

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5190 OF 2013**

- 1 The Association of Management of Unaided Engineering Colleges (Mah.), a Society registered under the Act having its registered office at c/o K.K. Wagh Education Society Hirabai Haridas Vidya Nagari, Amrut Dham, Panchavati, Nasik 422 003 Maharashtra, through its President Shri Balasaheb Wagh.
- 2 K.K. Wagh Institute of Engineering Education & Research Hirabai Haridas Vidya Nagari, Amrut Dham, Panchavati, Nashik-422 003. Through the Secretary Prof. K.S. Bandi
- 3 Guru Gobind Singh College of Engineering & Research Centre, Khalsa Educational Campus, Guru Gobind Singh Marg, Nashik-422 009, through its Chief Executive Officer Prof. D.S. Jaggi.

...Petitioners.

Vs.

- 1 The State of Maharashtra Through Secretary, Higher & Technical

Education Department  
Mantralaya-Annexe Bldg.,  
Mumbai-400 032.

2 The Director,  
Directorate of Technical  
Education, Maharashtra State,  
3, Mahapalika Marg,  
Dhobi Talao, Mumbai-400 001.

3 The Secretary,  
Social Welfare and  
Special Aid Department,  
Government of Maharashtra,  
Mantralaya-Annex Bldg.,  
Mumbai-400 032.

4 The Secretary,  
Tribal Development Department,  
Government of Maharashtra,  
Mantralaya-Annex Bldg.,  
Mumbai-400 032.

....Respondents.

Mrs. Chandana Salgaonkar with Mr. Sandeep Waghmare for the  
Petitioners.

Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 5454 of 2013**

The Association of Management of  
Unaided Polytechnics (Mah.)  
through President and Ors.

....Petitioners

Vs.

State of Maharashtra & Ors.

....Respondents

Mr.Nikhil Sakhardande i/by Mr. Sandeep Waghmare for the  
Petitioners.

Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 5633 of 2013**

Adarsh College of Pharmacy, Vita,  
through Principal, Mr. Niranjana  
Shishir Mahajan and Ors.

....Petitioners

Vs.

State of Maharashtra & Ors.

....Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 6039 of 2013**

Shanti Education Society's  
A.G. Patil Polytechnic Institute,  
through Principal and Ors.

....Petitioners

Vs.

State of Maharashtra & Ors.

....Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 6068 of 2013**

Prakash Shikshan Prasarak  
Mandals and Ors.

....Petitioners

Vs.

State of Maharashtra & Ors.

....Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH**

**WRIT PETITION NO. 6071 of 2013**

Suman Ramesh Tulsiani Charitable  
Trust and Ors. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ...Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 6191 OF 2013**

Swaraj Education Society, through  
Founder President Shri Ajit Dinkarrao  
Thorat and Ors. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. Nitin Dhumal for the Petitioners.

**ALONG WITH  
WRIT PETITION NO. 6201 of 2013**

G. H. Raison Education and Medical  
Foundations and Ors. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 7302 of 2013**

Shri D.D. Vispute College of  
Pharmacy and Research Centre,  
through Principal and Ors. ...Petitioners

Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 7369 of 2013**

The Association of Management  
of Unaided Engineering  
College, (Mah) and Ors. ....Petitioners

Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. Sandeep Waghmare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 to 4.

**ALONG WITH  
WRIT PETITION NO. 9641 OF 2013**

Chatrapati Shahu Maharaj  
Shikshan Sanstha and Ors. ....Petitioners

Vs.  
State of Maharashtra & Ors. ....Respondents

Mr.N. B. Khandare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9642 OF 2013**

Republican Students Federation & Ors ....Petitioners

Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. C. J. Choudhary for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9645 OF 2013**

Yashodabai Dagadu Saraf  
Charitable Trust and Ors. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Ms. Megha Keluskar i/by Mr. A.G. Talhar for the Petitioners .  
Mrs. S.S. Bhende, AGP for Respondents 1 and 2.

**ALONG WITH  
WRIT PETITION NO. 9646 OF 2013**

Matoshri Pratishtan Integrated  
Campus & Anr. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr.N. B. Khandare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9647 OF 2013**

Karmaveer Shankarrao Kale ....Petitioner.  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. N. B. Khandare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9649 OF 2013**

Ashok Gramin Shikshan Sanstha ....Petitioner  
Vs.

State of Maharashtra & Ors.

....Respondents

Mr. N. B. Khandare for the Petitioners.

Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9764 OF 2013**

Radheya Charitable Trust

....Petitioners

Vs.

State of Maharashtra & Ors.

....Respondents

Mr. N. B. Khandare for the Petitioners.

Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9765 OF 2013**

Shram Sadhana Bombay Trust & Ors

....Petitioners

Vs.

State of Maharashtra & Ors.

....Respondents

Mr. N. B. Khandare for the Petitioners.

Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9766 OF 2013**

Jaikranti Shikshan Prasarak

Mandal & Ors.

....Petitioners

Vs.

State of Maharashtra & Ors.

.... Respondents

Mr.s.S. Deshmukh for the Petitioners.

Mrs.S.S. Bhende, AGP for Respondents 1 and 2.

**ALONG WITH**

**WRIT PETITION NO. 9767 OF 2013**

Khandesh College Education & Ors. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr.V. T. Chaudhari for the Petitioners.  
Mrs.S.S. Bhende, AGP for Respondents 1 and 2.

**ALONG WITH  
WRIT PETITION NO. 9768 OF 2013**

Chhatrapati Shahu Maharaj Shikshan  
Sanstha & Ors ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr. N. B. Khandare for the Petitioners.  
Mrs. S.S. Bhende, AGP for Respondents 1 & 2.

**ALONG WITH  
WRIT PETITION NO. 9786 OF 2013**

Jagdamba Bahuuddeshiya Gram  
Vikas Sanstha & Ors. ....Petitioners  
Vs.  
State of Maharashtra & Ors. ....Respondents

Mr.Abhay Sambre for the Petitioners.  
Mrs.S.S. Bhende, AGP for Respondents 1 and 2.

**AND  
ALONG WITH****ORIGINAL SIDE WRIT PETITION NO. 2537 OF 2013**

Raosaheb Wangle Master  
Charitable Trusts ....Petitioners



Vs.  
State of Maharashtra & ors.

....Respondents

Mr. Sandeep Waghmare for the Petitioners.

Mrs. Anjali Helekar, AGP for Respondents 1 to 4.

Mr. Mihir Desai with Mr. Sarnath Sariputta with Mr. Swaraj Jadhav for AICTE in all the matters.

**CORAM : ANOOP V. MOHTA AND  
E.M. REIS, JJ.**

**RESERVED ON : 2 SEPTEMBER 2014.**

**PRONOUNCED ON : 9 SEPTEMBER 2014.**

**JUDGMENT:- (PER ANOOP V. MOHTA, J.)**

Rule returnable forthwith. Heard finally by consent of the parties.

2 As common issues are involved in these Writ Petitions, so also the challenge to Clause-14 of the Government Resolution (GR)Nos. 177 and 188, (74/13-81/13) dated 9.5.2013, 15 May 2013, therefore, this common judgment. Impugned Clause No.14 (translation) is as under:-

*“14. The Institutes which are recognized by this Government Resolution who has applied directly to All India Council of Technical Education instead of submitting proposal through State Government as well as those institutes which are negatively recommended by the State Government such institutes will not be eligible for*

*fee reimbursement scheme as implemented by State Government for approved courses. Director, Directorate of Technical Education, State of Maharashtra, Mumbai, is directed to act in accordance with this condition.”*

3 “Technical Education” and related aspects are controlled and governed by the All India Council for Technical Education Act, 1987 (For short, “AICTE Act”). The aim and object by the AICTE Act is to co-ordinate and integrate the development of technical education system at all levels throughout the country to provide and promote qualitative technical education in planned manner. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. It also involves regular performance appraisal for technical institutions and universities. The AICTE, therefore, is under obligation to control the norms and standards for common development of such education in the country.

4 The Act itself provides for grant of approval for starting new technical institutions and for introduction of new courses and variation in intake capacity and permits, in consultation with the

agencies concerned. On the basis of this Act, therefore, various authorities, board, council have been created to control and supervise the technical education and all its related aspects. This itself means, the AICTE having various functions and powers and being specialized body is empowered to ensure that all the institutions recognized by the AICTE are possessed of complete infrastructure/staff and other facilities and have capacity of maintaining quality education standards for imparting the technical education.

5 The annual approvals by the AICTE for establishment of new colleges/technical course/intake capacity/change of courses are also subject to sanction by AICTE being highest/supreme body constituted for the same. The requisite approval process and procedure (handbooks) are published from time to time before 6 to 8 months of the concerned academic year. All the parties are aware of the same. A specific procedure for approval of new institution and/or an extension and/or increase in intake capacity is also required to be followed by all in advance. Various provisions are

provided to deal with the violation of regulations, norms and requirements and the respective obligations. The Respondents' officials/officers of Director of Technical Education (for short, "DTE") are also need to participate in the process of approval, right from the date of scrutiny of such applications, documents, verification and inspection of premises/properties till the date of approval/sanction and even thereafter.

6 The events and dates of Writ Petition No.5190 of 2013, filed by the Petitioners-The Association of Management of Unaided Engineering Colleges (Mah.) (for short, "The Petitioners") as stated to be common are relevant for other Petitioners and specifically agreed polytechnic institutes/colleges are as under:-

On 29 September 2012, AICTE by its advertisement invited applications for establishment of new institutes, additional courses, increase in capacity or variation in intake etc.

Accordingly the members of Petitioner No.1, on 8 January 2013 had applied to AICTE in time. Petitioner No.2 had applied to AICTE on 7 February 2013 for increase intake capacity,

and Petitioner No.3 had on 7 February 2013 applied to AICTE for establishment of new BE Courses so also other Petitioners.

On 14 December 2012, DTE by their Notification called upon the institutes for verification of documents who have applied to AICTE for establishment of new institutes, additional courses in existing institutions, increase in the intake capacity, variation in intake etc. There was no mention regarding non-applicability of fee reimbursement facility to the reserved category students.

On 22 December 2012, AICTE by their Notification published complete time schedule for approval process. The last date of AICTE approval was 10 April 2013 and last date of permission from State/University was 15 May 2013.

On 27 February 2013, Respondent No.3 by Government Resolution declared that the Government decided to disburse fee reimbursement to the reserved category students who have taken admissions for academic year 2012-13. The members of the Petitioners have been following system of applying directly to AICTE on their website since academic year 2006-07, and for the academic year 2013-14 same procedure was followed. During all these years at

no point of time, the Applications were routed through the State. Government Resolution dated 27 February 2013 shows that during academic year 2012-13 also there was no issue in respect of non-applicability of fee reimbursement facility to the reserved category students/institutes.

On 19 March 2013, Petitioner No.2 College granted approval by AICTE for increase in intake capacity and Petitioner No.3 granted approval by AICTE for starting new course BE Course in Electrical Engineering, Mechanical Engineering and Civil Engineering.

On 9 April 2013, DTE by their Notification called upon the institutes to update their information on or before 12 April 2013 on DTE website pursuance to AICTE approval, if granted. In the Notification also there was no mention about such conditions for non-applicability of fee reimbursement facility to the reserved category students/institutes.

On 9 May 2013-added clause 14 and in some individual cases (W.P. No.5454/2013) a negative recommendation was intimated at late stage. On 15 May 2013, though Respondent No.1-State by their Government Resolution Nos. 177 and 188 granted permissions to colleges who had been granted AICTE approvals for establishment of

new institutes, additional courses in existing institutions, increase in the intake capacity, variation in intake etc., but has inserted clause No.14 which contemplates that the fee reimbursement facility will not be applicable to the reserved category students admitted in the newly established institutions or newly started courses in the existing institutions in academic year 2013-14 to whom there is a negative recommendation from the State Government and who's applications are not forwarded through the State Government.

On 12 June 2013, Petitioner No.1 submitted a detailed representation to the Respondents, thereby requested to withdraw Clause 14. By the representation the Petitioners brought to the notice of the Respondents that in Government Resolution dated 27 February 2013 (Annexure- C to the petition) issued by Respondent No. 3, it is mentioned in clause b(1) and point No.5, that the students who are admitted through the Centralized Admission Process (CAP) will be eligible to avail the fee reimbursement facility in question.

On 4 June 2013, Respondent No.2 by their Admission Notification published a list of colleges under column of "No fees

reimbursement choice code”. Hence, the Writ Petitions.

7 The Respondents have resisted the Petitioners claim and filed affidavits dated 7 September 2013, 6 March 2014, 30 April 2014 and lastly on 1 September 2014. The Petitioners have filed their respective rejoinders/additional affidavits and reiterated their case.

8 It is relevant to note the fee reimbursement scheme, from the affidavit of Respondents 1 and 2 :-

*“7 I say that the fee reimbursement scheme introduced by the Government of Maharashtra from the academic year 2006-07 for the candidates securing admission in State Government recognized private unaided and permanently unaided institutes is continued. 100% fee reimbursement is made by the Social Justice and Special Assistance Department of the Government of Maharashtra for the eligible candidates belonging to SC, VJNT and SBC. 100% fee reimbursement is made by the Tribal Development Department of the Government of Maharashtra for the candidates belonging to ST. However 50% fee reimbursement is made by the Social Justice and Special Assistance Department of the Government of Maharashtra for the eligible candidates belonging to OBC and 50% fee reimbursement is made by the Higher and Technical Education Department of the Government of Maharashtra for the eligible candidates belonging to*



*EBC. During the academic year 2013-14 also the fee reimbursement scheme introduced by the Government of Maharashtra from the academic year 2006-07 for the candidates securing admission in State Government recognized private unaided and permanently unaided institutes is continued for the institutes / courses for whom the approvals were given by AICTE and recommended by the Government of Maharashtra. Similarly during the academic year 2013-14 for the first time No Fee Reimbursement Scheme was introduced for the candidates securing admission in State Government recognized private unaided and permanently unaided institutes / courses for whom the approvals were given by AICTE but not recommended by the Government of Maharashtra. I crave leave to refer to and rely upon the documents submitted as and when produced.”*

9 The Respondents have also relied upon the Supreme Court judgments in support and thereby sought to place on record the settled principles of law relating to the power of Courts to interfere with the policy decision and/or the policy announced from time to time. Those are: (a) Madhya Pradesh Ration Vikreta Sangh Society & ors v. State of Madhya Pradesh & anr,<sup>1</sup> State of Kerala and anr v. Naveena Prabhu & ors<sup>2</sup>, State of Uttar Pradesh & ors v. Chaudhari Ran Beer Singh & anr<sup>3</sup> and Brij Mohan Lal v. Union of

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1(1981) 4 SCC 535

2 (2009) 3 SCC 649

3 (2008) 5 SCC 550

India and ors<sup>4</sup>. The Judicial review in State financial matters and related policies is quite limited. The Court will not and/or should not substitute its own judgment, for the decision of the executive and even if a second view is possible. However, following exceptions cannot be skated away while considering the scope and power of writ Court under Article 226 of the Constitution of India. The Apex Court reiterated the position in Brij Mohan Lal (supra) in the following words:-

*“100. Certain tests, whether this Court should or not interfere in the policy decisions of the state, as stated in other judgments, can be summed up as:*

*(I) If the policy falls to satisfy the test of reasonableness, it would be unconstitutional.*

*(II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.*

*(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.*

*(IV) If the policy found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.*

*(V) It is de hors the provisions of the Act or legislations.*

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4 (2012) 6 SCC 502

(VI) *If the delegate has acted beyond its power of delegation.*”

10 The learned Counsel appearing for the Petitioners, in support of their submissions, have also relied upon the judgments in T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors<sup>5</sup>, and specifically paras 50, 53 and 51 read as under:-

*“50 The right to establish and administer broadly comprises the following rights:*

*(a) to admit students;*

*(b) to set up a reasonable fee structure”*

In para 53, the Supreme Court has observed as under:-

*“53 With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational*

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5 (2002) 8 SCC 481

*institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students.*

The following passage for the issue in question, is reproduced as under:-

*“61 .....The State say that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the State has to provide the difference which, therefore, brings us back in a vicious circle to the original problem viz. The lack of State funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of State-run schools and in subsidizing the fees payable by the students there.” (emphasis added)*

11 The reliance is also placed on the judgment in Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government Higher Education Department, Thiruvanthapuram, Kerala State & Anr<sup>6</sup>, basically para-27 as under:-

*“Therefore, the State could not have any “policy” outside*

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6 (2000) 5 SCC 231

*the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4) and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action. Decision of University in not granting further or final affiliation wrong on merits.”*

12 The reliance is also placed by the Petitioners on judgment delivered by the Division Bench of this Court in Dr. D.Y. Patil Pratishthan's Padmashree Dr D.Y. Patil Polytechnic Vs. Directorate of Technical Education & Ors. (Writ Petition No.5816 of 2014) dated 19 July 2014, wherein one of us (Anoop V. Mohta, J.) was also a member. The Division Bench considering the Supreme Court's judgments referred above, has maintained the power of expert authority like AICTE, while granting the approval/sanction/permission to establish new Technical Educational College/Courses and/or increase intake capacity and observed as under in para24:-

*“24 The Respondent-State's financial burden, cannot be the reason to deny the approval as they are also under constitutional obligation to provide and give all benefits and privileges to the Scheduled Castes and Scheduled Tribes, Other Backward Classes and Special Backward Classes including the students of Financial Backward Background and as per their own policy. The details of such financial burden has not been placed on record. This also cannot be the reason, at this stage, to withhold the approval. The perspective plan itself recommends that “No student should be deprived technical education due to lack of financial aid”.*

13 We are concerned with the issue of the State fee-reimbursement scheme and not of a Central Government scholarship issue. The Petitioners/Association have been getting regular fee reimbursement though, in part, since beginning and including for academic years 2011-12 and 2012-13. Impugned clause 14, however, denied directly the fee reimbursement facility to the reserved category students admitted in the newly established institutions and/or newly started courses in the existing institutions from the year 2013-14.

14 This Court (Aurangabad Bench) by order dated 17 June 2013 in Writ Petition No.4618 of 2013 (Chatrapati Shahu Maharaj Shikshan Sanstha, College of Polytechnic Vs. The State of Maharashtra.

& Ors. along with connected matters, after hearing all the parties, passed the following interim order :-

*“2 By way of interim order, the respondents are directed to grant General Choice Code to the Petitioner colleges and make necessary appropriate corrections in the information brochure, subject to condition that the petitioner colleges undertake to inform each student seeking admission to the colleges that entitlement of such students, to receive reimbursement of fees shall be subject to outcome of the instant petitions. The respondent authorities are also directed to notify such students that their entitlement to receive the benefits in respect of reimbursement of fees in accordance with the policy prescribed by the State Government would be subject to outcome of these petitions. Parties to act upon authenticated copy of this order.”*

15 Above similar orders have been passed in all the Writ Petitions in question in the same month of 2013. All the matters have been tagged together and placed for an early final hearing, as an urgency expressed with regard to the non-reimbursement of fee in question for academic year 2013-14 of Petitioners/ colleges/institutions.

16 There is no serious issue with regard to the policy which is in existence for last several years which is applicable to all

technical courses like diploma/degree, including Engineering, pharmacy, HMCT (Hotel Management & Catering Technology) and Architect. The policy is also applicable to post-graduate degree courses in MBA and MCA which has been extended by the Tribal Development Department on annual basis. The State was further restricted by the Department as policy decision to Economically Backward Class (EBC) students seeking admissions to various colleges/institutions which have been recommended by the Government of Maharashtra. The Petitioners/members applied as per then existing provisions, to AICTE for increased capacity, establishment of new courses prior to February 2013. The same applications/proposals were submitted to the concerned Authorities/bodies like University and Director of Technical Education (DTE). AICTE, as recorded, granted approvals based upon positive recommendation of the State and concerned Universities as most of the college/institutes have been providing this technical education since long, based upon the approval/permission/affiliation from the concerned Authorities. DTE, by notification dated 14 December 2012, called upon the institutes for verification of



documents for such start and/or additional courses in the existing institutes. There was nothing mentioned even in the notification about non-applicability of fee reimbursement facility to such reserved category students. AICTE, by notification dated 22 December 2012 published complete time schedule for approval process. The last date of approval was 10 April 2013. The last date of permission from the State/University was 15 May 2013. Respondent No.3, by Government Resolution dated 27 February 2013 declared that the Government has decided to disburse fee reimbursement to the reserved category students who have taken admissions for the academic year 2012-13. The Petitioners, therefore, based upon the consistent representations and the policies so declared, for academic year 2013-14, applied directly to AICTE on their web-site. All these applications, never routed through the State as the same was not the requirement nor the case of the State Government. Government Resolution dated 27 February 2013 also no-where restricted and/or mentioned about the non-applicability of fee reimbursement. DTE, by notification on 9 April 2013 on their website, called the institutes to update their information on or before

12 April 2013 on DTE website, pursuant to AICTE approval only, if granted.

17 The State Level Committee of DTE, for new institutes, at the time of inspection, infrastructures, facilities and/or at the time of giving hearing for additional courses in existing institutes and on variation in intake capacity and any appropriate state, communicated/intimated to the Petitioners with regard to the non-applicability of reimbursement of fees to such institutes and/or for the Reserved Category Students. There is no dispute that in pursuance to the earlier Resolutions, the students who have admitted through the Central Admission Process (CAP) have been eligible to avail fee reimbursement facilities. The students who have participated in CAP for academic year 2013-2014, cannot be denied the fee reimbursement facilities in such fashion. Therefore, this abrupt decision after the above stages, which ultimately affecting the students of the category as the institutes have no choice but to ask and insist for the fee or required to burden upon them, if not reimbursed by the State. All these colleges are entitled to recover

the requisite fees from all the students. They are entitled to recover the restricted amount from these students. The State Government/Central Government required to reimburse the balance fees as per the Scheme. The costs/expenses so incurred by the institutes/Managements upon the students for providing the technical education and the facilities, ultimately, based upon the collection of requisite fees from the students.

18 This High Court, in these matters, considering the challenge so raised by interim reliefs directed the Respondents to grant general choice code to the Petitioners' members mentioned in the respective Petitions and even directed to make appropriate corrections in the information brochure, though subject to the conditions so recorded. There is no denial that the students have been intimated, accordingly. The fact of their admission and the expenses so incurred by the Management are not in dispute. The institutes' entitlement to requisite fee reimbursement, just cannot be taken away in such fashion. The reimbursement facility to these Reserved Category Students and/or the institutes if not granted, this

would also amount to treating "equals unequally". Therefore, the existing institutes/colleges are entitled to get these benefits in accordance with the policy, even after the impugned Resolutions dated 9 May 2013/15 May 2013.

19 For the next academic year 2014-2015, the similar clause is also insisted- we are not concerned with the same. The basic purpose and object of the policy, which has the foundation of the basic Articles of Constitution of India, will be frustrated, only because the Petitioners and/or such institutes/colleges not routed their permission/approval, through the State of Maharashtra. The Constitutional reservation, the privileges and the benefits for such Reserved Candidates, cannot be restricted/ought not to have been restricted. AICTE granted the permission/approval as the Petitioners have applied, as per the existing provisions and the policies/circulars issued by the concerned Authorities.

20 There is no denial to the fact that the State Government/Authorities and/or DTE Officers are always play

important role, even when the parties applied directly to AICTE through the web-site. There are certain formalities need to be complied by such institutes, apart from the requisite fees, which the State Authorities recovers from such institutes for such approval/permission. As recorded, a copy of such proposals and/or Applications need to be forwarded even to the State/DTE. It is not the case that the Respondent- DTE were not informed and/or not aware of the proposals for new institutes and increase intake capacity and/or new courses. The concerned State Authorities, as recorded above, took inspection of individual institutions before granting permission to new colleges. They verified the documents and granted hearing before passing order/sanction/permission for new courses and/or additional intake capacity.

21           There is no provision and/or procedure placed on record to justify the insisting for routing such permission through the State Government, specifically when, this Court in D.Y. Patil (Supra), based upon the Supreme Court Judgments and other Judgments of this Court, has given clear findings that the role of the State

Government for such approval/permission/sanction, for such technical education courses, is quite limited. This Court in number of matters, even directed to grant such permission and to issue Government Resolution once the competent authorities/bodies like AICTE, granted the sanction/approval to such institutes and so also the affiliation by the Universities. The State role, is restricted. No prior notice for the stated mandatory procedure that Applications should be routed through the State Government for such benefits. The abrupt restrictions through clause 14, in our view, nothing but the creation of class within the class on the basis of unreasonable and arbitrary use of powers.

22 We have already recorded in D.Y. Patil (Supra) that such students should not be deprived of their higher technical education, merely because the State Government will be financially burdened because of such policies. On the contrary, it is the State policy that no students should be deprived of their technical education merely because there will be financial burden upon the State Government, but subject to available fund/budget.

23 The Respondent-State's financial burden, cannot be the reason to deny the approval as they are also under constitutional obligation to provide and give all benefits and privileges to the Scheduled Castes and Scheduled Tribes, Other Backward Classes and Special Backward Classes including the students of Financial Backward Background and as per their own policy. The perspective plan itself has recommended that "No student should be deprived technical education due to lack of financial aid".

24 Strikingly, the State Government is not denying the existence of policy and benefits of fee reimbursement to the Reserved described Category-, but only to the students of the institutes who have applied through the State Government. Therefore, merely because some institutions, as contended, not routed through the State Government, therefore, they are not entitled for this fee reimbursement and one who routed through the State Government are entitled for this fee reimbursement, in our view, is nothing but a clear discrimination and violation of Articles

14, 15, 16 and 19(g) and other related provisions of the Constitution of India.

25 The State Government cannot insist to route through them without declaring their such scheme in advance and giving due publications to all the concerned, at the appropriate stage and before the date and the schedule so fixed, for every academic year, for sending proposal/requisition to AICTE. AICTE never restricted and/or put such condition in advance while granting the permission/approval at earlier point of time.

26 There is no provision and/or instruction issued in advance about such procedure to route such application for approval/increase capacity/new Course/Section through the State. Respondent No.1 has no power and authority to give negative recommendation, even if any. AICTE is the final authority. The State consultation formality in any case cannot be the reason to deny such privilege/benefits, to the deserving students of the institutes. The imposition of clause 14 and consequential orders for the year 2013-



2014 are inapplicable to such institutes/students.

27 In the present facts and circumstances, we are inclined to observe that, as we are concerned with the fee reimbursement for the academic year 2013-2014, as this Court in various Writ Petitions has passed the interim orders and all the parties including the students have been accordingly acted upon and now after one year and/or the close of academic year 2013-2014, we are not inclined to interfere with the interim orders and the effect given to the same, specially at the instance of State of Maharashtra, for the reasons so recorded above. Therefore, we are not dealing further with the Constitutional challenge so raised revolving around Clause 14 of the Government Resolutions dated 9/5/2013 and 15 May 2013, in question. The State Government is entitled to change the policy. We are not interfering with the policy in question so declared, but we are inclined to observe that the same shall not be and should not be extended and/or made applicable to academic year 2013-2014 for the Petitioners institutes/colleges/students.

28 Even assume for a moment, as sought to be contended and as placed on record through affidavit dated 1 September 2014, the issue about the financial burden, yet, in view of above observations, that cannot be the reason to put in such policy abruptly, without due and proper notice, at least for this academic year 2013-2014. Paragraph No.4 of the said affidavit reads thus:-

*“4) I say that the entire idea behind restricting the benefit to only a class of students is because of considerable financial implication on the State Exchequer; it imposes huge financial burden of approximately Rs.1055 crores per year and it comes to approximately Rs.4220 crores for four years for candidates taking education in Technical Education, Medical Education and Agriculture departments. I say that if the fee-reimbursement policy is also made applicable to such colleges, as is being demanded by the Petitioners, the additional financial burden would come to around Rs.25 crores annually and it will be approximately Rs.100 crores for four years. As things stand today, the Government of Maharashtra is not in a position to undertake this additional financial burden. I humbly submit that since the policy decision taken by Higher & Technical Education is based on reasonable intelligentsia, the allegation of the Petitioners of discrimination does not stand to reason and is denied by these Respondents.”*

29 To achieve the goal to provide quality technical education to all the students is always the endeavour of the State. Therefore,

the power to control the rampant establishments/institute, with requisite infrastructure and facilities, cannot be denied. The obligee also provides financial assistance to such candidates, but subject to the available budget/finance. Therefore, the policy so declared cannot faulted with, but the timing and the mechanism, the state has invoked, in the circumstances, are difficult to implement for the academic year 2013-2014, for want of due notice/intimation, positive action about the negative recommendations, at the appropriate stage.

30 Admittedly, it is the policy of the State Government to reserve 50% seats for backward class candidates in private unaided technical institutes. This is also subject to other conditions. On these seats, students of open category cannot be admitted. The fee-reimbursement scheme is only to the candidates admitted through the Common Entrance Test (CET), even as per circular dated 4 March 2010. The CET was hold by the Respondents for the academic year 2013-2014 in May 2013. The Petitioners/institutes admitted the students allotted by the Respondents. Therefore, not to

grant such fee-reimbursement to the Petitioners/institutes in view of Clause 14 after establishment of new institutes/courses and/or increase in seats based upon the valid permission from the AICTE is unacceptable. The students belong to particular clause, in the present facts and circumstances, having admitted apart from above, in pursuance to the orders passed by this Court in various matters, just cannot be denied the benefits in the form of such reimbursement. The Petitioners/institutes have no choice but to ask and/or demand the balance fees from such students and/or they have to bear this costs/expenses. Therefore, the implementation of Clause 14 of the Resolutions would certainly against the State Government's own earlier policy, as that would be in breach of Constitutional and Legal principles. The State Government also never communicated any negative and/or any objection to the AICTE before final approval granted to the Petitioners/institutes. In one or two cases there were negative communications, but in May 2013 only. In Writ Petition No. 5454 of 2013 there was negative communication dated 9 May 2013, even prior to 15 May 2013. There was no such policy, including requiring to seek no objection

from the State Government before making such application. There was no requirement to apply to the AICTE through the State Government. There was nothing pointed out accordingly even in the affidavit. There is nothing also on record to show that the Petitioners/institutes have filed any affidavit and/or giving any undertaking that they would not entitle for such fee-reimbursement. On the contrary, insertion of Clause 14 and the abrupt endorsement, so put, created two different classes, as recommended and non-recommended colleges, considering the Constitutional obligations to provide the facilities/privileges, including fee-reimbursement to all who belongs to the reserved category and/or declaring category.

31 In this connection allowing the Government Resolutions to be in force as from the date the same came to be issued would amount to retrospective operation of such Resolution as the admission process in the institutions of the Petitioner had already started. All administrative orders ordinarily are to be considered prospective in nature. In the present case, the Petitioners acted upon the earlier Government Resolutions to admit the students to their

institutions and as such the principles of promissory estoppel would also apply to read down the implementation of such Government Resolution only from the year 2014. In this context the Apex Court in the judgment in Kusumam Hotels Private Limited v. Kerala State Electricity Board and others<sup>7</sup>, has observed at paragraph Nos. 21 and 36 thus:-

“21 It is now a well-settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutory directions.”

“36 The law which emerges from the above discussion is that the doctrine of promissory estoppel would not be applicable as no foundational fact therefore has been laid down in a case of this nature. The State, however, would be entitled to alter, amend or rescind its policy decision. Such a policy decision, if taken in public interest, should be given effect to. In certain situations, it may have an impact from a retrospective effect but the same by itself would not be sufficient to be struck down on the ground of unreasonableness if the source of power is referable to a statute or statutory provisions. In our

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7 (2008) 13 SCC 213

*constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication. It is a principle of the rule of law. A presumption can be raised that a statute or statutory rule has prospective operation only.”*

32 We are not interfering with the policy decision in view of above factual situation. But the implementation of the same, in such fashion, creates a class within class and discriminates the institutes at least for this academic year 2013-2014. The equals cannot be treated unequally. There is no intelligible differentia having a rational relation to the objects sought to be achieved – to provide fee reimbursement for the deserving class/category. All the parties have acted, based upon the earlier declared policy and practice, apart from the interim orders passed by this Courts. The action of Government/State/ Authority, which is arbitrary, unreasonable, discriminatory and violates Articles 14,15 and 16 and 19(g) of the Constitution of India, an appropriate Writ order or direction can be issued. We are inclined to do so, but only to the limited extent. Taking overall view of the matter, we are inclined to pass following moulded order.

32 Therefore, the following order:-

**ORDER**

- a) The Government Resolution Nos. 74/2013 and 81 of 2013, dated 9 May 2013 and 15 May 2013 and all other consequential directions/orders are not applicable to the Petitioners/institutes/colleges approved by AICTE, for academic year 2013-2014.
- b) Petitioners/institutes/colleges are entitled for fee-reimbursement, and all other related benefits continuously, based upon the earlier Government circulars/policies prior to 9 May 2013/15 May 2013, as per the State scheme.
- c) Interim orders of granting General Code on the DTE web-site is confirmed. The Petitioners and the Respondents are permitted to announce accordingly.



- d) Rule made absolute in above terms only.
- e) There shall be no order as to costs.

**(F.M. REIS, J.)**

**(ANOOP V. MOHTA, J.)**