

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8209 OF 2006

1. Palla Nilofer Begum Mustafa
Age : 18 years, Occ : Education,
R/o Shams Chouk, Osmanabad.
 2. Patel Shabanabi Akhatar
Age : 17 years, Occ : Student,
(Through her father and natural
guardian Shri Patel Akhatar)
R/o At Post Ter, Tq. & Dist. Osmanabad.
- ..PETITIONERS

-VERSUS-

1. The State of Maharashtra
(Through the Principal Secretary,
School Education Department,
Mantralaya, Mumbai).
 2. Deputy Director of Education
and Competent Authority for
Admission to D.Ed. Course,
Latur.
 3. The Principal
District Institute of Education and
Training, Osmanabad.
 4. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
- ..RESPONDENTS

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Mr. A.S. Bayas, advocate for the petitioners.
Mrs. S.S. Raut, A.G.P. for respondent Nos.1 and 2.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 18th APRIL, 2018.

DATE OF PRONOUNCING JUDGMENT: 25TH APRIL, 2018.

JUDGMENT [PER S.S. SHINDE, J.]:

This Petition is filed with the following prayers :-

"A. To direct the respondent to give admission to the petitioners to Urdu Medium D.Ed. College of the respondent no.3 on payment of Rs.2025/- towards fees for admission to the said college, if they are selected for such admission on 26.08.2006 for the academic year 2006-2007.

AA. To direct the respondents to forthwith refund the excess fees paid to respondent no.3 by the petitioner while seeking admission to D.Ed. Course."

2. The brief facts leading to file the

present Petition, as stated in the memo of the Petition, in brief, are as under :-

A. It is the case of the petitioners that, the petitioners have passed their 12th examination in Arts and Science Faculty, respectively. The petitioners have also passed their drawing examination. The petitioners have applied for admission to D.Ed. Course for the academic year 2006-2007. As per the rules of admission to the D.Ed. course contained in Information Brochure on page no.34 at entry no.62, the Government D.Ed. College at Osmanabad is shown as "unaided college", and the annual fees of the said college for Marathi and Urdu faculty is shown as Rs.2025/-. According to petitioners, the petitioners were legitimately expecting that they would be required to pay annual fees of Rs.2025/- for admission to Government Urdu D.Ed. college of Respondent No.3.

B. It is the case of the petitioners that, on 1st August, 2006, respondent no.3 had published the final merit list and also the programme of admissions as per the category of students. In the said public notice, it is mentioned that, the admission to D.Ed. college in Urdu medium (permanent unaided) will be given on deposit of fees of Rs.12,000/-. In view of the marks obtained by the petitioners, they were expecting admission to the D.Ed. college in Urdu medium of respondent no.3. Since in the information brochure, it was not shown that the D.Ed. College in Urdu medium of respondent no.3 is permanent unaided college, the petitioners were not required to pay an amount of Rs.12,000/-.

C. It is the case of the petitioners that, on 13th August, 2006 revised timetable of admission was published by respondent no.3 in daily news paper "Lokmat". As per said timetable, the students belong to Urdu medium were required to

appear before the competent authority on 26th August, 2006 at Latur. The petitioners, therefore, started collecting all the documents and the Demand Draft of annual fees. However, the petitioners were given understanding that the annual fees for admission to Government D.Ed. college in Urdu medium of respondent no.3 was Rs.12,000/-. On inquiry in the college of Respondent No.3, it was confirmed that although, it is a Government College, it is an unaided college for Urdu medium. Thus in one government D.Ed. college, the Urdu medium class is unaided and Marathi medium D.Ed. class is a government aided college.

D. It is the case of the petitioners that, unaided D.Ed. colleges are established and run by the private educational institutions, and the fees charged and recovered by them from the students is fixed by the Authority. Such fees is fixed by the Authority on consideration of the expenses

incurred by the private institutions on establishment of college, including building, salary of teaching and non-teaching staff, administrative expenses and other infrastructure facilities. However, such expenses of running D.Ed. colleges by private institutions are on very higher side, as compared to one or two divisions of D.Ed. courses run on aided basis in a government D.Ed. College. Therefore, the fees fixed for unaided D.Ed. colleges run by the private institutions cannot be applied to one division of D.Ed. Course, on unaided basis in a government D.Ed. College. Hence present Petition is filed seeking directions to respondents to forthwith refund the excess fees paid to respondent no.3 by the petitioners while seeking admission to D.Ed. Course in Urdu medium.

3. Learned counsel appearing for the petitioners submits that, the petitioners are the students of D.Ed. course in Urdu medium of the

Government Institute of Education and Training Institute, Osmanabad. The building of the said government D.Ed. college was constructed by the Government and expenses on entire paraphernalia are also incurred by the Government, and therefore, fees payable by the students of D.Ed. course in Marathi medium is only Rs.2025/- per year. However, the fees payable by the students of Urdu D.Ed. course, who were initially only 40 in numbers and now 100 in numbers is Rs.12,000/- per year.

4. Learned counsel submits that, on inquiry the petitioners are given understanding that, in 1990, the Government had decided to start one division of Urdu D.Ed. Course for 40 students in its own government aided D.Ed. College. In fact, there is no reason to start such a division in Urdu D.Ed. Course on unaided basis in government D.Ed. College, in as much as, entire expenses for running such college are incurred by the

Government. Therefore, the decision to start Urdu division of D.Ed. Course on unaided basis in government D.Ed. College was confined only for the year 1990. Urdu teachers working in local high schools or teachers teaching in Urdu school were given the teaching work on hour basis right from the beginning. Moreover, the separate library was not provided for the Urdu students. Similarly, non-teaching staff of government D.Ed. College was appointed even prior to opening of Urdu D.Ed. Course. Same employees were rendering services in Marathi medium as well as Urdu medium class. It is submitted that, the administrative expenses and salary of all teaching and non-teaching staff of Marathi D.Ed. Government aided divisions cannot be imposed and recovered from the students learning in Urdu medium classes. There is no library for Urdu students and therefore, no expenses are incurred. The salary of other non-teaching staff utilized for Marathi D.Ed. College and courses cannot be included in the expenses incurred to run

D.Ed. Urdu division. Thus, the levy and recovery of amount from the students is unjust and improper, which is without any legal and factual basis, and therefore, it is illegal, arbitrary and oppressive and violative of Article 14 of the Constitution of India.

5. Learned counsel appearing for the petitioners submits that, the petitioners were given understanding that, the Urdu medium D.Ed. College is treated as unaided on the basis of the letter dated 02.07.1990. However, the contents of the said letter shows that, the decision to treat Urdu medium D.Ed. College as unaided was confined to only year 1990. It is also clear from the contents of said letter that, from 1991 onwards the government was supposed to bear the expenses of classes run in Urdu medium of respondent no.3 D.Ed. College, and asked the college to submit proposal for appointment/regularization of teachers.

6. It is submitted that, the said circular was challenged before the High Court by way of filing the Writ Petition. However, the said Writ Petition was dismissed. Thereafter, the Review Petition was also filed. The respondents have understood that the Urdu medium of government D.Ed. College cannot be permanent unaided college, and therefore, in the information brochure the annual fees of Rs.2025/- was mentioned. In any case, the levy and recovery of fees of Rs.12,000/- for admission to Urdu medium D.Ed. College of respondent no.3 is illegal, arbitrary, unreasonable, discriminatory and violative of article 14 of the Constitution of India. Learned counsel, therefore, relying upon the pleadings in the Petition and annexures thereto submits that, the Petition may be allowed.

7. On the other hand, learned A.G.P. appearing for the respondent/State, by relying

upon the averments made in the replies filed on behalf of the respondents, submits that, the Petition deserves to be dismissed.

8. We have heard learned counsel appearing for the petitioners and learned A.G.P. appearing for the Respondent/State. With their able assistance, we have carefully perused the pleadings in the Petition, annexures thereto and the averments made in the replies filed by the respondents.

9. At the outset, it is necessary to state that, pursuant to the order dated 14th March, 2018 passed by this Court, the Principal Secretary, School Education and Sports Department, Government of Maharashtra i.e. respondent No.1 has filed the affidavit in reply on 10th April, 2018. The paras 2 to 5 of the said affidavit-in-reply read thus :-

"2. I say that, the aforesaid Writ

Petition came up for hearing before this Hon'ble High Court on 14.03.2018. After hearing, Hon'ble High Court directed that the Principal Secretary, School Education and Sports Department, Mantralaya, Mumbai to apply his mind to the issues raised in the petition and after conscious application of mind, file his personal reply on or before 10.04.2018.

3. At the outset I say and submit that it appears from the order dated 02.07.1990 that for sake of educational convenience of Urdu linguistic students in Osmanabad and Latur District, government has granted permission to one division of Urdu medium D.Ed. on unaided basis in the Government D.Ed. College at Osmanabad. It is clarified in the said order dated 02.07.1990 that the students who were to be admitted for this Urdu medium D.Ed.

College/ course in this division would be liable to pay fees as is applicable to the students studying in nongrant D.Ed. Colleges, and the expenses towards educational items and honorarium to be paid to the part-teaching staff was to be made from the amount of fees collected from the students. It was also clarified that instead of creating new posts, help of qualified teachers in nearby Urdu medium secondary schools and educational institutions be taken for teaching. Hence, there is disparity in fee of Marathi medium and Urdu medium D.Ed. students in Osmanabad.

4. I further say and submit that relevant time there was no specific policy to attach / run unaided division in the Government D.Ed. College. However, due to non availability of record, it is not

possible to explain the reasons why unaided division of Urdu medium D.Ed. was sanctioned in the Government D.Ed. college, Osmanabad.

5. I respectfully say and submit that, the decision of granting unaided Urdu division in Government D.Ed. College is not in accordance of the policy. Henceforth no such discrepancy in the fee structure will be there. However, as the amount received as fees collected from the students of unaided division of Urdu medium was spent on items and honorarium as mentioned in the order dated 02.07.1990, it is not possible to refund the fees collected so far."

10. Admittedly, by way of filing the affidavit in reply, Respondent No.1 has specifically stated that, at the relevant time

there was no specific policy to attach / run unaided division in the Government D.Ed. College. However, due to non availability of record, it is not possible to explain the reasons why unaided division of Urdu medium D.Ed. was sanctioned in the Government D.Ed. college, Osmanabad. So also it is stated that, the decision of granting unaided Urdu division in Government D.Ed. College is not in accordance with the policy. In that view of the matter, we are of the prima facie opinion that, at the relevant time when there was no specific policy to attach / run unaided division in the Government D.Ed. College, the respondents have erroneously started the D.Ed. College in Urdu medium, and as alleged in the Petition have recovered the exorbitant fees from the students, for admitting them in Urdu D.Ed. College which was being run on unaided basis and the said action of the respondents, is unsustainable and unreasonable. Hence, the Petition deserves to be partly allowed.

11. In the light of discussion made hereinabove, the Writ Petition is partly allowed. The Respondent No.3 is directed to refund the excess fees accepted from the petitioners, while seeking admission to D.Ed. Course. However, after verifying the record and on producing receipts by the petitioners as expeditiously as possible and preferably within three months from today. Rule made partly absolute in the above terms. Writ Petition stands disposed of accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

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