

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

Writ Petition No. 03071 of 2006

District : Dhule

1. Trimurti Shikshan Sanstha,
Sakri, Taluka Sakri,
District Dhule,
through its Secretary,
Dr. Mangala Bhaskar Desle,
Age : 55 years,
Occupation : Medical
Practitioner,
R/o. Sakri, Taluka Sakri,
District Dhule.

2. The Principal,
Arts College, Sakri, run by
Trimurti Shikshan Sanstha,
Sakri, Dist. Dhule.

.. Petitioners.

versus

1. The State of Maharashtra,
through its Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.
2. The Director of Higher Education,
Maharashtra State, Pune.
3. The Joint Director of Higher
Education, Jalgaon Region,
Jalgaon.
4. North Maharashtra University,
Jalgaon, through its Registrar.

.. Respondents.

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Mr. R.S. Deshmukh, Advocate, for petitioners.

*Mr. S.P. Sonpawale, Asst. Government Pleader, for
respondent nos.01 to 03.*

*Mr. Y.B. Bolkar, Advocate, holding for
Mr. R.B. Raghuwanshi, Advocate, for respondent
no.04.*

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**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 14TH DECEMBER 2017

JUDGMENT *[Per Smt. Vibha Kankanwadi, J.]*:

01. Heard learned Counsel for respective parties.

02. By this writ petition, the petitioners have invoked writ jurisdiction under Article 226 of the Constitution of India, for issuance of writ of certiorari for quashing order passed by respondent no.01 on 19-07-2001 and for issuance of writ of mandamus for re-considering the permission granted in favour of the petitioners for starting science stream in its college on 'no grant basis' instead of 'permanent no grant basis'.

03. Petitioner no.01 is a Society registered under the Societies' Registration Act, 1860 and a public trust registered under the Bombay Public Trusts Act, 1950. Petitioner no.02 is the Principal of the Arts College run by petitioner no.01. The petitioners had applied for grant of permission to start science college and arts college at Sakri, District Dhule. The college was to be started from

1998-99 onwards. After considering the recommendations of respondent no.04, respondent no.01 granted permission to start the arts and science college vide its order dated 19.08.1998. However, that permission was after commencement of the academic year and, therefore, the petitioners could start only arts faculty from the academic year of 1998-99. They could not start the science faculty as the arrangements for infrastructure and necessary equipments could not be made. Thereafter they decided to start the science faculty from 2000-2001. It was not necessary for them to apply afresh or renewal. However, that renewal was granted by respondent no.01. Respondent no.01 had allowed the petitioners to start both science as well as arts faculty on 'no grant basis'. Unnecessarily, respondent no.04 - University had asked the petitioners to take no objection certificate from respondent no.01. Therefore, the petitioners applied for the same though original permission was granted on 19.08.1998. Respondent no.01 vide its letter dated 19.07.2001 granted permission to the petitioners to start science stream from the academic year 2000-2001 on 'permanent no grant basis'. When in fact, original permission was for both i.e. science and arts faculty on 'no grant basis', there was no necessity for respondent no.01 to modify any term or condition.

04. The petitioners had approached respondent no.01 time and again to delete the word 'permanent'

since the college was located in a hilly area. Further, even respondent no.02 had recommended starting of such college in the said area. Respondent no.01 has granted colleges located in hilly areas to be run on 'no grant basis'. Therefore, the petitioners cannot be discriminated. A resolution to that effect was passed by the government on 23.11.1990, stating that the colleges which are located either in hilly area or tribal area or area affected by naxlites would be permitted to change the permission. The petitioners' case ought to have been covered by respondent no.01 within the parameters of the said government resolution. However, since the permission has not been granted to the petitioners to run the college on 'no grant basis', present petition has been filed.

05. Affidavit in reply has been filed on behalf of respondent nos.01 to 03 by one Rambhau s/o. Vishwanath Kirdak, Joint Director of Higher Education, Jalgaon Region, Jalgaon. It is admitted that the petitioners had applied for grant of permission to run science and arts college at Sakri in the year 1998-99 and considering the recommendation by respondent no.04, respondent no.01 had granted permission to start college in the said faculties on 'no grant basis'. The petitioners failed to start science faculty for the said academic year when it was, in fact, their duty to start the same as per the permission. When they decided to start it from the next academic year i.e. 2000-2001,

respondent no.04 had directed them to obtain no objection certificate. As per the provisions of Section 83(5) of the Maharashtra Universities Act, 1994, the permission was granted to run the science faculty on '*permanent no grant basis*'. It was as per the policy of the government and it was also on the basis of representation of the Society. Permission to the college mentioned by the petitioners as per letter dated 17.03.2004 (a different college) is on a different footing. As the said college is located in backward and naxlite area, it was granted as a special case. When an undertaking has been given on behalf of the petitioners to run the said college on '*permanent no grant basis*', now, the petitioners cannot pray for change in the condition.

06. Learned Counsel appearing for the petitioners has submitted that Taluka Sakri has been included in the hilly area and, therefore, as per the policy adopted by respondent no.01, to run colleges for the benefit of the students residing in hilly area, the colleges will be allowed to be started on '*no grant basis*'. He relied on the decision in Writ Petition No. 04413 of 1999 decided by this Court on 26.08.2014 whereby it was specifically held that the respondent no.01 cannot discriminate between the two institutions to run the colleges on either '*permanent no grant in aid*' basis or '*grant in aid*' basis. The review application filed challenging the said decision has been dismissed by this Court on 11.03.2015.

07. Learned Asst. Government Pleader appearing for respondent nos.01 to 03 pointed out that Secretary of petitioner no.01, Dr. Mangala Bhaskar Desale, has given an affidavit cum undertaking on 07.05.2001, wherein petitioner no.01 had undertaken to run the science faculty on '*permanent non-grant in aid*' basis. Under such circumstance, the permission came to be granted and, therefore, now, the petitioners cannot give a go by to the said undertaking.

08. It is not in dispute, that though petitioners had applied for both the faculties i.e. arts and science, they could not commence the science faculty from the year of 1998-99. It appears that they could not start it even from the academic year of 1999-2000. Their own say states that it was due to non-procurement of infrastructure and instruments. Therefore, when they were ready with the infrastructure, implements and other factors, it appears that they approached respondent no.04 to accord affiliation to start the science faculty from the academic year 2000-2001. Respondent no.04 taking into consideration all the above facts, directed petitioner no.01 to obtain no objection certificate. It appears that, at that time, the undertaking was given by the Secretary of the Society on behalf of the petitioners, that they are ready to start the science faculty in their college on '*permanent non-grant in aid*' basis. Copy of the said undertaking dated 07.05.2001 has been produced on record. The

petitioners cannot give a go by to the said undertaking.

09. Now, as regards the discrimination is concerned, it is to be noted that the said government resolution is applicable to the colleges which are in hilly, naxlite affected and backward areas. The petitioners cannot take help of the decision in Writ Petition No. 04413 of 1999 because the petitioner therein was from village Kharda, Taluka Jamkhed, District Ahmednagar. Further, it is also to be noted that it is stated to be a special case that has been treated by respondent no.01. There cannot be parity in respect of treating an institution as a special case. When by their own conduct, petitioners have stated that they are ready to start the college on '*permanent no grant basis*', now they cannot seek any kind of benefit by putting forward such cases in which respondent no.01 had given special treatment.

10. The petition is devoid of merits and, therefore, deserves to be dismissed. Hence, the writ petition is hereby dismissed. Rule is discharged. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

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