

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

WRIT PETITION NO. 5361 OF 2014
WITH CA/9080/2014 IN WP/5361/2014 WITH WP/5369/2014 WITH
WP/5371/2014 WITH CA/8966/2014 IN WP/5371/2014

PRAVARA RURAL EDUCATION SOCIETY'S INSTITUTE OF PHARMACY,
AT LONI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. V. D. Hon, Senior Adv. for Petitioner.
Mr. K.G.Patil, A.G.P. for Respondent/State Authorities.
Mr.S.V.Adwant, Advocate for Respondent No.3.

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**CORAM : S. V. GANGAPURWALA &
V. L. ACHLIYA , JJ.**

DATE : 6th February, 2015

PER COURT

1 All these writ petitions are based on common set of facts and involve common question of law, as such, are decided together.

2 We have heard Mr. Hon, learned senior counsel for the Petitioners, so also, Mr. Patil, learned Additional Government Pleader and Mr. Adwant, learned counsel for respondent No.3.

3 All the Petitioners in these writ petitions have been granted permission to run the Polytechnic, Pharmacy and Engineering courses by AICTE, in the month of April, June 2014. The Government vide Resolution dated 3rd July, 2014 and 7th August, 2014, as applicable in respective writ petitions, had granted recognition. However, vide

clause-14 of the said Government Resolution, has held 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, those institutions will not be entitled for the reimbursement of the fees. The said clause-14 of the said Government Resolution is assailed by way of these writ petitions. Amongst other arguments canvassed by the learned counsel for respective Petitioners, one of the ground to assail clause-14 of the said Government Resolution, is that said clause cannot have a retrospective operation. The Petitioners have been granted permission by the AICTE to run the courses in April and June, 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 these cases also, the AICTE has granted permission in April/ May 2014 and the similar Government Resolution

is issued in August, 2014.

4 Mr.Patil, 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 applications were not routed through the State, the Petitioners are not entitled to the benefit of reimbursement of fees. The State has powers to impose such conditions.

5 Though the learned counsel for the Petitioners 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 held 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 be 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 is 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.”

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

- I. Clause-14 of the impugned Government Resolution shall not apply to the Petitioners for the academic year 2014-15.
- II. The Petitioners are 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 petitions stand disposed of with aforesaid observations and directions.

No costs.

V. Civil applications also stand disposed.

(V. L. ACHLIYA, J.)

(S. V. GANGAPURWALA, J.)

JPC