

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7805 OF 2009

BHARAT JODO YUVA ACADEMY
VERSUS
STATE OF MAH AND ORS

Mr.V.L.Dhobale, Advocate for the petitioner
Mr.A.B.Girase, Government Pleader for the
respondent/State
Mr.U.S.Malte, Advocate for the respondent No.3

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 15.06.2018

P.C. :-

. Heard Mr. Dhobale, learned counsel appearing for the petitioner, Mr. Girase, Government Pleader appearing for respondent Nos. 1 and 2 and Mr.Malte, learned counsel appearing for respondent No.3/University.

2. Perused the petition filed by the petitioner Institute with a prayer for grant of permission to run Art Degree College namely Sane Guruji College of Arts at Islapur, Tq. Kinwat, Dist. Nanded. It is submitted in the petition that the petitioner Institute is a registered Institute and in response to notification calling for the application proposals to start the education Institution for the Academic year 2009-2010, the petitioner Institute

being interested submitted its proposal to the University on 31.10.2008. The University was in favour of the proposal submitted by the petitioner and the petitioner Institute was only the Institute seeking such permission in the area of Nanded District at the relevant time. It may not be necessary for us to give the other details of the submissions of the petitioner. Suffice to say that the issue for consideration before this Court was the discriminatory treatment given to the petitioner Institute. The petition was admitted by granting rule by order dated 21.02.2011 by the Division Bench of this Court. It would be useful to refer the certain orders passed by this Court. By order dated 27.03.2018 the Division Bench of this Court was pleased to observe that in spite of the fact that in certain proposal even though there was no favourable recommendation by respondent No.3/University (herein after referred to as the University for the sake of brevity) and though there was a favourable recommendation by the University in case of the petitioner, the petitioner's proposal was kept pending before the Government without any decision. Thus, in short, it was prima-facie opinion of this Court that the State Government is applying two yardsticks to different institutes. The State Government was directed to file affidavit-in-reply to explain the issue raised by

this Court in the order dated 27.03.2018. On 23.04.2018 the learned Government Pleader representing the State Government expressed his inability for filing affidavit-in-reply due to short of instructions. This Court left with no choice but to direct the State Government to keep its Officer namely Deputy Secretary remain present before this Court on the next date. It was also caution by the Division Bench of this Court that if the order of this Court is not complied with, warrant will be issued to the said authority. Mr. Girase, Government Pleader at the outset has tendered an apology on behalf of Officers as well as on behalf of the State Government for not complying the order of this Court by filing affidavit within stipulated period as directed by this Court. Mr.Girase, Government Pleader submitted before us that in spite of an extensive search of the record the authorities of the State Government could not lay their hands on particular record. In so far as the issue of discrimination raised in the order of this Court and canvassed before this Court, it was submitted by Mr.Girase, Government Pleader, the process was initiated some time in the year 2007-2008, 2008-2009 and 2009-2010 and the relevant record was not available. This statement is made in the affidavit-in-reply paragraph No.5. Mr. Girase, Government Pleader also submitted before us that

in view of the directions of this Court the Deputy Secretary is present in this Court. Our attention is also invited to paragraph No.2 of the affidavit-in-reply. It is submitted that due to communication gap between the Higher Officer and the Subordinate Officer the fact of directions of this Court for filing affidavit-in-reply within stipulated period was not noticed as such the affidavit-in-reply could not be filed. Mr. Girase, Government Pleader gives an undertaking to this Court that henceforth all care and caution would be taken to comply the orders of this Court in general and in particular of filing the reply within stipulated period in the letter and spirit of the order.

3. A statement is made in the affidavit-in-reply at paragraph No.8 and it reads thus:

“I say and submit that in view of the facts and circumstance stated herein above the answering respondent is willing to consider the case of the petitioner, as a special case, favourably for opening new college provided the petitioner fulfill the norms prescribed under the Government Resolution dated 15.09.2017 and recommended by the respondent No.3.”

. Mr. Dhobale, learned counsel appearing for the petitioner submitted that the petitioner is interested in starting college for the immediate next academic year and he also undertakes to submit a fresh proposal to the

State Government in view of the circular dated 15.09.2017.

4. Learned counsel appearing for the petitioner submitted that the State Government and respondent No.3 University be directed to expedite the other formalities so as to take decision on the proposal of the petitioner as early as possible without there being an inordinate delay. The submissions of Mr. Dhobale, learned counsel appearing for the petitioner was justified and undertaking given by the learned counsel appearing for the petitioner/institute would submit proposal before the State Government for its consideration /decision, served the purpose of approaching this Court and in that way the grievance of the petitioner is redressed. In view of these facts the petition can conveniently be disposed of by issuing following directions to the parties.

i. The petitioner to submit his proposal to the University/respondent No.3 within four weeks.

ii. Respondent No.3/University to take necessary steps for complying the formalities of respondent No.3/ University within four weeks thereafter.

iii. If, the University forwards the favourable recommendation in case of the petitioner to the State Government, on receipt of such favourable recommendation respondent Nos. 1 and 2 to take decision on the proposal within three weeks from the date of receipt of the proposal from the University.

5. Mr. Dhobale, learned counsel appearing for the petitioner submits that there is apprehension in the mind of the petitioner that the respondent authorities may act with vengeance as the petitioner has approached this Court. We are making it very clear that the State Government will maintain its undertaking given to this Court in the affidavit-in-reply more particularly in paragraph No.8. The respondent authorities to follow the stipulation of period directed by this Court scrupulously and would not cause any delay raising hyper technical objections, resulting in an inordinate delay in decision of the said proposal. The petition is disposed of in view of the above directions.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]