

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 5139 OF 2013

Annapurnadevi Vidya Prasarak
Sanstha Thalner, Tq. Shirpur,
Dist. Dhule
Through its President
Sharadchandra Pitambar Wadile,
Age 53 years, Occu. Service,
R/o. Thalner, Tq. Shirpur,
Dist. Dhule.

....Petitioner.

Versus

1. The State of Maharashtra
Through its Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Nashik Division, Nashik.
4. The Education Officer (Secondary),
Zilla Parishad, Dhule.
5. The Kisan Vidya Prasarak Sanstha,
Shirpur, Tq. Shirpur, Dist. Dhule
Through its President
Shri. Tushar Vishwas Randhe
6. Shri Sant Gadge Maharaj Vidyalaya &
Smt. D.T. Pawar, Junior College,
Thalner, Tq. Shirpur, Dist. Dhule
Through its Principal.

....Respondents.

Mr. P.S. Dighe, Advocate for petitioner.

Mr. R.V. Dasalkar, APP for respondent Nos. 1 to 4.

Mr. V.D. Sapkal, Advocate for respondent Nos. 5 & 6.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : March 6, 2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed under Articles 14, 19 (1)(g) and 226 of Constitution of India for relief of quashing and setting aside the permission granted by respondent No. 1, the State to respondent Nos. 5 and 6 to start the Junior College, 11th Standard Science and also for preventing the Government from giving such permission. It is contended that the permission granted on 22.1.2013 is illegal. Both the sides are heard.

3) The petitioner is registered trust and it is running primary and secondary school and also junior and senior college at Thalner in Shirpur Tahsil. The State Government granted permission to petitioner to start science faculty in junior college of petitioner in the year 2006 and 100% grant was also made available for that division. It is contended that accordingly, the petitioner started 11th standard science division in the year 2006 and the course was running smoothly as there were admissions of more than 90 students.

4) It is the case of petitioner that respondent No. 5 submitted proposal for granting permission to start science faculty as junior college in the year 2011-12. It is contended that as there was such facility in the village and opening of another junior college for the same faculty would have created unhealthy competition, the petitioner objected for giving permission to respondent Nos. 5 and 6. It is contended that the authorities like Education Officer, Deputy Director and Director considered all the relevant factors and prepared reports against respondent Nos. 5 and 6. It is contended that on the basis of those reports, the State Government took a decision of rejection of the proposal of respondents Nos. 5 and 6 for the academic year 2011-12 and in the list, which was published by the State Government in respect of permission on 27.7.2012, there was no name of respondent Nos. 5 and 6 for aforesaid course. It is contended that up to the Government level, the petitioner had filed the objection.

5) It is the case of petitioner that though the permission was refused, respondent Nos. 5 and 6 had admitted some students by starting 11th standard science division. It is contended that directions were given by the State Government and authority like Director to see that the students already admitted by respondent Nos. 5 and 6 in 11th standard science faculty are transferred to other schools. It is contended that when the action was in process, one M.L.A. intervened

in the matter and gave recommendation in favour of respondent Nos. 5 and 6. It is contended that due to influence of M.L.A. and as the President of respondent No. 5 was Zilla Parishad member and he was belonging to the then ruling party, Congress I party, the report was submitted by Director in favour of respondent Nos. 5 and 6 and then the Government issued letter of permission in favour of respondents in January 2013. It is contended that in view of the procedure laid down, the respondents could not have started science division of 11th standard without getting permission and as the previous proposal was rejected in view of the procedure laid down, it was not possible to consider one more proposal for the same academic year. It is contended that the action is in contravention of provisions of aforesaid Articles 14 and 19(1)(g) of the Constitution of India and so, the illegal decision of the State needs to be quashed and set aside.

6) The State has filed reply affidavit. It is admitted that initially the proposal submitted by respondent Nos. 5 and 6 was rejected. It is contention of the State that in subsequent report, the Director had informed to the Government that there was full strength in the division of petitioner viz. 92 and 36 students had taken admission for science course 11th standard started by respondent Nos. 5 and 6 and so, in the interest of the students, the State Government subsequently granted the permission. It is contention of the State that

such permission has not affected the interest of petitioner and so, no relief can be given to the petitioner.

7) The petitioner has produced relevant record which is consistent with aforesaid contentions made in the petition. It is also not disputed that the first proposal submitted by respondent Nos. 5 and 6 was rejected by the State. This record is record like reports prepared by Education Officer, Deputy Director and Director of Education. The annexures with the report show that the distance between the place of institution of respondent Nos. 5 and 6 and the junior college of petitioner was around 7 k.m. It was less than prescribed 10 k.m. It was also reported by the authority that in this village, there was division of 11th standard receiving grants in aid and opening of new junior college will create unhealthy competition. The Education Officer, Deputy Director and Director had concurred with this opinion and on that basis, the Government had rejected the proposal of respondent Nos. 5 and 6. The subsequent correspondence of August and September and also of October 2012 show that specific directions were given by the Government and Director that the division which was illegally started was to be closed and the students of that division were to be transferred to the nearest school of that locality. The Government has contended that opening of new college would not have affected the college of petitioner as only 36 students were admitted in the new

division, cannot be accepted as in ordinary course, if the strength of the students had increased in that locality, the petitioner also could have claimed one more division of 11th standard science in it's college and by granting permission facility could have been created to the aforesaid additional students.

8) The record contains letter of M.L.A. of Shirpur dated 7.9.2012 showing that he recommended giving of the permission to respondent Nos. 5 and 6 and the letter was given to Deputy Director of Education, Nashik Division. On the basis of that letter and by giving reference of that letter, Deputy Director made recommendation to Director of Education, Pune. The necessary annexure prepared by the Education Officer and Deputy Director show that this time even when other things were the same, it was mentioned that there was necessity of one more science division and so, they were recommending the proposal to start 11th standard science in the institution of respondent Nos. 5 and 6.

9) There are many suspicious things about this correspondence. As the first proposal was rejected, there was nothing in the hand of Education Officer, Deputy Director and Director to submit the new recommendation. Due to these circumstances, this Court had asked the learned counsel for respondent Nos. 5 and 6 to produce copy

of proposal, if any, submitted subsequently to the Education Department. The learned counsel submitted that no such copy is available. This submission shows that no new proposal was submitted by respondent Nos. 5 and 6.

10) There is one more circumstance. The learned counsel for petitioner took this Court through the record of information supplied by the authority showing that the Education Officer who has signed on the second recommendation had retired in May, but his signature appears as Education Officer on the second recommendation, which was apparently submitted after October 2012. It is serious thing and the State ought to have taken it seriously, but the State Government considered the proposal favourably due to intervention of M.L.A.

11) The learned counsel for petitioner took this Court through the procedure laid down in Secondary School Code for obtaining permission to start new college or school. In section 1 at clause 2.1 from Chapter 2, the procedure is given for submitting proposal and it shows that the proposal needs to be sent to reach the Education Officer before 30th October in the year preceding the year which the school is proposed to be started. With every proposal the fees prescribed in this clause needs to be deposited. Clause 2.12 shows that the application for obtaining permission to start secondary/higher secondary school will

be considered only for that year and the application will not be considered next year or the application will not be kept on waiting list. It provides that the application along with the fee will automatically extinguish. Clause 2.13 shows that in no case the school should be started unless the written previous permission of the Government is obtained. However, it also provides that school started without such permission shall not ordinarily be considered for permission. This Court had an occasion to consider the provisions of Secondary School Code in one case reported as **2001 (4) Mh.L.J. 293 [Annaji Raut Shikshan Sanstha, Umri and Anr. Vs. Secretary, Department of Education and Employment, Bombay and ors.]**. This Court has laid down that if the decision of the Government granting permission to start new school was illegal, arbitrary, contrary to the rules and against principles of natural justice, permission granted by the State can be cancelled. There cannot be dispute over this proposition. When some procedure is prescribed for obtaining permission and the opinion of the authority which is required to study the ground reality is required to be considered, the State Government cannot go away from that procedure. In the present matter, the aforesaid circumstances show that due to the influence of M.L.A. and also due to the circumstance that the President of respondent No. 5 and 6 institution was a member of Zilla Parishad and he was also ruling party worker, such steps were taken by the State Government. Due to the aforesaid circumstances,

this Court holds that the petition needs to be allowed and the relief as claimed by the petitioner needs to be granted.

12) In the result, the petition is allowed. The relief as claimed in prayer clause 'B' of the petition is granted. The decision of the Government granting permission to respondent Nos. 5 and 6 to start 11th standard science division with effect from academic year 2011-12 stands quashed and set aside. The students who are admitted in said division are to be transferred to the nearest school as per the convenience of the students and care of those students is to be taken to see that they do not suffer in their academic year or in facing examinations of that standard. It will be open to respondent Nos. 5 to 6 to approach the Government again and if the due procedure is followed, the Government will be entitled to consider the new proposal for future.

Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

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