
(2018) 12 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 1882, 4035, 9166 Of 2018

Swapnapuja Shikshan Sanstha Through Its Secretary Swapnil
Ramkrishna Jangle

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Citation : (2018) 12 BOM CK 0044

Hon'ble Judges : Prasanna B. Varale, J; Mangesh S. Patil, J

Bench : Division Bench

Advocate : S.S. Thombre, Ashwin V. Hon, S.Y. Mahajan

Final Decision : Allowed

Judgement

Prasanna B. Varale, J

1. Heard learned Counsel appearing for the respective parties.
2. Rule. Rule made returnable forthwith. By consent, heard finally.
3. The petitioners are education institutions running nursing school from the year 2012 and admitted students for nursing course including students belonging to reserved category.
4. It may not be necessary for us to refer other details. Suffice to say that the issue involved in these petitions is of reimbursement of fees and scholarship to the students prosecuting their studies in nursing course admitted by the petitioners-institutions. The petitioners have raised challenge to the communication dated 23rd July, 2014 issued by the Commissioner of Social Welfare, M.S. Pune. By this communication, regional authorities of the State were informed that certain order was passed in Public Interest Litigation No.72 of 2013 dated 9th July, 2013 and the regional subordinate authorities were directed to verify whether Indian Nursing Council has issued suitability certificate in favour of the petitioners - institutions as well as whether affiliation is granted to

these institutions by the Maharashtra Nursing School. It was grievance of these petitioners - institutions that in view of this communication, a rider was created in favour of the institutions in the matter of reimbursement.

5. Learned Counsel for the petitioners submitted that the issue raised in these petitions is no more res integra and in support of this submission, learned Counsel invited our attention to the judgment and order of this Court in Writ Petition No. 8053 of 2015 dated 5th August, 2015.

6. It would be necessary for our purpose to refer certain observations of this Court in the order dated 5th August, 2015. At the outset, the Division Bench of this Court refers to the issue involved in the petition and it states that the petitioner claims reimbursement of fees in respect of reserved category candidates for the year 2011- 2012 and 2012-2013. Thus, it cannot be a dispute on the fact-situation that the issue involved in the present petitions is an identical issue which was involved in the Writ Petition No.8053 of 2015. Then Division Bench refers to the submissions advanced by learned Counsel for the petitioner and counter submissions opposing the petition.

7. The Division Bench in clear words states that clause (9) of the Government Resolution dated 21st March, 2005 has been held to be ultra vires and illegal by the Division Bench of this Court in P.I.L. No. 72 of 2013 and further observed that when the said clause itself has been set aside and held to be illegal and not in consonance with the statute, then only because the said P.I.L. was pending, the State would not be entitled to withhold reimbursement of the fees for the years 2011-2012 and 2012-2013. Again the Division Bench further observed in clear words that the condition of the suitability certificate is imposed vide Government Resolution dated 27th March, 2014 is not relevant for the years 2011-2012 and 2012-2013.

8. With these clear, straight way and unambiguous observations, the Division Bench directed the respondent-State to release the tuition fees/examination fees of the approved students of the petitioner school for the reserved category students of ANM/GNM course admitted for the academic year 2011-2012 and 2012-2013, expeditiously, preferably within three months from the date of order without insisting for the suitability certificate for the year 2011-2012 and 2012-2013 and Rule accordingly made absolute by the Division Bench.

9. In an attempt to seek review of the order, State Government filed review petitions in this Court and again in detailed order dated 13th October, 2017 the Division Bench dealing with all the grounds raised in the review petitions dismissed review petitions. A reference is made to the very communication dated 23rd July, 2014 and re-iterating earlier observations that insistence by the State Government on the pretext of non compliance of condition No.8 of the Government Resolution dated 21st March, 2005 is unsustainable for the reason that there is no reasonable basis to deny benefit to these students. The Division Bench also refers to certain judgments of the Hon'ble the Apex Court.

10. It would be again useful to refer the observations of the Division Bench as reflected in paragraph-19 of the order and it reads thus; Moreover, the fees reimbursement is to the S.C. and O.B.C. students and not the institutions. The institution is allowed to admit the students without any demur, their results are also declared and are allowed to prosecute further studies. The Division Bench then observed that there would be no rational in withholding and/or denying the reimbursement of fees.

11. The affidavit in reply is filed on behalf of respondent No.6 through Dr. Sachin Shankarrao Madavi, Assistant Commissioner, Social Welfare, Beed is only re-iteration of earlier grounds of opposition and interestingly enough, again reliance is placed on Government Resolution dated 21st March, 2005 to oppose the petitions.

12. Learned A.G.P. appearing for the State opposing the petitions only relied on affidavit in reply.

13. Considering the above referred facts, we are of the clear opinion that there is merit in the submission of learned Counsel for the petitioners that the issue raised in the petitions is no more res integra and there is an authoritative judicial decision of this Court maintained by the Division Bench further by dismissing the review petitions and in the fact-situation, no other view is possible and we have no hesitation to adopt the view of the Division Bench of this Court taken in the order dated 5th August, 2015 in Writ No. 8053 of 2015. It is also our opinion that opposition to the writ petitions when the issue is already dealt in by the Division Bench and very objection raised by the State was considered in the order of the Writ Petition no. 8053 of 2015, as well as in the order of review petitions.

14. Considering these facts, only inescapable conclusion can be drawn is, the writ petitions deserve to be allowed and accordingly the petitions are allowed in terms of prayer clause (B) and (C).

15. Rule made absolute in above terms.