

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6863 OF 2012

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Kai Ambumata Lomte,
Shikshan Sanstha, Salgara (Diwati)
Tq. Tuljapur, Dist. Osmanabad
Through its Chairman. Petitioner.

VERSUS

1. The State of Maharashtra,
through Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai.
2. The Regional Director,
of Higher Secondary Education,
Aurangabad.
3. The Deputy Director of
Education, Latur Division,
Latur.
4. Madhukarrao Chavan
Chariatable Trust Andoor,
Tq. Tuljapur, Dist. Osmanabad.
5. Madhushail Art Science and
Commerce College,
Salgara (Diwati)
Tq. Tuljapur, Dist Osmanabd
Through Its Principal. Respondents.

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Advocate for Petitioner : Mr. V.D. Salunke
AGP for Respondents 1-3 : Mrs S.A.Dhumal
Advocate for Respondent 4 : Mr. V.D.Sapkal with Mr.
L.C.Patil

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.

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DATE OF RESERVING THE JUDGMENT : AUGUST 06, 2015
DATE OF PRONOUNCING THE JUDGMENT : SEPTEMBER 23, 2015

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JUDGMENT :- (Per V.K.Jadhav, J.)

1. By this writ petition, the petitioner is seeking directions to Respondents No. 1 to 3 to re-consider the proposal filed by the petitioner and also the proposal filed by respondent No.5 for grant of Senior College at village Salgara (Diwati) by strictly adhering to the norms. Consequently, the petitioner is also praying for the relief to quash and set aside the order dated 7.5.2012 by which the proposal submitted by the petitioner was rejected and the order dated 15.6.2012 by which the proposal of respondent No.5 for grant of Senior College was allowed.

2. Brief facts giving rise to the present writ petition are as follows :-

The petitioner Institution runs Kai. Ambumata Junior College of Arts and Science faculty at village Salgara (Diwati) since 2003. The State Government by

taking policy decision issued Government Resolution dated 30.10.2010 and prescribed a procedure for inviting applications to start a new College. Pursuant to the advertisement dated 20.10.2010 issued by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad thereby inviting applications from the Institutions as specified in the aforesaid Government Resolution dated 30.10.2010 for village Salgara (Diwati), the petitioner institution submitted its proposal on 29.10.2010 alongwith all required documents. According to the petitioner, the University has scrutinized the proposal and forwarded it with recommendations to the Government for grant of Junior College to the Petitioner.

3. It is further case of the petitioner that the respondent No.5 has also submitted a proposal for grant of College for village Salgara (Diwati)/Tamalwadi.

4. By impugned order/letter dated 7.5.2012, the proposal submitted by the petitioner came to be rejected holding that there are in all 17 deficiencies in the

proposal. Furthermore, the proposal submitted by respondent No.4-Trust for grant of respondent No.5 College came to be allowed by order dated 15.6.2012.

5. By filing this writ petition, the Petitioner Institution has challenged both the orders.

6. The learned counsel for the petitioner submits that, the proposal submitted by the petitioner fulfilled all the conditions as required under the Government Resolution dated 30.10.2010. Learned counsel submits that the impugned order dated 7.5.2012 is vague and incorrect. The proposal submitted by the petitioner was scrutinized by the University and no defect was pointed out nor the same was communicated to the petitioner at any point of time. The proposal submitted by the petitioner was forwarded with recommendations by the University. Learned counsel further submits that, if at all there were 17 deficiencies then, the procedure prescribed in paragraph No.1.9, 1.10, 1.11 and 1.12 of the Government Resolution dated 30.10.2010 ought to have been strictly followed

by the respondents. The learned counsel further vehemently submits that, the respondent No.4 – Trust is headed by the learned Minister and therefore, though the proposal submitted by respondent No.4 was defective and not fulfilling the requirements as specified in the Government Resolution dated 30.10.2010, still the proposal was allowed arbitrarily and under the political pressure. The learned counsel also submits that the petitioner Institution is running a Junior College, whereas the respondent Institution was not running any College, still the order is granted in favour of the respondent No.4 violating the norms in its entirety. The learned counsel further submits that the Government has rejected the claim of the petitioner by order dated 7.5.2012 stating therein that there are 17 deficiencies in the proposal. According to the Rules, the deficiencies ought to have been communicated to the petitioner Institution till 15.3.2011 and decision was to be taken till 1.5.2011. However, the proposal of the petitioner was kept undecided till the proposal was invited for the year 2012-2013 to suit the respondent No.4 to submit the proposal. The learned counsel thus, submits that since

the proposal of the petitioner was pending, there was no question of submitting any fresh proposal for the same place. The petitioner's proposal was rejected on 7.5.2012 which could have been decided on 7.5.2011. The learned counsel submits that the order does not contain the details of the alleged deficiencies. The same cannot be supplemented by affidavit. The learned counsel thus lastly submits that the Writ Petition deserves to be allowed as prayed for by setting aside the order passed in favour of the respondents No.4 and 5. Learned counsel for the petitioner relies on following judgments :

i]. **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others reported in AIR 1978 Supreme Court Page 851 (1).**

ii]. Judgment of Division Bench of this Court Writ Petition No.3947 of 2000 decided on 11.10.2001 (in case of **Bhartiya Rashtriya Shikshan Sanstha Aurangabad Vs. The state of Maharashtra**).

iii]. **U.P.S.R.T.C Versus Jagdish Prasad Gupta reported in 2009 AIR (SC) 2328.**

7. The learned AGP for respondents No. 1 to 3 submits that, proposal of the petitioner is considered by strict adherence to the provisions of Government Resolution dated 30.10.2010 and 25.10.2011 in the

mandate and spirit of Section 82 (5) of the Maharashtra Universities Act, 1994 (hereinafter referred to as 'the Act' for short). There are in all 26 norms which are to be considered while granting permission to run the College. The learned AGP further submits that, the Petitioner Institution did not fulfill 17 requirements and therefore, the proposal of the petitioner was rejected. The learned AGP further submits that, as far as proposal submitted by respondent No.4-Institution is concerned, University has recommended the same for the academic year 2012-2013. While considering the proposals received for grant of new College for the academic year 2012-2013, it was decided at Government level that permission may be granted to the Institution to start a new college by taking into account the positive recommendations of the concerned Universities. Accordingly, total 151 proposals were recommended by the concerned Universities for the academic year 2012-2013 to the Government for consideration. Accordingly, the Government has scrutinized the proposals received from the concerned Universities vide Government Resolution dated 15.6.2012 for grant of permission to 151 new

College. The learned AGP further submits that the proposal of respondent No.4 Institution was considered positively for the academic year 2012-2013. Furthermore, as per decision taken by the Government, the same was communicated to the petitioner by a letter dated 7.5.2012. The learned AGP, thus, lastly submits that, there is no substance in the writ petition and same is liable to be rejected.

8. The learned counsel for respondents No.4 and 5 submits that the petitioner Institution has not applied for the academic year 2012-2013 as per the Advertisement issued on 3.10.2011 in this regard. The petitioner has challenged the rejection of his proposal which was for the year 2011-2012. Learned counsel further submits that in response to the advertisement published in tune with the Government Resolution dated 31.10.2010 and in view of the provisions of Section 82 (3) of the Act, various Institutions have submitted their proposals to the concerned Universities. Respondent No.4 Institution has also submitted the proposal through proper channel. In due course, the

Committee formed by the University has inspected the proposed College and submitted report as provided under section 81 of the Act. The learned counsel further submits that, proposal submitted by the respondent No.4 Institution came to be recommended positively by the University. It is a matter of record that, the proposals which has been positively recommended are considered by the Government. In view of this, the Government has passed the order permitting respondent No.4 Institution to run respondent No.5 College and accordingly respondent No.4 is running the College. The learned counsel also submits that the petitioner has no locus to challenge the permission granted in favour of respondent No.4 for the academic year 2012-2013. Learned counsel further submits that the petitioner has made baseless allegations against the Hon'ble Minister. It is denied specifically that, impugned orders are passed under the political pressure. Learned counsel, thus, lastly submits that, writ petition is devoid of any merits and thus liable to be dismissed with heavy costs.

9. The proposal tendered by the Petitioner seeking permission to open a College was turned down for the reason that, the Petitioner does not fulfill the 17 deficiencies out of total 26. The proposal of the petitioner was forwarded by the University with positive recommendations. It is also the case of the petitioner that the Authorities have never communicated the deficiencies in the proposal. Thus, the petitioner was prevented from making necessary compliance within the prescribed period. The petitioner has also raised an objection to the proposal of respondent No.4–Institution on the ground that even though said proposal was not forwarded by the University with positive recommendations, the same has been considered by the State Government.

10. As per the Scheme of Section 82(4) of the Act, the proposals received by the University are required to be scrutinized by the Board of College and University Development and be forwarded to the State Government with approval of Management Council. The scheme of Sub-section (5) of Section 82 of the Act clearly lays down

that, out of the applications recommended by the University, the State Government may grant permission to such Institutions as it may consider right and proper in its absolute discretion, taking into account the State Government's budgetary resources, the suitability of the Managements seeking permission to open new institutions and the state level priorities with regard to the location of the Institutions of higher learning. It is also obvious that the State Government is not vested with a blanket discretion.

11. According to the petitioner, though the full fledged proposal was submitted within time, at no point of time the deficiencies were communicated by the Respondent Authorities. The petitioner's proposal was recommended by the University to the Government, it was rejected by order dated 7.5.2012 stating that there are 17 deficiencies.

12. It appears on perusal of the file of the proposal submitted by the Respondent Authorities that, the Government has considered the proposal of the

petitioner for granting permission to run the traditional College as per the norms laid down in the Government Resolution dated 30.10.2010. It also appears that the proposal is also considered in the light of the Government Resolution dated 25.10.2011. It appears that total 26 norms are required to be considered while granting permission to run the college. The petitioner's proposal was scrutinized by the Government and as per the Scrutiny sheet, it appears that the petitioner Institution did not fulfill the 17 requirements out of the said 26 requirements. The deficiencies in the proposal of the petitioner as pointed out on the said scrutiny sheet are as under :-

- i) *The Society has not submitted the registered Undertaking on Stamp paper of Rs. 100/- by the Society that the Society will incur the salary and non salary expenditure.*
- ii) *The Society is not having 2 acres land within the area of City Corporation or 5 acres land in other town.*
- iii) *The Society has not submitted certified copies of the documents in respect of land of the Society of its own or registered rent deed if the land is on*

rent basis.

- iv) The Society has not shown any minimum space for Seminar room, Lecture room, Library, Lab. as prescribed by the University Grants in the proposed college building.*
- v) The Society has not shown or made any arrangement of Water, Electricity, Lavatory or waste water line etc. in the proposal building of College.*
- vi) The Society has not kept minimum Rs. 1 Lac per subject under Reserve Fund for required equipment of Lab.*
- vii) There is no availability of Books (minimum 500 Books) in the Library.*
- vii) The Society has not shown or made any provision for Playing ground, Canteen Health Care facility to the students in the proposed College.*
- ix) If the Society has obtained the Play ground on rent basis Rent Agreement on stamped paper of Rs.100/- or certified copy of the same has not been submitted.*
- x) There is no separate common room for Teachers or for the students.*

- xi) There is no evidence of proposed arrangement of staying the students within the area of College.*
- xii) There is no sufficient furniture in Seminar room, Lecture room, Faculty room, Staff room, Principal's room, Hostel room etc. in the proposed College building.*
- xiii) There is no document relating to Rent Deed of Principal's Quarter within the College premises.*
- xiv) The society has not submitted any undertaking regarding that the Society will shift the College in its own Building on or within 5 years from the date of first affiliation.*
- xv) There is no evidence regarding that as per the G.R.No.NGC/2009/(301/9)/MASHI-4 dated 25.9.2009 if the Society is running other Colleges and if that the Society requested for grant of new permission then earlier College should have been accredited/reaccredited or otherwise application for the same should have been submitted to the appropriate authorities."*

13. Thus, looking into the nature of the deficiencies, it appears that the deficiencies as pointed out are major deficiencies. The Petitioner-Institution has not followed

the norms laid down in the Government Resolution dated 30.10.2010 and 25.10.2011. We do not think that mere belated communication of the rejection of the proposal by the Government amounts to exercising of the discretion in arbitrary manner.

14. The learned counsel for the petitioner vehemently submits that in the impugned communication dated 7.5.2012 the said deficiencies has not pointed out. The learned counsel, thus, placed his reliance on the case Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others (supra), wherein the Apex Court has observed that, '*when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.*'

15. On careful perusal of the impugned

communication dated 7.5.2012, the petitioner institution was communicated by the Government that the proposal suffers from deficiencies and out of 26 requirements, the petitioner Institution has failed to comply 17 requirements and therefore, the proposal stands rejected. We do not find any fault in the impugned communication since it specifically indicates the number of deficiencies. We do not think that by way of an affidavit, the Respondent-State has justified the rejection by creating the additional grounds lateron. By any stretch of imagination, it cannot be said that the rejection of the proposal of the Petitioner-Institution was without any reason, or without application of mind. Thus, the case cited above and the case U.P.S.R.T.C Vs. Jagdish Prasad Gupta (supra) as relied upon by the learned counsel for the petitioner cannot be made applicable to the facts and circumstances of the present case.

16. The Petitioner institution has also challenged the acceptance of proposal submitted by respondent No.4 institution. However, it appears that respondent No.4

has submitted the proposal for the academic year 2012-2013. It also appears that the same was considered by the Government on its own merits. For the academic year 2012-2013 total 151 proposals were recommended by the concerned University for the consideration of the Government and the Government has given sanction to those proposals. It is not the case that proposal of respondent No.4 alone was considered by the Government. The Petitioner-Institution has not submitted a fresh proposal for the academic year 2012-2013 nor challenged the decision to call fresh proposals by giving advertisement for the academic year 2012-2013. It appears that the Petitioner Institution was knowing about the fate of its proposal and only upon grant of proposal submitted by respondent No.4 by the Government, questioned the rejection of its proposal and challenged the sanction of the proposal submitted by the respondent No.4.

17. The Petitioner-Institution has challenged the rejection of its proposal in the month of August, 2012 while rejection of its proposal was communicated by the

Government on 7.5.2012 to the Institution. It appears that, Dr. Babasaheb Ambedkar Marathwada University has published an advertisement in the various newspapers and invited applications for opening new colleges for the academic year 2012-2013. Said advertisement was published on 3.10.2011 and last date for submission of the application was 31.10.2011. In view of the said advertisement, various institutions have submitted applications to the University and respondent No.4 has also submitted application to the University. On careful examination of the file, it appears that, the proposal submitted by respondent No.4 was recommended positively and accordingly the Government has considered the proposals of various institutions whose proposals are recommended positively. The State Government, vide its Government Resolution dated 15.6.2012, had granted permission to 151 new colleges accordingly. Proposal submitted by respondent No.4 was also considered positively for the academic year 2012-2013.

18. In light of the above, we do not find any substance

in the petition. Hence, following order.

ORDER

- I] The Writ Petition is hereby dismissed.
- II] In the circumstances, there shall be no order as to costs.
- III] Original Record be returned to the learned AGP.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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