

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13818 OF 2016

- | | | |
|---|--|------------------------|
| 1 | Jayprakash Education Society,
Peth Vadgaon, Tal.Hatkanangale,
District Kolhapur.
Through its Chairman. | |
| 2 | Dr.Babasaheb Amedkar College,
Barrister Tatyasaheb Mane Vidyanagar,
Peth Vadgaon, Kolhapur
Through its Principal
V/s. | ... Petitioners |
| 1 | The State of Maharashtra,
Through the Secretary, Higher
and Technical Education Department,
Mantralaya, Mumbai 400 032. | |
| 2 | The Divisional Joint Director,
(Higher Education), Kolhapur Region,
Kolhapur. Having Office at
Rajaram College Campus,
Vidyanagar, Kolhapur 416 003. | |
| 3 | Shivaji University, Kolhapur,
Vidyanagar, Kolhapur 4167 003. | |
| 4 | The Director, College & University
Development Board, Shivaji University,
Kolhapur. | ... Respondents |

Mr.Narendra V. Bandiwadekar, Advocate for the Petitioners.

Mr.C.P.Yadav, Asstt. Goverment Pleader for the Respondent Nos.1
and 2.

Mr.Amit Borkar, Advocate for the Respondent No.4.

**CORAM : SHANTANU S. KEMKAR &
A. M. BADAR JJ.**

**DATED : RESERVED ON 28th April 2017
PRONOUNCED ON 5th May 2017**

ORAL JUDGMENT : (PER CORAM : A.M.BADAR)

Rule. Rule made returnable forthwith. With consent of parties, heard finally.

2 By this petition, petitioners – Education Society and the College run by it at village Peth-Vadgaon in Hatkanangale taluka of Kolhapur district are challenging the order dated 10/11/2016 passed by the respondent No.4 Director, College and University Development Board of Shivaji University, Kolhapur, so far as it relates to refusal to grant first time affiliation to petitioner No.2 college in respect of new subject of N.C.C. - Elective in Bachelor of Art Course and to start new Faculty in Science. Petitioners are praying for directing respondent Nos.3 and 4 to grant first time affiliation to petitioner No.2 Dr.Babasaheb Ambedkar College, Peth-vadgaon for new subject of N.C.C. - Elective in B.A. Course and for starting new Faculty of Science.

3 It is case of petitioners that vide orders dated 4th July 2016, the first Respondent State of Maharashtra has been pleased to grant permission to petitioners to start Science Faculty on permanent non-grant basis as well as new subject NCC – Elective in B.A. Course under Section 83(5) of the Maharashtra Universities Act, 1994 (“University Act” for the sake of brevity). However, by the impugned order dated 10th November 2016, respondent No.4 Director has illegally rejected first affiliation to the petitioner No.2 College for starting the new subject NCC – Elective and new Faculty in Science.

4 Heard the learned Advocate appearing for petitioners at sufficient length of time. He vehemently argued that petitioner No.2 College, in pursuant to the order dated 4th July 2016 (Exhibit 'A') of the State has already admitted students in B. Sc. Part-I course. Respondent No.3 University has already accepted eligibility fees of students who are admitted by the college for prosecuting B.Sc. Part-I course. Examination center has also been assigned to students admitted by petitioner No.2 College in B.Sc.

Part-I course. The learned Advocate for petitioners further argued that once the State Government has granted permission to petitioners for starting new subject in B.A. course as well as for starting new Faculty in Science, it was not open for respondent Nos.3 and 4 to refuse affiliation to the new Faculty in Science and new subject in B.A. course. Entire procedure prescribed for opening the new Faculty as well as starting new subject in B.A. course has been followed by petitioners. He further argued that petitioner No.2 College had complied all terms and conditions in this regard and as such, the impugned order dated 10/11/2016 refusing affiliation for starting new subject as well as new Faculty is totally illegal. It is further argued that observations and conditions mentioned in the impugned order dated 10/11/2016 are totally incorrect. Discrepancies mentioned in the impugned order dated 10/11/2016 are totally erroneous and contrary to the record. The learned Advocate further argued that the Committee has declined to peruse the record and hurriedly concluded the inspection. He drew our attention to pleadings in the petition showing that there are no discrepancies and shortfalls as are

reflected in the impugned order dated 10/11/2016. The learned Advocate for petitioners further argued that the impugned order dated 10/11/2016 does not disclose the reason of non-inclusion in the 'Perspective Plan', for refusing to grant first time affiliation for starting new subject in B.A. course as well as new Faculty in Science. The learned Advocate submitted that when the impugned order refusing to grant affiliation does not contain this reason, respondent Nos.3 and 4 cannot justify the impugned order by supplementing it by the fresh reason to the effect that the village Peth-vadgaon was not included in the Perspective Plan. For this purpose, he placed reliance on judgment in the matter of Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi and others¹. Similarly, reliance is also placed on judgment in the matter of Shree Chhatrapati Shivaji Education Society v. State of Maharashtra and Ors.² to buttress the contention that even though Perspective Plan does not make provisions for opening a new Faculty or new subject, the affiliation can be granted on the basis of permission from the State.

1 AIR 1978 SC 851

2 2003 (6) Bombay Cases Reporter 487

5 As against this, the learned Advocate appearing for respondent Nos.3 and 4 drew our attention to the fact that Perspective Plan prepared by respondent No.3 Shivaji University has provided for opening Science Faculty in a college existing at village Hatkanangale, but it is not providing for opening of new Science Faculty at village Peth-vadgaon. It is also pointed out that the Perspective Plan does not contain provisions for opening new subject in B.A. course at village Peth-vadgaon. In submission of the learned Advocate appearing for the respondent Nos.3 and 4 village Peth-vadgaon, where petitioner No.2 Dr.Babasaheb Ambedkar College exists comes under Hatkanangale taluka of Kolhapur district. Villages/towns – Ichalkaranji, Hatkanangale and Pulachi-shiroli were shown in the Perspective Plan prepared by respondent No.3 University for opening new Faculty/College, but village Peth-vadgaon in Hatkanangale taluka was not included in the Perspective Plan for opening either a new Faculty or a new subject. In submission of the learned Advocate appearing for respondent Nos.3 and 4, the Scrutiny Committee inadvertently interpreted the Perspective Plan and considered that village Peth-

vadgaon comes under Hatkanangale taluka and, therefore, a Committee was sent for inspection of petitioner No.2 College. The learned Advocate further argued that as village Peth-vadgaon was not included in the Perspective Plan prepared by the University, there was no question of grant of affiliation to new Faculty in Science and new subject in B.A. course to petitioner No.2 college which is situated at village Peth-Vadgaon. It is further argued that petitioner No.2 college ought not to have admitted students in prosecuting B.Sc. Part-I course as there was no affiliation to that course. Those students cannot be termed as 'students' as per provisions of Section 94 of the University Act. The University has already directed to transfer those students to nearby affiliated college. The learned Advocate appearing for respondent Nos.3 and 4 relied on judgments of the Division Bench of this Court in the matter of Dr. Punjabrao Deshmukh Memorial Educational Society v. Nagpur University & Ors.³ and Social Society, Morba v. The Principal Secretary, Higher and Technical Education Department, Mumbai⁴ to substantiate his contention that it is

3 1997(2) Mh.L.J. 276

4 2011 (4) Mh.L.J. 316

the duty of the University to examine as to whether opening of the proposed Faculty and subject is in conformity with the Perspective Plan prepared under Section 82 of the University Act and whether the college complies with all other mandatory eligibility criteria.

6 It is a stand of respondent No.1 State of Maharashtra, reflected from its affidavit that in exercise of powers conferred to it under Section 83(5) of the University Act, it has granted permission to petitioners to start new Faculty in Science as well as new subject of N.C.C. - Elective in B.A. course. However, grant of affiliation is exclusively within the jurisdiction of the University and the State of Maharashtra has no role to play in the matter.

7 We have carefully considered the rival submissions and also perused pleading and affidavits of parties.

8 At the outset we may mention that it is settled principle of law that when the law requires a particular thing to be done in a particular matter, it has to be done in that manner alone

or not at all. Valuable reference can be had to this proposition from judgments of the Supreme Court in case of **Dhananjaya Reddy v. State of Karnataka**⁵ and **Babu Varghese & Ors. v. Bar Council of Kerala**⁶. In the light of this settled proposition of law, we will have to consider the another proposition enunciated in the matter of **Mohinder Singh Gill & Anr.(supra)** which is to the effect that when the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reason in the shape of affidavit or others.

9 It is not in dispute that respondent no.3 University had prepared a perspective plan in terms of provisions of Section 82 of the University Act for the academic year 2015-16 and 2016-17 as per norms prescribed by the State Government. Hatkanangale Taluka of Kolhapur district is certainly finding its place in the perspective plan prepared by respondent no.3 – Shivaji University, Kolhapur. Three towns / villages from that Hatkanangale Taluka

5 (2001) 4 SCC 9

6(1999) 3 SCC 422

of Kolhapur were selected for opening new colleges and faculties. Those three towns / villages from Hatkanangale Taluka are Ichalkaranji, Hatkanangale and Pulachi-Shiroli. Need of opening science faculty was found at Village Hatkanangale whereas need of opening the College of Pharmacy, the Law College and the Science faculty was found at town Ichalkaranji of Hatkanangale Taluka. Pulachi-Shiroli in Hatkanangale Taluka was found to be in need of Arts, Commerce and Science College. It is not in dispute that petitioner no.2 - Dr.Babasaheb Ambedkar College is situated in Village Peth Vadgaon in Hatkanangale Taluka. This Village Peth Vadgaon is not finding its place in the perspective plan prepared by respondent no.3 – Shivaji University for opening new college or faculty etc. Bare perusal of Section 82 of the University Act which deals with procedure for permission to open new college or faculty etc. shows that the University while preparing the perspective plan has to keep in mind equitable distribution of facilities for higher education having due regard to the need of unserved and undeveloped areas within its jurisdiction. It is, thus, seen that the University is required to apply its mind and to locate

where genuine need for opening new college or faculty is there in areas within its jurisdiction. Parties are not at dispute that Village Peth Vadgaon in Hatkanangale Taluka was not included in the perspective plan prepared by the University for the academic year 2015-16 and 2016-17.

10 At this juncture, it is apposite to quote only relevant provisions of Sections 82 and 83 of the Maharashtra Universities Act, 1994. They read thus :

Section 82 - Procedure for permission:-

(1) The university shall prepare a perspective plan and get the same approved by the State Council for Higher Education for educational development for the location of colleges and institutions of higher learning in a manner ensuring equitable distribution of facilities for Higher Education having due regard, in particular, to the needs of unserved and under-developed areas within the jurisdiction of the university. Such plan shall be prepared by the Board of College and University Development, and shall be placed before the Academic Council and the Senate through the Management Council and shall, if necessary, be updated every year.

(2) No application for opening a new college or institution of higher learning, which is not in conformity with such plan, shall be considered by the university.

(3) The managements seeking permission to open a new college or institution of higher learning shall apply in the prescribed form to the Registrar of the University before the last day of October of the year, proceeding the year from which the permission is sought.

(4) All such applications received within the aforesaid prescribed time-limit, shall be scrutinised by the Board of College and University Development and be forwarded to the State Government with the approval of the Management Council on or before the first day of May of the year with such recommendations (duly supported by relevant reasons) as are deemed appropriate by the Management Council.

(5) Out of the application recommended by the university, the State Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking

into account the State Government's budgetary resources the suitability of the managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of higher learning.

(5A)

(5B) Notwithstanding anything contained in this Act or any other law for the time being in force, on and from the date of commencement of the Maharashtra Universities (Second Amendment) Act, 2013,-

(a) no management shall establish or open a new college or an institution of higher learning in the State, except with the prior permission of the State Government;

(b) no management shall start a new course of study, subject, faculty or additional division, except with the prior permission of the State Government.

Section 83 - Procedure for affiliation:-

(1) On receipt of the permission from the State Government under section 82 the Academic Council of the university shall consider grant of first time affiliation to the new college or

institution by following the prescribed procedure given in sub-section (2) and after taking into account whether and the extent to which the stipulated conditions have been fulfilled by the college or institution. The decision of the Academic Council in this regard shall be final.

(2) For the purpose of considering the application for the grant of affiliation the Academic Council shall cause an inquiry by a committee constituted for the purpose by it.

(3)

(4)

(5) The procedure referred to in sections 82, except the second proviso to sub-section (5) thereof, shall *mutatis-mutandis*, apply for the permission to open new courses and additional Faculties. The procedure for permission for starting new subjects and additional divisions in the existing colleges and institutions shall be such as may be prescribed by the State Government, from time to time.

(6) No student shall be admitted by the college or institution unless the first time affiliation has been granted by the university to the college or institution.

11 Perusal of sub-section (2) of Section 82 shows that no application for opening a new college or institution of higher learning which is not in conformity with the perspective plan can be considered by the University. Sub-section (5) of Section 83 makes it clear that procedure referred to in Section 82 of the University Act applies mutatis-mutandis for the permission to open new courses, additional faculties etc. In the case in hand, it is explicitly clear that Village Peth Vadgaon was not selected in the perspective plan for opening new faculty or new subject by respondent no.3 Shivaji University, Kolhapur. Mandate of Sections 82 and 83 of the University Act provides that unless and until name of the place where new colleges, new courses and additional faculties figures in the perspective plan, there cannot be affiliation by the University for opening such colleges, courses or faculties. The law requires that affiliation can be granted only if the

proposal for affiliation is fulfilling condition prescribed by Sections 82 and 83 of the University Act. Therefore, law laid down by the Supreme Court in the matter of Dhananjay Reddy (supra) and Babu Varghese (supra) squarely applies to the case in hand and no fault can be found in the impugned order dated 10th November 2016 passed by respondent no.4 – Director rejecting preliminary affiliation to faculty in science and new subject NCC – Elective for B.A. Course proposed by petitioners.

12 In the matter of Chhatrapati Shivaji Education Society (supra) relied by the learned counsel for petitioners, the petitioner Society therein was having 100 bedded Ayurvedic Medical Hospital at Village Mayani, Taluka Khatav. It was stated to be a drought prone area in the hilly region having social disadvantage to the population thereat. Applications for opening medical college were invited by the University of Health Sciences but the application of the petitioner came to be rejected by respondent no.2 University therein as the proposal was not in consonance with the perspective plan. However, after considering

the need of Ayurvedic Hospital in the hilly region of Western Ghats, the State Government took the decision to approve the said proposal in the said matter. In the said matter, the State Government was satisfied about the requirement of establishing the medical college and had issued “Essentiality Certificate” and forwarded it to the Central Council of Indian Medicine. That certificate was containing details about existing Ayurvedic institutions, Ayurvedic doctors etc. as well as desirability of establishing Ayurvedic Medical College at Village Mayani in the public interest. In the said matter, even the University had directed the petitioner / society to appoint qualified teaching as well as non-teaching staff. After making extensive search, such staff came to be appointed by the petitioner / society. While deciding that matter, in paragraph 7, the Division Bench of this court has categorically held that there can be no doubt that the perspective plan prepared by the University under Section 82 of the Maharashtra University Act, 1994 is binding on the State Government and the State Government cannot grant permission to open a technical college for higher technical education or a

medical college, contrary to the perspective plan prepared by the University. However, the Division Bench of this court further noted that the Expert Committee appointed by the University for granting affiliation to the Ayurvedic College pointed out many shortcomings and the University had directed the said college to remove those shortcomings. That shortcomings were removed by spending huge capital expenditure. Not only that, the Division Bench further noted in the said matter that the University had directed the petitioner therein to provide separate hostels for boys and girls, to purchase books and provide for laboratory equipments. All those requirements were found to be fulfilled by the college. On these peculiar facts in the said matter, the Division Bench of this court was pleased to allow that petition filed by the Shree Chhatrapati Shivaji Education Society by balancing the equities. The said case proceeded on its peculiar facts. The ratio which can be culled out from the said judgment is to the effect that there cannot be affiliation to the college or faculty without Perspective Plan. Therefore, the said judgment cannot advance the cause of the petitioners. In the instance case, petitioner no.2

College was categorically informed by respondent no.3 University by communication dated 6th May 2016 that recommendation of the State should not be considered as approval of the State and admission should not be effected unless the College gets preliminary affiliation. Still, petitioner no.2 has admitted students in first year degree course of B.Sc. and that too, without preliminary affiliation to it.

13 The learned advocate appearing for the Respondent Nos.3 and 4 rightly relied upon the judgments of the Division Bench of this Court in the matter of Dr. Punjabrao Deshmukh Memorial Education Society (Supra) and the Social Society, Morba (Supra). In the matter of Dr. Punjabrao Deshmukh Memorial Education Society (Supra), this Court after interpreting provisions of Sections 82 and 83 of the University Act, 1994 categorically prohibited the State Government from entertaining any application directly for the purpose of grant of permission to open new college. It is held that Section 83(5) of the said Act makes a provision that the procedure referred to in

Section 82(1) to (6) shall apply *mutatis-mutandis* for permission to open new course, additional faculties, new subjects and additional divisions. With such observations, the Division Bench of this Court has upheld the decision of the Nagpur University rejecting the decision of the State of Maharashtra to grant permission to start M.S.W. degree course. In the matter of **Social Society, Morba (Supra)**, the challenge was to the communication dated 6.11.2010 from the Higher and Technical Education Department of State informing the Petitioner that in view of the Government policy of not starting any new Arts, Science or Commerce College, the request of the Petitioner to grant permission to start Science College for women for the Academic Year 2010-2011 cannot be considered. The Division Bench of this Court while deciding that matter relied upon the judgment of this Court in the matter of the **Maharashtra Cosmopolitan Education Society v. University of Pune and Ors.**⁷ wherein it is held that the scheme of Sections 81, 82 and 83 of the University Act, 1994 shows that the university is the final arbiter on matters decided by

⁷ 2000(1) Mh.L.J. 424

it under Section 83(3) of the said Act. Paragraphs 16 and 17 of that judgment needs re-production and they read as under:

“16. In substance, the principle expounded in this decision is that on matters which the Academic Council of the University has to decide in terms of section 83(3) of the Act, which includes whether affiliation should be granted or rejected, etc., the University itself has to take decision on the said matters without seeking prior approval of the State Government, if no financial implication was involved to the Government. In cases where the Management intends to start new College on non-grant basis and without taking any other aid from the Government, it necessarily follows that there would be no financial implication to the State Government if affiliation is granted to such College by the University. The University, however, is expected, by virtue of section 82 of the Act, to ensure that the affiliation to be granted by it for opening a new College or Institution of higher learning must be in conformity with the perspective plan. In the present case, the fact that the University has repeatedly approved the proposal of the petitioner for starting a new Women's Degree College in Science Faculty at post Morba, Taluka Mangaon, District Raigad, it presupposes that as per

the extant perspective plan prepared by the University under section 82, opening of such new College is in contemplation. Thus, applying the principle expounded in the case of Maharashtra Cosmopolitan Education Society (supra), which decision, we are informed, has become final and no contrary view thereto has been taken, the petitioner's proposal having been approved by the University to start a new College, which concededly is on no-grant basis and without taking any other assistance or aid from the Government, the University itself could proceed to grant affiliation to the said College without seeking prior approval of the State Government. A priori, the question of forwarding the petitioner's proposal to the State Government by the University does not arise, whether be it for A.Y 2010-2011 or for that matter for A.Y 2011-2012 as the case may be. Instead, the University itself has to take the final decision on whether to grant affiliation to the new college proposed by the petitioner, subject to compliances of all mandatory requirements in that behalf.

17. We are in agreement with the argument canvassed before us by the Counsel for the University that on such interpretation, the opening part of section 83(1) of the Act which refers to the factum of permission from the State Government

under section 82 will be applicable only in respect of proposed new colleges which are looking forward to take aid from the State Government, financial or otherwise. However, if the institute such as the petitioner (which incidentally is also a minority institute) intends to start a new college on permanent no grant-in-aid basis and without taking any other assistance or aid from the Government, the question of obtaining prior permission of the State Government under section 82(5) of the Act would not arise at all as that condition is inapplicable to such institutes/colleges. In such cases, however, the Academic Council of the University ought to examine as to whether opening of the proposed college is in conformity with the perspective plan prepared under section 82 and the college also complies with all other mandatory eligibility criterion.”

14 It is thus, clear that it is the duty of the University to ensure that the request for affiliation should be in conformity with the Perspective Plan. The University is required to examine whether the proposed faculty or subject is in conformity with the perspective plan prepared under Section 82 of the University Act. This is so because while preparing perspective plan, equitable

distribution of facilities for Higher Education, need of unserved and under-developed areas within the jurisdiction of concerned university are relevant considerations. As such, the places ear-marked in the perspective plan can only be considered for opening new college, faculty or new subject. For ear-marking such places, the University is required to consider relevant factors as provided in Section 82 of the University Act. Therefore, unless and until the place is ear-marked in the Perspective Plan, affiliation for opening new college, course or subject cannot be granted.

15 In the wake of foregoing discussion it is clear that for want of inclusion of Village Peth Vadgaon in the Perspective Plan prepared by respondent no.3 Shivaji University, petitioners were not entitled for applying for opening new faculty or new subject in the existing course. The application moved by petitioners for opening the science faculty as well as for permission to start new subject i.e. NCC – Elective in B.A. Course could not have been validly entertained as Village Peth Vadgaon was not included in the Perspective Plan. Grant of prayer made by petitioners would

amount to violation of provisions of Sections 82 and 83 of the University Act, 1994. The statute i.e. the Universities Act, 1994, prescribes the procedure for applying for permission to start new faculty as well as new subject. When the law provides the mode and manner in which a new faculty and a new subject is required to be started, permission to start such faculty or subject is required to be granted in the prescribed manner alone. Therefore, we do not find any substance in contention of the learned counsel for petitioners that respondent nos.3 and 4 – University cannot be permitted to support the impugned order by supplementing it by fresh reason.

16 In view of foregoing reasons, the petition is devoid on merit and therefore the same is dismissed.

17 Rule discharged.

(A. M. BADAR, J.)

(SHANTANU S. KEMKAR, J.)