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

PUBLIC INTEREST LITIGATION NO. 25/2024

(RAJIV KHOBRAGADE **VERSUS** PRINCIPAL SECRETARY, SOCIAL JUSTICE AND SPECIAL ASSISTANCE, MUMBAI)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri Shekhar Samaan, counsel for the petitioner.
Shri N.S. Rao, Assistant Government Pleader for the respondent.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE : JUNE 26, 2024

P. C.

The petitioner, a social worker, has invoked the jurisdiction of this Court questioning the unreasonable criteria adopted by the State Government in selecting and awarding 'Rajarshi Shahu Maharaj Foreign Fellowship' provided in the Government Resolutions dated July 20, 2023, October 30, 2023 and November 09, 2023.

2. The facts necessary for deciding the Public Interest Litigation are as under:-

The petitioner, claiming to be a public-spirited person, has alleged that the respondent floated the 'Rajarshi Shahu Maharaj Foreign Education Scholarship Scheme' (hereinafter referred to as 'the Scholarship scheme' for the sake of brevity') with an object to extend the financial assistance to the students belonging to the Scheduled Castes who have bright academic future and but for financial hardship are unable to enhance academic qualification from the Foreign Universities.

3. The Scholarship scheme is in existence since 2003 and the benefits thereunder are extended to 75 students annually. The Scholarship scheme provides for the following eligibility criteria; (a) earlier there was no maximum annual income limit for the students who intend to get admission in top foreign

universities whose *Quacquarelli Symonds* (QS) world ranking is between 1 to 100 and by the impugned Government Resolutions, the said maximum annual income limit is prescribed at Rupees Eight Lakhs; (b) for the students who intend to get admission in top foreign universities whose *Quacquarelli Symonds* (QS) world ranking is between 101 to 300, the maximum annual income limit is raised from Rupees Six Lakhs to Rupees Eight Lakhs; and (c) minimum percentage of marks to be obtained by a candidate in the qualifying examination has been raised from 55% to 75%. It is alleged that the aforesaid criteria was revised by the State Government *vide* the Government Resolutions dated July 20, 2023, October 30, 2023 and November 09, 2023 so as to bring uniformity in the matter of implementation and execution of the Scheme.

4. According to the petitioner, increasing the minimum percentage of marks to be obtained by a candidate in the qualifying examination from 55% to 75% is unreasonable and as such the said condition is under challenge. The other condition which is impugned in the present Public Interest Litigation is the maximum annual income limit of the family of the student who intend to get admission in top foreign universities whose *Quacquarelli Symonds* (QS) world ranking is between 1 to 100 has been raised to Rs.8,00,000/-. The petitioner has also challenged the said condition viz. raising the maximum annual income limit of the family of the student who intend to be eligible for the scholarship in foreign universities whose *Quacquarelli Symonds* (QS) world ranking is between 101 to 300 to Rs.8,00,000/- from Rs.6,00,000/-.

5. The learned counsel for the petitioner in support of his prayer for setting aside the requirement of minimum percentage of marks to be obtained by a candidate in the qualifying examination to 75% and raising of the maximum annual income limit of the family of the student who intend to get benefit of scholarship in the matter of admission in top foreign universities whose

Quacquarelli Symonds (QS) world ranking is between 1 to 100 to Rs.8,00,000/- would urge that the State Government is conducting itself in violation of Articles 14 and 15 of the Constitution of India. According to the learned counsel for the petitioner, if a reference is made to Article 15(4) of the Constitution of India, it can be said that the State Government has every right to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. He would claim that the Scholarship scheme is framed by the State Government so as to achieve the constitutional object as prescribed *vide* Article 15(4) of the Constitution of India. While doing so, the State Government cannot incorporate unreasonable conditions of putting the maximum annual income limit of Rs.8,00,000/- and also raising the minimum qualification of percentage of marks to be obtained by the candidate in the qualifying examination to 75%. He would claim that by incorporating such conditions through the impugned Government Resolutions, the State Government is trying to do away with its constitutional responsibility by denying the opportunity of higher education to the students belonging to the backward classes. His further contentions are, an artificial and unreasonable embargo is created on the rights of the backward class students by incorporating aforesaid conditions and as such it is necessary that this Court may direct the State Government to revert back to the earlier criteria of qualifying minimum 55% of marks and to remove maximum annual income limit of family of the student who intend to get admission in top foreign universities whose *Quacquarelli Symonds* (QS) world ranking is between 1 to 100. It is claimed that the act of the State Government in incorporating the aforesaid unreasonable conditions is arbitrary and is required to be held to be violative of Article 14 of the Constitution of India. Even otherwise, according to the learned counsel for the petitioner, by incorporating aforesaid unreasonable conditions, the object which is sought to be achieved of extending financial benefits to the students belonging to the backward class category who are academically bright but for want of financial aid are unable to improve their education cannot be achieved.

6. As against above, Shri N.S. Rao, learned Assistant Government Pleader would invite attention of this Court to the provisions of Part-III of the Constitution of India. According to him, under clause 3(a) of Article 13 of the Constitution of India, any order issued by the Government has the force of law. As such unless it is demonstrated that the same violates the fundamental rights of the petitioner guaranteed under Part-III of the Constitution of India, the Public Interest Litigation cannot be said to be maintainable.

His further contentions are, the State Government has offered the Scholarship scheme which cannot be said to be a Constitutional right. According to him, the State Government has decided to extend the financial assistance to the students belonging to the backward class category so as to enable them to improve their academic qualification. Neither a statutory nor a constitutional right is vested in the petitioner to claim that the qualifying criteria of minimum percentage of marks criteria of 75% and maximum annual income limit of Rs.8,00,000/- can be said to be unreasonable. According to him, even otherwise, the policy decision of the State Government cannot be assailed merely because the same is not convenient to a particular class. He would further urge that the object which is sought to be achieved from the policy *prima-facie* appears to be to extend the benefit to bright students who otherwise can claim admissions in the State or National Universities in the country. As such, it is claimed that the students from the backward class category cannot be said to be having no opportunity of improving their qualification by securing qualifications in the institutions which are being operated in the country. The Assistant Government Pleader has thus submitted that the Public Interest Litigation is liable to be dismissed.

7. We have appreciated the submissions.

8. In view of constitutional mandate provided under Article 15(4) of the Constitution of India the State Government can make special provisions for the advancement of any socially and educationally backward classes of citizens and for the Scheduled Castes and Schedule Tribes. It appears that the Scholarship scheme in question appears to have been framed by the State Government through a policy decision way-back in 2003. The intention gathered from the preamble of the policy reflected in the Government Resolution dated July 20, 2023 is to extend the financial benefit to such academically bright students who are unable to improve higher academic qualification for want of financial assistance. As such, financial assistance to be extended remains to be available to the candidates belonging to the backward class category. However, the students will have to fulfil the eligibility criteria prescribed in the impugned Government Resolutions. The intention of the State Government appears to extend the benefit to the academically bright students who are meritorious and for want of financial assistance are unable to increase their educational qualification. That being so, incorporation of the condition of minimum percentage of marks to be obtained by the candidate in the qualifying examination to be 75% cannot be said to be unreasonable. Even otherwise, a student, who intends to have the benefit of the Scholarship scheme will have to fulfil the qualifying condition so as to get the benefit of the financial assistance. He cannot question the policy of the State Government to claim that the qualifying criteria be suited to their requirement to pursue higher or specialized education from the foreign universities.

9. Apart from above, the intention of the State Government appears to be to extend the financial benefit to such academically bright students whose

financial condition is not sound or supporting their endeavour of acquiring higher or super specialized qualification. So as to assess the financial condition of the student, who intend to qualify for the benefit of the Scholarship scheme, if the State Government has incorporated the qualifying condition of annual income limit of the family of the student, the same cannot be said to be unreasonable one. The intention of the State Government to extend the benefit to highly meritorious candidates is sought to be achieved by assessing the annual income of the family of the student. The same appears to be in tune with the powers vested in the State Government, which has every authority to frame a policy. The petitioner in our opinion has failed to demonstrate violation of any Rule, statutory right or fundamental right.

10. The Apex Court in the matter of *Anshul Gupta Versus Prima Minister Officer* [**2023 LiveLaw (SC) 765**] had an occasion to consider the matter of entertaining and consider the Public Interest Litigation. The Apex Court in reference to the judgment in *State of Uttaranchal Versus Balwant Singh Chaufal* [**(2010) 3 SCC 402**] has observed that the Court must fully satisfy itself that substantial public interest is involved before entertaining a petition. The Court is also required to ensure that the petition involves larger public interest and is aimed at redressal of genuine public harm or public injury. The factual matrix and the consideration depicts that the petitioner is trying to canvass the case of such candidates who have secured less than 75% of marks in the qualifying examination and/or whose annual family income is more than Rs.8,00,000/-. As such, it cannot be said that the petitioner is trying to canvass the interest of larger public but of the class of persons for whom he is seeking benefit to be extended irrespective of their merit. In our opinion, the Public Interest Litigation cannot be utilized for such purpose.

11. Apart from above, the fact remains that the class of the students who can be said to be qualifying the eligibility criteria under the aforesaid Government Resolutions so as to draw the benefit of the Scholarship scheme are required to be treated at par with such candidates who have secured less percentage of marks than the qualifying marks and have more income than the maximum annual family income limit prescribed by the Government Resolutions. The petitioner is trying to create class in class which in any case is not permissible under Article 14 of the Constitution of India. The State Government has taken a policy decision thereby incorporating the qualifying criteria for extending the benefit of the Scholarship scheme. Such decision of the State Government which is in the form of a policy must be based on the experts' opinion and on emerging situations and exigencies to be made in the interest of welfare of the people.

12. The Court is not required to substitute its views in the decisions of the State Government with regard to policy matters. The Apex Court has already held that the Courts should refuse to sit in appeal in the matter of challenge to the policy decisions of the Government unless it runs counter to the mandate of the Constitution. It is always open for the Government to frame its policy, alter or modify the same so as to suit to the needs of the society or class of members of the society. In support of the aforesaid observations, reliance can be placed on the judgment in *State of Himachal Pradesh & Others Versus Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh* [**(2011) 6 SCC 597**]. The Apex Court in paragraph 19 of the judgment in *Asif Hameed & Others Versus State of Jammu and Kashmir & Others* [**1989 Supp(2) SCC 364**] has observed thus:-

> "*19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the*

powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

13. In view of aforesaid observations, if we consider the case of the petitioner, we are of the view that the petitioner cannot claim relaxation in the eligibility criteria as a matter of right. Whether relaxation is to be extended is in the realm of the State Government. The Government may or may not alter or modify the eligibility criteria. However, this Court cannot interfere with the policy decision thereby directing the relaxation of the eligibility criteria. The Apex Court has time and again reiterated that it is not open for the Courts to exercise its writ jurisdiction for the said purpose. Apart from above, a similar issue came up for consideration before the Division Bench of this Court at Aurangabad Bench in *Sri Sri Ravishankar Vidya Mandir Versus Government of India, through its Under Secretary & Others* [**2023 SCC OnLine Bom 1928**]. The Division Bench while dealing with the similar situations has observed in paragraphs 21 and 22 as under:-

"*21. For examining the policy on the touchstone of permissible classification two conditions are laid down by the Constitution Bench matter in the matter of Budhan Choudhary Versus State of Bihar, AIR 1955 SC 191. We are of the considered view that both the conditions in the present matter are fulfilled. Consciously the respondent No.1 created two classes and it is the wisdom of the respondent No.1 not to disburse the scholarship throughout country irrespective of nature of the school, because it involves availability of the funds. The respondents are the best persons to decide and determine how to spend and where to* *spend its corpus. The Court of law cannot insist the respondent No.1 to formulate policy involving financial liability in a particular manner.*

22. While examining the validity of policy of government we have limited scope. High Court cannot substitute the policy decision of the government. Neither can we suggest what is best suitable to the situation. It has to be left to the wisdom of the respondent No.1. In the absence of any violation of the statutory provision or arbitrariness, the High Court has very little role to monitor the policies of the Government."

14. In the aforesaid background, we are of the view that the qualifying conditions which are incorporated in the Government Resolutions so as to extend the benefit of the Scholarship scheme to the needy students cannot be said to be unreasonable or violative of the Articles 14 and 15 of the Constitution of India. Such class of students are not fulfilling the eligibility criteria of the Scholarship scheme, they can always opt for admissions in the State and National Universities. We are required to observe that the claim put forth by the petitioner in the Public Interest Litigation cannot be accepted for the reason that no condition or eligibility criteria in the Scholarship scheme in question can be said to be violative of any provision of law or the Constitutional mandate. In this background, we have no hesitation to hold that the Rajarshi Shahu Maharaj Foreign Education Scholarship Scheme does not suffer vice of arbitrariness *interalia* not violative of Article 14 of the Constitution of India.

15. That being so, the present Public Interest Litigation, in our opinion, is devoid of merits and the same stands dismissed accordingly. No costs.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

APTE