

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.408 OF 2018

Sinhgad Technical Education Society
Through Its Founder President ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondents

**WITH
CIVIL APPLICATION NO.807 OF 2018
IN
WRIT PETITION NO.408 OF 2018**

Central Bank of India ...Applicant
V/s.
Sinhgad Technical Education Society
Through Its Founder President ...Respondent

**WITH
WRIT PETITION NO.4849 OF 2018**

Dattakala Shikshan Sanstha ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

**WITH
WRIT PETITION NO.5498 OF 2018**

Savitribai Phule Shikshan Prasarak Mandal ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.V.P. Sawant, i/by Mr.N.S. Dhumal for the Petitioner in Writ
Petition Nos.408 of 2018, 4849 of 2018 and 5498 of 2018.

Ms.Sapana Rachure i/by Mr.T.N. Tripathi & Co. for the Applicant in
CAW No.807 of 2018.

Mr.A.A. Kumbhakoni, Advocate General a/w Mr.V.M. Mali, AGP and

Mr.S.B. Kalel, AGP for Respondent Nos.1 to 8 and 10.

Mr.A.A. Joshi a/w Mr.Nigel Qurishi for Respondent No.11-AICTE.

Mr.Rajendra Anbhule for Respondent No.12.

Mr.V.M. Mane, AGP for Respondent No.1 to 6 in Writ Petition No.4849 of 2018.

Mr.V.M. Mali, AGP for Respondent Nos.1 to 5 in Writ Petition No.5498 of 2018.

**CORAM : B.R. GAVAI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 04th MAY 2018

P.C.

1. All these petitions which are filed by the professional unaided colleges or their managements have arisen out of the peculiar facts.

2. As per the earlier policy which was followed by the State Government, initially the amount of Scholarship and Fees which was payable on account of admission of reserved category candidates was paid by the State Government to the institution directly. However, it was noticed by the State Government that some bogus students were also enrolled and resultantly the amount which was meant for the beneficiary students was being misappropriated by the institution. As such the Government had changed the policy

thereby monitoring for crediting the amount directly into the account of the concerned beneficiary student.

3. However, it is to be noted that though the State Government had prescribed a time schedule to make the payment within the prescribed period, for the variety of reasons the State itself could not adhere to the said timetable, resultantly now even the present academic session is over. We had therefore directed by order dated 16th April 2018 and observed that in view of this peculiar situation, if the amount is directly credited in the account of the student and if such student for one or other reason does not continue in the institution where he/she has undertaken the course, the management will be helpless to recover the fees from the said student. In the order dated 16th April 2018, we have also taken into consideration that various institutions including some of the petitioner, on account of non-receipts of the Scholarship amount on time, have not been in a position to pay the salaries of the staff.

4. We have therefore observed that since the State Government itself had created such a chaotic situation, the State Government itself should find out solution and come out of this situation. We have observed that only on account of the policy of

the State Government that the candidate belonging to reserved category are admitted in the institution, on an assurance that the fees will be reimbursed by the State Government. We had observed that the institutions are put in a difficult situation on account of the policies of the State Government or because of the erroneous implementation there.

5. We had therefore directed the Chief Secretary to convene the meeting of all the Principal Secretary/Secretary of the concerned department and to come out with the solutions to these problems. We had also requested the Learned Advocate General to use his good officer to resolve and find out the solution, inasmuch as the issue involved had wider ramifications throughout the State. The matter was thereafter adjourned from time to time.

6. Finally, today an affidavit is filed by Shri.Dinesh Dingle, the Joint Secretary, Social Justice and Special Assistance Department. In paragraph No.5 of the affidavit various details have been given with regard to the applications received, applications pending for scrutiny, the applications decided etc., however in paragraph Nos.7,8,9 and 10 it is stated thus :

“7. I say and submit that as a result of the aforesaid

practical difficulty, though the present academic year has come to almost end, appropriate payments as required and desired by the aforesaid policy could not be made within the requisite time. These and such other aspects of the matter have given rise to immense complications in the actual grant of benefit to the eligible students, which in turn were to be passed on to the respective institutions. Attempts have been made to resolve the aforesaid issue in a practical manner. Various possibilities have been explored. In view of its past experience, the State needs to continue with its aforesaid policy of directly crediting funds into the respective Adhar-linked/verified bank accounts of the eligible students' respect accounts, instead of paying them over to the respective institutions directly. However, in as much as the current academic year is concerned, the State is ready to make an exception to the implementation of the said policy in the following manner.

8. I say and submit that the various amounts payable to the eligible students, which have so far not been paid, will be paid over to the respective educational institutions in lump sum, instead of crediting them into the bank accounts of the students. This will be 'a onetime exercise', to be performed in respect of the current academic year only. From the next academic year the aforesaid policy decision and/or

the cabinet decision, will be implemented and the amounts will be paid, not to the institutions but to the students, after taking corrective steps in respect off the practical implementation of said policy.

9. For the current academic year, all the institutions will be required to submit an Affidavit to the following effect:

a) That the list of the eligible students along with all the duly filled in application forms with supportive documents are produced.

b) An undertaking to the effect that the amounts receivable from the students have not been directly received, so far, by institutions from the students.

Upon receipt of the aforesaid Affidavit, duly filled in applications and respective documents, the respective department will scrutinize the same within two weeks thereof. Appropriate payments will be made to the respective institutions, in lump sum, by giving break up thereof with requisite details of each student for whom such payment is made, within two weeks of completion of the scrutiny. It will be open for the State Government to take appropriate action against the erring institution/students who commit breach of the aforesaid undertaking or practice any illegality or fraud in carrying out the aforesaid exercise.

10. As the original aforesaid policy decision has been

taken and the Government Resolution has been issued in accordance with a cabinet decision, an appropriate fresh Cabinet decision was required to be taken in the aforesaid regard, for which the concerned department had moved the file before the Cabinet which was scheduled today i.e. 3rd May 2018. Accordingly, today the cabinet has taken an appropriate decision in the aforesaid regard. However, the copy of the minutes of today's meeting is not available. I further say that as per the business rules the minutes of today's meeting will be approved in the upcoming Cabinet meeting which is scheduled in the next week i.e. 08th May 2018 and thereafter appropriate Government Resolution will be issued in this regard.”

7. It can thus be seen that the State Government has now after considering the ground reality, decided to make an exception for the present academic session. Certain conditions have been laid down as a pre-requisite for making the payment directly into the account of the institution. One of such condition is filing of an affidavit and an application along with the respective documents. It is submitted on behalf of learned counsel appearing on behalf of some of the petitioners that the petitioners have already submitted voluminous documents including applications of the students and such a requirement would lead to nothing else but multiplication of

the documents. We are sure that the State Government would act in a fair and reasonable manner and would not insist on filing the applications again which are already available with them. When the State Government have itself come up with a reasonable policy to find out a way, an apprehension that the State Government will act again in a hyper-technical manner, in our view, is totally misplaced.

8. Another difficulty which is expressed is that on account of non-payment of the salary to the staff, the All India Council for Technical Education had put various institutions in the “no admission category”. It is however now submitted that on account of the interim order passed by this Court the institution in non-admission category are now removed from that category and put into the category of admission. However, the difficulty was expressed in respect of one institution wherein the same was not yet removed from that category.

Shri.Joshi, the learned counsel appearing on behalf of the AICTE states that even so far as that institution is concerned, it was on account of some technical difficulty, that the same was included in non-admission category. He sates that, however it will immediately be removed from that category and put in the category of admission.

9. One another difficulty that is expressed by the Writ Petitioners in Writ Petition No.408 of 2018 is that on account of the orders passed by this Court that no coercive steps are directed to be taken against the employees who are Writ Petitioners in other petitions, it will not be possible for the management to even proceed administratively insofar as appointment of teachers which was 'on temporary basis' are concerned. We clarify that the interim orders passed by this Court would not come in the way of reappointment, following fresh selection process for making appointment insofar as the post on which the candidates were appointed on year to year basis. However, the interim order passed by this Court insofar as the employees who are permanent/regularly selected shall continue to operate.

10. It is to be noted that the main reason on the basis of which the institutions were put in non-admission category was on account of the non-payment of the salary of staff of the petitioners institutions. We are therefore, of the considered view that in order to comply with the mandate of the "All India Council of Technical Education" requirement, as soon as the petitioner's receives amount from the Government, they shall first clear salaries of the staff of the said colleges. The petitioners shall file an undertaking through their

authorized representatives in this Court that upon receipt of the amount from the State Government, they shall first disburse the amount towards pending salaries of their staff before clearing any other claims. The undertakings will be filed within a period of one week from today.

11. In view of the aforesaid orders, we find that the amount which is deposited by the State Government in this Court should not remain with this Court. The Court cannot act as either a Recovery Agent or Distributor for the salary of the employee of the petitioners and setup a salary and accounts department on behalf of the petitioners institutions in this Registry. The amount which is deposited in this Court, is therefore directed to be refunded to the State Government, in the account from which the said amount was deposited in this Court. The same shall be done within a period of one week from today.

12. No coercive action be taken against the employees on account of they going on strike due to non-payment of the salary.

13. The aforesaid petitions are disposed of in terms of the aforesaid directions, by treating the statement made by the State

Government in the affidavit as an Undertaking to this Court. Needless to state that the undertaking of the State Government and the petitioner as aforesaid, is treated as Undertaking to this Court and accepted by this Court.

14. We are of the considered view that the aforesaid order takes care of all the concerned stake holders.

15. However, before we pass this order we must express our appreciation for the efforts taken by the Learned Advocate General for finding a solution to this burning issue and also to the State Government for responding in a positive manner.

16. Stand over after vacation.

(SMT.BHARATI H. DANGRE, J.)

(B.R. GAVAI, J.)