

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7485 OF 2014

WITH

CIVIL APPLICATION NO. 634 OF 2016

AND

CIVIL APPLICATION NO. 624 OF 2016

Kusum Sudhir Goenka

.. Petitioner

V/s

State of Maharashtra & Ors.

.. Respondents

Mr. N.H. Seervai, Senior Advocate with Mr. Pratik Sakseria and Mr. Nishanth Sasidharan i/b L.J. Law for the petitioner and applicant in CA No.634/2016.

Mr. A.B. Vagyan, Government Pleader with Mr. C.P. Yadav, A.G.P. for respondent nos.1, 2 and 5.

Mr. Mahendra Agrekar i/b Mr. M.V. Limaye for respondent no.3.

Mr. Ramchandra Gunjal, Deputy Secretary, School Education and Sports Department, present in Court.

CORAM: D.H. WAGHELA, CJ. & M.S. SONAK, J.

DATE : 16th MARCH 2016

P.C.:

The petition is filed by an unaided educational institution, to which the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 was applied, but no notification as required under the provisions of section 4(2) of the said Act has been issued for regulation of fees.

2. It was on that basis submitted by learned counsel for the petitioner that the proceedings initiated by the authorities of the State to register and prosecute criminal case against the petitioner on the basis of the alleged collection of capitation fees ought not to be proceeded further. It was fairly stated in that context by learned Government Pleader appearing for the respondents that in view of the observations made by the Apex Court in *Father Thomas Shingare & Ors. vs. State of Maharashtra & Ors.*, (2002) 1 SCC 758, the matter of prosecution in respect of alleged collection of capitation fees against the petitioner, an unaided education institution, would not survive. It was, however, clarified that any other offence under the provisions of any other penal law may have to be pursued in accordance with law.

3. In view of the above fair statement being recorded in this order, the petition admittedly does not survive for quashing the inter-departmental correspondence or any other instructions as far as they relate to the allegation of collection of capitation fees by the petitioner.

4. It was, however, submitted by learned Government Pleader for the respondents that the Government would in its discretion issue appropriate notification and guidelines in terms of the provisions of section 4 of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987. It was further

pointed out that the important aspect of collection of fees is now additionally covered by the Maharashtra Educational Institutions (Regulation of Fees) Act, 2011 (for short “Act of 2011”) whereunder all schools are prohibited from collecting any fees in excess of fees approved under the said Act. The parties to which the Act of 2011 applies are required to comply with its provisions on the pain of being prosecuted for offences which are also provided to be cognizable offence. It was stated at the bar that the Government is in the process of framing rules under the Act of 2011 which, prima facie, is no bar to application of the provisions or implementation of the Act of 2011.

5. From the submissions of learned counsel appearing on either side, it can be expected that the Government would frame the rules and notify them for the people concerned, as early as may be, and preferably within a period of 2 months as stated by the learned Government Pleader, on the basis of instructions of Mr. Ramchandra Gunjal, Deputy Secretary, School Education and Sports Department of the State Government, who is personally present in the Court. It can also be expected of the educational institutions concerned that they would abide by the provisions of the Act of 2011 and avoid unnecessary or illegal collection of fees, putting the parents to hardship of initiating or facing litigation in respect of education of their children.

6. With these observations, the petition is disposed of as not surviving with no order as to costs. Civil Applications are also disposed of as not surviving.

7. It is clarified at the request of Mr. Seervai, learned senior counsel for the petitioner, that the above observations are recorded without prejudice to the individual contentions of the parties regarding any particular provision of the Act of 2011 or its due application in the facts and circumstances of the individual case.

(M.S. SONAK, J.)

(CHIEF JUSTICE)