

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

WRIT PETITION NO. 470 OF 2021

1. Namdeo S/o Janardhan Karad,
Age – 45 yrs, Occu- Service,
R/o – at present Parmeshwar V. Kande,
Above Ranwara Hotel, Kande
Mama Canel Corner, Taroda Naka,
Malegaon Road, Nanded,
Tq. & Dist. Nanded-431605.
2. Dnyaneshwar S/o Tukaram Sakhare,
Age-42 yrs, Occu.-Service,
R/o-at Present flat no-303
Shrinagesh Apt, Balaji Nagar,
Taroda bk-Nanded-431605.
3. Santosh S/o Maruti Gore
Age- 48 yrs, Occu- Business
R/o At present “Shakuntala” - 15,
Swastik Nagar Shiv Road, Taroda
Bk Nanded, Tq. & Dist.
Nanded-431605

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education and Sports Dpt
Mantralaya, Mumbai – 400 032.
2. The Director of Education,
Secondary and Higher Secondary
Education, Central Building,
Dr. Annie Basent Road,
M. S. Pune – 1.
3. The Deputy Director of Education,
Sub-Divisional Office,

Gandhi Chowk, Latur.

4. The Education Officer (Secondary),
Zilla Parishad, Nanded,
Dist. Nanded.
5. The Principal,
Little Scholar's Public School,
Behind of SBI Bank, Bhavsar Chowk,
Malegaon Road, Nanded,
Tq. & Dist. Nanded 431605.
6. The Principal,
Shakuntal School for Excellence,
Pasadgaon, Malegaon Road,
Nanded, Tq. & Dist. Nanded 431605.
7. The Principal,
Dnyanbharti Vidyamandir,
Patil Colony, Puyani Nila Road,
Nanded, Tq. & Dist. Nanded 431605.
8. The Principal,
Oxford The Global School,
Puyani Nila Road, Nanded,
Tq. & Dist. Nanded 431605.
9. The Principal,
Holy City Public School,
Pasadgaon, Malegaon Road,
Nanded, Tq. & Dist. Nanded 431605. .. Respondents

Ms. Kavita S. Bhale, Advocate for the Petitioners.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 4.

Shri S. R. Bagal, Advocate h/f Shri B. N. Gadegaonkar, Advocate
for the Respondent Nos. 5 to 7 and 9.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT/ORDER : 16.10.2023
JUDGMENT/ORDER PRONOUNCED ON : 08.11.2023

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With consent heard learned counsel for respective parties finally at the admission stage.

2. The petitioners principally are seeking implementation of the Government Resolution dated 13.06.1996. They are seeking directions to refund the amount of fees paid by them for their wards. They are also challenging the communication dated 18.08.2018 issued by the respondent No. 4/Education Officer.

3. By Government Resolution dated 13.06.1996, the State Government promulgated free studentship scheme for the wards studying in standards I to X. The scheme is applicable for the wards of primary, secondary and higher secondary teachers and non teaching employees. It is made applicable to the wards studying in aided and unaided schools run by the private management and local bodies. The modalities of the scheme are provided by Schedule – I and II. The rate of fees is prescribed by the Schedule I-A. The wards of the teachers are exempted from paying tuition fee, term fee and admission fee at the rate as prescribed in the Schedule I-A.

4. The petitioner Nos. 1 and 2 are teachers whose sons are studying in different private schools. The petitioner No. 3 is a

businessman, his two daughters are studying in the private schools. As per Clause 13 of the G. R. dated 13.06.1996, he is claiming freeship for the daughters.

5. It is the case of the petitioners that their wards are studying in the private schools which are subsequently impleaded as respondent Nos. 5 to 9. They were admitted in the schools and the petitioners were required to pay their fees despite there is scheme of free studentship. The petitioners made correspondence from the year 2016 onwards to their respective schools as well as Education Officer claiming refund of the fees paid. There was no positive response. The respondent No. 4/Education Officer responded to the school authority of the ward of the petitioner No. 1 on 18.08.2018 stating that the total fees exempted would be Rs. 90/-. The said letter is challenged in this petition.

6. The learned counsel for the petitioners submits that the respondents have failed to implement the G. R. dated 13.06.1996, when the petitioners were satisfying all the parameters. From time to time the correspondence has been made to the respondents seeking refund of the fees, but there is no response. The total fee paid by the petitioners to the respective private schools needs to be refunded. The action of the respondents is stated to be arbitrary and against Article 21 of the Constitution of India. The petitioners have placed on record the amount of fees paid to the private schools which is much higher than what is quoted in the impugned letter dated 18.08.2018. Our attention is

drawn to the correspondence received from the schools demanding the fees more than the rate prescribed.

7. The learned counsel would submit that the representation cum appeal was also preferred to the respondent No. 1, but there is no reply. The learned counsel seeks to rely upon the **decision dated 11.04.2018 passed by this Court in the matter of Sarika Sanjay Gaikwad Vs. The State of Maharashtra and others in Writ Petition No. 969 of 2017**. It is prayed that on the ground of parity, the petitioners are entitled for refund of the fees.

8. The respondents have contested the petition by filing distinct affidavits in reply. The respondent No. 5 private school has also filed reply and opposed the claim. It is contended that the petitioners are not entitled to refund of the fees because G. R. dated 13.06.1996 is not applicable to the permanently unaided schools or self financed schools. It is further stated that the applications seeking freeship were not submitted within 30 days from the date of admission. The time schedule stipulated in the policy has not been followed. The reimbursement is permissible to the extent of rates prescribed.

9. It is further contended that the decision in the matter of **Sarika Sanjay Gaikwad Vs. The State of Maharashtra and others** (supra) is not applicable in the present case. The respondent No. 5 has stated that it is a permanently non grant school, which is not covered by the G. R. in question. The documents showing permission to open the schools are placed on record.

10. The petitioners have filed affidavit in rejoinder reiterating the facts already pleaded. It is denied that the petitioner No. 3 has filed application after completion of post graduation. The application is stated to have been filed on 24.10.2018, when the daughter was in VIII standard. The stand in the affidavit in reply is refuted by the petitioners.

11. There is further affidavit in reply filed by the respondent No. 4 reiterating the stand taken by the respondents. It is additionally stated that the petitioners are not entitled to claim any benefit under Section 12(1-C) of the Right of Children to Free and Compulsory Education Act 2009. The rates prescribed for the refund are stated to have been provided by the G. R. dated 13.06.1996.

12. We have considered rival submissions of the parties and perused the documents placed on record.

13. The petitioners are seeking implementation of the G. R. dated 13.06.1996. The wards of the petitioners were admitted in the respondents private schools. The respondent Nos. 5 to 9 schools are subsequently impleaded as parties to the petition. The petitioner Nos. 1 and 2 are the teachers. The petitioner No. 3 has two daughters. Their entitlement is under different clauses of the same resolution.

14. It can be gathered that ward of the petitioner No. 1 was admitted from 2011-2012. Upto 2020-2021 a total fees of Rs. 1,22,100/- was paid. On 30.11.2016 for the first time application was made for refund of the fees. Thereafter couple of applications were made seeking benefit of the freeship. Reliance is placed on letter dated 13.09.2017 issued by the respondent No. 4/Education Officer. It was in respect of ward of petitioner No. 1. The impugned letter dated 18.08.2018 is also issued in the case of petitioner No. 1.

15. The petitioners have failed to provide details of wards of petitioner Nos. 2 and 3. The commencement of their education, the schools in which they were admitted and any correspondence received from the respondent authorities are absent. It appears that petitioner No. 2 submitted application on 25.09.2017 for the first time seeking benefit of Government Resolution. Petitioner No. 3 made application on 26.12.2019.

16. The petitioners have placed on record the correspondence made after 2016-2017 to various authorities. However, the individual centric data is absent. Few details of payment of fees are placed on record, but there is no supportive pleadings to that effect. We find that the petition memo lacks specific pleadings to support the documents and the grounds raised.

17 The learned counsel for the petitioners has only emphasized that the petitioners are covered by the G. R. dated

13.06.1996. It is expected to demonstrate by proper pleadings and material on record that the petitioners are entitled to, but illegally deprived of the benefits. The conditions are stipulated by Schedule – I and IA appended to the G. R. dated 13.06.1996. Unless the parameters laid down are satisfied, the emotional submissions may not assist the petitioners.

18. The petitioners have not explained when their wards were admitted first and which was the school. The petition memo lacks material particulars. It is also not made clear when the petition is filed what was the status of the wards. To claim benefit of the policy, it is expected that individual centric data should be placed before the Court to determine the entitlement.

19. The respondents have strongly contested the matter on the ground of delay. Schedule II of the resolution in question, which is at page No. 26 provides in clause No B, the limitation of one month from the date of admission for submitting proposal to the Education Officer. It is not made clear by the petitioners when their wards were admitted in the respondent schools. The petitioner No. 1 has made first application on 30.11.2016. The petitioner No. 2 made application on 25.09.2017. The petitioner No. 3 made application on 27.09.2017. There is no material on record to show that prior to above dates, any proposals were forwarded seeking benefit of the free studentship scheme. The applications are not made by the petitioners within stipulated period of 30 days from the date of admission of their wards. The respondents have rightly contended that the claims of the

petitioners are inordinately belated.

20. There is significance for making application within thirty days from the date of admission. The authorities concerned have to comply the formalities which are essential to ascertain the entitlement of a claimant. In case of belated applications there is doubt to genuineness of the claims. We have considered this aspect of the matter in our **order dated 04.10.2023 in the matter of Kanchan Dashrathrao Devade Vs. The State of Maharashtra and others in Writ Petition No. 7040 of 2021**. In that matter we were dealing with the G. R. dated 19.08.1995 which was also on similar lines. We, therefore, are not with the petitioners by ignoring the aspect of delay.

21. The respondents have objected the claim of the petitioners on the ground that the scheme promulgated by the G. R. dated 13.06.1996 is applicable to aided and unaided schools. It is not applicable to permanently non grant schools or self financed schools. Our attention is drawn to Clause No. 2 of the G. R. The respondent No. 5 has contended in the affidavit in reply that Little Scholar's Public School is a permanent non grant school.

22. The documents showing permission on permanent non grant basis is placed on record along with the reply. The petitioners have not placed on record the status of the respondent Nos. 6 to 9 schools. We have to infer that all the schools are permanently non grant schools. They are not covered by the policy in question. We are constrained to observe that the

petition is lacking material particulars in this regard also.

23. The learned counsel for the petitioners has submitted that the letter dated 18.08.2018 issued by the Education Officer states the entitlement to the extent of Rs. 90/- only, whereas the private schools have charged huge fees from the petitioners. The petition memo refers to chart X in para No. 14. The letter dated 18.08.2018 pertains to the petitioner No. 1. There is nothing on record to show that in case of the petitioner Nos. 2 and 3 any such correspondence is ever made.

24. The scheme as per G. R. dated 13.06.1996 is to exempt tuition fees, term fee and admission fee at the prescribed rates. The rates are prescribed by Schedule IA. For all the standards, cities and the schools, the rates are prescribed. The prescribed rates are applicable for the reimbursement. The charging of the fees by the private schools is totally irrelevant and not covered by policy in question. The petitioners cannot be heard to claim the reimbursement of the fees stated in chart X of para No. 14 of the memo. We do not find any merit in the claim of the petitioners.

25. The petitioners have placed on record the payment of fees as well as demand raised by the schools. We have already recorded that the scheme is not applicable to the schools where the wards of the petitioners were taking education. On the ground of delay we have expressed our inability to accept the submissions. We have also observed that the petition lacks in material particulars. Therefore, grievance tried to be raised by

the petitioners cannot be entertained.

26. The learned counsel for the petitioners has submitted that in the year 2011-2012, the Self Finance Schools (Establishment and Regulation) Act, 2012 was not in force. We are unable to accept the submissions. The judgment rendered in **Sarika Gaikwad** (supra) is of no assistance to the petitioner. Plea of delay and applicability of policy were not raised in that matter.

27. We find that the petition is sans merit and is dismissed. However, there shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Nov. 23