IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
906 WRIT PETITION NO.2601 OF 2018

APURVA PRADIP SHIRUDE AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

…

Mr. Girish V. Wani, Advocate for the Petitioners.
Mr. S. G. Karlekar, AGP for Respondents-State.
Mr. Subodh P. Shah, Advocate for Respondent No.4.
Mr. Sujeet D. Joshi, Advocate for Respondent No.2.
Mr. U. S. Malte, Advocate for Respondent No.3.

…

WITH
WRIT PETITION NO.3242 OF 2014
WITH
CIVIL APPLICATION NO.11097 OF 2014
IN
WRIT PETITION NO.3242 OF 2014
WITH
CIVIL APPLICATION NO.8487 OF 2017
IN
WRIT PETITION NO.3242 OF 2014

NILAMA D/O. SANJAY WAGH ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

…

Mr. Girish V. Wani, Advocate for the Petitioners.
Mr. S. G. Karlekar, AGP for Respondents-State.
Mr. M. D. Narwadkar h/f Mr. Murar V. Deshpande, Advocate for Respondent Nos.3 and 4.
Mr. K. C. Sant, Advocate for Respondent No.6.
Mr. Subodh P. Shah, Advocate for Respondent No.5.

…

WITH
WRIT PETITION NO.9646 OF 2015

AKASH RATIBHAN GUJAR AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

…

Mr. Girish V. Wani, Advocate for the Petitioners.
Mr. S. G. Karlekar, AGP for Respondents-State.
Mr. K. C. Sant, Advocate for Respondent No.2.
Mr. Subodh P. Shah, Advocate for Respondent No.3.

…

WITH

WRIT PETITION NO.12364 OF 2017

SAGAR PARAG AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

…

Mr. Girish V. Wani, Advocate for the Petitioners.
Mr. S. G. Karlekar, AGP for Respondents-State.
Mr. U. S. Malte, Advocate for Respondent No.3.
Mr. Subodh P. Shah, Advocate for Respondent No.4.

…

WITH

WRIT PETITION NO.10362 OF 2018

GUNJAN BHAGWAN PATIL AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

…

Mr. Girish V. Wani, Advocate for the Petitioners.
Mr. S. G. Karlekar, AGP for Respondents-State.
Mr. K. C. Sant, Advocate for Respondent No.2.
Mr. U. S. Malte, Advocate for Respondent No.3.
Mr. Subodh P. Shah, Advocate for Respondent No.4.

…

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATED : 6th MARCH, 2019.

PER COURT:-

1. Mr. Wani, learned counsel for petitioners in all these matters submits that petitioners have failed in some subjects. They are repeaters for a particular subject or for subject they have failed.

2. The gravamen of the case of petitioners is that the College does not conduct separate classes for those subjects in which petitioners are repeaters. As such, the College cannot charge tuition fees for those subjects. They can only charge the examination fees. The learned counsel relies on the affidavit filed by the Under Secretary, Fees Regulating Authority.

3. According to Mr. Shah, learned counsel for the Institution the issue is already decided by the Shikshan Shulka Samiti and the Shikshan Shulka Samiti has approved the charging pro-rata fees for the failed subjects from the repeater students and in view of that the institution is entitled to charge the fees from repeater students.

4. We have also heard Mr. Malte and Mr. Narwadkar, learned counsel for the Fees Regulating Authority, so also Mr. Joshi and Mr. Sant, learned counsel for the Health University.

5. The Fees Regulating Authority is a competent authority to determine the fees to be charged by the Institution. The Item Nos.6(a) and

6(b) of the proceedings before the Shikshan Shulka Samiti reads thus:

"**Item No.6(a)** : To consider and decide on the letter dated 10.10.2012 received from the Dadasaheb Surupsing Nayak Ayurved University, Dhule in respect of fixation of fees for repeater students, (Ref.No.5(d) of minutes 10/1/2012).

Considered the letter dated 10/10/2013 received from Dadasaheb Surupsing Naik Ayurvedic Mahavidyalaya, Dhule. It is in resepct of fee to be collected from repeater students. The college can collect the fee from such students pro-rata of the failed subjects (or example if the fee is Rs.1,00,000/- and there are five subjects, if a student fails in two subjects and it required to appear again for these two subjects, then college can charge Rs.40,000/-) for which they are required to appeared again. The fee is for the course and in case students is not able to complete the course within stipulated time, then College/Institute can charge the fee which is declared for the next course. For example the B.A.M.S. Course is 4 ½ years, if the fee declared for the Academic year 2011-2012 is Rs.1,00,000/- then it will continue for 4 ½ years. But thereafter it will apply the fee which is declared for the course started in Academic year 2015-16. The norm provides as under.:-

"1.5 The students admitted in the academic year 2013-14 and there after continuing their studies will pay an enhance fee of 5% till the completion of the course (during) the stipulated period of the course). For example if the fee is approved is Rs.1,00,000/- then from IInd years onward till completion of the course i.e. say II, III, and IV year the fee will be Rs.1,05,000/- per @. In case the students take Vth years

for completing the course then he shall pay the fee approved in that year.

The actual collection of fees to be done by institute and Samiti is not concerned with it. Office to inform.

Item No.6(b): To consider and decide on the complaint dated 17/10/2013 received from the Parents of the 1st year BAMS students ..V/s..Dadasaheb Surupsingh Nayik Ayurved University, Dhule.

Considered the letter dated 11/10/2013 received to have been written by an advocate on behalf of 25 students of Dadasaheb Surupsing Naik Ayurved Mahavidyalaya, Dhule. There are various grievances made against college. They are general in nature and for that, they have to approach 1) Central Council of Indian Medicine, New Delhi (CCIM) and 2) Maharashtra University of Health Sciences, Nashik (MUHS). In respect of admission fee, it can be collected. Similarly, college can collect repeater form fee as prescribed by the Maharashtra University of Health Sciences, Nashik. Similarly, though for the practicals no separate fee can be charged, practical form fee can be collected provided it is prescribed by Maharashtra University of Health Sciences, Nashik."

6. The affidavit filed by the Under Secretary of the Fees Regulating Authority (Shikshan Shulka Samiti) more particularly paragraph 3 reads thus:

> "3. The grievance of the students is in respect of charging the repeater fee without imparting the tuition/instructions by the concerned college. It is hereby clarified that, the college has to conduct the classes as per the syllabus prescribed by the Health University. The college can collect the repeater fee, only when they impart the instructions/tuition to the

> students for the failed subjects. In case the college is not providing tuition to the students for the failed subjects in such scenario the college is not entitled to collect the fees from students pro-rata of the failed subjects. Needless to add and mention, the student is required to pay the Form Fee as prescribed by the University and further any other fee which is payable to the University for appearing in the examination."

7. Upon perusal of the affidavit filed by the Fees Regulating Authority and Item Nos.6(a) and 6(b) as referred to supra, we do not find consistency in the same. The Shikshan Shulka Samiti has to consider the record and the grievance of the students and thereafter arrive at a conclusion as to whether tuition fees would be leviable by the College upon the repeater students for particular subject. For that purpose it would be necessary for it to scan the record.

8. In light of the above, we pass the following order:

ORDER

(i) The Fees Regulating Authority shall consider the grievances of petitioners and after going through the record, so also considering the stand of the Institution take decision with regard to the right of the Institution to charge tuition with regard to the failed subjects from the repeater students. The endeavour shall be

made to take said decision expeditiously as it is submitted that this is recurring issue. The petitioners may approach the Fees Regulating Authority on 25.03.2019. The Institution may also remain present before the Fees Regulating Authority on 25.03.2019 and are entitled to file its record. If it is possible the Fees Regulating Authority may take decision within a period of three months from the date of their appearance.

9. Till the decision is taken by the Fees Regulating Authority the Institution may not refuse to accept the examination form from the students only on the ground of repeaters tuition fees. The parties naturally would be bound by the orders passed by the Shikshan Shulka Samiti. The petitioners shall give undertaking to the Institution that if Shikshan Shulka Samiti decides against them, then they would pay the fees.

10. Writ Petitions are disposed of. No costs.

11. In view of disposal of writ petitions, civil applications also stand disposed of.

(A. M. DHAVALE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/March-19