



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

WRIT PETITION NO. 3524/2011

1. Mahatma Fuley Shikshan Prasarak Mandal, through its President, Patur, Taluka Patur, District : Akola.
2. Mahatma Fuley Arts and Science College, Through its Principal, Patur, Tq. Patur, District : Akola.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra, Through its Secretary, Department of Higher and Technical Education, Mantralaya, Mumbai.
2. Director of Higher Education, Maharashtra State, Pune.
3. Sant Gadgebaba Amravati University, Amravati.

RESPONDENTS

Shri A.P. Raghute, counsel for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1 and 2.
Shri S.S. Ghate, counsel for the respondent no.3.

WITH

WRIT PETITION NO. 3829/2013

1. Shri Shivaji Education Society, Congress Nagar, Amravati – Through its Secretary.
2. Dr.H.N. Sinha Arts & Commerce College, Patur, Distt. Akola, run by Shri Shivaji Education Society, Amravati - through its Principal.

PETITIONERS

.....VERSUS.....

1. The State of Maharashtra, Through its Secretary, Department of Higher Education, Mantralaya Extn. Building, Mumbai : 32.
2. The Director of Higher Education, Maharashtra State, Pune.
3. The Joint Director of Higher Education, Amravati Division, Amravati.
4. Mahatma Fule Shikshan Prasarak Mandal, Patur, Distt. Akola – through its Secretary.
5. Mahatma Fule Arts & Science College, Patur – run by Mahatma Fule Shikshan Prasarak Mandal, Patur, Distt. Akola – through its Principal.

RESPONDENTS

Shri P.B. Patil, counsel for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1 to 3.
Shri A.P. Raghute, counsel for the respondent nos.4 and 5.

WITH
WRIT PETITION NO. 8602/2018

1. Shri Shivaji Education Society, Congress Nagar,
Amravati – Through its Secretary.
2. Dr.H.N. Sinha Arts & Commerce College, Patur,
run by Shri Shivaji Education Society, Amravati -
through its Principal.

PETITIONERS

.....VERSUS.....

1. The State of Maharashtra, Through its Secretary,
Department of Higher Education, Mantralaya
Extn. Building, Mumbai : 32.
2. The Director of Higher Education, Maharashtra State, Pune.
3. The Joint Director of Higher Education,
Amravati Division, Amravati.
4. Mahatma Fule Shikshan Prasarak Mandal, Patur,
Dist. Akola – through its Secretary.
5. Mahatma Fule Arts & Science College, Patur – run by
Mahatma Fule Shikshan Prasarak Mandal, Patur,
Dist. Akola – through its Principal.
6. Sant Gadge Baba Amravati University, Amravati,
through its Registrar.

RESPONDENTS

Shri P.B. Patil, counsel for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1 to 3.
Shri A.P. Raghute, counsel for the respondent nos.4 and 5.
Shri S.S. Ghate, counsel for the respondent no.6.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : JULY 20, 2023

DATE ON WHICH JUDGMENT IS PRONOUNCED : SEPTEMBER 20, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

These three writ petitions have been heard together and are being decided by this common judgment since interlinked issues arise for consideration therein.

2. By Government Resolution dated 04.02.2008 the Higher and Technical Education department of the State of Maharashtra came up with a policy to ensure that in each Taluka in the State of Maharashtra there would be one aided degree college. It was stated in the said Government Resolution that initially by the earlier decision dated 17.06.1995 the policy of ensuring availability of a grant-in-aid college in each Taluka was being implemented. With a view to ensure further compliance of the same, the Government Resolution dated 04.02.2008 was being brought into force. As per the said Government Resolution, grant-in-aid was to be made available to the colleges fulfilling various terms and conditions. Selection of a college for entitlement to grant-in-aid was to be on the basis of merit. For a college to be entitled to receive grant-in-aid, it was necessary that there were no irregularities in the management of the college, selection of staff and that there were no pending criminal matters against the Office bearers of the Education Society. Pursuant to the said Government Resolution, Mahatma Fule Shikshan Prasarak Mandal (for short, 'MFSPM') that was running Mahatma Fule Arts and Science College, Patur sought grant-in-aid pursuant to the advertisement dated 17.10.2008 that was published in various newspapers by the Directorate of Higher Education, Pune. In accordance with the prevailing policy a Task Force was constituted to examine the claims made by various institutions. It is the case of the said college that despite a positive recommendation made by the Task Force for release of grant-in-aid, no decision in that regard was being taken by the State Government. The

said petitioners therefore filed Writ Petition No. 3524 of 2011 with a prayer that the State Government ought to act as per the recommendations of the Task Force dated 02.08.2009 and thereafter release grant-in-aid to enable the college to run its science stream.

3. Shri Shivaji Education Society, Amravati (for short, 'SSES') is running Dr.H.N. Sinha Arts and Science College at Patur, District Akola. Pursuant to the advertisement dated 17.10.2008 that was published by the Directorate of Higher Education, it had also applied for benefit under the grant-in-aid scheme in the light of the Government Resolution dated 04.02.2008. After giving a Power-Point presentation before the Task Force it is the case of the college that on 21.06.2011 the said Task Force recommended its college for grant-in-aid. The Department of Higher and Technical Education considered the recommendations of the Task Force pertaining to Taluka Patur, District Akola. Two colleges being Mahatma Fule Arts and Science College, Patur and Dr.H.N. Sinha Arts and Science College, Patur were under consideration by the Higher and Technical Education Department for entitlement to grant-in-aid. The said Department on 06.06.2013 held the College run by MFSPM entitled to 100% grant-in-aid for its science stream. Being aggrieved by the decision of the Higher and Technical Education Department dated 06.06.2013, SSES has challenged the same in Writ Petition No. 3829 of 2013.

4. During pendency of the present proceedings, order dated 29.11.2017 was passed in Writ Petition No. 3524 of 2011, by which a direction was issued to the Ministry of Higher and Technical Education to consider the proposal that had been moved by the College run by MFSPM for releasing grant-in-aid for the period from 2008-09 to 2011-12. The said direction was issued in the backdrop of the fact that the claim in that regard was made pursuant to the Government Resolution dated 04.02.2008. A review of the aforesaid order was sought by SSES and by the order dated 10.04.2018, the Division Bench clarified that the earlier order dated 29.11.2017 directing the Ministry of Higher and Technical Education to consider the entitlement of the College run by MFSPM to release of grant-in-aid for the period from 2008-09 to 2011-12 would be subject to the result of Writ Petition No. 3829 of 2013 wherein challenge was raised to the decision of the Ministry of Higher and Technical Education to provide grant-in-aid to the College run by MFSPM. It was further clarified that in case the writ petition was allowed, the said College would have to restore the position as prevailing on the date of passing of the order providing grant-in-aid.

In compliance with the aforesaid direction, the Ministry of Higher and Technical Education considered the entitlement of the College run by MFSPM for grant-in-aid for the period from 2008-09 to 2011-12. On 21.03.2018 it passed an order holding the said College entitled to grant-in-aid for the aforesaid period and found it entitled for a sum of

Rs.14,46,722/-. Being aggrieved by this order, SSES has challenged the same in Writ Petition No. 8602 of 2018.

5. Shri P.B. Patil, learned counsel representing SSES while raising a challenge to the Government Order dated 06.06.2013 by which 100% grant-in-aid was made available to the College run by MFSPM submitted that pursuant to the policy dated 04.02.2008 an advertisement was issued on 17.10.2008 by the Directorate of Higher Education, Pune. In the same matter a fresh advertisement came to be issued in October-2010 wherein it was stated that the earlier proposals made pursuant to the advertisement dated 17.10.2008 had lapsed and therefore fresh proposals were required to be submitted. SSES responded to the said advertisement and submitted its proposal to the Task Force as constituted for examining the entitlement of various institutions to receive grant-in-aid. Since its claim was found to be on a better footing, the five member Task Force by its communication dated 21.06.2011 forwarded its proposal to the State Government. Without indicating any reason whatsoever the State Government proceeded to extend 100% grant-in-aid to the College run by MFSPM. It was submitted that the comparative analysis made by the Task Force clearly indicated that the College run by SSES was in a better position on various aspects than the College run by MFSPM. While the College run by SSES was owning its own building, the College run by MFSPM was in a rented premises. Its College had also received NAAC Accreditation which was missing in the case of

College run by MFSPM. Without indicating any reason whatsoever for preferring the College run by MFSPM over the College run by SSES for receiving grant-in-aid, the impugned order dated 06.06.2013 had been passed. Inviting attention to the affidavit-in-reply filed on behalf of the Department of Higher and Technical Education, it was submitted that the only reason why the College run by SSES was not granted benefit of the Government Resolution was that an Office bearer of the Education Society was stated to be involved in a criminal case which was therefore a disqualification in view of Clause 6 of the Government Resolution dated 04.02.2008. In that context it was submitted that no Office bearer of the Education Society was involved in any criminal case whatsoever. First Information Report No.18 of 2010 dated 03.02.2010 had been filed against the officiating Principal of another College run by SSES. In terms of Clause 6 of the said Government Resolution it was only if any Office bearer of the Education Society was involved in any criminal case that the same would constitute a disqualification. Without verifying the relevant facts and without considering First Information Report No. 18 of 2010 the claim of the College was turned down in a manner contrary to the Government Resolution dated 04.02.2008. Since this was the only reason for holding the College run by SSES as disqualified, the order dated 06.06.2013 was unsustainable.

It was further submitted that under the impugned order dated 06.06.2013 a relevant condition imposed was that if the concerned college

had been established prior to five years then within a period of one year from the date of the order providing grant-in-aid, it ought to acquire NAAC Accreditation. With regard to a college that had not completed the period of five years, on completion of said period of five years such NAAC Accreditation was required to be obtained within a period of one year thereafter. The College run by MFSPM had been established in the year 2003-04 and hence when the order dated 06.06.2013 was passed it had already completed the period of five years since establishment. Despite that within a period of one year from the order dated 06.06.2013 the said college had not even applied for NAAC Accreditation. Therefore, in terms of Condition No.6 of the order dated 06.06.2013 the grant-in-aid was liable to be discontinued. Since the order dated 29.11.2017 passed in Writ Petition No. 3524 of 2011 had been made subject to the outcome of the Writ Petition No. 3829 of 2013, if the order dated 06.06.2013 was set aside, the College run by MFSPM would not be entitled even for grant-in-aid for the period from 2008-2009 to 2011-12 and the amount of grant-in-aid received would be liable to be made good to the College run by SSES. The learned counsel submitted that the order dated 20.03.2018 passed by the Ministry of Higher and Technical Education also did not indicate any reason whatsoever and proceeded to hold the said College entitled for grant-in-aid only in view of the directions issued by this Court on 29.11.2017. It had already been clarified in the order of review dated 10.04.2018 that the claim ought to be considered independently on its own merits. Despite that,

no reason was indicated in the impugned order and the same appeared to have been passed only on the ground that the respondent no.1 had been directed to consider such claim. The report of the Director of Education that was sought to be obtained under the provisions of the Right to Information Act, 2005 also does not indicate any justification for holding the College run by MFSPM entitled to grant-in-aid. On these counts, it was submitted that the orders dated 06.06.2013 and 20.03.2018 passed by the Ministry of Higher and Technical Education holding the College run by MFSPM entitled to grant-in-aid from 2008-09 to 2011-12 and thereafter were liable to be set aside and consequential orders were liable to be passed.

6. Ms N.P. Mehta, learned Assistant Government Pleader for the State Authorities opposed the prayers made in the writ petitions preferred by SSES. She referred to the affidavit-in-reply filed by the respondent nos.1 to 3 in Writ Petition No. 3829 of 2013 and submitted that the Ministry of Higher and Technical Education had considered both the proposals as per the recommendations of the Task Force. Since it was found that criminal proceedings against one of the office bearers of SSES was pending the College run by it was found to be disqualified to receive grant-in-aid in view of Condition No.6 of the Government Resolution dated 04.02.2008. It was submitted that pendency of the criminal proceedings ought to have been disclosed by SSES in its application but the same was not so disclosed. Attention was invited to First Information Report No. 18 of 2010 dated

03.02.2010 to urge that there was a reference to the office bearers of SSES in the said report. The claim of the College run by SSES was considered but in view of Condition No. 6 of the Government Resolution, the College run by MFSPM was found entitled to the benefit of grant-in-aid as per the said Government Resolution. The matter with regard to grant-in-aid was discretionary and on finding the claim of the College run by MFSPM to be deserving, such benefit was granted. On this count, there was no reason to interfere with the order dated 06.06.2013. Similarly as regards the order dated 20.03.2018 it was submitted that the fact that Condition No. 6 of the Government Resolution dated 04.02.2008 was not satisfied by the college run by SSES was taken into consideration and by complying with the order dated 29.11.2017 passed in Writ Petition No. 3524 of 2011 the College run by MFSPM was found entitled to receive grant-in-aid for the period from 2008-09 to 2011-12 by virtue of the order dated 20.03.2018. This order also did not require any interference. Hence no relief could be granted as prayed for.

7. Shri A.P. Raghute, learned counsel appearing for MFSPM referred to the Government Resolution dated 04.02.2008 and submitted that under the said policy, preference was to be given to the local institutions in the matter of extending the benefit of grant-in-aid. Since the College run by MFSPM was already having a science stream it was at an advantageous position than the College run by SSES since it was not having any science

stream. Referring to First Information Report No. 18 of 2010 dated 03.02.2010 he submitted that on the date when the College run by SSES had moved its application, an offence against the office bearers was pending. The same was rightly taken into consideration and in view of Condition No. 6, the claim for benefit of grant-in-aid by the said College was found to be untenable. Since the College run by MFSPM had not suppressed any fact in its application and had improved all its facilities within the stipulated time, the Task Force had rightly found its College entitled to receive grant-in-aid and it therefore could not be said that there was any arbitrariness in the decision of the State Government. Similarly, the entitlement to grant-in-aid for the period from 2008-09 to 2011-12 by the order dated 20.03.2018 was also justified not requiring any interference. The report submitted by the Director of Higher Education dated 07.02.2018 was relevant and the same was taken into consideration by the Ministry of Higher and Technical Education while passing the order dated 20.03.2018. Inviting attention to the judgment of the Hon'ble Supreme Court in *The State of Uttar Pradesh & Others Versus Principal Abhay Nandan Inter College & Others* [Civil Appeal No. 865 of 2021] he submitted that the right to receive grant-in-aid was not a fundamental right and as the college run by MFSPM was found entitled to receive the same in the light of the Government Resolution dated 04.02.2008 no interference with the said order was called for. The writ petitions preferred by SSES were therefore liable to be dismissed.

8. Shri S.S. Ghate, learned counsel appearing for Sant Gadgebaba Amravati University submitted that the matter with regard to release of grants was within the purview of the State Government and the University did not have any significant role in that regard.

Shri P.B. Patil, learned counsel for SSES in reply submitted that despite the interim order directing *status quo* to be maintained as passed on 20.11.2013 in Writ Petition No. 3829 of 2013 in the matter of release of grants, the amount of grants came to be disbursed despite the said order. He therefore prayed that if the prayers made by SSES were granted the earlier position was liable to be restored in light of the clarification by this Court in its order of review dated 10.04.2018.

9. We have heard the learned counsel for the parties at length and with their assistance we have perused the relevant documents on record. The dispute between the parties pertains to the entitlement to receive grant-in-aid for the colleges run by the respective societies. The entitlement to receive such grant-in-aid is governed by the policy of the Higher and Technical Education Department *vide* its resolution dated 04.02.2008. Since a college entitled to receive grant-in-aid receives such benefit from the State Exchequer, such college ought to satisfy the requisite terms and conditions for it to be entitled to such benefit. In this regard it would be necessary to keep two aspects in mind. Firstly, the right to receive grant-in-aid is neither a fundamental right or a legal right conferred by any Statute. The right to

be considered for entitlement to receive grant-in-aid is governed by the policy of the State. Subject to satisfying prescribed requisites, a college can seek such benefit. Each contender seeking grant-in-aid is thus entitled to a fair consideration of its claim in accordance with the prescribed norms. Secondly, though the matter with regard to release of grant-in-aid is within the discretion of the State, such discretion is required to be exercised in a fair and objective manner without any element of arbitrariness. There ought to be leeway for fair play in the joints but when the exercise of discretion is challenged as having been arbitrarily exercised, the material considered while exercising such discretion ought to support the ultimate decision so as to indicate that the same has been taken in a fair and unbiased manner. Additionally, the Court while examining the exercise of such decision is concerned only with the decision making process rather than the decision itself.

10. As per the policy decision dated 04.02.2008 it was intended that in each Taluka of the State of Maharashtra there ought to be one aided college receiving 100% grant-in-aid. With the view to ensure that each Taluka has such college, the necessary exercise to consider the colleges so entitled was required to be undertaken by the manner prescribed under the Maharashtra Universities Act, 1994. Some salient terms and conditions stipulated in the Government Resolution dated 04.02.2008 that are relevant for the present purpose are *vide* Clause 2 therein. Clause 2(1) thereof stipulates that selection of a college to receive grant-in-aid would be purely

on the basis of the criteria of merit. As per Clause 2(2) if there was no stream receiving grant-in-aid, the applications ought to be called with regard to academic year 2008-09. As per Clause 2(4) if a college was having one or two streams that were receiving grant-in-aid, preference would be given to start the other stream. Under Clause 2(6) written undertaking was required to be taken from the Education Society that there were no irregularities in the Management or in the selection of teachers. Similarly there ought to be no pending criminal cases against the office bearers of the Education Society. A written undertaking in that regard was required to be taken.

11. It is not in dispute that insofar as District Akola is concerned, Taluka Patur was found entitled to receive grant-in-aid for science stream. Advertisement dated 17.10.2008 came to be published by the Directorate of Higher Education. However since no college was granted the benefit of grant-in-aid at Taluka Patur, another advertisement in October-2010 came to be issued. The claims of the Colleges run by SSES and MFSPM came to be considered. The Task Force found the Colleges run by SSES and MFSPM to be eligible for consideration for release of grant-in-aid. Hence, the report was accordingly submitted by the Task Force on 21.06.2011 to the State Government. The comparative chart alongwith the said report indicates that insofar as the College run by SSES was concerned it was having a science stream that was permitted to run on permanent no grant basis from academic session 2010-11. The College was affiliated to the University and

it had its own laboratory as well as building. It had also received C+ NAAC Accreditation and it was also running the Arts and Commerce streams that were receiving grant-in-aid. As regards the College run by MFSPM it was stated that the college was affiliated to the University and it had its own laboratory. The College was being run in a rented premises and the lecturers were appointed on clock-hour basis. The Arts and Science College was being run since Academic Session 2003-04. The report of the Task Force dated 26.05.2010 contains a reference to the instructions given by the Hon'ble Chief Minister on 06.05.2010 and thereafter proceeds to recommend the College run by MFSPM. This report is by a two member Task Force. Subsequently, on 21.06.2011 a five member Task Force recommended the College run by SSES for receipt of grant-in-aid. On the basis of aforesaid material, the order dated 06.06.2013 holding the College run by MFSPM eligible to receive the grant-in-aid has been passed. Condition No.6 of the said order stipulates that it would be necessary for a college that has been established for more than five years to acquire the NAAC Accreditation within a period of one year of receiving grants and in the case of a college that has not completed five years to acquire the same within one year of completion of the period of five years.

12. The order dated 06.06.2013 does not indicate the considerations that have weighed with the State Government while extending the benefit of grant-in-aid to the College run by MFSPM. However in the affidavit-in-reply filed on behalf of the State Government and its Authorities it has been

stated that since some office bearer of SSES was involved in a crime registered with Police Authorities, the same was treated as a disqualification. For this reason, the State Government had not considered the recommendation of the Task Force insofar as SSES was concerned. The stand as taken in paragraphs 5 and 7 of the affidavit dated 27.01.2014 filed in Writ Petition No. 3829 of 2013 reads as under:-

“5. ... As per the restrictions of conditions of G.R. Dated 4.2.2008 the executive member of the institution of petitioner no.1 and 2 involved in a crime registered in the police station for which the documents were received by the Government therefore, it was the disqualification of said institution of petitioner no.1 and 2 under condition no.6, therefore the government has not considered the recommendation of Task force committee in favour of petitioner no.1 and 2 and in the said background their right is not violated.”

“7. ... The recommendations in favour of the petitioners were not considered only because of the executive member of the institution of the petitioners was involved in criminal case registered by the police which was the disqualification under condition no. 6 of the Government Resolution Dt.4.2.2008 and therefore the petitioner No.1 and 2 institution was not accepted to extend the benefit of G.R. Dt. 4.2.2008.”

Further stand has been taken in the said affidavit that though the Task Force had recommended the colleges run by SSES and MFSPM, the State Government had the absolute right and power to extend the benefit of grant-in-aid in favour of the College run by MFSPM. In this context the relevant averments in paragraphs 8 and 9 read as under:-

“8. ... When the Task force committee recommended both the names i.e. petitioner No.2 and respondent No.5, it is the power of the Government to decide for extending the

benefits as per G.R. Dt.4.2.2008 and accordingly the Government has declared such grant-in-aid benefits to respondent No.5 College which is absolute right and power of the Government. The petitioners have not caused any injustice because the Government has applied appropriate powers to extend the benefits to the proper college for the upliftment of the new admitted students.”

“9. The Task Force Committee under its report dated 21.6.2011 recommended the names of petitioner college i.e. petitioner No.2 and the respondent No.5. Though the position of the college of petitioner No.2 is highest than the respondent No.5 but the petitioner No.2 is not qualified in terms of government resolution Dt.4.2.2008. The executive member of petitioner institution was involved in criminal prosecution registered by the police authority therefore the position of petitioner No.2 College even ahead is disqualified in extending the benefits of grants under Government Resolution Dt. 4.2.2008.”

The reason for disqualifying the College run by SSES for being considered for benefit of receiving grant-in-aid is stated to be non-disclosure of the criminal prosecution against it. It is thus clear from the stand of the State Government and its Authorities that the claim of the College run by SSES was not considered as there was a criminal prosecution pending against its office bearer which fact was not disclosed though the same was required to be disclosed as per the Government Resolution dated 04.02.2008.

13. The Copy of First Information Report No. 18 of 2010 dated 03.02.2010 has been placed on record of Writ Petition No. 3829 of 2013. Its perusal indicates that an offence under Section 420 read with Section 34 of the Indian Penal Code was registered against the Principal and office

bearers of Dr.Gopalrao Khedkar College. It is asserted by SSES that it is only the Principal of Dr.Gopalrao Khedkar College who was arrayed as an accused in First Information Report No. 18 of 2010. Similarly a copy of the final report/charge-sheet bearing No. 41 of 2011 dated 22.06.2011 is also placed on record which indicates that the offence registered pursuant to First Information Report No. 18 of 2010 is under Section 5 of the Protection of Civil Rights Act. The only accused is the retired Principal of Dr.Gopalraao Khedkar College namely Shri Harinarayan Shelke. The proposal submitted by SSES pursuant to the advertisement published in October-2010 is dated 27.10.2010. While various necessary details have been stated therein there is no reference to any pending prosecution against any office bearer of the Education Society as contemplated by the Government Resolution dated 04.02.2008. From the perusal of the material on record, it becomes clear that except for a vague reference to the members of the Education society and a specific reference to the retired Principal of the college, no office bearer of SSES finds mention either in First Information Report No. 18 of 2010 dated 03.02.2010, Charge-Sheet dated 22.06.2011 or for that matter the order passed by the Judicial Magistrate First Class Telhara on 27.12.2013 in Summary Criminal Case No. 125 of 2011. It is only for the first time that the reason for non-consideration of the recommendation in favour of SSES has been indicated in the affidavit filed by the State Government and its Authorities in this regard.

14. The order dated 06.06.2013 that has been issued by the Department of Higher and Technical Education holding the College run by MFSPM entitled for grant-in-aid indicates that reference has been made to the proceedings of the meeting of the Task Force held on 03.05.2011 as well as the report of the Director, Higher Education, Pune dated 21.06.2011 as the basis for extending the benefit of grant-in-aid to the College run by MFSPM. The meeting of the Task Force held on 03.05.2011 indicates that the recommendation was made in favour of SSES in preference of the claim of MFSPM. It appears that after the aforesaid recommendations were received, a communication dated 15.05.2011 came to be issued on behalf of MFSPM to the Chairman of the Task Force in which it was stated that since offences were registered against the President and all the Directors of SSES its claim was not tenable in the light of Clause 6 of the Government Resolution dated 04.02.2008. A similar communication on same lines was again issued by the President of MFSPM on 10.04.2013 to the Principal Secretary, Higher and Technical Education Department, Mantralaya, Mumbai. It can thus be gathered from the documents on record that though the Task Force in its communication dated 21.06.2011 has not referred to any pending criminal proceedings against the office bearers of SSES, according to the affidavit filed by the respondent no.1 the said aspect was considered by the Higher and Technical Education Department while issuing the order dated 06.06.2013. In other words, the cognizance of the communication dated 10.04.2013 issued by the President of MFSPM to the Principal Secretary, Higher and Technical

Education Department appears to have weighed with the respondent no.1 while holding the College run by MFSPM entitled for grant-in-aid.

It must be stated that this reason as regards pendency of criminal proceedings resulting in disqualification of SSES in view of Clause 6 of the Government Resolution dated 04.02.2008 does not find place in the impugned order dated 06.06.2013. This reason is sought to be put forth only in the affidavit-in-reply filed on behalf of the respondent no.1. It is thus clear that the order dated 06.06.2013 is sought to be supported by reasons not contained in the said order. Those reasons are being assigned by filing an affidavit subsequent to the passing of the said order. It is not permissible to seek to support the impugned order by referring to the extraneous material in the form of affidavit-in-reply. The law in this regard is clear and it would suffice to refer to the decision in *Mohinder Singh Gill Versus Chief Election Commissioner, New Delhi* [(1978) 1 SCC 405].

15. Assuming that the State Government is permitted to explain the reason for holding the claim of SSES to be not tenable on the ground that criminal proceedings were pending against some of its office bearers thus attracting Clause 6 of the Government Resolution dated 04.02.2008, we find that since this aspect as regards pendency of any criminal proceedings was not referred to by the Task Force in its recommendations. If the Higher and Technical Education Department intended to rely upon the said aspect the same could have gone into by making an enquiry in that regard. The Department could have called for the relevant papers in that regard coupled

with an opportunity to SSES to have its say on this aspect. We say so for the reason that if the Department found it fit to entertain the grievance raised by MFSPM in that regard as per its communication dated 10.04.2013 then in fairness, an opportunity to explain and clarify relevant facts ought to have been afforded to SSES. The Department of Higher and Technical Education has thus accepted what was stated by MFSPM in its communication dated 10.04.2013 and without seeking any explanation or clarification from SSES has held that aspect against it to deny the benefit of grant-in-aid despite a positive recommendation by the Task Force. This aspect becomes more relevant in the facts of the present case since it is seen that though First Information Report No. 18 of 2010 was registered on 03.02.2010, the charge-sheet came to be filed on only 22.06.2011. It is clear from the charge-sheet that no Member/Office bearer of SSES was arrayed as an accused therein. The only accused therein was the retired Principal of Dr.Gopalraao Khedkar College run by SSES. The offence for which the said accused was tried was under Section 5 of the Protection of Civil Rights Act, 1955. It thus becomes clear that if the Department of Higher and Technical Education would have called upon SSES to clarify this aspect it would have become clear that no offence was registered against any of its office bearers and therefore its claim could not have been defeated by relying upon Clause 6 of the Government Resolution dated 04.02.2008. The course followed by the Department of Higher and Technical Education of entertaining a complaint at the behest of MFSPM and accepting the same as correct without seeking any explanation from SSES is in

breach of exercise of fair and impartial discretion. We find that this aspect also results in vitiating the consideration of the recommendation of the Task Force.

16. There is one more reason for which the College run by MFSPM would not be entitled to receive grant-in-aid pursuant to the order dated 06.06.2013. As per Clause 6 of the said order, a condition was imposed that if the concerned college was established prior to period of five years then in such contingency NAAC Accreditation be obtained within a period of one year from 06.06.2013. With regard to a college that had not completed five years since its establishment, such Accreditation was required to be obtained within a period of one year of completion of the period of five years. It was further stated that on failure to obtain such NAAC Accreditation the order providing grant-in-aid would automatically stand cancelled. Undisputedly the college run by MFSPM was established in 2003-04 and hence when the order dated 06.06.2013 was passed it was operating for a period of more than five years. Thus in accordance with Condition No.6 of the order dated 06.06.2013 it was required to obtain NAAC Accreditation within a period of one year. It is seen from the record that the said College has till date not acquired NAAC Accreditation. The said fact has been brought on record by SSES in its pleadings and there is no denial to the same by MFSPM. The order dated 06.06.2013 is conditional in nature and the consequence of failure to acquire NAAC Accreditation in accordance with the time limit indicated therein would render the said order inoperative after a period of one year. Despite this clear condition being stated in the order dated 06.06.2013 the Higher and Technical

Education Department has not taken any steps in accordance with Condition No.6 of the said order. No reasons have assigned in the affidavit as filed to explain the reason as to why the consequence as provided in the said order have not followed. It was sought to be urged on behalf of MFSPM that the College run by SSES could acquire NAAC Accreditation after almost forty years from its establishment and therefore it could not be expected from the College run by MFSPM to obtain such accreditation within a period of one year. This stand can hardly be justified in the light of the specific condition contained in the order dated 06.06.2013 by which grant-in-aid was made admissible to MFSPM. The requirement of obtaining such accreditation is with the object of ensuring that requisite standards are met by the College concerned and the benefit of grant-in-aid has been rightly extended. The order dated 06.06.2013 being conditional in nature and providing for the consequence of failure to acquire NAAC Accreditation, MFSPM would be bound by the same.

17. For aforesaid reasons it will have to be concluded that the order dated 06.06.2013 is liable to be set aside on the ground that the decision making process is vitiated by considering irrelevant aspects. At the same time, it must be noted that though this Court in its order dated 10.04.2018 had clarified that if the order dated 06.06.2013 was set aside MFSPM would have to restore the position prevailing on the date of passing of the order of grant-in-aid. Coming to the challenge to the order dated 20.03.2018 that is impugned in Writ Petition No. 8602 of 2018, the College run by MFSPM has been held

entitled for grant-in-aid for the period from 2008-09 to 2011-12. Pursuant to the advertisement dated 17.10.2008 it was only MFSPM that had applied for grant-in-aid for the relevant period. As per the report of the Task Force dated 02.08.2009 the College run by MFSPM was recommended for grant-in-aid from academic session 2010-11. By the order dated 20.03.2018 said College has been held entitled to receive grant-in-aid from 2008-09 to 2011-12. The said order has been passed in the light of the recommendation by the Director of Higher Education, Pune dated 07.02.2018. After considering the strength of students as well as the workload of the teaching staff engaged an amount of Rs.14,46,722/- has been found to be admissible to be paid to the College run by MFSPM towards grant-in-aid for the period from 2008-09 to 2011-12. The application moved by SSES for release of grant-in-aid is dated 27.10.2010 in response to the second advertisement published in October-2010. We do not find any justifiable reason to interfere with the order dated 20.03.2018 notwithstanding the fact that the order dated 06.06.2013 had been set aside since the issue with regard to release of grant-in-aid for the period from 2008-09 to 2011-12 has been independently undertaken.

18. Accordingly, the following order is passed :-

- (A) The order dated 06.06.2013 passed by the Ministry of Higher and Technical Education is set aside.
- (B) Since SSES was the only college whose name was recommended by the Task Force on 21.06.2011 for receiving the grant-in-aid, it is held entitled to receive such grant-in-aid in terms of the

Government Resolution dated 04.02.2008 from academic session 2012-13 and onwards. The Department of Higher and Technical Education shall pass fresh orders in this regard. It is at liberty to impose appropriate conditions as warranted by the then policy contained in the Government Resolution dated 04.08.2008.

- (C) MFSPM shall refund the amount of grant-in-aid received by it pursuant to the order dated 06.06.2013 to the Department of Higher and Technical Education within a period of twelve weeks from today after which the said amount shall be made over to SSES.
- (D) The order dated 20.03.2018 providing grant-in-aid to MFSPM for the period from 2008-09 to 2011-12 is not interfered with.

19. Consequentially, Rule is made absolute in Writ Petition No. 3829 of 2013. Rule in Writ Petition Nos. 3524 of 2011 and 8602 of 2018 is disposed of in aforesaid terms. Pending civil applications also stand disposed of. The parties shall bear their own costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)