IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2024

CORAM :

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.20940, 22712, 21486, 21488, 21491, 20946, 20948, 20956, 20966, 20967, 20971, 13556, 20958, 20959, 21495, 21496, 22704, 20951,20955 & 21493 of 2023
and
W.M.P.Nos. 13231, 22151, 22162, 20349, 20347, 20855, 20856, 20860, 20863, 20861 & 20862 of 2023

W.P.No.20940 of 2023

Tamil Nadu Unaided Polytechnic Management Association
Registration No.117/2012,
Represented by its Secretary,
M.Maran,
Having Office at No.793,
Nehruji Road,
Indian Bank Building 3rd Floor,
Villuppuram – 605 602. .. Petitioner

vs

1.The Union of India
Rep. by its Secretary,
Ministry of Social Justice & Empowerment,
Government of India,
Shastri Bhawan, C – Wing,
Dr.Rajendra Prasad Road,
New Delhi – 110 011.

2.The Government of Tamil Nadu

Rep. by its Principal Secretary,
Adi-Dravidar and Tribal Welfare Department,
Government of Tamil Nadu
Secretariat, St.George Fort,
Chennai – 600 009.

3.The Commissioner,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai - 600 005. ... Respondents
(and etc batch)

PRAYER In WP No.20940 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the Post Matric Scholarship Scheme guidelines to the students belonging to Scheduled Castes for studies in India (2020 – 2021 to 2025 – 2026) issued by the Ministry of Social Justice & Empowerment, Government of India on March, 2021 in so far it relates to the Clause 11.1 – Payment Mechanism and quash the same and consequently direct the respondents to implement the payment mechanism of remitting the tuition fees under Post Matric Scholarship Scheme directly in the bank accounts of the educational institutions.

For Petitioner : Mr.KandhanDuraisami
(in all writ petitions)

For respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.B.Rabu Manohar, SCGSC
For R1
Mr.P.Anandakumar
Government Advocate
For R2 & R3
(in all writ petitions)

COMMON ORDER

This batch of writ petitions has been filed by the Tamil Nadu Unaided Polytechnic Management Association (comprising 300 polytechnic colleges), the Association of Management of Coimbatore, Anna University affiliated colleges (comprising 116 engineering colleges) and eighteen colleges.

2. All writ petitioners seek a writ of certiorarified mandamus calling for records of the first respondent being the Secretary to Government, Ministry of Social Justice & Empowerment/R1, relating to the Post Matric Scholarship Scheme Guidelines to students belonging to Scheduled Castes ('Scheme') for studies in India 2020 – 2021 to 2025 – 2026 and quash the same insofar as it relates to Clause 11.1 thereof, being payment mechanism alone.

3. They seek a consequential direction for a modification in payment mechanism under the Scheme such that tuition fees borne by the Central Government may be credited by direct payment to the bank accounts of the petitioner Institutions.

4. The Scheme in question has been issued by the Ministry of Social Justice and Empowerment in March, 2021. The beneficiaries are students, who aspire for post matriculate studies and who belong to the Scheduled Castes. The objective of the Scheme is to achieve an appreciable increase in the gross enrolment ratio of Scheduled Castes students (SC students) in higher education

and the focus there, is to train those from the poorest households by providing financial assistance to advance in their education.

5. The scholarship is available for studies within India and the beneficiaries are selected by the State/Union Territory where the student is permanently settled /domiciled. Present beneficiaries as well as fresh applications are permitted. The target group of students are those who aspire to post graduate courses as per the following categories:-

> *a) "Group 1 : Degree and Post Graduate level professional courses" shall mean all Professional courses in Medicine, Engineering, Technology, Planning, Architecture, Design, Fashion Technology, Agriculture, Veterinary & Allied Sciences, Management, Business Finance / Administration, Computer Science / Applications (ii) Post Graduate Diploma courses in various branches of Management & Medicine (iii) C.A/I.C.W.A/C.S./I.C.F.A etc. ,(iv) M.Phil, Ph.D, and Post-Doctoral Programmes (D.Lit, D.Sc., etc) of Group I, Group II and Group III courses, (v) L.L.B., Integrated L.L.B, L.L.M.*
>
> *b) "Group 2 : Other Professional Courses leading to Degree, Diploma, Certificate" shall mean all Professional Courses leading to Degree, M.Ed/ M.Pharma, Diploma, Certificate in areas like Pharmacy (B Pharma), Nursing (B Nursing), BFS, other para-medical branches like rehabilitation, diagnostics etc., Mass Communication, Hotel Management & Catering, Travel/Tourism/Hospitality Management, Interior Decoration, Nutrition & Dietetics, Commercial Art, Financial Services (eg Banking, Insurance, Taxation, etc) for which entrance qualification is minimum Sr.Secondary (10+2) and Vocational stream, ITI courses and Polytechnic where entrance qualification is Class XII or above.*

c) "Group 3 : Graduate and Post Graduate course" shall mean : courses not covered under Group 1 & Group 2 e.g. B.A./B.Sc.,/B.Com etc., M.A./M.Sc/M.Com etc.
d) "Group 4: All post-matriculation (Post Class X level) non-degree courses" shall mean : All post-matriculation level non-degree courses for which entrance qualification is High School (Class X), e.g., Senior Secondary certificate (class XI and XII); both general and vocational stream, ITI courses, 3 year diploma courses in Polytechnics, etc.
Note: The list of courses in various groups is indicative and States/UTs may add courses as per laid down standard in the State/UT."

6. The eligibility conditions that the candidate must satisfy are as follows:-

(i) Open to nationals of Indians only

(ii) Open to those who belong to Scheduled Castes only in relation to the State / Union Territory where the candidate is domiciled.

(iii)Candidate should have passed the Matriculation /Higher Secondary or any higher examination of a recognized university / Board of Secondary Education

(iv) The family income threshold has been pegged at Rs. 2.50 lakhs and income certificate should be produced at the time of admission stipulating that the income of the parents/guardians does not exceed the aforesaid amount.

(v) Age limit has to be fixed by the concerned institution (vi)Children of all parents/ guardians, i.e., one who satisfies the financial threshold, will be entitled to apply for the benefits of the Scheme and;

(vii)Only those candidates who have succeeded to obtain admission on merit criteria are eligible.

7. The Scheme envisages the participation of the State Government as well and the details of the role by the State are at Clause 6 thereof as well as other Clauses under the Scheme. Clause 7 thereof, set out the benefits available to the beneficiaries for the complete duration of the Scheme as follows:

"The scholarship includes the following components for the complete duration of the course:-
i. Compulsory non-refundable fees including tuition fee, as fixed by the Fee Fixation/Rationalization Committee of the State Government
ii. Academic allowance

Group 1: Degree and Post Graduation level professional courses	*13500*	*7000*
Group 2: Other professional courses leading to Degree, Diploma, Certificate	*9500*	*6500*
Group 3: Graduate and Post Graduate courses not covered under Group I & Group II	*6000*	*3000*
Group 4: Al post matriculation (Post Class X level) non-degree courses	*4000*	*2500*

Note 1. Ten percent extra allowances shall be provided for Divyang students.
Note 2. Students pursuing C.A/ICWA/CS/ICFA shall be treated as day scholars for the purpose of academic allowance. Students studying through correspondence/online courses shall not be eligible for academic allowance.

Note 3. The academic allowance as above shall be applicable from the year 2021-22. For the year 2020-21 the allowances as applicable under the earlier guidelines shall apply."

8. Clause 7.4 states that in addition to what the Central Government provides, the State Governments may, at their discretion, top up the academic allowances from their own resources. The State has not provided any details of additional stipend given by them to the students.

9. To enable a student to apply for Scheme without payment of tuition and hostel fees, a Freeship Card will be issued by the State Government. The student is expected to register before the expected date of admission for issuance of the Freeship card on the respective State Scholarship Portal.

10. The Scheme specifically provides that *the institutions should be willing to honour the FREESHIP CARD issued by the State/District Authority through the scholarship portal and admit the student without insisting on pre-payment of the college/tuition fee or hostel fee. This would be paid by the student on release of the scholarship amount by the Government as per the provisions of this scheme. In this regard, the State Governments will coordinate with the institutions located in their respective States.*

11. There is thus a clear and categoric responsibility cast upon the school to ensure that no student who holds a valid Freeship Card will be turned away on account of non-payment of fees. The State is also expected to play a part in

the effective and implementation of the Scheme and Clause 6 of the Scheme outlines this:

6. Role of the State Governments

6.1 Although many SC students have availed benefits under this scheme and have occupied high positions in the society, still the Gross Enrolment Ratio (GER) of SCs in higher education (23.0%) lags behind the national average (27.0%). It is the endeavour of the Government to raise the GER of SCs in higher education from 23.0% to the national average in the next five years. Similarly, the GER in Senior Secondary education of SCS has to increase from the current 56% to the national average in the next five years. Towards this end, special focus of the implementing agencies is required to achieve the goal.

6.2 All the SC students with annual income of up to Rs 2.50 lakh per annum would be eligible under the scheme. However, the State Government will additionally make special efforts to identify the poorest households from various sources and enroll the eligible students under the scheme in a mission mode. Further, these students would be monitored on regular basis so that they continue with their studies. Such students shall include (i) students from SC households with three or more deprivations as per SECC-2011 (i) students from SC households where one or both the parents are illiterate and (ii) the students who have passed 10th standard from a State Government/ Municipality/Local Body school. In this regard, States/UTs will launch special campaigns to identify and cover such students.

6.3 States/UTs may adopt methodology suitable to the local conditions for identification of such students e.g. SC majority districts/blocks/villages may be taken first for identification of poorest students or students leaving class 10th or 12th class may be tracked in association with the education department or data emanating from other Central/State schemes indicating the dropouts rates or other sources as deemed fit. Every State Government shall undertake a campaign every year in

March/April to identify such students and mentor them to enrol and avail scholarships. Such students will be helped for identification of courses also as per their skills.

6.4 Awareness drive shall be undertaken by the State Governments/UTs about the scheme through the Gram Panchayats Notice Boards, school committees, and discussions in the parent-teacher association meetings and other public awareness measures, in order to extend its coverage and also minimize any misuse by unscrupulous elements.

6.5 The States are required to take up identification of the students for fresh enrolment by taking up systematic drive covering all the higher secondary schools and encouraging the pupils who have dropped out after Class 12th to come back to higher education.

6.6 It is essential that the fresh enrolments to the extent possible are made in the courses which are having employment potential. For this purpose, the State may do an exercise in consultation with the Higher Education Department of the State Government, and the State Skill Mission for identifying courses which would improve the employment potential of the students. It is strongly advised that fresh enrolment may be made in these courses. Such skill courses should be long term courses with periodicity of at least 1 year and conducted by the institutions as per Para 4 of the scheme guidelines.

6.7. State Government will ensure that the beneficiary, at the time of admission, applies for the scholarship also. In this regard, the State Government may open facilitation centers or nominate a nodal officer in the educational institutions so that the entry into the student database for renewals and fresh admissions can be done in a stipulated timeframe.

6.8 The State Governments shall put in place a scholarship portal that has all features as prescribed in para 13 of these guidelines and share the data on a real-time basis with the Central portal.

6.9 The State/Central Government shall have robust monitoring systems, including field inspections, social audits, data analytics etc. so that timely payments are made to eligible beneficiaries.

6.10 States/UTs shall ensure that Fee Rationalization/Fixation Committees are set up for all courses.

12. The role of the State is thus as a partner, to ensure proper implementation, identify suitable candidates and, in general maximise the penetration of the scheme. At the time of registration for the Freeship Card, the student must undertake that once the fees are credited to his/her account the same would be transferred to the admitting Institution within seven working days from date of receipt of the amount in the bank account of the student.

13. Clause 11 deals with payment mechanism and is extracted below:-

"11.Payment Mechanism
11.1 The entire scholarship amount – both from the State and Central Government – including the tuition fees, academic allowance and any other admissible allowance will be paid directly into the account of the students ONLY through DBT preferably through an Aadhaar Based Payment System (Aadhaar Payment Bridge) from 2021 – 22. The States shall preferably release the payments through PFMS System so that the accounts of the students are not required to be validated again.
11.2 Starting from 2021 -22, the Central share in the Scheme would also be released on DBT mode directly into the bank accounts of the students, after ensuring that the concerned State Government has released their share.
11.3 All the State/UTs/Centre would adhere to the following timelines for processing of the applications and release of scholarship amounts:

- *The Scholarship portals would remain open throughout the year so that all eligible students can register for the Freeship Card and apply for the scholarships.*
- *Disbursal of scholarships for all applications (fresh/renewals) shall be made in one instalment as per the following schedule:*

Dates of receiving of applications	*Date by which State share (40% 10% in case of NE States) should be released*	*Date by which Central Share (60%; 90% in case of NE States) should be released*
From 1st April to 31st July	*15th August*	*30th August*
From 1st August to 30th November	*30th December*	*26th January*
From 1st December to 31st January	*28th February*	*15th March*
*From 1st February to 31st March**	*With 75 days of application*	*Within 90 days of application*

** Portal shall remain open only for submission of applications for scholarships for courses where admission is after November.*
11.4 There shall be no delays in payment of the scholarships. For this purpose the State shall ensure that their instalments are disbursed to the students by the timelines defined in previous para so that the Central share can also be released in time.
11.5The Ministry of Social Justice vide notification number 428 dated Fen,16,2017 has notified Aadhaar as identity document under Section 7 of Aadhaar Act, 2016 for all Scholarship Schemes w.e.f.16th February 2017
11.6The authentication through Aadhaar would be compulsory at the time of renewals, if not provided earlier at the time of admission."

14. It is the above procedure that is the cause leading to institution of these writ petitions as it is the case of the petitioners that several students have received the amounts representing the fees from the Central Government but have not, in turn, transferred the amounts to the respective admitting Institutions. This Court has repeatedly sought a confirmation from the respondents as to whether such undertakings have been received from the students but there has been a marked reluctance to produce the particulars called for.

15. Thus, and left with no option, this Court proceeds on the basis that those candidates who have not transferred the tuition fee amount to the Institutions have completed the process as outlined under Clause 8 of the Scheme and executed the undertakings required under Clause 8.2.

16. The thrust of the petitioners' submissions is that the tuition fees are credited directly to the accounts of the candidates who, in several instances do not abide by the undertaking given by them and fail to transfer the same to the Institution. Tabulations have been filed by the learned counsel for the petitioners, setting out details of students who have been successful awardees

under the Scheme and to whom the amounts under the Scheme have been credited, and those from the Institutions has not been received the fees[1].

17. The tabulations are made part and parcel of this order and annexed as Annexures 1 and 2 in preference to including them in the order itself, which would render the order bulky. The Registry is directed to issue this order with annexures.

18. Both respondents have filed a counter. R1, in the counter filed in June, 2023 has stated thus. PMS-SC Scheme is a Centrally Sponsored Scheme, 60% of which is funded by the Centre. It is fully implemented by the States. The aim is the educational empowerment of Scheduled Caste (SC) students. Leeway is given to the States/Union of Territories, if they so desire, to improve the amount given to SC students from their own budgets.

19. The scheme is a dynamic one which is revised from time to time bearing in mind the requirements of all stakeholders. Clause 8.2 of the revised guidelines as applicable for the years 2020-21 to 2025-26 provides that the students shall give an undertaking that the fees payable to the Institution will be remitted by the Centre to the student for onward transmission to the Institution, within seven working days from date of receipt of the scholarship amount in his or her bank account.

[1]*The credit of fee to the students account is only at the end of academic year and hence at this point in time, the credit for academic year 2023 – 2024, even to the students, is yet to take place.*

20. They emphasize that their intention is certainly not to deprive the Institution of the fees due to it. For the financial years 2017-18 to 2020-21, substantial amounts, being Rs.162.88, 383.73,379.23 and 120.23 crores have been released to the State of Tamil Nadu and thus there are no arrears, according to the Centre, in regard to the amounts payable to the State for those years.

21. From 2022-23 onwards, the share of the Centre is disbursed directly into the Aadhar seeded accounts of the beneficiaries, after payment of the State's share to the beneficiaries. Being a matching scheme (where the Centre and the State both participate), the Centre disburses its share after the State meets its obligations. The dual responsibilities are set forth in clause 10 that deals with the Funding Pattern of the Scheme and reads as follows:

> ***10. Funding Pattern of the Scheme***
>
> *10.1 There will be a 60: 40 sharing ratio between the Centre and States (90:10 in case of North Eastern States) of the average demand for the scheme for three year period 2017 - 18 to 2019-20 (to be considered as the base period), with a 5% overall annual increase each year in the Central assistance for all States put together in absolute terms w.r.t. base period. The above shall be applicable from 2020-21 onwards and the scheme will be continued upto the financial year 2025-26.*
>
> *10.2 Thus, for the purpose of determining the demand for the year 2020-21, the average demand of 2017-18 to 2019-20, or the actual demand for 2020-21, whichever is lesser, will be considered for each State/UT. For subsequent years i.e. 2021-22 & onwards, the*

Central assistance for all States put together will be limited by a 5% annual increase over the average demand for the scheme for the base period of 2017-18 to 2019-20, which shall be ensured by the Project Appraisal Committee (PAC) while appraising the States' Annual Action Plans. The Ministry will have the flexibility of adjusting the allocation of funds between the States subject to the total allocation approved, without disrupting the 60:40 sharing ratio between the Centre and the States.

10.3 If the total fund requirement is over and above the annual 5% limit, the central share will be limited to that and the additional requirement of funds, if any, shall be met by the State Governments from their own resources.

10.3. All the State Governments and Union Territory Administrations implementing the scheme will maintain the data of all the beneficiaries on their online portal and will distinctly mention the amount of scholarship under various components as mentioned in the Scheme.

22. The number of beneficiaries and the amount remitted through the Direct Beneficiary Transfer (DBT) for financial years 2021-22 and 2022-23 for 6,83,187 and 3,31,819 beneficiaries is Rs.667.44 and Rs.365.13 crores respectively. R1 states that during years 2014-2017, there were instances of irregularities by the Institutions on account of which the eligible students had been deprived of both quality education as well as the scholarship amount.

23. There are references to the Audit reports of the Controller and Auditor General as well as judgments of the High Courts in this regard and it is only for this reason that the Central Government found the need to regulate the

payment mechanism and had decided to provide for payment of fees through the student and not directly to the Institution.

24. Thus the substratum of the defence of R1 is that the Scheme provides for the student to undertake to transfer the fees to the Institution and the responsibility in entirety upon the State to ensure that the students honour this undertaking. That apart, they would submit that being a matter of policy, it would not be appropriate for the Court to intervene.

25. The counter also proceeds on the basis that the Writ Petitions are based on an *apprehension* that the petitioner institutions would not receive the fee. However, the Court notes that it is not an apprehension that the petitioners put forth, but the realities of the situation where they have, in fact, not received the fees for the last several academic years.

26. The second respondent, i.e., the Principal Secretary, Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu has also filed a counter. In this counter, they point out that no material has been submitted by the petitioners to corroborate their claim that they have not received their fees. They also support the case of the petitioners that there is a mandate on the petitioners to admit the students without insistence of the fee.

27. However, they deny any liability to the Institutions on account of the default by the students, maintaining that it is not tenable for them to reimburse

the fee to the institutions, since they have disbursed the scholarship amounts to the students. This, they fear, will cast a double jeopardy upon them.

28. The Petitioners have cited the following cases:

- *Om Kumar and others V. Union of India*[2]
- *Union of India and others V. Dinesh Engineering Corporation and another.*[3]
- *Ramgarhia Polytechnic College, P.O.Satnampura V. The State of Punjab and others.*[4]
- *Small Scale Industrial Manufacturers Association (Registered) V.Union of India and others.*[5]

29. I have heard learned counsel and have also perused the materials available on record including the cases cited. Undoubtedly, the scheme in question is laudable and there can hardly be any question in regard to the necessity for implementation of the same. The narration in the initial paragraphs of this order has captured the raison d'être and mechanism for implementation of the scheme.

30. The only question that arises is as to whether it is legally appropriate for the college and fee to be remitted to the bank account of the students for onward transmission to the Institutions. If the answer is in the negative, the question that then arises is the manner in which this default must be addressed and plugged.

[2] (2001) 2 SCC 386
[3] (2001) 8 SCC 491
[4] 2013 SCC OnLine P&H 15948
[5] (2021) 8 SCC 511

31.There is a provision in the Scheme for the student to undertake to transfer the fees to the Institution once received from the Central Government. The stand of the Centre is that it is for the State to take appropriate action if the student does not do so. Such a situation is not envisaged in the scheme and thus there is no mode of redressal that is provided within the Scheme for such an eventuality

32. Clause 21 of the Scheme which deals with '*Other conditions for the Award*' states that if a student is found to have obtained a scholarship by false statements, the scholarship will be cancelled forthwith and the scholarship paid will be recovered at the discretion of the concerned State Government. The penalty on the student is blacklisting and debarment from any scholarship forever.

33. Clause 21.3 also provides that a scholar will be liable to refund the scholarship amount at the discretion of the State Government, if, during the course of the year, the studies have been discontinued. Yet another situation for cancellation of the scholarship is if the candidate changes the subject of the course of study or institution without prior approval of the State Government. Even this cancellation is at the discretion of the State Government. These are the only circumstances where punitive intervention by the State is envisaged and that too at its discretion.

34. The Scheme has not envisaged the possibility that the candidate would defalcate with the fees and hence there is no remedy provided. The casualty in this situation is the Institution. The thrust of the Scheme is to educate the target audience being students belonging to the SC Community and it is thus that wide discretion is available with the State to condone violations as envisaged under Clause 21.

35. However, this cannot impinge upon the functionality of the educational Institution itself. As the Institutions rightly point out, there is great responsibility cast upon them to continue to educate the scholarship students come what may and there are penalties envisaged if they fail in such duty. This however, does not in my considered view, mean that they should shoulder this responsibility gratis, or to their detriment.

36. The Utopic view is that dissemination of education is a philanthropic and not commercial endeavour. However, it is unreal to expect students to be educated free, and at the cost of the Institutions. The reason for the switch of mechanism from direct payment to 'payment through the students', is that some Institutions had failed in their responsibility, rendering sub-par education. If this were so, it is for the authorities to dome down hard on such Institutions and pull them in line. The remedy cannot be one that leads to grossly disproportionate results.

37. In the case of *Om Kumar* (supra), the Hon'ble Supreme Court considered proceedings proposing to reopen the quantum of punishments imposed in departmental enquiries on officers of the Delhi Development Authority in connection with land allocations to a private company.

38. Justice O. Chinnappa Reddy had been requested to investigate into the matter and had filed a report. The defence put forth turned around the principles of proportionality. It was submitted that Courts would not normally interfere with the departmental actions/proceedings unless such proceedings were grossly disproportionate to the matter that it concerned.

39. The Wednesbury Principles were pressed into service. While agreeing, in context of quantification of punishment in disciplinary matters, that it is primary for the disciplinary authority and the jurisdiction of the Constitutional Courts and Tribunals would be restricted to the applicability of Wednesbury Principles, a series of cases were considered to decide on the width and ambit of what would constitute '*proportionality*'.

40. This judgment has been pressed into service to state that administrative action in India affecting fundamental freedoms has routinely been tested on the anvil of proportionality of which arbitrariness would be one facet of consideration. Applied in the context of the present matters, the Court

must test the scheme, especially, offending clause 11.1 in the context of whether it has achieved the purpose that it seeks to.

41. Any welfare scheme such as the scheme in question is no doubt to be implemented bearing in mind the primary target audience, in this case, the SC student community. However, if the Scheme were to affect the fundamental rights of other stakeholders who are intrinsic to the working of the scheme, such as the educational Institutions, in my considered view, that would a gross legal lacunae in the Scheme itself, to that extent and would, in time, render that Scheme unworkable. The attitude of the Institution towards the defaulting students would undoubtedly sour which cannot be the ideal circumstance for a college-student relationship to flourish.

42. The Union Territories of Jammu & Kashmir and Ladakh has implemented a Special Scholarship Scheme for their students during academic year 2021-22 which contains the following disbursement procedure.

> ***15. DISBURSEMENT PROCEDURE:***
> *STEPS TO BE TAKEN BY STUDENT FOR DBT:*
>
> *a) After joining the institution, the students have to immediately upload their joining report (in the prescribed format available on website under SSSJ&K 2021-22 tab) before the last date of joining is over. The students are required to login to AICTE portal using their credentials which has already been created by them at the time of application submission process under SSSJ&K.*

b) The joining report will be verified by the Institution post which candidate has to fill and upload the following documents to start the disbursement process. Fill all the necessary information in Basic Details Tab, Institute Details Tab & Bank Details Tab.

STEPS TO BE TAKEN BY INSTITUTE:

For processing of scholarship, the institute needs to perform the below mentioned task for taking the benefit of academic fee in their account. ***The annual academic fee would be credited in the institute account directly which is in the name of institution and their details are submitted to AICTE. The fee would be released based on SFRC (State Fee Regulatory Committee/Authority) applicable to that particular batch/course with the maximum limit as per scheme guidelines.***

a) College will upload documents for claiming Academic Fee. If the institute is admitting SSSJ&K candidates for the first time they should apply for the issuance of User ID & Password by clicking at: https://www.aicte-india.org/bureaus/jk/2021-2022.

b) If the institute has already admitted candidates under SSSJ&K, then you may use the old User ID & Password and submit SFRC and other documents as per norms.

c) Login on to AICTE's J&K Portal using authorized "User Id" & "Password', sent on your official email address.

d) Fill in the necessary information & upload documents namely in 3 tabs: Institute Details, Bank Details and Fee Details.

e) The following documents are to be uploaded in Institute login:
(i) College Fee Structure/Academic fee (in the prescribed format available on AICTE portal: https://www.aicte-india.org/bureaus/jk/2021-2022)

(ii) Fee as per SFRC (State Fee Regulatory Committee/Authority) / State Govt. issued fee fixation document.

> *(iii) Mandate Form - Institution accounts details (format available on website under SSSJ&K 2021-22 tab)*
>
> *(iv) Passbook Copy/Cancelled cheque clearly indicating bank name, Account holders Name, Account Number, IFSC code, MICR Code, Bank Address.*
>
> *(v) The Institution bank account should not be in the name Trust/Society.*
>
> *(vi) Finally click on Submit Button*
>
> *Scholarships will be disbursed through PFMS Mechanism only after joining the institute and uploading the joining report along with other required documents including AADHAR Number on AICTE, SSSJ&K portal through their login.*
>
> (Emphasis by the Court)

43. Thus, the Direct Payment mode is being routinely deployed, even by the Centre itself, as applicable to this Scheme till the Academic Year 2018.

44. The State has circulated a copy of letter dated 31.07.2023 addressed to the Director, Ministry of Social Justice and Empowerment bringing to its notice the fact that the students, after receiving the tuition fees, have defaulted in paying over the same to the educational institutions. In response, the Centre has merely opined vide letter dated 06.02.2023 *'it is the duty of the State Governments that such guidelines are complied with and (they) are further required to initiate awareness exercises among students and take appropriate measures so that the students can be guided and apprised about this clause and scheme guidelines.'*

45. In *Ramgarhia Polytechnic* College (supra), a learned single Judge of the Punjab and Haryana High Court considered the identical challenge qua the same Scheme as under consideration in the present matters, directing that the fees under the Scheme shall be paid directly to the college and not deposited in the accounts of the eligible students.

46. In *Dinesh Engineering Corporation* (supra), while considering the contracts issued by the Railways, the Court noticed that public authorities, even in contractual matters should not have unfettered discretion though they may be permitted some extra discretion. They are bound to follow norms recognised by Courts in dealing with public property. Such a requirement was thought necessary in order to avoid any unreasonable and arbitrary decisions being taken by public authorities.

47. In *Small Scale Industrial Manufacturers Association (Registered)* (supra), three Judges of the Hon'ble Supreme Court dwelled on the scope of judicial review of economic and fiscal policy of the Government. In those matters directions were sought by the petitioners to the Union of India and other authorities to take effective remedial measures to redress the financial constraints caused to the industrial sector, particularly MSMEs, by the Corona Virus pandemic. The petitioners were evidently dissatisfied with the measures taken and had hence approached this Court seeking additional intervention.

48. Though the issue in this matter is slightly different, it concerns, largely, a formulation of a special scheme and its implementation. This Court cannot turn a blind eye to the modus operandi to be followed by the Centre and all stakeholders. In this regard, paragraphs 71 and 72 of the judgment in *Small Scale Industrial Manufacturers Association (Registered)* (supra) are relevant:

> *71. The correctness of the reasons which prompted the government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the government.*
>
> *72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate.*

49. The above paragraphs make it clear that judicial review is possible when the policy reveals an operational flaw that impedes the Fundamental Rights of the parties to the Scheme. In this case, it is the Right to trade under Article 19(1)(g) of the Constitution of India that is being compromised by virtue of the Payment Mechanism in Clause 11 of the Scheme. The wisdom or soundness of the policy cannot be faulted and I would, at the risk of repetition,

commend the objectives that it seeks to promulgate. However, in doing so, the respondent must be cognizant of the roles and responsibilities of other stakeholders as well and how best the policy shapes their functionality. The benefit given to one section of the society cannot make an inroad into another and this what will happen if the Payment Mechanism under Clause 11 continues.

50. These judgments would thus put paid to the position that intervention in matters of policy is barred in toto. The power of judicial review is thus always available, to be exercised in appropriate matters. In my considered view, based on the detailed narration in this order, I would think this is one such matter.

51. I am inclined to accept the submissions of the petitioner that proper measures must be taken by the Centre and the State to make good the shortfall in fees payable by those students who have not transferred the fees to the educational institutions. Reference to clause 20 of the Scheme providing for mechanism for redressal of grievance is really of no use.

52. Clause 20 reads as follows:

20.1 There shall be an online grievance redressal mechanism linking all the authorities responsible for implementation on the scholarship portal.
20.2 The student shall be able to lodge a grievance either through the portal or by a mobile app.

20.3. Every institution shall have a Grievance Redressal Officer (GRO) who is responsible for entertaining the grievances and resolving them by following up with the appropriate authority.
20.4. The non-resolution of the grievance at the institution level in a given time frame shall automatically be escalated to the district and later to the State level for resolution.

53. This is a grievance mechanism which enables airing of grievances by the students. There is nothing in that clause to commend applicability thereof to any other stakeholder such as the educational institutions. Clause 20.2 makes it clear that it is the student who may lodge a grievance either through the portal or on a mobile app.

54. The presence of all authorities responsible for implementation on this app/portal is only to facilitate the resolution of the grievance of the student and it is not envisaged that one of the stakeholders may be aggrieved themselves. There is thus no enabling provision in this Scheme to provide for resolution of grievance by an educational institution and these Writ Petitions are thus found maintainable.

55. The following directions are issued:

(i) The petitioners will compute the shortfall in fees for the academic years covered by the Scheme thus far and forward the same to both the first and second respondents with full supporting particulars of the students who have defaulted in transferring the fees.

(ii) Upon receipt of the particulars, R1 and R2 will make good the shortfall in the proportion of 60:40 (per the Funding Pattern mechanism set out in Clause 10 of the Scheme) within a period of eight (8) weeks from date of receipt of the particulars. Any additional documents or clarifications, if required, from the institutions, shall be sought and obtained within the timelines as stipulated aforesaid.

(iii) The State may, at its discretion, decide whether to initiate proceedings as against the defaulting students.

56. These Writ Petitions are allowed. R1 shall do the needful to effect an amendment to Clause 11.1 of the Scheme in relation to Payment Mechanism, in line with the observation in this order prior to the date when the fees are next payable to the Institutions. No costs. Connected Miscellaneous Petitions are closed.

16.02.2024

Ssm/sl
Index : Yes / No
Speaking Order/Non-speaking order
Neutral Citation:Yes/No.

To
1.The Secretary,
Ministry of Social Justice & Empowerment,
Government of India,

Shastri Bhawan, C – Wing,
Dr.Rajendra Prasad Road,
New Delhi – 110 011.

2.The Principal Secretary,
Adi-Dravidar and Tribal Welfare Department,
Government of Tamil Nadu
Secretariat, St.George Fort,
Chennai – 600 009.

3.The Commissioner,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai - 600 005.

DR.ANITA SUMANTH, J.

Ssm/sl

**W.P.Nos.20940, 22712, 21486,
21488, 21491, 20946, 20948, 20956,
20966, 20967, 20971, 13556,
20958, 20959, 21495, 21496,
22704, 20951,20955 & 21493 of 2023**

16.02.2024