

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

WRIT PETITION NO. 4105 OF 2006

Al Sabha Education and Welfare
Society, Aurangabad (Through its
Secretary Shaikh Mansoor s/o
Shaikh Mustafa

Age : 36 yrs, occ : service
R/o Bari Colony, Aurangabad.

Petitioner.

Versus

1. The State of Maharashtra
(Through Secretary, Higher
Education Department,
Mantralaya, Mumbai).
2. Dr. Babasaheb Ambedkar
Marathwada University,
Through Registrar, Aurangabad.
3. Ekta Shikshan Prasarak Mandal
Through its President
Shri M.M. Shaikh
C/o Opposite RTO Office,
C/o Modern Education Society,
Near Railway Station, Jagir
Colony, Aurangabad.
4. Shri M.M. Shaikh
Age : major, occ : social worker
and President of respondent
No.3, r/o, c/o opposite RTO
Office, c/o Modern Education
Society, Near Railway Station,
Jagir Colony, Aurangabad.

Respondents.

Mr. A.B. Jagtap, Advocate holding for
Mr. V.D. Sapkal, Advocate for the petitioner.

Mr.A.R. Borulkar, A.G.P. for respondent No.1.

Mr.K.M. Suryawanshi, Advocate for respondent No.2.

Mr.S.M. Godsay, Advocate for respondent Nos.3 & 4.

CORAM : **R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Dated : 26-09-2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.):—

1. By this petition under Article 226 of the Constitution of India, the petitioner has impugned the order dated 30.04.2001 granting permission to the respondent No.3 to start Senior College at Bidkin, Taluka Paithan, District Aurangabad.

2. Some of the relevant facts for the purpose of deciding this petition are as under.

3. It is the case of the petitioner that the

petitioner is Minority Educational Institution and has been successfully running two recognised High Schools i.e. one in Marathi medium and another in Urdu medium in Aurangabad city. On 10.10.1997, petitioner submitted a proposal for grant of permission to open and run a college and deposited a sum of Rs. 5,000/- with the University. On 27.01.1998, the proposal of the petitioner was recommended by the University to the State Government. Since no decision was taken by the State Government on the said proposal of the petitioner and on the recommendation of the University, the petitioner filed Writ Petition No. 4778/1998 in this Court. By an order dated 10.11.1998, this Court directed the respondent No.1 to consider the proposal of the petitioner within a period of 4 months from the date of the said order.

4. By an order dated 08.03.1999 respondent No.1 once again rejected proposal of the petitioner on the ground that there was no

sufficient strength of students and directed that the petitioner may submit a proposal for academic year 1999-2000. The petitioner thereafter filed Writ Petition No. 2951/1999 challenging the legality and validity of the order dated 08.03.1999 in this Court. The petitioner also submitted a fresh proposal in the month of October 1998. This Court, by an order dated 13.06.1999, directed respondent No.1 to take decision on the pending proposal of the petitioner and adjourned the matter for some time. Respondent No.3 also had submitted a proposal for starting a college. The proposal of the petitioner was rejected and the proposal of respondent No. 3 was allowed to run Senior College at Bidkin. The petitioner filed Civil Application No. 3963/1999 to implead respondent No.3 as party respondent, which was granted. Respondent No.1 thereafter passed a fresh order against the petitioner and in favour of respondent No.3, which is impugned by the petitioner in this petition.

5. Learned Counsel for the petitioner invited our attention to some of the annexures to this Writ Petition and would submit that though the petitioner was eligible for grant of permission to start a college, the application of the petitioner was illegally rejected and the application of respondent No.3 was illegally allowed. He submits that though this Court had directed the Authority to pass a reasoned order after considering the applications of the petitioner and respondent No.3, the Authority did not pass any reasoned order and mechanically dismissed the application filed by the petitioner. He submits that the order dated 30.04.2001 passed by the Authority, thus, deserves to be set aside.

6. The petition has been resisted by respondent No.3 as well as by the State Government by filing affidavit.

7. Mr. Borulkar, learned A.G.P. for respondent No. 1 submits that the petitioner had

not satisfied the conditions of granting permission to start new college whereas respondent No.3 had satisfied those conditions. After hearing both parties, respondent No.1 had passed an appropriate order. The recommendations of the University in respect of both applicants were received by respondent No.1 and were duly considered. He submits that the respondent No.3 has been running the said college for last several years and thus no interference shall be made by this Court with the impugned order passed by respondent No.1.

8. Learned Counsel for respondent No.2-University opposes the petition on the ground that the University had recommended the name of both parties to the State Government for approval. The University is, thus, not at fault if the approval was not granted by the State Government to the application of the petitioner.

9. Learned Counsel for respondent No.3

submits that the application of respondent No.3 was rightly considered by respondent No.1 and after having satisfied that the proposal of respondent No.3 was satisfying all the conditions for grant of permission to start college, the Authority had rightly granted permission to respondent No.3 to start new college and rightly rejected proposal of the petitioner. He submits that the findings of the fact cannot be interfered with by this Court.

10. It is lastly submitted by the learned Counsel that pursuant to the said permission granted by respondent No.1 as on 30.04.2001, the respondent No.3 has been running the said college for last more than 15 years and has been also getting grant-in-aid from the Government. He submits that at this stage, thus, this Court shall not interfere with the impugned order passed by respondent No.1 and if is interfered, great irreparable injury would be caused to the institution as well as to the students.

11. Mr. Jagtap, learned Counsel for the petitioner, in re-joinder submits that though this Court had directed respondent No.1 to produce relevant files pertaining to the subject-matter of this petition for perusal of this Court, respondent No.1 has delinquently not produced the files. He submits that this Court, thus, should remand the matter back to the State Government for deciding the proposal of the petitioner and respondent No.3 afresh, and respondent No.1 shall be directed to record the reasons.

12. A perusal of the record indicates that this Court had directed the respondent No.1 to consider the proposal of both parties and to pass an order thereon. Respondent No.1 has accordingly passed fresh order on 30.04.2001, rejecting the proposal made by the petitioner and allowing the proposal made by respondent No.3. There was no interim relief granted by this Court when the petition was admitted. Respondent No.3 has been running the college in response to the said

permission dated 30.04.2001 since then, and has been also granted grant-in-aid by the State Government fully.

13. As on today, there is no plan of the University to start any other college at Bidkin. There is no prospective plan of the University to start any new senior college in the four districts such as Aurangabad, Jalna, Beed and Osmanabad. Mr. Suryawanshi, learned Counsel for the University had already made a statement before Court in this regard on 11.08.2017.

14. A perusal of the prayers in the petition further indicates that though the petitioner had prayed for quashing and setting aside the order dated 30.04.2001 passed by respondent No.1, there is no prayer in the petition for granting permission to the petitioner to start senior college at Bidkin in Taluka Paithan of district Aurangabad. In the facts and circumstances of this case we are, thus, not inclined to interfere

with the order dated 30.04.2001 passed by respondent No.1 at this stage. If the said order dated 30.04.2001 is interfered with by this Court at this stage after 16 years, not only the interest of the respondent No.3 Institution would be seriously prejudiced, but also large number of students who are taking education in respondent No.3 college.

15. In our view, the petition is, thus, devoid of merit. We, therefore, pass the following order.

ORDER

1. Writ Petition No. 4105/2006 is dismissed.
2. Rule is discharged.
3. No order as to costs.

(**SUNIL K. KOTWAL**)
JUDGE

(**R.D. DHANUKA**)
JUDGE