

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
CIVIL APPLICATION NO. 2367 OF 2014
IN
WRIT PETITION NO. 8478 OF 2013**

The State of Maharashtra & Ors. .. Applicants
V/s
Radhey Shikshan Vikas Mandal Kowad
through its Head Master .. Respondent

WITH

**CIVIL APPLICATION NO. 2925 OF 2014
IN
WRIT PETITION NO. 7209 OF 2014**

The State of Maharashtra & Ors. .. Applicants
V/s
Shivneri Shikshan Sanstha Tere Vayangani
& Anr. .. Respondents

Mr. A.B. Vagyani, Government Pleader with Mr. V.B. Thadani, A.G.P.
for the applicants.

Mr. S.S. Pakale with Mr. Avinash R. Belge for the respondent
(original petitioners).

**CORAM: MOHIT S. SHAH, C.J. &
B.P. COLABAWALLA, J.**

DATE : 7 JANUARY 2015

P.C.:

The State of Maharashtra and its officers under the Education Department have moved these civil applications for recalling and modifying the order dated 16 July 2014 as modified on 6 August 2014 insofar as this Court has directed the applicants (respondents in the writ petition) to make payment of salary grant to the school managements who were writ petitioners in Writ Petition No. 8478 of 2013 and cognate writ petitions.

2. By the judgment dated 16 July 2014, this Court had set aside the impugned orders issued by the Director of Education (Secondary and Higher Secondary) and of the Education Officer (Secondary), Zilla Parishad of the concerned district by which the petitioner schools were held to be ineligible to get grant-in-aid under the Government Resolution dated 15 November 2011. The impugned orders were set aside on the ground that the petitioner schools were not given any opportunity of hearing by the Director of Education / Education Officer of the concerned Zilla Parishad. Hence, after quashing the impugned orders, this Court had granted opportunity to the respondent authorities to issue show cause notices to the petitioner - school managements and after giving an opportunity of filing reply to the show cause notice and producing documentary evidence and after giving them an opportunity of personal hearing, the authorities were directed to take fresh decision in the matter.

3. There is no question of recalling or reviewing the said directions. The State Government and its officers are seeking review/modification of only direction no.(iii) by which the authorities were directed to release the salary grant to the writ petitioners and direction no.(v) by which the arrears of salary grant were also ordered to be released and a direction was given to continue to pay salary grant in accordance with rules and regulations without withholding any salary grant on the ground of backlog. Thereafter by an order dated 6 August 2014, this Court modified the said direction no.(v).

4. Mr. Vagyani, the learned Government Pleader, submits that once this Court permitted the authorities to take a fresh decision in the matter after issuing fresh show cause notice to the school managements and after giving them an opportunity of filing reply and producing documentary evidence and after giving them an opportunity of a personal hearing, the respondents ought not to have been directed to release the salary grant to the school managements. It is submitted that in case the authorities take a decision rejecting the application of the concerned school managements for grant-in-aid under the above Government Resolution dated 15 November 2011, there would be no question of releasing any grant in favour of such school managements nor would there be any arrears of salary grant for any prior period. It is, therefore, submitted that direction

nos. (iii) and (v) in the order dated 16 July 2014 as modified by order dated 6 August 2014 need to be recalled.

5. On the other hand, Mr. Pakale, learned counsel for the writ petitioners (opponents in the civil application) has opposed the applications and submitted that no case is made out for recalling/reviewing any of the directions given earlier. It is submitted that the impugned order indicated that the applications of school managements were rejected on the ground of backlog, that is not following the reservation policy in respect of recruitment of employees in the school. The Zilla Parishad Committees constituted under the Government Resolution dated 15 November 2011 had submitted reports in favour of school managements. The Government Resolution prescribed 100 marks and further provided that a school getting 70 marks would be declared qualified for grant-in-aid. The petitioner in Writ Petition No. 8478 of 2013 was given 91 marks by the Committee as contemplated in para (3) and 4 of the Government Resolution dated 15 November 2011. Hence, there was no justification in considering the petitioner school as ineligible to get the grant. As regards the remark of backlog, it is submitted that the petitioner school had followed the reservation policy as was in force from time to time, but without prejudice to the said submission it is submitted that in any view of the matter grant-in-aid educational institution cannot be required to follow the reservation policy. Reliance is placed in this behalf on the judgment of the

Constitution Bench in *Ashok Kumar Thakur vs. Union of India*, (2008) 6 SCC 1 laying down that imposing reservation on private unaided institution constitutes an unreasonable restriction upon the fundamental right guaranteed by Article 19(1)(g) of the Constitution to establish and run educational institutions and would also run counter to the basic structure of the Constitution.

6. Having heard the learned counsel for the parties, we find that the Government Resolution dated 15 November 2011 clearly lays down the policy of the Government of Maharashtra as well as the procedure for giving grant-in-aid to the permanently unaided primary and secondary schools (excluding English medium schools in the State of Maharashtra). Para 2 of the Resolution lays down the eligibility criteria, which reads as follows:

“(2) Eligibility of schools:

The proposal of those schools which comply with below mentioned requirement, would be accepted for evaluation. The proposal of those schools which do not comply with these requirement be not considered for evaluation.

(a) The school should observe the terms and conditions decided by the Government from time to time for granting recognition.

(b) At the time of making application for the evaluation, the school should have followed the reservation policy in respect of recruitment of employees in the school.

- (c) *It is necessary to have staff approval and the individual approval of the employees employed in the school done against the sanctioned posts, at the time of submitting online proposal for grant in aid, it is mandatory to annex the last three years staff approval and individual approval of non-teaching staff alongwith the online proposal.*
- (d) *The evaluation be made as per the revised norms of those unaided schools which are not yet receiving grant in aid.*

Thereafter para 3 of the Resolution lays down for norms for evaluation and division of marks. Para 4 stipulates the required marks for qualifying for grant-in-aid in the following terms:-

*“(4) The required marks for qualifying for grant-in-aid:
As per final norms of evaluation, the schools located at area of tribal development sub plan and outside area of tribal development sub plan and 103, educational backward class recognized unaided primary/secondary school get 65 marks out of 100 marks, and in the other group which secures 70 marks will be declared qualified for grant-in-aid. Those schools which become eligible for grants-in-aid should get 75% marks out of 50 marks allotted for educational merit of the school. Otherwise, the school will not be considered qualified for grant-in-aid. Failing which, the school will not be held eligible to get any grant-in-aid.”*

Para 11 of the Resolution provides that the giving of the grant is the discretion of the Government and that the grant will not be given with retrospective effect.

7. Having carefully considered the aforesaid clauses of the Government Resolution dated 15 November 2011 and having gone through the judgment of the Constitution Bench in *Ashok Kumar Thakur vs. Union of India (supra)*, we are of the view that when the Government is not going to grant aid with retrospective effect, the Government cannot apply its reservation policy with retrospective effect. In other words, the Government cannot insist that the reservation policy should have been followed with retrospective effect prior to the date of application of the school management under the Government Resolution dated 15 November 2011. The law on the subject having been laid down in the judgment of Justice Dalveer Bhandari of the Constitution Bench decision in *Ashok Kumar Thakur vs. Union of India (supra)*, the State Government cannot act contrary to the principles laid down in the said judgment.

8. In the facts of the present case, it is the contention of the school managements that the reservation policy was followed as was applicable from time to time and that in any case, norms for evaluation and division of marks, as prescribed in the said Government Resolution dated 15 November 2011, do not provide for any marks for reservation policy in respect of the past period.

9. We find considerable substance in the above submission and, therefore, while appreciating the contention of the applicants – State Authorities that there should not be any direction for releasing the grant during pendency of the proceedings before the Director of Education, we are of the view that the directions contained in the order dated 16 July 2014 of this Court should be modified so as to defer release of grant after the decision of the Director of Education, but with a clarification that the Government cannot withhold the grant under the said Government Resolution dated 15 November 2011 on the ground that the school had not followed the reservation policy prior to making applications for grant under the Government Resolution dated 15 November 2011.

10. In the result, the civil applications are disposed of in the following terms:

- (i) The directions contained in para 6(iii) and (v) for releasing the salary grant under the Government Resolution dated 15 November 2011 shall not apply till the Director of Education takes a decision in the matter which shall be done within 6 weeks from today.
- (ii) It is clarified that if an institution is found to be eligible to receive grant under the Government Resolution dated 15 November 2011, it shall not be denied the grant on the ground of not following the reservation policy prior

to the date of making the application for the grant under the Government Resolution dated 15 November 2011.

- (iii) If in light of the above directions and clarifications the authorities take any tentative decision to issue a show cause notice for rejecting the application of the concerned school managements, the show cause notice shall be issued within 3 weeks from today giving an opportunity to the school managements to reply and to file documentary evidence after receipt of the show cause notice and the Director of Education shall give them personal hearing and take a decision within 3 weeks thereafter.
- (iv) If no show cause notice is issued to the school management within 3 weeks from today, the authorities shall release the grant in their favour within 6 weeks from today.
- (v) Liberty to apply in case of difficulty.

The civil applications stand disposed of with the aforesaid directions / clarifications.

CHIEF JUSTICE

(B.P. COLABAWALLA, J.)