

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.815 of 2020**

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Ranjeet Pandit Son of Sri Parsuram Pandit, Resident of Gajipur, P.O. Ufroul,  
P.S. Deshri, District- Vaishali at Hazipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Education Department, Government of Bihar, Patna.
4. The Principal Secretary through Chancellor to Government of Bihar, Raj Bhawan.
5. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
6. The Vice Chancellor, Magadh University, Bodh Gaya.
7. The Vice-Chancellor, Patliputra University, Patna.
8. The Vice- Chancellor, Sri Arvind Mahila College, Patna.
9. The Vice Chancellor, Bir Kumar Singh, University, Ara.
10. B.R.A. Bihar University, Muzaffarpur.
11. Sant Kabir Mahanth Vidyanand College, Fatuha, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate Mrs. Ritika Rani, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, AG Mr.Md. N.H. Khan (SC 1) Mr. Bishwa Bibhuti Kumar Singh, Advocate
For V.K.S.U.		Mr. P.K. Verma, Sr. Advocate Mr. Rajesh Prasad Chaudhary, Advocate
For B.R.A.Bihar University	:	Mr. Indrajesh Kumar, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 28-06-2022**

Following questions of law arise for consideration in  
this present public interest litigation:



- (i) What is the duty of the State to ensure that members of marginalized communities have access to education?  
What are the contours of such a policy?
- (ii) What is the nature of obligation upon both, the State and universities, for the timely implementation of such beneficial schemes as the non-realization of fee from students of Scheduled Caste / Scheduled Tribe or female students?

### **Facts**

2. The present public interest litigation stands filed for issuance of writ directing the respondents, i.e. Universities not to avail fees from Scheduled Castes, Scheduled Tribes as well as female students up to Post Graduate qualification in accordance with State Government's decision dated 24.07.2015 as also refund of fees already availed by certain Universities and for taking action against officials who have been complacent in such availing.

3. The Department of Education, Government of Bihar issued Resolution vide letter no. 15/M1-197/2014 under the signature of Joint Secretary, Government of Bihar, communicating the decision to not realize any fees from students from Scheduled Caste and Scheduled Tribes as well as



female students right up to the level of Post Graduate Studies. Further, it stated that the State Government would, to offset the loss incurred by the respective colleges and Universities reimburse the fees in the next financial year. The reasons supplied for such policy decision is that in Bihar the overall enrollment in Institute of Higher Education is lower in comparison to other States. In particular, the enrollment of women as well as SC and ST candidates is especially low. It is in this light that such a policy decision has been taken with respect to the Universities of the State and Colleges affiliated therewith.

4. The Resolution passed to this effect reads as under:

“बिहार सरकार शिक्षा विभाग

**संकल्प**

संख्या - 15/एम1-197/2014 पटना, दिनांक - .....

विषय :- राज्य के विश्वविद्यालयों तथा अंगीभूत/संबद्ध महाविद्यालयों में सामान्य पाठ्यक्रमों में अनुसूचित जाति/अनुसूचित जनजाति एवं महिलाओं को स्नातकोत्तर स्तर तक शिक्षा में प्रत्येक स्तर पर नामांकन के समय सभी प्रकार के शुल्क नहीं लिए जाने की स्वीकृति के साथ-साथ विश्वविद्यालयों/महाविद्यालयों को इस कारण से होने वाली आर्थिक क्षति की प्रतिपूर्ति, विश्वविद्यालयों से वास्तविक सूचना प्राप्त कर क्षति होने वाले वर्ष के अगले वित्तीय वर्ष में सरकार द्वारा किए जाने की स्वीकृति के संबंध में।

बिहार शैक्षणिक दृष्टिकोण से एक पिछड़ा हुआ प्रदेश है। यहाँ उच्चतर शिक्षण संस्थाओं में सकल नामांकन अनुपात देश के अन्य राज्यों की अपेक्षा कम है। महिलाओं का तथा अनुसूचित जाति/अनुसूचित जनजाति के विद्यार्थियों का सकल नामांकन अनुपात अप्रत्याशित रूप से कम है। इस तथ्य को ध्यान में रखते हुए सम्यकरूप से समीक्षोपरान्त राज्य सरकार द्वारा राज्य के विश्वविद्यालयों तथा



अंगीभूत/संबद्ध महाविद्यालयों में सामान्य पाठ्यक्रमों में अनुसूचित जाति/अनुसूचित जनजाति एवं महिलाओं को स्नातकोत्तर स्तर तक की शिक्षा में प्रत्येक स्तर पर नामांकन के समय सभी प्रकार के शुल्क, नहीं लिए जाने का निर्णय लिया गया है।

2. उपर वर्णित शुल्कों के नहीं लिए जाने के कारण महाविद्यालयों/विश्वविद्यालयों को होने वाली आर्थिक क्षति की वास्तविक गणना प्रत्येक शैक्षणिक वर्ष में महाविद्यालयों/विश्वविद्यालयों में होने वाले नामांकन के आधार पर की जायेगी तथा गणना के पश्चात् राशि की प्रतिपूर्ति, क्षति होने वाले वर्ष के अगले वित्तीय वर्ष में राज्य सरकार द्वारा संबंधित विश्वविद्यालयों/महाविद्यालयों को की जायेगी। राशि की प्रतिपूर्ति किये जाने हेतु प्रक्रिया का निर्धारण विभाग द्वारा अलग से किया जायेगा।

4. प्रस्ताव पर मंत्रिपरिषद् की स्वीकृति प्राप्त है।

बिहार राज्यपाल के आदेश से

ह0/-

;सुनील कुमार सिंह

सरकार के संयुक्त सचिव”

5. The English translation of the above mentioned resolution is reproduced hereunder:

“ Government of Bihar  
Education Department

Resolution

Memo :- 15/M1-197/2014 Patna, Dated .....

Subject :- Regarding sanction of not taking all kind of fee during admission at each level in education upto Post Graduate level, from Schedule Caste/Schedule Tribe and women in General syllabi in the Universities and Constituent/Affiliated Colleges of the State along with sanction of reimbursement of financial loss by the Government incurred by the Universities/Colleges due to this, in the next financial year to the year of incurring loss, after obtaining actual information from the universities.

Bihar is a backward State from educational point of view. Here, the gross admission ratio is less in higher



educational institutions in comparison to other States. Gross Admission Ratio of women and students of Schedule Caste/Schedule Tribe is unexpectedly low. Keeping this fact in mind, after due consideration, it has been decided by the State Government not to take all kind of fee from Schedule Caste/Schedule Tribe/Women upto Post Graduate level in General Syllabi in Universities and Constituent/Affiliated Colleges.

2. Actual calculation of financial loss occurred to Colleges/Universities due to not taking above mentioned fee shall be made on the basis of admission in Colleges/Universities in each academic year and after calculation, the amount will be disbursed by the State Government to the Universities/Colleges concerned in next financial year to the year of occurring loss. The process for disbursement of the amount will be determined separately by the Department.

4. Consent of Cabinet has been obtained on the proposal.

By the order of Governor of Bihar  
Sd/- (illegible)  
(Sunil Kumar Singh)  
Joint Secretary to the Government”

**(Emphasis supplied)**

6. The petitioner sought information regarding the implementation of the Government Resolution dated 24.07.2015 (Annexure-1, page-14) from M.S.M. Samta Mahavidyalaya, B.R.A, Bihar University, Muzaffarpur (Annexure-2, Page-16) Shri Arvind Mahila College, Patna, Magadh University (Annexure-3, Page-18), S. K. Mahila College, L. N. Mishra University, Darbhanga (Annexure-4, Page-19) and has also brought on record fee receipt issued to one Sanju Kumari by M.S. Samta Mahavidyalaya, Vaishali and another receipt issued to one Kavya Kumari by Sant Kabir Mahant Vidyanand



College, Fatuha, Patna as well as eight other receipts. The efforts of the petitioner were in vain and the attempts to seek information went unanswered.

7. The petitioner then approached this Court on 13.01.2020. Taking notice of the issue, respondent no.3, namely, Principal Secretary, Department of Education, Government of Bihar was directed to have the matter examined and filed suitable response vide order dated 03.03.2020.

8. Subsequently, on 11.12.2020 respondent no.4, (Principal Secretary) was directed to file an affidavit indicating the steps being taken for refund of the amount, if any, payable to students, hailing from the concerned category.

9. On 12.07.2021 this Court directed the Principal Secretary, Education Department, Government of Bihar to ascertain information regarding the disbursement of amount recovered as tuition fee from students falling in the exempted category as also convene a meeting with Vice Chancellors of universities to ensure that the fee so collected from students refunded forthwith.

10. In pursuance thereto, Additional Chief Secretary, Education Department, Government of Bihar, filed an affidavit (Supplementary Counter Affidavit on behalf of Respondent No.



3) on 22.07.2021, wherein it was stated that a meeting with all Vice Chancellors of universities in Bihar was held on 17.07.2021 wherein they were appraised of a decision vide resolution no. 1475 dated 24.07.2015 and directions were issued for return of the fee of the students in question.

11. Vide order dated 22.06.2022 this Court directed the Director, Higher Education and Principal Secretary, Education Department, Government of Bihar, to ascertain the current status of the process of fee returns.

12. A letter was issued to Registrars of three universities to attend a meeting in this regard, on 23.06.2022, which was held, exuberantly, on the very same day, and that a direction was issued in said meeting to refund the fee so realized from the students so exempted. He also submitted that some of the students whose receipts were mentioned in the writ application from Sant Kabir Mahanth Vidayanand College, Fatuha and Arvind Mahila College have received refunds.

13. Additional Chief Secretary, Education Department, Government of Bihar, filed his affidavit on 27.06.2022 wherein further steps taken to publicize the aforesaid resolution no. 1475 dated 24.07.2015 were recorded—letter dated 25.06.2022 requesting the Director, Information and



Public Relations Department, Government of Bihar, to issue an advertisement in leading newspapers in above terms, also attaching the press release issued in “PRABHAT KHABAR” on 26.06.2022.

### **Education – a Constitutional Right and Obligation**

14. Education forms one of the most fundamental facets of Article 21 under the Constitution of India. It is the vehicle for effective upliftment of those historically, socially, economically marginalized. Hon’ble the Apex Court as well as other Courts, in numerous pronouncements have emphasized on the importance of education highlighting the various Articles of the Constitution that seek to ensure access to education for all.

15. In **Maharishi Mahesh Yogi Vedic Vishwavidyalaya v. State of M.P., (2013) 15 SCC 677**, Hon’ble the Supreme Court observed as under:

“30. Further, Article 46 declares that the State shall promote with special care the educational and economic interests of the weaker sections of the people. It is significant to note that among several articles enshrined under Part IV of the Indian Constitution, Article 45 had been given much importance, as education is the basic necessity of the democracy and if the people are denied their right to education, then democracy will be paralysed; and it was, therefore, emphasised that the objectives enshrined under Article 45 in Chapter IV of the Constitution should be achieved within ten years of the adoption of the Constitution. By establishing the obligations of the State, the Founding Fathers made it the responsibility of future Governments to formulate a programme in order to achieve the given goals,



but the unresponsive and sluggish attitude of the Government to achieve the objectives enshrined under Article 45, belied the hopes and aspirations of the people. However, the judiciary showed keen interest in providing free and compulsory education to all the children below the age of fourteen years.”

**16. In Mohini Jain v. State of Karnataka, (1992) 3**

**SCC 666**, Hon’ble the Apex Court held that:

“12. ‘Right to life’ is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.”

**17. In Unni Krishnan, J.P. v. State of A.P., (1993) 1**

**SCC 645**, the Court partly overruled the decision rendered in **Mohini Jain** case (supra). It was held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the directive principles of State policy contained in Articles 41, 45 and 46. This Court, however, limited the State obligation to provide educational facilities as follows:

- (i) Every citizen of this country has a right to free education until he completes the age of fourteen years;
- (ii) Beyond that stage, his right to education is subject



to the limits of the economic capacity of the State. [see also **Maharishi Mahesh Yogi Vedic Vishwavidyalaya (supra)**]

[**Emphasis Supplied**]

18. There can be no question as to the power of the State Government to undertake such a policy. Hon'ble the Apex Court observed in the case of **P.H. Paul Manoj Pandian v. P. Veldurai, (2011) 5 SCC 214** that:

“48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations.”

19. In **Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562**, Hon'ble the Apex Court observed-

“48. ...While we realize the need to generate better employment opportunities to the people of rural backward areas and an affirmative action in this regard is not ruled out, any such action should be within the framework of constitutional provisions relating to equality. Equalising unequals by taking note of their handicaps and limitations is



not impermissible under the Constitution provided that it seeks to achieve the goal of promoting overall equality.”

**[Emphasis Supplied]**

20. The Hon’ble Apex Court, while dealing with a matter concerning the medical reimbursement policy of a State in **Govt. of Haryana v. Vidya Sagar, (2009) 14 SCC 652**, observed as under:

“Once the State in its magnanimity adopted a decision that the medical bills in their entirety in connection with heart diseases shall be reimbursed, the authorities of the State being bound thereby were obligated to comply therewith.”

21. While dealing with a similarly placed issue in regards of fee reimbursement, the Hon’ble High Court of Bombay in **Yash Pramesh Rana v. State of Maharashtra, 2020 SCC OnLine Bom 678** observed as under:

“133. Here, we are grappling with the question of fee reimbursement. No law mandates that the fee of the SC students must be returned or that they should be paid back their educational expenditure. It is, indeed, a welfare decision of the Government. The modern state is a source of succour and, therefore, we need to examine whether it is bound by any norms in dispensing its largess.

147. By providing the fee reimbursement, among others, to the SC students, what has the Government sought to achieve? We reckon the fees reimbursement is a facet of affirmative action. The ‘reservations’ is a correctional policy, not a concessional one. For integrating a historically, socially, and economically marginalised section into the ‘mainstream’



society, education is the sure-fire device. Education not only enlightens but also elevates an individual's status. It is the “collective upgrade”. It gives the people the necessary wherewithal to live and to live with dignity — the need of the hour for every society. In that process, mere admission into the education portals is no guarantee that the marginalised individual emerges educated.”

**[Emphasis Supplied]**

### **The Opinion of the Court**

22. In **Kailas v. State of Maharashtra, (2011) 1 SCC 793**, Hon’ble the Supreme Court, albeit in a different context noted:-

“26. However, giving formal equality to all groups or communities in India would not result in genuine equality. The historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status. It is for this reason that special provisions have been made in our Constitution in Articles 15(4), 15(5), 16(4), 16(4-A), 46, etc. for the upliftment of these groups... Hence, it is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimised for thousands of years by terrible oppression and atrocities....”

23. The objective informing the policy adopted by the State as reflected in the resolution, i.e. to make higher education



more accessible to female students as well as those belonging to SC/ST categories, is in line with the goals of correcting historical injustices as also the ideal of equality enshrined in the Constitution of India.

24. As noted by Hon'ble the Apex Court in **Maharishi Mahesh Yogi** (supra), the State is to take special care with regards to the educational and economic interests of weaker sections of the society, also noting that, it is a basic necessity of democracy. Taking suitable action in recognition of the limitations and handicaps suffered by people from such weaker sections, is in furtherance of promoting overall equality (**Kailash Chand Sharma** (supra)).

25. It has also been noted, in context of policy of medical reimbursement that when a State has adopted a decision to reimburse such bills in connection to certain ailments, all authorities of the State are bound by such policy (**Vidya Sagar** (supra)).

26. In the present set of facts, the state policy on not realizing fee from students belonging to Scheduled Caste/Scheduled Tribe as well as female students up to the level of post graduate studies is a beneficial decision taken by the State Government to aid the pursuit of education, in fulfillment



of its Constitutional responsibilities and therefore, the obligation of the universities to abide by the stand taken, cannot be gainsaid. In other words, the fee realized by certain universities from these students is patently an affront to state policy and must be refunded at once.

27. In the present case, the universities of the state would be bound by a decision taken keeping in mind the welfare of the society to reimburse fee.

28. However, we are constrained to take note of the sheer apathy displayed by the State. The policy of non-realization of fees was issued in 2015 and yet, in 2021 and 2022, meetings have to be convened in order for various university administrations to be made aware of the existence of such a scheme. It is only pursuant to the constant monitoring and prodding by this Court, as is evident from the affidavits filed by the Additional Chief Secretary, Department of Education, Government of Bihar, that some money stands dispersed to Patna university, for instance, and efforts are being made, albeit insufficient, to increase awareness about this policy.

29. Equally, we may note that college and university administrations have showcased a striking lack of commitment toward the duty they hold to their students as also to the State by



delaying, for whichever reasons, the submission of reports for the loss incurred under the policy, to the State.

30. Questions of law are answered accordingly.

31. In light of the above observations and decisions, we deem it appropriate to issue the following directions:

- (1) All of the Universities in Bihar, to immediately refund the amount, if not already disbursed in terms of directions issued, as indicated in para-12 of the affidavit dated 27.06.2022 filed by Director, Higher Education, Government of Bihar;
- (2) This be so done, within a period of one month.
- (3) Hence forth no educational institution shall charge fee contrary to the terms of the Resolution no. 1475 dated 24.07.2015;
- (4) The Principal Secretary, Education Department, Government of Bihar is directed to take steps for giving wider publicity to this decision of the Government, enabling students hailing from SC/ST and Women Category to avail these benefit(s) and pursue their education.
- (5) Violation of the order shall tantamount to contempt and initiation of proceedings for de-recognition of



the concerned institution(s).

32. We place on record our appreciation for the assistance rendered by Ms. Ritika Rani, learned Advocate, to the Court and for having brought to our notice, this issue of importance.

33. Petition stands disposed of.

34. Interlocutory Application(s), if any, shall stand disposed of.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

Sunil/K.C.Jha/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	22.07.2022
Transmission Date	

