

23. Again, there is no dispute to the fact that petitioner No.2-polytechnic college for the academic year 2007-08 admitted 150 students in second shift

without written approval from AICTE, which were over and above of sanctioned intake capacity of existing 5 courses. For this, petitioner No.2 -

polytechnic college has offered its justification, which we would be adverting to at an appropriate stage. Further, there is no dispute to the fact that

Government Resolution (Higher and Technical Education) dated 22nd January 2007 provides that admission over and above the sanctioned intake

capacity are to be regularized with penalty of 200% of tuition fee of the institute approved by Shikshan Shulka Samiti for that year.

24. The petitioners have a bone to pick with respondents about approved tuition fee vis-a-vis their college for the academic year 2007-08. According

to petitioners, it was only Rs.21000/- per student whereas as per the respondents it was Rs.35,875/-. The petitioners have admittedly paid penalty

amounting to Rs. 63,00,000/- ($150 \times 21,000 \times 2 = 63,00,000/-$). The respondents, on the other hand, have claimed Rs.1,07,62,500/- ($150 \times 35,875 \times$

$2 = 1,07,62,500/-$). Herein lies the rub.

25. Before finding out the fee structure, we propose to ascertain, appreciate and assess the circumstances under which the petitioners claimed

themselves to be justified in admitting 150 students in second shift without written approval of AICTE. According to them, after complying the

minimum requirements as stipulated in the approval process book of the AICTE, the petitioners submitted their complete proposal along with the

requisite processing fees. As they had complied all the minimum requirements, the scrutiny committee on its part also recommended the proposal

submitted by them for starting diploma courses in engineering in second shift for the academic year 2007-08. Not only this but the State Government

also had forwarded a positive recommendation to AICTE favoring petitioners. In this backdrop and the fact that as the admission process of the

diploma level courses for the academic year 2007-08 had started, the petitioners under bonafide impression and legitimate expectation that the AICTE

will grant its approval, admitted 150 students in their college by taking ad-hoc fees @ 21,000/- per student. The concerned students were also

specifically informed the fees being ad-hoc fees and in case of decrease or

increase in the final fees fixed by the samiti, either party would have to bear the difference as the case may be.

26. From the above, it is more than clear that not only necessary requirements as contemplated by AICTE for the conduction of second shift were fulfilled but at the same time the scrutiny committee and as also the State Government favorably had recommended AICTE to grant approval to petitioners for starting second shift in their college. The petitioners went overboard in the light of high expectations of their proposal being met with approval and as the admission process for the academic year 2007-08 had commenced, in the said anticipation admitted 150 students in the second shift. This is precisely explanation and justification given by the petitioners.

27. In our considered opinion, this feeling must be dispelled at the earliest. This is nothing but essentially a self serving explanation. The petitioners are utterly wrong when they justified their action under the garb of bonafide impression and legitimate expectation. It needs to be said that they ought to have waited the decision of AICTE. There was no reason at all for them to start second shift without there being an approval forthcoming from AICTE. Needless to say petitioners exceeded their briefs and exercised right which was never bestowed in their favour. Their act cannot be justified and vindicated by any means.

28. This bring us to crux of the matter i.e. fee structure which have been reckoned for penalty purpose. It is now very clear from the record that by virtue of direction issued by Shikshan Shulka Samiti dated 13th June, 2007 (Exh. A) the petitioners collected ad-hoc fee @ Rs. 21000/-. As against this, as per respondents, the approved tuition fee for petitioner No.2- polytechnic college for the academic year 2007-08 was Rs. 35,875/-. Now if the letter dated 13th June, 2007 (Exh. A) is read carefully then at the very beginning it would be seen that the interim fee for the academic year 2007-08 was decided for newly opened colleges in 2007 and accordingly, the resolution came to be passed.

29. Thus, a plain reading of Exh. A sufficiently demonstrates that directions contained in letter dated 13th June, 2007 were meant for newly opened colleges. The petitioners college admittedly was not newly opened college and rather was established in 1993. As against above, if the letter dated 29th April 2008 (Exh. F) issued by Shikshan Shulka Samiti is read carefully then

it would be seen that Shikshan Shulka Samiti had decided the final fee structure of the colleges/institutes and same was to be made applicable for the courses started from academic year 2007-08.

30. In the case on hand, admittedly, the petitioners have started five courses in the second shift without there being any approval from AICTE for the academic year 2007-08. Exh. F also shows that the table at page No. 60 of the paper book and at serial No. 11 they fixed the tuition fee vis-a-vis petitioner No.2- polytechnic college @ Rs. 35,875/-. This being so, the penalty is to be worked out on the basis of tuition fee applicable to institute for prevailing academic year.

31. The learned Senior Counsel for the petitioners does not make eminent sense when he argued that the penalty ought to have been reckoned @ Rs. 21000/-. What is at any rate more pertinent is that there was clear cut instructions/ directions of Shikshan Shulka Samiti dated 29th April, 2008 and were made applicable to petitioner No.2-polytechnic college as well. Clearly, the learned Senior Counsel for the the petitioners is unreconciled to the above fact.

32. The respondents, on the other hand, have therefore good reason to call upon petitioners in the light of directions (Exh. F) of Shikshan Shulka Samiti to pay penalty @ Rs. 35,875/-. The argument of learned Senior Counsel for the petitioners that the penalty so imposed is ex-facie perverse is without any real substance and rather appears to be totally justified in the light of above discussion.

33. Facts and circumstances enable respondents to stand in good stead. Common sense would prompt, in the light of above discussion, the conclusion that the respondents have every right to demand the differential penalty amount of Rs. 42,62,500/-.

34. For the reasons as recorded above, we do not find any force in the contentions raised on behalf of the petitioners.

35. In the circumstances, writ petition stands rejected. Rule is discharged.