

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

WRIT PETITION NO.2326 OF 2023

Seva Shikshan Prasarak Mandal's
Dr.N.J. Paulbudhe College of Education,
Shaneshwar Nagar, Vasant Tekadi,
Ahmednagar.

Through it's Superintendent
Shri Raghunath Sidaram Karampuri,
Age : 65 years, Occupation : Service,
R/o Tirumale, Nityaseva Colony,
Vasant Tekdi, Ahmednagar,
Tq. & Dist. Ahmednagar.

...Petitioner

-Versus-

1. The State of Maharashtra.
Through it's Secretary,
Higher Education Department,
Mantralaya, Mumbai.
2. The Commissioner and the
Competent Authority,
State Common Entrance Test
Cell, Maharashtra State,
Fort, Mumbai.
3. The Admission Regulatory Authority,
9th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort, Mumbai-01.
Through it's Chairman.

...Respondents

**WITH
CIVIL APPLICATION NO.4059 OF 2023
IN
WRIT PETITION NO.2326 OF 2023**

SMT.SMITA PRASAD BHISE @ SMITA RAMDAS BHAWAR
AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioners : Shri P.R. Katneshwarkar i/by Shri
Ambetkar Arvind G.

AGP for Respondent 1/State : Shri V.M. Kagne
Advocate for Respondents 2 and 3 : Shri M.D. Narwadkar
Advocate for the Applicants/ Intervenors : Shri K.D. Pote i/by
Shri A.P. Avhad

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CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 06th April, 2023

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*) :-

(a) Writ Petition No.2326/2023:-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner Education Society has put forth prayer clauses B, C and D as under:-

“B) Issue a writ of Mandamus or any other appropriate writ or order or direction in the like nature, the Hon'ble Court may kindly be pleased to quash and set aside the impugned communication dated 03.02.2023 issued by the respondent No.2 the Commissioner and Competent Authority of the Common Entrance Test Cell, Maharashtra State, Mumbai.

- C) *Issue a writ of Mandamus or any other appropriate writ or order or direction in the like nature, the Hon'ble Court may kindly be pleased to direct the respondent No. 2 the Commissioner and Competent Authority of the Common Entrance Test Cell, Maharashtra State, Mumbai to approve the admissions of 23 students for B.Ed. course mentioned in the list at Exhibit-E to this petition in the petitioner college for B.Ed. course for the academic year 2022-23.*
- D) *Pending the hearing and final disposal of this writ petition, the Hon'ble Court may kindly be pleased to direct the respondent No. 2 the Commissioner and Competent Authority of the Common Entrance Test Cell, Maharashtra State, Mumbai to approve the admissions of 23 students for B.Ed. course mentioned in the list at Exhibit-E to this petition in the petitioner college for B.Ed. course for the academic year 2022-23.”*

3. We have considered the submissions of the learned Advocates for the respective sides. We have perused the petition paper book and the affidavit in reply filed by the Commissioner and Competent Authority, State Common Entrance Test Cell, State of Maharashtra and the Secretary of Admission Regularity Authority, dated 13.03.2023.

4. Following dates and sequence of events are relevant:-

- (a) The Petitioner College has a sanctioned intake of

100 plus 10 (EWS) quota.

(b) The admission of students was regulated by the Competent Authority i.e. the State Common Entrance Test Cell.

(c) If any candidate accepts a seat with an allotted college, he/she has to deposit a sum of Rs.1000/- for confirmation of acceptance of the seat.

(d) For the academic year 2022-2023, the Petitioner had an intake capacity of 110 students for the B.Ed. course.

(e) “Very Important Instructions to the Colleges and Candidates” carries an important note that *“After the end of admission process all admitting colleges will upload the provisional allotment letter of all admitted candidate duly signed by the candidate and Admission Committee of the college along with college fee receipt and college ID card of the candidate within eight days from the cut off date of admission under any condition.”*

(f) 87 students were admitted prior to 24.12.2022.

(g) The issue before the Court is as regards admission of 23 students.

(h) The College contends that admission is effected before the cut off date 30.12.2022.

(i) The Competent Authority contends that these 23 admissions were effected after the cut off date.

(j) All these 23 candidates are in the order of merit and it is nobody's case that they are illegally picked and chosen or selected.

(k) Instructions to candidates and institutes indicate 27.12.2022 as the date prior to which the institutional round admissions must confirm such admissions.

(l) Cut off date of admission is 30.12.2022.

(m) The list of candidates seeking admission as per the merit list in the extended institute level round, must be confirmed by the college through the college login between 29.12.2022 till 30.12.2022.

(n) Each of these 23 students have confirmed their admission by depositing the seat confirmation amount of Rs.1000/-, on 24.12.2022.

(o) All these payments for confirmation of seats, were carried out between 1.53 pm to 2.41 pm on 24.12.2022, which is well within the cut off date of 27.12.2022.

(p) The College found it difficult to upload the final status of 23 admitted students on 30.12.2022 and therefore, the

College approached Respondent No.2 with a handwritten representation dated 30.12.2022, which was received by the inward clerk of the State CET Cell, Mumbai on 30.12.2022.

5. In the affidavit in reply, the Competent Authority submits that the admissions are irregular since they are after the cut off date and if such admissions are entertained, it would create a chaotic situation. The seat acceptance fees of Rs.1000/- cannot be termed as admission fees.

6. Shri Narwadkar, the learned Advocate for Respondent No.2, has relied upon the judgment delivered by the learned Full Bench of this Court in ***Mahatma Gandhi Mission, Aurangabad vs. The State of Maharashtra and others, 2008 (5) Mh.L.J. 913***, more particularly paragraphs 38, 49 and 56, which read as under:-

“38. *Non-adherence to schedule and granting untimely or midstream admissions have their adverse effects on the education system itself. Besides others, it also introduces the element of arbitrariness and defeating the merit oriented admissions. It is expected of all the bodies including the Central Council to work in coordination and ensure adherence to the notified calendar for admissions. Breach of this solemn object often results in disfunctional or un-reconcilable situation. The courts have in*

some cases granted admissions to balance the equities between the parties but jurisdiction of equity can hardly be exercised to defeat the law and particularly the merit. The courts would not and may not be able to supervise the admission process and, therefore, it is more than essential that court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India in accordance with the notifications and the judgments of the Supreme Court which alone will further the cause of fairness in admission process and excellence of educational standard.”

“49. *Larger question which needs to be deliberated and clarified by us is with regard to the strict adherence to the admission schedule and to ensure that rule of merit-cum- preference is not defeated, time period of courses is not curtailed, the admission system is timely completed and decisions are not taken at the eleventh hour. Midstream admissions beside generating litigation will have impact of frustrating the concept of fair and transparent admission system.”*

“56. *We have already noticed in some length that no irreparable loss or prejudice is being caused to the institutions particularly after commencement of terms. The rule is to follow the notification and exception is to direct its variance. We are of the considered view that upon correct analysis of the above enunciated law, present cases are not one's which would justify interference by this court in the current academic year. There has to be some exceptional and compelling circumstances before the court can find fault with exercise of statutory power by the Council as well as the Director of Technical Education in fixing these cut-off dates. These dates essentially are sacrosanct and, therefore, they should be adhered to. There is some inconvenience to the*

institutions for the current year merely because some seats may remain vacant would not justify judicial intervention as it inevitably result in defeating merit-cum- preference principle, timely commencement of courses, undue haste and manipulation of admission process by the institutions and lowering the academic excellence. Moreso, In the case of Harish Verma and others v. Ajay Srivastava and another, 2003(8) SCC 69, the Supreme Court while directing that only majority view given in a judgment would be a binding precedent, further set aside the judgment of the Full Bench of the Rajasthan High Court, holding that the regulations framed by the Medical Council of India had the force of law and they should be adhered to and even struck down and set aside the admission given contrary to such provision. It is also the obligation of the concerned authorities, Central or State to ensure that professional education should be made accessible on criteria of merit and preference to all eligible students on uniform basis. In other words, students should have an equal opportunity of indicating their preference relatable to their merit.”

7. From the dates and sequence of events set out herein above, it is clear that each of these 23 students had themselves transacted the payment of Rs.1000/- to the State CET Cell. If the Management could approach the Competent Authority personally on 30.12.2022 requesting for admission of these 23 students, it would indicate that it was aware of the cut off date 30.12.2022 and, therefore, it rushed to the Authority at Mumbai and tendered

a letter as well as the list of these 23 students. These 23 students had confirmed their admission by depositing the seat confirmation amount of Rs.1000/- on 24.12.2022, which was also within the cut off date.

8. The Petitioner had approached this Court in Writ Petition No.868/2023 raising the grievance that the representation put forth by the Petitioner was pending and no decision was taken. By the order dated 24.01.2023, this Court directed the Competent Authority to follow the due procedure laid down and deal with the issue of admission of 23 students.

9. The impugned communication dated 03.02.2023 addressed by the Commissioner, State CET Cell, Mumbai, confirms that the last date for admitting students was 30.12.2022. The communication served upon the State CET Cell by the Petitioner is dated 30.12.2022 thereby, indicating that the formalities for admitting 23 students were to be completed on that date as these students had deposited Rs.1000/- each for confirming the seat allotment made to them. The Commissioner of the State CET Cell mentions in the communication dated 03.02.2023, that the admission of the students for the B.Ed. course for the academic year 2022-2023 could be carried out till

30.12.2022. If this be so, the communication of the Petitioner received by the State CET Cell, undisputedly establishes that it was delivered to the said Authority by the Petitioner on 30.12.2022. This development, in the light of the observations of the Commissioner in the last paragraph of the communication dated 03.02.2023, therefore, leads to an inescapable conclusion that the admissions of these students were carried out prior to 30.12.2022 and the confirmed list of 23 students was delivered to the Competent Authority on 30.12.2022.

10. In the light of the above fact situation, paragraph 38 in *MGM (supra)*, would permit the admission of these 23 students since these students were not admitted by “*non adherence to the schedule*”.

11. In view of the above, **this Writ Petition is allowed** in terms of prayer clauses B and C, reproduced above.

12. Needless to state, the Petitioner College shall tender the original documents of these 23 students to Respondent No.2/ Commissioner and Competent Authority, State CET Cell, on or before 15.04.2023. Since the students are already attending the classes, these directions would not result in deferring or delaying the admission process. In the event, there are any deficiencies in

the original documents of the students, more particularly if the students claiming admissions from the reserved category, do not have the validity certificates, such admissions would not be regularized by the Authority, except by following the due process of law.

13. Rule is made absolute in the above terms.

(b) Civil Application No.4059/2023:-

The pending Civil Application does not survive and stands disposed off.

kps

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)