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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CIVIL APPLICATION NO. 4763 OF 2024
IN WRIT PETITION NO. 13310 OF 2023

RAGHUWANSHI CHARITABLE TRUST THROUGH ITS SECRETARY AND
ANOTHER

....Petitioner

VERSUS

STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS
.....Respondent

.....

Advocate for the Petitioner : Mr. Barde Parag Vijay

AGP for Respondents: Mr. N.S. Takale.

Advocate for Respondent Nos. 4 and 5 : Miss Nayana Patil h/f. Ms.
Surekha Mahajan.

.....

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 10TH MAY, 2024.

P.C. :-

Present Civil Application has ben filed for quashing and setting aside the communication dated 3.5.2024. issued by the respondent No.5 and to restrain the respondents from withholding the result of the students, who appeared from the applicant's school for HSC examination conducted in the month of February, 2024.

2. Heard Mr. Parag Barde, Advocate for the applicant, and Miss Nayana Patil, Advocate holding for Ms. Surekha Mahajan, Advocate for respondent Nos. 4 and 5.

3. Learned advocate for the petitioner has taken us through the

documents in the writ petition and submits that in the main writ petition, the petitioner is challenging the circular dated 5.10.2020 issued by respondent No.4 and consequential prayers. By order dated 23.10.2023, this Court issued notices to the respondents and stayed the operation of the impugned communication dated 18.10.2023, whereby, respondent No.5 Board had demanded regular fees with delayed fees for granting eligibility certificates to 77 students by resorting to the relevant provisions of the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 and Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977. The notice was issued taking into consideration the statement that there is no approval of the State Government to the said circular dated 5.10.2020 on the basis of which delayed charges were levied.

4. Thereafter, civil application No. 13509 of 2023 was taken by the petitioner. By order dated 9.11.2023, this Court had allowed the said civil application and directed the respondent NO.5 Board to issue Eligibility Certificates to 78 students, so that they can apply for 12th standard examination to be conducted. It was on furnishing undertaking by the petitioner to the court that if petitioner is ordered to pay the necessary charges from the original communication, then, it would be deposited.

4. Now, the communication is issued on 3.5.2024, that as the appropriate fees have not been paid and petition is still pending, the results of the junior college students from the petitioner school will be withheld till the decision of the writ petition by this Court.

5. The learned counsel Ms. Nayana Patil appearing for

respondent Nos. 4 and 5 has brought to our notice the relevant rule from the impugned circular dated 5.10.2020 and submits that since that date i.e. from the date of circular, such levy of fees as well as late fees has come into existence. Since, the eligibility certificate is necessary at the time of admission itself, said provision has been made.

6. Affidavit in reply has also been filed on behalf of respondent No.5 by Mrs. Vaishali Jagannath Jamdar, Divisional Secretary, Maharashtra State Divisional Secondary and Higher Secondary Board, Aurangabad. She has tried to contend that in the order passed by this Court on 8.11.2023 or earlier order dated 23.10.2023, there is no mention or stipulation to the Board to declare the result of 78 students of the Junior College of the petitioner. According to the affiant, if the results are declared, then nothing will survive in the writ petition.

7. At this stage, we do not want to go into the merits, as the petition is yet to be admitted and in fact, it can be disposed of at the admission stage itself, when the pleadings are complete. The fact to be brought on record is that, on 15.9.2023, the petitioner has deposited Eligibility Certificate Fees to the extent of Rs. 38,000/- with the respondent No.4. By impugned communication dated 18.10.2023, the bifurcation was made and apart from that Rs. 38000/- it was then stated that the petitioner is liable to deposit the amount of Rs. 5,57, 980/- which is towards the Late Fees/Fine.

8. We have already taken note of the order passed by this Court on 23.10.2023 and 9.11.2023. Especially, the second order states that the Board should issue Eligibility Certificates and then, an undertaking was taken from the Secretary of the petitioner that in case so ordered,

the petitioner would deposit the necessary charges as directed by the Court. So, we will like to say that the respondent Nos. 4 and 5, who are interested in getting said amount of fine, that amount is in a way secured, in case the petition goes against the petitioner. Only on the basis of said charges, respondent No.5 cannot withhold the results of the students. We may clarify this further that, in case this Court orders, then, the Secretary will have to deposit the said amount and it has nothing to do with the amount to be recovered from the students. Now, the basic challenge to the circular which states about the entitlement of the Board to charge late fees, has not received sanction from the Government is to be decided, then, we are not expecting that respondent No.5 to withhold the results.

9. The learned advocate for the respondent No.5 is pointing out that by the said circular the Board can withhold results. To this submission, it can be said that when that circular itself is under challenge, the further submission that the Board has power, would also be subject to the challenge.

10. Taking into consideration the fact that already students had appeared for 12th Standard Examination (H.S.C.) and their results would be declared, they should not suffer and when the amount is, in a way secured as aforesaid, the impugned communication dated 3.5.2024 deserves to be quashed and set aside. Hence, we pass the following order :-

ORDER

[a] The Civil application is allowed;

[b] The impugned communication dated 3.5.2024 issued by

respondent No.5 is hereby quashed and set aside;

[c] Respondent Nos. 4 and 5 are restrained from withholding the result of the students appearing from the applicant/petitioner's school for H.S.C. examination, conducted in the month of February, 2024.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-