IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1837 OF 2015

SAYALI CHARITABLE TRUST'S COLLEGE OF PHARMACY (DIPLOMA), AURANGABAD
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Jadhav Chandrakant A.
AGP for Respondents: Mr.D.B.Bhange.

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CORAM : **S. V. GANGAPURWALA and V. L. ACHLIYA, JJ.**
DATE : 17th February, 2015.

PER COURT:

1 We have heard Mr.Jadhav, learned counsel for the Petitioner and Mr.Bhange, learned Additional Government Pleader.

2 The Petitioner has been granted permission to run the Pharmacy course by AICTE with intake capacity of 60 students. In the month of March 2014, AICTE granted permission to the Petitioner – College for additional intake of 60 more students. The Government vide Resolution dated 7th August, 2014, had granted recognition. However, vide clause-14 of the said Government Resolution, it is laid down that those institutions not routed through the State or wherein negative recommendation has been given by the State but still the permission has been granted by AICTE, will not be entitled for the

reimbursement of the fees. The said clause-14 of the said Government Resolution is assailed by way of this writ petition. Amongst other arguments canvassed by the learned counsel for the Petitioner, one of the ground to assail clause-14 of the said Government Resolution, is that said clause cannot have a retrospective operation. The Petitioner has been granted permission by the AICTE to run the course in March 2014, and this Government Resolution is issued in August 2014. With retrospective operation, the same cannot be applied and this is already held by this Court at its principal Seat at Bombay in Writ Petition No.5190 of 2013 with connected writ petitions vide order dated 9th September, 2014. According to the learned counsel, the circumstance as existed when deciding the said writ petitions, also exists herein. In the writ petitions decided at the principal Seat at Bombay, the permissions were granted by the AICTE in May 2013 and the Government Resolution was issued in September 2013. In this case also, the AICTE has granted permission in March 2014 and the similar Government Resolution is issued in August, 2014.

3 Mr.Bhange, learned Additional Government Pleader submits that it is within the powers of the State to frame the policy and lay down the conditions. Pursuant to the same, the conditions have

been laid down. It is for the State to prepare perspective plan. As the said application was not routed through the State, the Petitioner is not entitled to the benefit of reimbursement of fees. The State has powers to impose such conditions.

4 Though the learned counsel for the Petitioner and the learned Additional Government Pleader canvassed the submissions on various aspects of the matter, we are not inclined to consider all other aspects, as last year also in similar set of facts, this Court at principal Seat at Bombay had struck down the said clause in the Government Resolution on the ground that it cannot be applied retrospectively. The judgment delivered by this Court at principal Seat at Bombay in Writ Petition No.5190 of 2013 with connected writ petitions vide order dated 9th September, 2014, has been accepted by the State Government and was not assailed before the Apex Court. Paragraph Nos.30 and 31 of the said judgment, read as under:

> "30. Admittedly, it is the policy of the State Government to reserve 50% seats for backward class candidates in private unaided technical institutes. This is also subject to other conditions. On these seats, students of open category can not be admitted. The fee-reimbursement scheme is only to the candidates admitted through the Common Entrance Test (CET), even as per circular dated 4 March 2010. The CET was hold by the Respondents for the academic year 2013-2014 in May 2013. The Petitioners/institutes

admitted the students allotted by the Respondents. Thereafter, not to grant such fee-reimbursement to the Petitioners/ institutes in view of Clause 14 after establishment of new institutes/courses and/or increase in seats based upon the valid permission from the AICTE is unacceptable. The students belong to particular clause, in the present facts and circumstances, having admitted apart from above, in pursuance to the orders passed by this Court in various matters, just cannot be denied the benefits in the form of such reimbursement. The Petitioners/institutes have no choice but to ask and/or demand the balance fees from such students and/or they have to bear this costs/expenses. Therefore, the implementation of Clause 14 of the Resolutions would certainly against the State Government's own earlier policy, as that would be in breach of Constitutional and Legal principles. The State Government also never communicated any negative and/or any objection to the AICTE before final approval granted to the Petitioners/institutes. In one or two cases there were negative communications, but in May 2013 only. In Writ Petition No.5454 of 2013 there was negative communication dated 9 May 2013, even prior to 15 May 2013. There was no such policy, including requiring to seek no objection from the State Government before making such application. There was no requirement to apply to the AICTE through the State Government. There was nothing pointed out accordingly even in the affidavit. There in nothing also on record to show that the Petitioners/institutes have filed any affidavit and/or giving any undertaking that they would not entitle for such fee-reimbursement. On the contrary, insertion of Clause 14 and the abrupt endorsement, so put, created two different classes, as recommended and non-recommended colleges, considering the Constitutional obligations to provide the facilities/privileges, including fee-reimbursement to all who belongs to the reserved category and/or declaring category.

31. In this connection allowing the Government Resolutions to be in force as from the date the same came to be issued would amount to retrospective operation of such Resolution as the admission process in the institutions of the Petitioner had already started. All administrative orders ordinarily are to be considered prospective in nature. In the present case, the Petitioners acted upon the earlier Government Resolutions to admit the students to their institutions and as such the principles of promissory estoppel would also apply to read down the implementation of such Government Resolution only from the year 2014. In this context the Apex Court in the judgment in *Kusumam Hotels Private Limited v. Kerala State Electricity Board and others*, has observed at paragraph Nos. 21 and 36 thus:-

"21 It is now a well-settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutory directions."

"36 The law which emerges from the above discussion is that the doctrine of promissory estoppel would not be applicable as no foundational fact therefore has been laid down in a case of this nature. The State, however, would be entitled to alter, amend or rescind its policy decision. Such a policy decision, if taken in public interest, should be given effect to. In certain situations, it may have an impact from a retrospective effect but the same by itself would not be sufficient to be struck down on the ground

of unreasonableness if the source of power is referable to a statute or statutory provisions. In our constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication. It is a principle of the rule of law. A presumption can be raised that a statute or statutory rule has prospective operation only.""

5 In light of the above, we pass the following order:

I. Clause-14 of the impugned Government Resolution shall not apply to the Petitioner for the academic year 2014-15.

II. The Petitioner is entitled for fees reimbursement and all other related benefits based on the earlier Government circular/policy prior to the said impugned Government Resolution (in respect of students admitted through Central Admission Process and belonging to specified reserved category).

III. It is made clear that we have not considered the arguments canvassed by the learned counsel for respective parties about the powers of the State to frame the policy or otherwise.

IV. Accordingly, the writ petition stands disposed of with aforesaid observations and directions. No costs.

[V. L. ACHLIYA, J.] **[S. V. GANGAPURWALA, J.]**

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