

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8403 OF 2017

The Secretary, Hindi Junior College
of Arts, Science, Commerce and
Vocational & Ors.

...Petitioners

Versus

The District Vocational Education
Officer & Ors.

...Respondents

.....

Mr. A.A. Garge for the Petitioners.

Mr. C.P. Yadav, AGP for the Respondent Nos.1 to 4.

CORAM : B.R. GAVAI &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 4th OCTOBER, 2017.

P.C.:-

Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2. The Petitioners by way of present petition impugn the order dated 19th June, 2017, 28th June, 2017 and 6th July, 2017 vide which the Petitioners have been informed that it will not admit the students for Accounting and Auditing course.

3. The Petitioners initially were granted permission on 19th August, 1993 for conducting the courses in three streams, one of them

was Accounting and Auditing. However, it appears that the Petitioners could not start the course in Accountancy and Auditing in the said year and therefore, in the year 1999 again applied for revalidation of the permission of the said course. Vide order dated 28th September, 2004 the Petitioners were granted permission with retrospective effect for running the said course in the academic year of 2004-2005 on payment of certain charges. Vide a subsequent order dated 1st October, 2014 the Petitioners were granted permission for conducting said course in the stream of Accounting and Auditing with intake capacity of 14. Vide the impugned orders the Petitioners have been informed that from the academic sessions 2017-2018 the Petitioners should not admit the students in the stream of Accounting and Auditing since the course is being run unauthorisedly.

4. Mr. C.P. Yadav, the learned AGP for the Respondent Nos.1 to 4 -State submits that since from the present academic year, process of admission is being conducted online and since the Petitioners did not participate in the online process, the impugned order has been passed. He has relied upon the affidavit of one Dilip Rajaram Bhokare, Jt. Director, Vocational Education and Training, in support of his submission.

5. We find the stand taken by the Respondents is totally untenable. Firstly, the reason given in the impugned communication that the course is being run unauthorisedly is contrary to the documents of the Respondents- State itself. The order dated 1st October, 2014 would reveal that the State itself has granted permission for conducting the course of Accounting and Auditing with intake capacity of 14. In so far as the ground regarding the online admission is concerned, same does not find place in the impugned orders. In view of the law laid down by the Apex Court in the case of ***Mohinder Singh Gill and Anr. Vs. Chief Election Commissioner, New Delhi AIR 1978 SC 851*** the Respondents cannot be permitted to improve their case by an affidavit. It is settled law that the ground which is not mentioned in the impugned orders cannot be raised in the affidavit.

6. In that view of the matter we are of the considered view that the impugned orders are unsustainable in law.

7. Rule is made absolute in terms of prayer clause (i). No orders as to costs.

(ANUJA PRABHUDESSAI, J.)

(B.R GAVAI, J.)