IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.497 OF 2018
IN
WRIT PETITION NO.9168 OF 2016

Shri. Chatrapati Shahu Education Society,
Ashti, Tal. Ashti, District Beed,
Through its President,
Sau. Lakshmi @ Damayanti Bhimrao Dhonde,
Age 54 years, Occ. Household - Social Work,
R/o Ashti, Tal. Ashti,
District Beed ..PETITIONER

VERSUS

1. Shri Sitaram Janardhan Kunte,
The Secretary,
Higher And Technical Education
Department,
Mantralaya,
Mumbai

2. Shri Dattatraya Vasantrao Kharake,
Desk Officer, Higher and Technical
Education Department,
Maharashtra State,
Mantralaya, Mumbai ..RESPONDENTS/
CONTEMNORS

Mr S.S. Thombre, Advocate holding for Mr B.T. Bodkhe, Advocate for petitioner

CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.

DATE : 16th July, 2018

ORAL ORDER:

Heard Mr Thombre, learned Counsel appearing on behalf of the petitioner.

2. The petitioner is before this Court alleging that the respondents have committed a willful disobedience of the order of this Court dated 23rd April, 2018, passed in Writ Petition No.9168 of 2016.

3. Mr Thombre submitted that the petitioner submitted proposal to the State Government in the year 2015-16 for opening a new college at the place, namely, Brahmanath Yellamb, Taluka Shirur (Kasar), District Beed. By letter/communication dated 28th July, 2016 the said proposal of the petitioner was rejected and the said communication was subject-matter of Writ Petition No.9168 of 2016. Mr Thombre vehemently submitted that the Division Bench of this Court was pleased to pass a detailed order and thereby directed the State Government to decide the proposal of the petitioner without insisting on submitting fresh proposal.

4. Mr Thombre, by inviting our attention to the communication dated 31st May, 2018 submitted that the communication is clearly in contrast to the order passed by the Division Bench of this Court and the Division Bench of this Court directed the respondents not to insist on submitting fresh proposal, the decision is taken by the State Government on that very count.

Mr Thombre, in support of his submissions referred to certain part of the letter/communication dated 31st May, 2018. As it is the submission of the learned Counsel that the decision of the State Government on the ground that the petitioner failed to submit fresh proposal for the year 2018-19 and this is in contrast to the order of this Court and as such the respondents have committed contempt of this Court, it will be necessary for us to refer to the order of this Court and the communication dated 31st May, 2018. Mr Thombre submitted that he admits that the communication also refers to certain deficiencies in the proposal of the petitioner - institute. It was his submission that the decision of the State Government which is reflected in the communication dated 31st May, 2018 is not on those deficiencies but on the sole ground that the petitioner failed to submit the proposal for the year 2018-19 and as there is a new procedure laid down for grant of permission for opening new colleges under the Maharashtra Universities Act, 2016, we are referring to the following material.

5. As stated above, there is no dispute that the petitioner submitted proposal for the academic year 2016-17 in the year 2015. His proposal was rejected by way of communication dated 28th July, 2016. The said communication was under challenge in the writ petition and this fact is reflected in paragraph 2 of the order of the Division Bench, which reads thus:-

> "(B) By issuing writ of certiorari or any other writ, order or directions in the like nature, the letter dated 28.07.2016 issued by the respondent may kindly be quashed and set aside and for that purpose issue necessary orders;
>
> (C) By issuing writ of mandamus or any other writ, order or directions in the like nature, direct the respondent to grant permission to the petitioner institution to start Arts and Science College at Brahmanath Yellamb from the academic year 2016-2017 and for that purpose issue necessary orders."

6. Then it would be necessary to refer to the observations of the Division Bench wherein a ground was raised by the petitioner that though the proposal of the petitioner was rejected, at the same time, the State Government granted permission in favour of other 61 institutes, even though there was no positive recommendation by the University. A specific statement was made before this Court to that effect. There was also an issue raised before this Court as to whether the criteria of inclusion of the village in the perspective plan or the area restriction would be applicable in these matters. That issue is also dealt with by the Division Bench and then there is a specific statement made by the petitioner before this Court which reads thus :-

> "Learned Counsel further submits that, village Brahmanath Yellamb is included in the perspective plan prepared by the

> University and the University favourably recommended the proposal of the petitioner to the State Government. It is submitted that, now the petitioner has removed all the deficiencies, and therefore, the proposal of the petitioner deserves to be favourably considered by the State Government."
>
> (Emphasis supplied)

7. Then, other ground was raised before the Division Bench that an opportunity of hearing was not granted to the petitioner.

8. Learned Asstt. Govt. Pleader appearing for the State Government submitted that as per the new policy framed under the Universities Act, 2016, the university ought to have been a necessary party and it was also specifically brought to the notice of this Court that the new procedure requires a positive recommendation by the University. Considering these aspects, the Division Bench then ultimately observed in these words :-

> "We have given careful consideration to the submission of the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent-State. We have carefully perused the pleadings and grounds taken in the Petition, annexures thereto and reply filed by the respondent-State, and also all other documents placed on record. Admittedly, village Brahmanath Yellamb is included in the perspective plan prepared by the Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. Admittedly, the

proposal of the petitioner for the academic year 2015-16 was recommended by the said University. Upon perusal of the reply filed by respondent and also other documents placed on record, it appears that, the main reason for rejection of the proposal of the petitioner for the academic year 2015-16 appears to be the policy decision taken by the State Government not to grant permission to the proposals which were received for the academic year 2015-16.

The Division Bench (Coram S.S. Shinde & P.R. Bora, JJ.) while disposing of the Writ Petition No.6760 of 2015 [Mahesh Gramin Bahuuddeshiya Shikshan Sanstha Ashti Vs. The State of Maharashtra] directed the State Government to consider the proposal of the petitioner for opening new college for the academic year 2016-17. Upon perusal of the impugned order, it appears that, certain deficiencies have been pointed out. The petitioner has made categorical statement in the petition that, already those deficiencies have been removed."

(Emphasis supplied)

9. It was brought to the notice of this Court by the petitioner, by way of amendment, that said village is included in hilly area and there is no college within the radius of 30 Kms. of Brahmanath Yellamb.

10. The Division Bench of this Court then observed in paragraph 12 of the aforesaid order thus :-

> "12. In that view of the matter, in our considered opinion the ends of justice would be met in case respondent no.1 is directed to re-consider the said proposal submitted by the petitioner after removing/curing the deficiencies pointed out by the respondent for the academic year 2018-19. , however, without insisting for further process fees or for filing afresh proposal. Accordingly, we direct respondent-State and its officials to consider the said proposal of the petitioner for the academic year 2018-19 keeping in view the perspective plan prepared by the State Government and the University. The impugned letter dated 28.07.2016 issued by the respondent is quashed and set aside. Rule is made absolute in above terms. The petition stands disposed of."

11. Mr Thombre vehemently submitted that the communication dated 31st May, 2018 is on a sole basis that as per the new procedure there ought to have been a recommendation of the University to the proposal and on the ground that the petitioner society failed to submit a fresh proposal in the year 2018, we are unable to accept submission of Mr Thombre, for the reason that the communication dated 31st May, 2018 is misread by the petitioner. The communication is an exhaustive communication. The communication refers to the factors, namely, the order of this Court, the factual aspect of framing a new policy and the requirement of positive recommendation of the University, under the Maharashtra Universities Act, 2016. Then the communication states about a representation submitted by

the petitioner. The petitioner missed to read the said part of the communication and the communication reads thus :-

That the petitioner, by representation dated 2nd May, 2018 made a request to the State Government that the petitioner is complying with all the deficiencies. As such, the petitioner's proposal be allowed for opening new college from academic year 2018-19. Then there is a reference of the compliance of the criteria which was a pre-requisite as per Government Resolution dated 2nd September, 2013.

12. It is not in dispute that the petitioner submitted proposal for opening new college for the academic year 2016-17 in the year 2015, meaning thereby that aforesaid Resolution of 2013 was not operating the field insofar as the aspect of deficiencies is concerned. The communication further refers to non-compliance of the deficiencies by the petitioner. These deficiencies are re-produced in the communication. It would be useful for our purposes to refer to these deficiencies of the petitioner institute. The deficiencies are in respect of non submitting the audit report of the current financial year and it states that the audit report of 2012 was placed before the State Government. This assumes some importance for the reason that the audit report is a document on which the State Government can assess the financial capability of the institute. Then there is other important deficiency pointed out in the communication and it states that there is absolutely no

document submitted before the State that there is any construction carried out on the land. Then the other deficiencies pertain to criteria no.12.2.1 - non availability of water; then criteria no.12.2.2 - non availability of electric energy supply and there is no material placed on record to show that the petitioner institute was complying with these deficiencies such as, source of water or source of electrical energy. Then there was no material insofar as the deficiency of drainage facility. There was no material of having any hostel facility available with the petitioner. Similar was the deficiency about the furniture. Then there was other deficiency pointed out about the accreditation certificate. Then the communication refers to the part of the order passed by the Division Bench and then it refers to the provisions of the new Act i.e. Maharashtra Universities Act of 2016. The conclusion and the decision is reflected in the last statement of the communication and it reads that on assessing the proposal of the petitioner-institute, on qualitative standards, as it reveals that there are deficiencies and the petitioner institute failed to comply with these deficiencies, the proposal submitted by the petitioner cannot be allowed.

13. Considering the aforesaid facts, it is clear that it is not only the basis of the provisions of new Act of 2016 or the basis that the petitioner institute failed to submit proposal for the year 2018-19, but the basis for rejection of the proposal is non compliance of the deficiencies by the petitioner institute. Mr Thombre fairly submitted that this communication, on merits, is also

challenged by way of another writ petition in this Court.

14. On all aforesaid facts, we are of the clear opinion that the submission of the petitioner that the communication dated 31st May, 2018 is a willful disobedience of the order of this Court dated 23rd April, 2018, is thoroughly meritless and cannot be accepted by any stretch. The contempt petition is filed only on assumption and presumption and misreading of the communication by the petitioner institute. On such misreading, an allegation is made that the respondents-authorities have committed willful disobedience of the orders of this Court. We are unable to persuade ourselves to accept the submissions of the petitioner for the aforesaid reasons specifically stated by us. The contempt petition being thoroughly meritless deserves to be dismissed at the stage of admission itself and accordingly the petition is dismissed.

15. As we have taken note of statement made by Mr Thombre that the communication dated 31st May, 2018 is challenged by way of a separate writ petition, we make it clear that the said writ petition would be decided on its own merits.

(S. M. GAVHANE, J.) **(PRASANNA B. VARALE, J.)**

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