IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5705 OF 2023

Association of the Management of Unaided
Institute in Rural Area, Having its registered
Office : Gat No. 541/2A, Dattakala Shikshan
Sanstha, Swami Chincholi, Taluka Daud,
District Pune
Through its President
Shri. Ramdas Madhukar Zol,
Age 45 years, Occ. Social Worker,
R/o. A/p Washimbe Tq. Karmala,
District Solapur. ... **Petitioner**

VERSUS

1) The Union of India,
Through its Secretary,
Department of Social Justice and
Empowerment Ministry of Social
Justice and Empowerment,
New Delhi.

2) The State of Maharashtra,
Through : it's Secretary,
Social Justice and Special Assistant
Department, Mantralaya
Mumbai-32
And
State of Maharashtra
Through: it's Secretary,
Other Backward Bahujan Welfare Department
Annex Building-139, First Floor,
Mantralaya Madam Cama Road,
Hutatma Rajguru Chawk, Mumbai.

3) The Managing Director,
MAHA-IT, Maharashtra State
Mumbai.

4) Social Welfare Department
Through its Commissioner,
Pune.

5) Directorate of Other Backward
Bahujan Welfare Department,
Pune, Through its Director. ... **Respondents**

...

Advocates for Petitioner : Mr. Ruchir S. Wani and Mr. R.B. Jaju.
Advocate for Respondent No. 1 : Mr. Bhushan B. Kulkarni, Standing Counsel.
A.G.P. for Respondent Nos. 2, 4 and 5 : Mr. S.G. Sangle.
Advocate for Respondent No. 3 : Mr. P. V. Tapse.

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 23.08.2023
PRONOUNCED ON : 17.10.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr. Bhushan Kulkarni waives service for the respondent No. 1-Union of India, Mr. Sangale learned A.G.P. waives service for the respondent Nos. 2, 4 and 5 who are the respective Secretaries of the Social Justice and Special Assistant Department and Secretary of the Other Backward Bahujan Welfare Department of the State of Maharashtra and the Commissioner of Social Welfare Department and Directorate of the Other Backward Bahujan Welfare Department. Learned advocate Mr. Tapse waives service for the respondent No. 3 which is Managing Director of MAHA-IT.

2. The petitioner is an association of colleges undertaking various courses in the State of Maharashtra and duly registered under the Societies Registration Act, 1860 and the Maharashtra Public Trust Act, 1950.

3. The Union of India and the State of Maharashtra have formulated various schemes for students belonging to SC, ST, VJNT, OBC and Special Backward Class categories regarding payment of fees etc. which are as under :

(I) Post-Matric Tuition Fee and Examination Fee (Freeship) to

scheduled caste and scheduled tribes.

(II) *Post Matric scholarship to VJNT students.*

(III) *Tuition fee and examination fees to VJNT students.*

(IV) *Post Matric scholarship to OBC student.*

(V) *Tuition fees and examination fees to OBC student.*

(VI) *Post Matric scholarship to SBC student.*

(VII) *Tuition fee to examination fees to SBC student.*

4. According to these schemes, the Government disburses the amount under various heads to the Social Welfare Department and Directorate of Other Backward Bahujan Welfare Department. Once the amount is received by these two departments, the amounts are supposed to be disbursed to the accounts of the beneficiaries and the institutions concerned. It is alleged that in spite of respondent Nos. 4 and 5 having received money under respective heads for the academic years 2021-2022 and 2022-2023, they have not further disbursed these amounts in the Central Pool Account even after lapse of considerable period, longest being more than 405 days. Hence this petition under Article 226 of the Constitution of India with a prayer to direct the respondent Nos. 3 to 5 to disburse the amounts under various heads together with interest at the rate of Rs. 15% per annum from the date the bills were generated as described in detail in a tabulated chart annexed at Exhibit 'F' collectively.

5. One Mr. Shaikh Jalil Maula Shaikh working as a Regional Deputy Director of Other Backward Class Welfare Division, Aurangabad has filed affidavit on behalf of his department that is respondent Nos. 2 and 5, whereas one Jayshri Ravan Sonkawade working as a Regional Deputy Commissioner of the Social Welfare Division, Aurangabad on behalf of her department has filed separate affidavits. They have not raised any dispute about the fact that the institutions which are the members of the petitioner-Trust and similar other institutions are entitled to be reimbursed money under different heads under various schemes described herein above.

6. In the affidavit of Jalil Shaikh Maula he has described as to how the payments are processed in accordance with the Government resolution dated 12.10.2018 through State Government's Centralized Portal namely *'Maha-DBT'* portal. However, the entitlement of the institutions to be reimbursed for the academic year 2021-2022 and 2022-2023 has not been disputed. He has further stated that the amounts can be released except where there could be some technical issues where either the students accounts are not linked with the Aadhar or their accounts are blocked or frozen or the Aadhar is not mapped with the account or the beneficiary registration is pending at Public Financial Management System (PFMS). Besides, he has raised objection regarding maintainability of the writ petition in view of the remedy made available by the Government resolution dated 19.06.2018.

7. Ms. Sonkawade for the Social Welfare Department has in her affidavit not disputed about entitlement of the petitioner's members to get the reimbursement for the academic year 2021-22 and 2022-23. She has also given a chart *inter alia* mentioning that an aggregate of Rs. 248.51 crore and 163.83 crore for the academic year 2021-22 and 2022-23 totally Rs. 412.34 crore have been disbursed and still admit that amount of Rs. 67.52 crore and 1.58 crore totally Rs. 69.10 crore for the respective years are in process to be paid over. It has been further committed in the affidavit in reply that the disbursal would happen regarding the balance within 10 working days and all the pending bills would be cleared.

8. The learned advocate for the petitioner would vehemently submit that though the Government has undertaken a social responsibility of not depriving the students of various weaker sections from taking education for want of money and has come out with different schemes described herein above, the institutions have been mandated to admit the students of such weaker sections and are supposed to claim reimbursement of tuition fees, examination fees etc. Though there is a scheme in place and even there is no dispute about how such disbursement can happen, the issue is regarding the

artificial obstruction created by the departments which results in delayed reimbursements. He would submit that in spite of the two departments, Social Welfare and Other Backward Class having received money from the Government by following the set procedure, in spite of generation of bills whereupon even according to DDO workflow and payment process flow they are supposed to transfer these amounts to the Central Pool Account, they do not promptly transfer such money and in the result the beneficiaries that is institutes and students do not get the money in time. Rightful claim of these institutions are denied.

9. He would submit that though the affidavit in reply mentions about release of amount of Rs. 412.34 Crore conveniently it omits to state exact date on which money was released. He would submit that in fact on the date of petition only an amount of Rs. 28 crore was released and it is only after issuance of notice in the writ petition that the amount of Rs. 384 crore has been released. He would point out that still Rs. 67.52 crore of the academic year 2021-22 is to be released. The affidavits in reply do not even seek to explain the delay in releasing the money though technically the compliances mentioned in the affidavit in reply have to be made, those were already made even before the treasury released the money. Once the treasury releases the money it is incumbent on the part of the respondents to deposit it in Central Pool Account. The respondent Nos. 4 and 5 miserably failed to obey the instructions in the Government resolution dated 12.10.2018 and the petitioner having been deprived of its legitimate claim to receive the money should be awarded interest at the rate of 15% p.a.

10. Learned A.G.P. referring to the affidavits in reply submits that it was merely a procedural delay. There was no deliberate attempt to defer the payments to the beneficiaries. It is only after following due process as contemplated in the Government resolution dated 12.10.2018 that the beneficiaries of various schemes are being paid directly through 'Maha-DBT Portal'. Major component has already been disbursed and only Rs.67.52 crore

has remained to be released and would be released shortly.

11. The learned A.G.P. would also submit that in fact contemplating occurrence of such disputes, by virtue of Government resolution dated 19.06.2018 alternate remedy is provided and apart from students even the institutions are supposed to resort to the remedy and in view of such alternate remedy available in the form of not only the original proceeding but even appeal, the writ petition is not maintainable.

12. We have considered the rival submissions and perused the papers.

13. As can be appreciated, in fact there is nothing to be decided except the right of the petitioner's to claim interest for the delayed payment. The parties are *ad idem* that under the aforementioned various schemes modalities have been prescribed for disbursal of the money to the beneficiaries, students as well as institutions. It is a common ground that all such disbursals take place through Maha-DBT Portal conceived and developed by the Department of Information Technology, Government of Maharashtra. There is also no dispute about the DDO workflow and the payment process flow (Exh. 'R-3'). Long and short of the issue is as to if, considering the workflow and payment process flow process, there could be any occasion for the concerned departments-respondent Nos. 4 and 5 who have been designated as Drawing and Disbursing authorities to stall transfer of the money received in 'scheme specific account' maintained with the State Bank of India to the Central Pool Account. The specific averment that no sooner the respondent Nos. 4 and 5-departments received the money they are under obligation to transfer it to the Central Pool Account, has not been disputed. Rather the Government resolution dated 12.10.2018 in column No. 8 expressly lays down that once the Drawing and Disbursing authorities receive the funds on submission of bills to the treasury, the funds would be transferred to the scheme specific account and as soon as possible the Drawing and Disbursing authorities should credit it to the Central Pool Account through which by activiting 'E' voucher the beneficiaries' accounts would be credited.

14. If such are the modalities and the payment process flow, it was well neigh imperative for the respondents to have come out with some explanation for the lapse in not transferring the money immediately after the funds were received in the scheme specific accounts, as soon as possible. There is absolutely no whisper in the two affidavits in reply as to why the respondents could not soon after receipt of funds in the scheme specific accounts credited those to the Central Pool Account thereby avoiding further disbursal. The affidavits are conveniently silent as to when the funds were actually disbursed, as has been pointed out by the learned advocate for the petitioner. The affidavit of Regional Deputy Commissioner of Social Welfare Division though mentions about release of the funds to the tune of Rs. 316.03 crore, neither it states reason for the delay nor gives the specific date/s when the funds were disbursed. So far as the remainder of 67.52 crore at least an attempt has been made stating that due to technical issues relating to Aadhar seeding of the beneficiaries, errors and compliances in PFMS, mismatch of VAN no. and reconciliation of concerned banking systems were the reasons for the delay.

15. Even the State Government seems to be alive to the fact that there could be several such instances of disputes in respect of the benefits to be derived by various stake holders under the various schemes. Perhaps, that is the reason even some mechanism to put up a grievance and its redressal has been provided in the Government dated 19.06.2018 of the VJNT, OBC and ESBC department. If such is the seriousness of the issue which has even compelled the State Government to set up a mechanism for redressal of the grievances of the beneficiaries, the authorities were expected to be equally prompt and serious in disbursal of the funds. The circumstances clearly demonstrate total apathy on the part of the respondents-authorities in protecting the interest of the beneficiaries and the stake holders, in spite of the modalities having been provided for disbursal of the fund. Any reluctance on the part of the authorities to obey it is certain to land the beneficiaries and

the stake holders in trouble.

16. The declared social objective of the State Government does not allow the institutions to refuse to admit a student of such reserved category but on the other hand its departments are not efficient and prompt enough to protect their interest. The institutes cannot be expected to undertake any social cause. If they are running the educational institutions it is imperative for them to provide necessary infrastructure to maintain the standard of education. They are required to go on with the activity with the equal seriousness but are not reimbursed their legitimate dues promptly. We, therefore, find the concern expressed by the petitioner to be legitimate deserving attention of the State and its various departments. Even when their right to claim reimbursement is accepted, the actual benefits are not released. This cannot be the approach of the State. It needs to take remedial measures to obviate such delays in releasing the funds to the stake holders including the institutions.

17. The Government resolution dated 12.10.2018 expressly requires the Drawing and Disbursing authorities to credit the funds received in the scheme specific accounts to the Central Pool Account as early as possible. It is only after they receive the funds in the scheme specific accounts, the further process would go on which going by the workflow and payment process flow does not involve any further steps to be taken by the beneficiaries except to redeem the benefits by activating the 'E' vouchers. The stand of the respondents is clearly erroneous and not sustainable.

18. As far as the objection regarding maintainability of the writ petition is concerned, indeed, the Government seems to have provided a mechanism for ventilating the grievances of the beneficiaries. However, the issue involved in the present writ petition, in our considered view, is not a grievance seeking to derive some benefit under the various schemes. The right of the petitioner's members/institutes is not under any cloud. It is only a matter of delay in receiving the funds by them which even the respondents do not dispute. So

the grievance is not regarding the right to receive but after a right is established to derive its benefit in the form of funds. It is only in the former case that the beneficiaries can be expected to resort to the remedy provided by the Government resolution dated 19.06.2018. Therefore, the objection raised by the respondents on the ground of availability of the alternate remedy does not appeal to us. This Court in exercise of the powers under Article 226 has ample powers to remedy the issue as is being raised in the present matter.

19. Since, admittedly, except the balance amount of Rs. 67.52 crores even regarding which the affidavit in reply filed by the respondent No. 5 undertakes to release the funds, the rest of the fund has already been released to the petitioner's members/ institutions, the only issue that survives is regarding the rights of such institutions to claim interest.

20. Since the petitioner's members' rights to receive funds under the various schemes is not in question, it would be a money claim. As far as the right to claim interest is concerned, the provisions of the Interest Act, 1978 would apply. By issuing legal notices (Exhibit 'G' collectively) specific amounts were claimed by the petitioner from the respondents giving a detailed chart, specifically putting the respondents to notice that on failure to release the funds demanding interest at the rate of 15% p.a. The petitioner's members/institutes will not be entitled to claim interest at such exorbitant rate. They would only be entitled to claim such interest at the rate laid down under Section 3 of the Interest Act equivalent to the interest being paid by the Nationalized Banks on deposits, in our considered view the petitioner's members/institutes would be entitled to claim simple interest at the rate of 6% p.a. on the respective amounts to which they are entitled to from the date the respondent nos. 4 and 5 have received the funds in the scheme specific accounts till those were credited in the Central Pool Account. Obviously, these details are not provided either by the petitioner or the respondents. However, we feel it appropriate that the respondents can independently work

out these details. Consequently, we feel it appropriate to declare that the petitioner's individual members/institutions would be entitled to such interest for such delayed credit in the Central Pool Account.

21. The Writ Petition is partly allowed. It is declared that the petitioner's members/institutes are entitled to claim simple interest at the rate 6% p.a. on the amounts of Post-matric tuition fees, examination fees (Freeship) of the students belonging to SC/ST and tuition fee, examination fee and post-matric scholarship of the students belonging to VJNT, OBC, SBC studying in the respective colleges, schools, from the date of generation of the bills till the funds were transferred to the Central Pool Account. It shall be the responsibility of the respondent nos. 4 and 5 to work out these details and pay the amounts of interest to the respective institutes as expeditiously as possible and in any case within four months from today.

22. The respondents shall immediately release the remaining funds of Rs. 67.52 crore and 1.58 crore mentioned in the affidavit in reply filed on behalf of the respondent nos. 2 and 4, if not already disbursed, within six weeks from today. If it is not so disbursed as stipulated even these amounts would carry simple interest at the rate of 6% per annum as mentioned herein above. It would be open for the State Government if it so decides to recover this component of interest personally by fixing responsibility on the erring officials.

23. Rule is made absolute in above terms.

(SHAILESH P. BRAHME, J.) **(MANGESH S. PATIL, J.)**

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