

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2394 OF 2016

Shri Nagpur Gujrati Mandal, Nagpur vs. The State of Maharashtra, through its Secretary,
Department of Higher and Technical Education, Mantralaya, Mumbai and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.B.G.Kulkarni, Counsel for the petitioner.
Mrs.Kalyani Deshpande, AGP for respondent no.1
Mr.P.B.Patil, Counsel for respondent no.2.

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 14.06.2016.

Heard.

By this Writ Petition, the petitioner seeks a direction against respondent no.2/University to initiate necessary action for grant of affiliation to M.COM. (English Medium) Course in Sudha Sureshbhai Maniar College of Computer and Management, Nagpur established by the petitioner/Society, from the year 2016-17. The petitioner, incidentally, challenges the order of the State Government refusing to grant approval to the petitioner to start M.COM (English Medium) Course from the Academic Session 2015-16. The said prayer made by the petitioner has been rendered infructuous as the said Academic Session has expired.

Mr.B.G.Kulkarni, learned Counsel for the petitioner states that the petitioner is a Minority Institution desirous of starting M.COM. (English Medium) Course in the College established by the petitioner/Society, from the Academic Year 2016-17. It is stated that the petitioner desires to start and conduct the Course on 'permanent no grant-in-aid' basis. It is stated that the petitioner has given an

undertaking that the petitioner/institution would not seek any financial aid from the State Government in respect of any matter whatsoever. In short, it is the case of the petitioner/Society that it intends to start the M.COM. (English Medium) Course without taking any financial assistance or aid from the Government. It is stated that this Court had an occasion to consider whether a Minority Institution intending to start a new College or Course on 'Permanent No Grant' basis without any financial assistance from the State Government would be required to take prior permission of the State Government under Section 82 (5) of the Act and it was held by the Division Bench of this Court in the Judgment reported in 2011 (4) Mh.L.J. 316, Social Society, Morba .vs. Principal Secretary, Higher and Technical Education Department, Mumbai and Others that the question of securing prior permission of the State Government would not be applicable in such a case. It is stated that it was held by this Court that the Academic Council of the University should, however, examine whether opening of the proposed College is in conformity with the perspective plan prepared under Section 82 and whether the College complies with the other mandatory eligibility criteria. It is stated that the said Judgment was carried to the Hon'ble Supreme Court by the State Government and the Hon'ble Supreme Court has upheld the view of the High Court that permission under Section 82 (5) would not be required if a Minority Institution intends to start a new College on 'Permanent No Grant-in-aid' basis, without taking any financial assistance or aid from the State Government. It is stated that the petitioner would not be claiming any financial assistance or aid from the State Government. It is stated that since the petitioner is a Minority Institution that is not desirous of seeking any financial assistance from the State Government, only a direction to the respondent no.2/University to consider granting affiliation to the M.COM. (English Medium) Course would be necessary.

The learned Assistant Government Pleader and the learned Counsel for respondent no.2 do not dispute the factual statements made on behalf of the petitioner. It is not disputed that the

petitioner is a Minority Institution and that this Court has held in the Judgment reported in 2011 (4) Mh.L.J. 316 (supra) that the prior permission of the State Government under Section 82 (5) of the Act would not be necessary when a Minority Institution decides to open a new College or Course on 'Permanent No Grant-in-Aid' basis without taking any financial assistance from the State Government.

In view of the admitted set of facts, the relief sought by the petitioner needs to be granted. Since the petitioner is admittedly a Minority Institution and since the petitioner is desirous of starting M.COM. (English Medium) Course in the College run by the petitioner/Society on 'Permanent No Grant-in-aid' basis without taking any financial assistance or aid from the State Government, permission of the State Government for starting the Course, under Section 82(5) of the Act is not necessary. As per the Judgment reported in 2011 (4) Mh.L.J. 316 (supra), it would be necessary to only direct the respondent no.2 to consider granting affiliation to the petitioner to start the Course, within a time frame.

Hence, for the reasons aforesaid, the Writ Petition is allowed. It is hereby declared that it would not be necessary for the petitioner to seek permission of the State Government for starting M.COM. (English Medium) Course in Sudha Sureshbhai Maniar College of Computer and Management, Nagpur run by the petitioner/Society. The respondent no.2 is directed to consider the prayer of the petitioner for granting affiliation, as early as possible and positively within a period of six weeks.

Order accordingly. No costs.

JUDGE

JUDGE