2023:BHC-AUG:19497-DB

VERDICTUM.IN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7861 OF 2020

Sri Sri Ravishankar Vidya Mandir,
Jadhavwadi Road,
Hatladevi Campus, Osmanabad
Through its Head Master
Kiran Dattatraya Ghodke
Age : 31 years, Occu: Service,
R/o C/o Sri Sri Ravishankar
Vidya Mandir, Jadhavwadi Road,
Hatladevi Campus, Osmanabad. .. Petitioner

Versus

1. Government of India,
Through its Under Secrtary
Ministry of Human Resource
Development Department of School
Education and Literacy.

2. The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.

3. The Commissioner,
Maharashtra State Examination Council,
17, Dr. Ambedkar Road, Near Lal Deul,
Pune. .. Respondents

Shri Santosh S. Jadhavar, Advocate for the Petitioner.
Shri Bhushan B. Kulkarni, Standing Counsel for the Respondent No. 1.
Shri A. S. Shinde, A.G.P. for the Respondent No. 2.
Shri Anup P. Nikam, Advocate for the Respondent No. 3.

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

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

CLOSED FOR JUDGMENT/ORDER ON : 21.08.2023
JUDGMENT/ORDER PRONOUNCED ON : 08.09.2023.

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

. Rule. Rule is made returnable forthwith. With the consent of parties heard learned counsel for respective parties for final disposal.

2. By the present petition, the validity of Note I of clause 3(d) of the brochure dated 14 March 2021 and clause 1.2 of the revised guidelines of Central School National Means cum Merit Scholarship Scheme (hereinafter referred as to the "Scholarship Scheme" for the sake of brevity and convenience) are challenged. Simultaneously, the petitioner is seeking declaration that the students of unaided private schools are eligible to appear for National Means cum Merit Scholarship examination. The grievance of the petitioner is that the students of VIII standard taking education in unaided private schools are not eligible for appearing in the scholarship examination and they are deprived of the scholarship scheme.

3. The petitioner is a recognized unaided private school imparting secondary education. The respondent No. 1 issued communication dated 20 April 2018 with revised guidelines of Scholarship Scheme, thereby declaring the object of the scheme. The guidelines provide the eligibility, procedure for selection and overall implementation of the scheme. Its clause No. 1.2 provides for scholarship to students in Class IX from a

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

Government, Government aided and local body schools. The scheme proposed disbursement of scholarship to one lakh students in entire nation. A quota of 11682 is earmarked for the State of Maharashtra.

4. The respondent No. 3 published brochure for scholarship scheme on 14 March 2021. It provides eligibility, modality of conducting examination, declaration of results, etc. Its clause No. 3(d) provides that the students taking education in unaided schools, central schools, Jawahar Navodaya schools, students having availed the benefits of government hostel, mess and education and Military schools are ineligible for the scholarship. The ineligibility of students of the private schools stipulated by clause 3 is under challenge in the present petition.

5. It is averred by the petitioner that the representations are made to the respondents to hold its students eligible for scholarship examination. However, there is no response to the representations. The schools in the vicinity also made written request to permit the students of private unaided schools to appear for scholar examination. Their common ground was that the promising and poor meritorious students need financial assistance and encouragement.

6. The petitioner has placed on record a communication issued by the respondent No. 3 on 03.02.2020 addressing the Head Masters of private unaided schools reiterating the ineligibility of the students. Under the above factual matrix, the

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

petitioner has approached this Court.

7. The respondent No. 3 has filed affidavit in reply contesting the pleadings and the relief of the petitioner. The respondent No. 1 has also filed separate affidavit in reply disclosing that the scholarship scheme was finalized on the recommendation of Over sight Committee on implementation of new reservation policy in the higher education with the approval of cabinet committee. It is contended that objective of the scheme is to award scholarship to meritorious students of economically weaker sections to arrest their drop out at Class VIII and to encourage them to continue the education. It is pleaded in para No. 3 of the reply that if the private school students are permitted to compete with the eligible students for scholarship examination, then percentage of students from Government, Government aided and local body schools would be reduced remarkably.

8. It is further stated in reply that in order to prevent the dropout of the students after elementary education for want of financial resources by the meritorious students, the scheme of awarding scholarship is aimed at. There are further schemes available for the students studying in Class X of the unaided schools namely National Talent Research Scheme and Central Sector Scheme of Scholarships for colleges and university students for those who have completed Class XII. Therefore, it is contended that the challenge in the writ petition has no merit and liable to be dismissed.

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

9. By interim order the petitioner was called upon to place on record the list of students from poverty stricken background. Accordingly, list is placed on record. They are admitted by the petitioner school through 25% of the quota as per Section 12 of the Right of the Child to Free and Compulsory Education Act, 2009 (for the sake of brevity hereinafter referred as to the 'Act of 2009')

10. The learned counsel for the petitioner submits that the clause No. 3(d)(i) of the Brochure and clause 1.2 of the guidelines do not stand to the test of intelligible differetia. Exclusion of students of unaided school is arbitrary. The impugned clauses of the policy are unreasonable and patently illegal. There are students admitted in the private schools from economically weaker strata. Such talented students are deprived of the benefits of scholarship scheme. As per Sec. 12 of the Act of 2009, the petitioner school has admitted the students, who are undisputedly from financially weaker section of the society.

11. The learned counsel for the petitioner would submit that there is no rational in excluding the talented students from weaker section of the unaided school from appearing for the scholarship examination and the scholarship benefits. The fees which is charged in the petitioner school is moderate and regulated by the competent authority. It is not always that the students taking education in the private school are affluent. The object sought to be achieved by the policy of N.M.C.C. scheme is frustrated because of the impugned clauses. It is submitted that

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

when there is rider of income of parent of a student, restriction incorporated in clause No. 1.2 on the basis of class of the school is contrary to the scheme, which is unjust and irrational. According to him two classes created because of the scheme is unsustainable in the eyes of law.

12. The learned counsel for the petitioner has relied upon the following judgments.

(i) Dr. Kriti Lakhina and others Vs. State of Karnataka and others reported in AIR 2018 SC 1657.

(ii) Director General, CRPF and others Vs. Janardan Singh and others reported in AIR 2018 SC 3101.

13. Per contra, learned counsel for the respondents would submit that the scholarship scheme was formulated by the competent authority. It is based on the recommendations of Oversight Committee on the implementation of new reservation policy in higher education which is an expert body. The impugned clauses are not shown to be violative of any statutory provisions of law. There are other scholarship schemes available for the students studying in private unaided schools or the colleges. It is submitted that there is intelligible differetia to exclude the students of the private schools which cannot be said to be discriminatory or unconstitutional.

14. The learned counsel Mr. Bhushan Kulkarni, appearing for the respondent No. 1 has placed reliance on the following

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

judgments of the Supreme Court and this Court.

(a) Judgment dated 21.09.2020 passed by the Division Bench of this Court in Writ Petition No. 5896 of 2020 in the matter of Mansi d/o Narayan Gaikwad Vs. Union of India and others.

(b) Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth and others reported in (1984) 4 SCC 27.

(c) Federation Haj PTOs of India Vs. Union of India reported in 2019 (2) Bom. C.R. 557 .

15. We have heard Mr. Santosh Jadhavar, learned counsel for the petitioner, Mr. Bhushan Kulkarni learned counsel for the respondent No. 1, Mr. Shinde, learned Assistant Government Pleader for the respondent No. 2 and Mr. Nikam, the learned counsel for the respondent No. 3.

16. It can be seen from the affidavit in reply of the respondent No. 1 and the letter dated 20 April 2018, which is at Exhibit – A of the paper book of the petition that the aim and object of the scholarship scheme is to award scholarships to the meritorious students of economically weaker section to arrest their dropout at Class VIII and to encourage them to continue the study at secondary stage. The Finance Minister in his budget speech of 28.02.2007 has announced a national means cum merit scholarship to award one lakh scholarships each year. Initially it

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

was Rs. 6,000/- per annum to be disbursed towards scholarship for a student to nurture the talent from the excluded section. The scheme in question needs funding and an amount of Rs. 750 crores was earmarked from 2008 – 2009 onwards. The scheme of funding for scholarship was approved by expenditure finance committee. The scheme was floated on the basis of recommendations of experts in the field of education department and finance department.

17. Subsequently, the amount of scholarship was enhanced from 6,000/- to Rs. 12,000/- per annum, the annual income of the parents of a student to be eligible for the examination is also enhanced from Rs. 1,50,000/- to Rs. 3,50,000/-. It is seen from the record that each state has been allotted a particular quota of scholarships. For Maharashtra 11682 students are earmarked for disbursing the scholarship in a year. The scheme in question has financial repercussions. It is not pointed out by the learned counsel for the petitioner that the clauses under challenge are violative of any statutory provisions.

18. The respondent No. 1 is competent to formulate the policy. The required budgetary provisions are also made. The experts in the field have deliberated and recommended the policy. The scholarship scheme casts a financial burden, therefore, it is the prerogative of the respondent No. 1 to lay down the eligibility criteria for awarding the scholarship to the students. It is the wisdom of the respondent No. 1 to determine a class of students to whom financial assistance is to be extended. We are afraid,

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

we can not dictate terms in policy matters to the State Government.

19. The respondent No. 1 has formulated the policy of scholarship scheme to be made applicable to particular students only. The students taking education (a) in unaided school, (b) central school/Jawahar Navodaya school (c) students having availed hostel facilities of the government, mess and education facilities and (e) military schools are excluded from appearing for the scholarship examination. We do not find any infirmity or want of competency to formulate above criteria.

20. The learned counsel for the petitioner has submitted that there is no intelligible differntia and rationale relation to the object sought to be achieved by the policy in question. The classification is founded on the financial position of the student or the parent. Normally, the students taking education in the Government, Government aided and local body schools are from moderate to low income group. A tendency of the students of dropping out is detected by the experts and the reason is non availability of financial resources. In order to encourage them to continue the study at a secondary stage, the scheme is aimed at. The excluded category of the student represent a picture that the students or their parents of unaided schools, central school, parents of a unaided school are comparatively of economically sound income group. They can afford to prosecute the study and the financial assistance is not required. There are less chances of dropping out of such students.

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

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 Vs. State of Bihar** reported in ***AIR 1955 S.C. 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.

23. The learned counsel for the petitioner has submitted that all the students in the private schools are not affluent and they are also from the weaker strata of the society. It is demonstrated that the fee structure in the petitioner school is moderate and affordable. A reference is also made to Section 12 of the Act of

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

2009. There is no dispute that every year 25% of the seats are to be admitted from economically weaker section of the society. The students from 25% of the quota are definitely in need of financial assistance. No fees is chargeable from them. The private management is entitled to reimbursement of the fees. Just because these 25% of the students are from weaker section does not lead to violation of principles of equality or reasonableness. It is up to the respondent No. 1 to take care of students from economically weaker section. The manner and mechanism has to be left to the respondent No. 1 to be formulated.

24. It cannot be lost sight of the fact that the objective of the scholarship scheme is not only to provide the financial succor to the weaker section of the society, but to arrest the dropout and to encourage them to go for secondary education. We are of the considered view that the State Government has taken care of the need of financial help to this quota of 25% by disbursing the tution fees to the managements. Therefore, the arguments of the learned counsel for the petitioner. in respect of 25% quota cannot be countenanced.

25. The petitioner has relied upon the judgment in the matter of **Dr. Kriti Lakhina and others Vs. State of Karnataka and others** cited supra. In that case directly petition under Article 32 of the Constitution was filed before the Supreme Court. The eligibility criteria for post graduation in the medical college was under consideration. The law laid down by the Supreme Court is undisputed. But that cannot be made applicable to the facts and

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

situation of the matter at hand.

26. Another judgment cited by the petitioner in the matter of **Director General, CRPF and others Vs. Janardan Singh and others** supra also does not apply to the facts of the present case. The respondent in that case was granted special allowance considering the place of serving in North-Eastern region by the Central Administrative Tribunal. Emanating from that the matter had reached the Supreme Court. In paragraph No 18 the principles of intelligible differentia are reiterated with reference to the constitution bench judgment of the Supreme Court. We have tested the validity of the impugned clauses to the touchstone of those principles.

27. The learned counsel Mr. Bhushan Kulkarni referred case of **Mansi d/o Narayan Gaikwad Vs. Union of India and others** (supra) in which the challenge was to the eligibility of the candidate to appear for compartment examination. The regulations are framed stipulating the eligibility. The reliance was placed on the judgment of **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth and others** (supra) and the petition was dismissed holding that the experts in the field have framed the policy and accordingly made amendment in the examination bye-laws of the C.B.S.C. on the basis of which circular in question was issued. The principles which are laid in the judgment, are equally applicable for the policies of the Government. We have no hesitation to hold that the

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

classification which is appearing in the present petition is reasonable and does not suffer vice of arbitrariness interalia not violative of article 226 of the Constitution of India.

28. The learned counsel for the respondent No. 1 has relied upon the judgment of the Supreme Court in the matter of **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth and others** (supra). A delegated legislation was under challenge in that matter. The relevant consideration for examining the validity of the subordinate legislation are stipulated in paragraph No. 14, 16 and 22. The restriction on the powers of the High Court while examining the validity of delegated legislation are laid down in the judgment. The same restriction with equal force are applicable to the policies of the Government. We are of the considered view that we cannot substitute our views for that of the respondent No. 1 as to which policy would best serve the object and purpose of the scheme and cannot sit in judgment over the wisdom and effectiveness or otherwise of the policy adopted by the respondent No. 1 and declare it as ultra virus merely on the ground that the impugned clauses will not serve the object and purpose of the act.

29. The guiding principles laid in para No. 16 of the above judgment are as follows :

> **16.** In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly, Section 18, 19 and 34 that the legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the Statute by framing rules/regulations which are in the nature of subordinate legislation. Sec. 3(39) of the Bombay General Clauses Act, 1904, which defines the 'rule' states: Rule shall mean a rule made in exercise of the power under any enactment and shall include any regulation made

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

> under a rule or under any enactment." It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The legislature has thus maintained in the Statute in question a clear distinction between 'bye-laws' and 'regulations'. The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of State Board, Divisional Boards and the Committee, the quorum required, etc More important matters affecting the rights of parties and laying down the manner in which the provisions of the Act are to be carried into effect have been reserved to be provided for by regulations made under Section 36. The legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-taking power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness.

30. The last judgment cited by the respondent No. 1 is in the matter of **Federation Haj PTOs of India Vs. Union of India** cited supra is also squarely applicable to the present case. We are bound to follow the restriction described on the Court while considering the validity of the policies of the Government. A useful reference can be made to the para No. 19, which is reproduced below.

> **19)** The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

> accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth:
>
> "16... The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

31. Considering the scope and the restrictions deducible from the judgments referred to above, we are of the view that the impugned clauses cannot be disturbed in exercise of writ jurisdiction under Article 226 of the Constitution of India.

32. Before parting with the judgment we express our sympathy with the cause espoused by the petitioner. The *bona-fides* of the petitioner cannot be doubted. We are not oblivious of the fact that in private schools there are students of the parents having low income and they need financial assistance and inspiration to prosecute further education. However, it is for the Government

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::

VERDICTUM.IN

to take a decision.

33. For the reasons assigned above, we are constrained to hold that the petition is sans merit. The writ petition is dismissed. There shall be no order as to costs. Rule is discharged.

[SHAILESH P. BRAHME, J.] **[MANGESH S. PATIL, J.]**

bsb/Sept. 23

::: Uploaded on - 08/09/2023 ::: Downloaded on - 11/09/2023 13:41:46 :::