

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.6919 OF 2016
WITH
CIVIL APPLICATION NO.13420 OF 2017**

1. Ahmednagar Zilla Maratha
Vidya Prasarak Samaj,
Laltaki Road, Ahmednagar,
District Ahmednagar,
through its Secretary
Shri Genuji S/o Gaddoji
Khandeshe, Age 80 years,
Occ.Agriculture, R/o
"Charushilp" Agarkar Mala,
Station Road, Ahmednagar,
District Ahmednagar.

2. Sahadeo S/o Kondaji Aher,
Age 52 years, Occ.Service,
Principal of Shri Mulikdevi
College, Nighoj, Tq. Parner,
R/o Nighoj, Tq.Parner,
District Ahmednagar.

... Petitioners.

Versus

1. The State of Maharashtra
through the Secretary for
Higher and Technical
Education Department,
Mantralaya, Mumbai.

2. The Director of Higher
Education Department,
Maharashtra State, Pune.

3. The Divisional Joint
Director, Higher Education,
Pune.

4. Savitribai Phule Pune
University Ganesh Khind,
Pune-7, through
its Registrar. ... Respondents

...

Mr.V.D.Hon, Senior advocate holding for
Mr.A.V.Hon, advocate for petitionrs.
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.V.P.Golewar, advocate holding for
Mr.A.R.Joshi, advocate for Respondent No.4.

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**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 14.11.2017.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for parties, the petition is taken up for final hearing.

2. Mr.Hon, learned Senior advocate submits that the petitioner is an educational institution registered under the Maharashtra Public Trusts Act and the Societies Registration Act. The petitioner applied for starting Arts and Science College at village Nighoj, Taluka Parner for the academic year 2012-13 pursuant to the advertisement issued by the Respondents inviting applications. The petitioner was granted

permission to start Arts and Science College at village Nighoj, Taluka Parner under order dated 6.10.2012. The proposal of the petitioner was recommended by the University and thereafter the permission was granted to the petitioner U/s 82(5) of the Maharashtra Universities Act, 1994. One another institution had challenged the permission granted to the petitioner. The Court was not inclined to entertain the said petition, as such the Writ Petition challenging the permission granted to the petitioner was withdrawn. Subsequently under order dated 6.5.2014, permission granted to the petitioner to run Arts and Science College at village Nighoj was revoked and cancelled. The petitioner challenged the said order by filing Writ Petition bearing W.P.No.4496/2014. This Court under its order dated 12.6.2014 allowed the Writ Petition and set aside the order cancelling the permission given to the petitioner. Subsequently, as per the liberty granted by this Court in the Writ Petition, the Respondents again on 13.6.2016 cancelled the permission granted to the petitioner to run Arts and Science College at

Nighoj dated 6.10.2012. The learned Senior advocate submits that the petitioner is running the College at Nighoj, Taluka Parner continuously since October 2012 and has erected a huge infrastructure. 642 students are taking education in the institution run by the petitioner. The permission granted to the petitioner to run the College at Nighoj is on permanent no grant basis. As per the Master Plan, permission could have been granted for running Arts and Science College at Nighoj, Taluka Parner for the academic year 2012-13. The learned Senior advocate further submits that in the Master Plan for the year 2018-19 also it is shown that permission can be granted to one more College in Taluka Parner.

3. Mr.Karlekar, learned A.G.P. for the Respondents submits that as per the Master Plan for the year 2012-13 only one College of Arts and Science was permissible in Parner Taluka and under order dated 15.6.2012, permission was granted to one Alpha Education Society to start and run Arts and Science College at Dhawalpuri,

Taluka Parner, Dist.Ahmednagar. The permission could not have been granted to the petitioner institution on 6.10.2012. In view of the above, the order is rightly passed by the Respondent-State. No interference is called for.

4. We have considered the submissions.

5. The fact that the petitioner was granted permission to open and run Arts and Science College at village Nighoj, Taluka Parner under order dated 6.10.2012 is undisputed and is a matter of record. Pursuant to the said permission, the petitioner erected the infrastructure and the functioning of the College commenced. For the first time, on 6.5.2014 the State ventured to cancel the said permission i.e. almost after two academic years. The said cancellation order was set aside by this Court in Writ Petition No.4496/2014 filed by the petitioner under order dated 12.6.2014. This Court further gave liberty to the Government to proceed in the matter as per law. Subsequently, after lapse of two years of the order of this

Court, setting aside the order of cancelling permission granted to the petitioner, the Government on 13.6.2016 again cancelled the permission granted to the petitioner on the ground that at the relevant time only one institution could have been granted permission to open and run Arts and Science College in Parner Taluka. The reason given in the said order may appear to be in consonance with the fact that one institution was already granted permission on 15.6.2012 to run Arts and Science College in Parner Taluka and as such the State certainly could not have again granted permission to run second College in Arts and Science faculty in Parner Taluka for the said academic year. The fact remains that no action was taken by the Government immediately. The permission granted to the petitioner on 6.12.2010 was cancelled after completion of two academic years. The same order was set aside by this Court in June 2014. Further after lapse of two more academic years the impugned order is passed. From the date of permission granted to the petitioner, the petitioner has run the said College for four

academic years and as stated by the petitioner, at present 642 students are taking education and the entire infrastructure is erected. The State also is not going to be burdened, in view of the fact that the permission granted to the petitioner to run Arts and Science College is on permanent no grant basis.

6. We are inclined to exercise our jurisdiction under Article 226 of the Constitution of India, on the ground of equity and more particularly, in view of the fact that for academic year 2018-19 in the Master Plan one more College is permissible for Arts, Commerce and Science faculties in Parner Taluka. The petitioner's College can be accommodated as per the Master Plan for ensuing academic year also. Till date the College of the petitioner is functioning and it has completed almost five academic years. It will be in nobody's interest now to revoke the said permission, more particularly, when a College for Arts and Science faculty is also permissible for the ensuing academic year 2018-19 in Parner Taluka.

7. The eligibility of the petitioner and the petitioner complying with all the requirements can not be doubted nor it is open for debate, in view of the fact that petitioner's proposal was recommended by the University. It was also considered by the Government and thereafter permission was granted to the petitioner and as now one College is permissible for academic year 2018-19 in Parner Taluka, the petitioner's College can be accommodated as per the said Master Plan.

8. In light of the above, the impugned order cancelling the permission granted to the petitioner to open and run Arts and Science College at village Nighoj, Taluka Parner is quashed and set aside. The students who were and are admitted and those who have also passed out shall be considered as regular students.

9. Rule accordingly made absolute in above terms. No costs.

10. In view of disposal of Writ Petition,

the Civil Application also stands disposed of.

Sd/-

(S.M.GAVHANE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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