

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

WRIT PETITION NO.9169 of 2016

Anand Charitable Sanstha, Ashti,
Through its President,
Sau. Yamunabai Mahadeo Gilche,
Age 55 years, Occ. Household-Social Work,
R/o. Ashti, Tal.Ashti,
District Beed. **PETITIONER**

VERSUS

The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai.

RESPONDENTS

...
Mr.B.T.Bodkhe, Advocate holding for
Mr.S.S.Thombre, Advocate for the petitioner
Ms.S.S.Raut, AGP for the respondent-State.
...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 18.04.2018
Pronounced on : 23.04.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] This Petition under Article 226 of the Constitution of India is filed with the following substantive prayer clauses:

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, Commerce and Science College at Tintarwani from the academic year 2016-2017 and for that purpose issue necessary orders;

3] It is the case of the petitioner that, the petitioner is registered under the provisions of the Bombay Public Trusts Act,

1950 as well as under the provisions of Societies Registration Act, 1860. The petitioner is running various schools and colleges in Beed District and presently, the petitioner is running 4 senior colleges, 7 Junior Colleges, 7 higher and secondary schools and 2 primary schools. The petitioner is also running 1 Polytechnic College, 1 D.Pharmacy College, 1 College of Diploma in Agriculture, 1 College of Diploma in Dairy, 1 College of B.Sc. Agri. and Food Technology. The aim and object of the petitioner institution is to impart the education to the poor and needy persons in the Beed District. The petitioner-institution is providing better education to the students, as the petitioner-institution is running above-mentioned schools and colleges in the Beed District. The petitioner is having all infrastructure to provide better education to the students. The petitioner institution is

also running various courses in the above mentioned schools and colleges. It is further the case of the petitioner that, the petitioner submitted a proposal for opening the Arts, Science and Commerce College at Tintarwani, Taluka Shirur [Kasar], District Beed, and pursuant to the proposal submitted within time as per the provisions of the Maharashtra Universities Act, 1994 [for short 'the Act of 1994'], the University recommended the said proposal to the State Government with the positive remarks. The place wherein the petitioner had submitted a proposal was under the perspective plan for the year 2016-17. By letter dated 29.04.2015, the State Government has taken a decision not to grant any permission to the proposals, which were received for the academic year 2015-16, and therefore, the various Writ Petitions were filed before the High Court, challenging the said letter dated 29.04.2015.

The petitioner had also challenged the said letter by filing Writ Petition No.6768/2015 [Anand Charitable Sanstha, Ashti Vs. The State of Maharashtra] and the High Court along with other companion Writ Petitions, directed the respondent to decide the petitioner's proposal for the academic year 2016-17. Respondent, in fact, ought to have decided the proposal before the academic year starts but it reveals that, on 05.08.2016 the decision is taken to grant permission in favour of other institution, and as far as the proposals, which were rejected that was informed to the University, and it was directed to the University to inform to the petitioner and in pursuant thereto, the letter dated 28.07.2016 came to be issued whereby it was informed to the petitioner that, the proposal is turned down on the ground of deficiencies which were pointed out in the chart accompanied thereto.

4] It is further the case of the petitioner that, the respondent is an Authority under the Maharashtra Universities Act, 1994 to grant permission to start senior college and after the proposal received from the University. Dr.Babasaheb Ambedkar Marathwada University prepared the perspective plan for granting new college at the respective places and as far as Beed District is concerned, village Tintarwani is included in the plan. The University after considering the report of the academic Council, management Council and with a view to improve the educational facilities at that place, it was decided to sanction the college at that place as there was a necessity of the college at that place and in pursuant thereto and in consonance with the provisions of the Act of 1994, the perspective plan was published. Pursuant to the perspective plan,

the petitioner institution, which is running various schools and colleges in the Beed District, intended to impart education in that area and having all the facilities, infrastructure, trained staff and other facilities and therefore, pursuant to Section 82 of the Act of 1994, the proposal was submitted for starting the new college at village Tintarwani, Taluka Shirur [Kasar], District Beed. The petitioner had submitted all the required documents along with the proposal, which were asked by the University for starting the new college as per the perspective plan.

5] It is further the case of the petitioner that, as the petitioner had submitted the proposal within time for the academic year 2015-16 for starting the school, and the Academic Council has considered the proposal which was also placed on record before the Management Council,

recommended the petitioner's proposal and submitted to the State Government. The petitioner had complied all the conditions as informed by the University as well as, as per the provisions of law which ought to have been complied by the petitioner, those were complied and therefore the University vide its letter dated 14.06.2015 forwarded the same with positive recommendation. As the proposal was pending before the State Government but surprisingly it was informed to the petitioner that, the State Government vide its letter dated 29.04.2015 has decided not to grant permission to any institution for the academic year 2015-16 as it was stated in the letter that, the University is intending to change the perspective plan from the next year. It was further stated that, the State Government has directed the Universities to prepare the revised perspective plan within 3 months and

therefore it was decided not to grant permission to any of the institutions. The petitioner, being aggrieved and dissatisfied with the letter dated 29.04.2015, approached before the High Court by way of filing Writ Petition No.6968/2015 challenging the said letter dated 29.04.2015. In the meanwhile, the said letter was also challenged before the Principal Seat at Mumbai and the Principal Seat has directed the State Government to consider the individual proposals without insisting the letter dated 29.04.2015.

6] It is further the case of the petitioner that, in the meanwhile the Dr.Babasaheb Ambedkar Marathwada University had published a revised perspective plan for the one academic year i.e. 2016-17, the place wherein the petitioner had already submitted the location is maintained / retained as it is. The perspective plan for the year 2015-16

is already placed on record by the petitioner. The High Court vide its order dated 21.01.2016 disposed of the Writ Petition Nos.6760/2015, 6761/2015, 6768/2015 and 9314/2015 with directions that, the respondent to consider the proposal of the petitioner pending before the State Government for the academic year 2016-17, keeping in view the prospective plan prepared by the State Government and University. As the petitioner's proposal was complied in all the aspects and therefore the petitioner was very hopeful that the State Government should consider the proposal of the petitioner as it was recommended positively by the University. Unfortunately, on 10.08.2016, the petitioner came to know that, the State Government had granted permission vide its order dated 05.08.2016 to the 61 institutions from the entire State. It can be revealed that, subject to correction and as per the

knowledge of the petitioner, the State Government has granted permission in favour of those institutions, in whose favour there is no recommendation by the University to the proposals submitted and granted for opening new colleges by those institutions.

7] Learned counsel appearing for the petitioner submits that, the rejection of the proposal by the respondent is unjust, arbitrary, illegal and contrary to the perspective plan prepared by the University. The deficiencies which are pointed out are already complied with by the petitioner. Before rejecting the proposal, the respondent had not given opportunity to the petitioner to cure the deficiencies, if any, and straight way, only because the petitioner institution approached before the High Court, the proposal of the petitioner is rejected, on such grounds which are contrary to the record. Learned counsel further submits that,

village Tintarwani 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. The impugned order passed by the State Government is without following the principles of natural justice and giving an opportunity to the petitioner to remove deficiencies, and therefore, is not legally sustainable.

8] On the other hand, learned AGP appearing for the respondent-State submits that, Dr.Babasaheb Ambedkar Marathwada University is necessary party to the Petition. In support of the said contention, learned AGP pressed into service exposition of law by the Supreme Court in the case of

Chief of Army Staff Vs. Daya Shanker Tiwari¹. Learned AGP points out that, due to deficiencies in the proposal which was submitted by the petitioner for the academic year 2015-16, the proposal of the petitioner for opening new college was rejected. The proposal was for the academic year 2015-16, and since the same has been rejected, the said proposal cannot be considered again for the academic year 2018-19. She submits that, the Maharashtra Public Universities Act, 2016 [for short 'the Act of 2016'] is brought into force, and therefore, in absence of recommendation of the University to consider the proposal of the petitioner for the academic year 2018-19; the prayer of the petitioner deserves no consideration.

9] Learned AGP invites our attention to the averments in the affidavit-in-reply filed on behalf of respondent-State and its

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officials and submits that, the petitioner institution has not complied with norms/guidelines prescribed by the State Government in Government Resolution dated 02.09.2013 for granting permission to open new college, and as such the decision impugned in this Petition needs no interference. It is further submitted that, as per Section 82 of the Maharashtra Universities Act, the State Government has absolute discretion to grant or reject the permission to open a new College or institution, taking into account the State Government's budgetary resources, the suitability of the managements seeking permission to open new institution and the State Level priorities with regard to location of the institutions of higher learning. As per the said Section, it is not obligatory upon the State Government to grant permission to the managements to open a new

college or institution, though the applications are recommended by the University. It is further submitted that, for the academic year 2016-17 again the petitioner institution submitted proposal to the University. The University scrutinized the said proposal as per norms laid down by the State Government as well as by the University. As the said proposal not complied with norms laid down by the State Government as well as the Maharashtra Universities Act, the concerned University has not recommended the proposal of the petitioner for permission to open new college at village Tintarwani.

10] 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 respondent-State,

and also all other documents placed on record. Admittedly, village Tintarwani 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.6760/2015 [Mahesh Gramin Bahuudeshiya 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.

11] The petitioner by way of amendment in the Petition has stated that, the said village is included in the hilly area and there is no any College within the radius of 40 kilo meters of the village Tintarwani as the Arts, Commerce and Science is at Shirur [Kasar], which is a Taluka Place and the distance between Tintarwani and Shirur [Kasar] is 40 kilo meters. The Government Authorities have issued letter/letters, which is placed on record mentioning therein the distance between Tintarwani and Shirur [Kasar] is 40 kilo meters.

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.

13] Needless to observe that, if the respondent feels it appropriate, respondent

may afford opportunity of hearing to the
petitioner.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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