

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3158 OF 2018

(Dr. Dilip s/o Labhachanda Kotecha & Ors. vs. The State of Maharashtra thr. its Secretary,
Department of Education & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
Z.A. HAQ, JJ.
JUNE 14, 2018.**

This Court has on 08.06.2018 passed the
following order :

“CORAM : B.M. DHARMADHIKARI AND Z.A. HAQ, JJ.

DATED : 8.6.2018.

- 1. Heard Advocate Shri D.M. Kale for the petitioners.*
- 2. Issue notice to the respondents for final disposal, returnable on 12th June, 2018.*
- 3. Respondent Nos. 2 and 3 – Board are directed to complete necessary procedure to declare the result of 174 students of respondent No.7 – College in the meanwhile so as to save loss of time.*
- 4. Service through R.P.A.D./ Hamdast/ E-mail allowed.*
- 5. Additionally, service on Standing Counsel also permitted.*
- 6. Ms. H.N. Prabhu, learned A.G.P. waives notice for respondent Nos. 4 and 5.”*

2. We have today, heard Shri D.M. Kale, learned counsel for the petitioners, Ms. H.N. Prabhu, learned AGP for respondent Nos. 1, 4 & 5, Shri Anand Parchure, learned counsel for respondent Nos. 2 & 3 and Shri M.M. Sudame, learned counsel for respondent Nos. 6 & 7.

3. After hearing we find that total 174 students studying with respondent No. 7 – Educational institute appeared for H.S.C. Examination conducted by respondent Nos. 2 & 3 in March – April 2018. Respondent Nos. 2 & 3 have not declared their result as the necessary fees for examination are not deposited by respondent Nos. 6 & 7. The other reason given is, non cooperation by respondent Nos. 6 & 7. Respondent Nos. 2 & 3 forwarded 250 answer papers for evaluation to respondent No. 7 and respondent No. 7 has refused to do that work.

4. Shri Sudame, learned counsel for the respondent – College points out that only eight students/ parents are before this Court. He further states that respondent Nos. 6 & 7 received fees only from 117 students and remaining 57 students have not cared to deposit fees. Respondent No. 7 being self financed institute, could not within time, therefore, deposit fees of entire 174 students. Respondent Nos. 2 & 3 thereafter started demanding late fees and respondent Nos. 6 & 7 could not arrange that amount. He submits that total amount of fees receivable by the Board for 174 students is Rs.82,255/- approximately but along

with penalty, the Board is now claiming amount in excess of Rs.17,48,700/-. He shows readiness and willingness to deposit the amount of fees without any penalty or interest.

5. Ms. Prabhu, learned AGP for respondent Nos. 1, 4 & 5 submits that her instructions are still awaited.

6. Respondent Nos. 2 & 3 – Board has attempted to point out that for non receipt of fees, suitable action was taken within time and some inquiry was also conducted. According to Shri Parchure, learned counsel, students were aware that their examination fees has not been deposited.

7. The facts at hand show that about 174 students allowed by respondent No. 1 – State and respondent Nos. 2 & 3 – Board to take education in respondent Nos. 6 & 7 are, therefore, facing grave problem of losing the entire prospects and future. The eight petitioners have pointed out that most of them have appeared for entrance examinations like CET, JEE, NATA and NEET. For some examinations 17.06.2018 is the last date for registration.

8. Because of directions issued by this Court on 08.06.2018, respondent Nos. 2 & 3 have kept the results ready.

9. In this situation, we direct respondent Nos. 6 & 7 to deposit fees without fail for 174 students with respondent Nos. 2 & 3 by 15.06.2018. Respondent Nos. 2 &

3 shall accept fees without prejudice to their rights in the matter and forthwith declare the results. In so far as amount of penalty is concerned, we direct respondent Nos. 6 & 7 to give an undertaking and bonds to the Board, mentioning therein the time within which the same shall be paid by them to the Board.

10. We find that inaction on the part of respondent Nos. 1, 4 & 5 has led to this situation. Similarly, respondent Nos. 2 & 3 could have put students on notice before examining them in this respect. That also has not been done.

11. In this situation, we direct that respondent Nos. 2 & 3 in future, in such situation before examining the students, inform them that their results will not be declared until and unless all fees along with late fees are received by the Board.

12. Respondent No. 1 – State shall in such matters also take suitable action against the managements in default. Here, we are informed that recognition of respondent No. 7 is already cancelled.

13. If respondent Nos. 2 & 3 do not receive late fees within three months from today, we permit them to file appropriate proceedings for recovery thereof against respondent Nos. 6 & 7 as also against respondent Nos. 4 & 5.

14. While depositing fees by respondent Nos. 6 & 7 with respondent Nos. 2 & 3, all Trustees of respondent No. 6 – institute and Principal/ Headmaster of respondent No. 7, shall on affidavit disclose their personal properties movable and immovable to respondent Nos. 2 & 3. It will be open to respondent Nos. 2 & 3 to seek recovery of its penalty amount by sale of those properties.

15. We also grant leave to respondent Nos. 2 & 3 to move respondent No. 1 for effecting such recovery as arrears of land revenue. If such an application is moved by respondent Nos. 2 & 3, respondent No. 1 shall proceed further to effect recovery as arrears of land revenue and complete it within next three months.

16. We also warn respondent Nos. 1, 4 & 5 that in future, we will direct the Board to recover part of such penalty even from respondent Nos. 1, 4 & 5, as the case may be.

17. After the results are declared, the petitioners to proceed further in the matter as per law.

18. With these directions, we partly allow the present writ petition and dispose it of. However, there shall be no order as to costs.

JUDGE

JUDGE