

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

WRIT PETITION NO. 14724 OF 2017

DISHA BAHUUDDESHIYA SEVABHAVI SANSTHA THROUGH ITS
PRESIDENT SUMANBAI BHAGWANRAO B
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. S.V. Deshmukh, Advocate for the petitioner
Mr. C.S. Kulkarni, AGP for the respondent/State

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

DATED : 24.07.2018

P.C. :-

Heard Mr. S.V. Deshmukh, learned counsel appearing for the petitioner and Mr. C.S. Kulkarni, learned AGP appearing for respondent Nos. 1 to 4.

2. The petitioner is before this Court challenging the order dated 22.08.2016, thereby informing the petitioner that in view of the policy decision of the State Government reflected in the Government Resolution dated 24.08.2004, the proposal of the petitioner cannot be considered favourably. The learned counsel appearing for the petitioner by inviting our attention to the documents placed on record submitted that the petitioner-institute was desirous of opening a new college for the stream of Social Work and accordingly on 05.11.2008 a proposal was submitted to the Director of

Social Welfare. It was submitted in the proposal that the petitioner-institute is having financial capacity and is also in a position to make available of the infrastructural facilities for opening a new Social Welfare College at place, namely, Badnapur. It is further submitted that the population of the town Badnapur is approximately 1,31,000 and there is no Social Welfare College available in the town. By way of a tabular data, it was also submitted that there are sufficient number of students, who have completed their 12th standard and Junior Colleges and are desirous of seeking admission for the graduate course. Alongwith proposal the necessary documents were also submitted, such as the registration certificate of the society, the bank statements and undertaking so as to set up full fledged library.

3. It is then submitted by the learned counsel appearing for the petitioner that though the petitioner-institute was making an attempt to seek decision on the proposal, the competent authority failed to take any decision on the proposal. The petitioner in that situation was left with no choice but to approach this Court by filing Writ Petition. Our attention was invited

to the order passed by the Division Bench of this Court dated 25.08.2014. A copy of the order is placed on record at Exh."C". The operative order of the Division Bench reads thus:-

"4. The petitioner may file a fresh proposal with the respondent authorities within a period of four (4) weeks from today. On receipt of the said proposal the respondent authorities shall decide the same on its own merits as per their existing policy after considering all the relevant aspects expeditiously and preferably within a period of four (4) months of the receipt of the proposal. The writ petition is disposed of. No costs."

4. The learned counsel appearing for the petitioner then submitted that the petitioner institute submitted a fresh proposal to the Secretary of Social Welfare Department on 18.09.2014. Alongwith the proposal, the copy of the order of the Hon'ble High Court was annexed as well as the documents showing the financial capacity of the institute and copy of earlier proposal was also submitted for consideration. Then our attention was invited to communication dated 22.09.2014 whereby the Additional Commissioner Social Welfare, Jalna forwarded the proposal to the Regional Deputy Commissioner, Divisional Social Welfare office, Aurangabad. Our attention was invited to communication

dated 25.09.2014 whereby the Regional Deputy Commissioner of Social Welfare forwarded the proposal to the Commissioner Social Welfare apprising the Commissioner of Social Welfare about the order passed by the Division Bench dated 25.08.2014.

5. The learned counsel appearing for the petitioner then invited our attention to the communication dated 03.07.2006 issued by the office of the Higher and Technical Education Department to the Registrar of the Pune University. This communication states that for the year 2006-07, the proposals were received for opening new colleges and by the said communication institutes are permitted to open new colleges on permanent non-grant-in-aid basis subject to certain conditions. The learned counsel appearing for the petitioner by inviting our attention to the list submitted that two institutes, namely, Jan Shikshan Sanstha, Aurangabad and Maratha Shikshan Sanstha, Aurangabad are permitted to open new college in Social Work. Thus, the submission of learned counsel for the petitioner that the State authorities, only relying on the Government Resolution dated 24.08.2004 rejected the proposal of the petitioner institute whereas by way of

communication dated 03.07.2006, the department of Higher and Technical Education granted permission to two institutes to open new Social Work colleges. Thus, the State Government would apply two yardsticks to similarly situated institutes and this approach of the State Government being a discriminatory approach is unsustainable. The learned counsel appearing for the petitioner invited our attention to the order passed by the Division Bench at Nagpur dated 07.11.2017 in Writ Petition No.2444 of 2017 and Writ Petition No.4422 of 2017.

6. Learned counsel appearing for the petitioner submitted that, the petitioner submitted his proposal for permission to open new college of permanent non-grant-in-aid basis as such this proposal was not causing any financial burden on the State Government.

7. Mr.C.S. Kulkarni, learned AGP appearing for the respondent/State opposes the petitions, firstly on the ground of the Government Resolution dated 24.08.2004 and secondly on the ground that the petitioner ought to have submitted his proposal to the Department of Higher and Technical Education. The learned AGP invited our

attention to the affidavit-in-reply. It would be interesting to note the statement made in the affidavit-in-reply which is filed at the instance of one Shri. Prakash Bhagirath Bachhav, Regional Deputy Commissioner, Aurangabad. The statement reads thus:-

"5. I say and submit that the question pertaining to grant permission to start a particular course is purely a question of Government policy. As mentioned above, State Government of its Social Justice and Special Assistance Department vide G.R. dated 10th April 2001 and 24 August 2004 has taken policy decision of not granting any new permission to start B.S.W., M.S.W. courses either on no-grant-basis or on grant-in-aid basis. There is no change in policy decision of this Respondent.

8. Then it will be also useful to refer to the other statement made in the affidavit in reply and the same reads thus:-

"6. I say and submit that, in this case, this Respondent wants to bring to the notice of this Hon'ble court that, Higher and Technical Education Department and Social Justice and Special Assistance Department are two different departments of Maharashtra State and their policy decisions are also independent. Hence decision of Higher and Technical Education Department, is not mutatis-mutandis applicable to the social Work Colleges coming under purview of Social Justice and Special Assistance Department."

9. It is further stated in the affidavit in reply which reads thus:-

"7. I say and submit that in Maharashtra

State, Respondent no.1 granted permission to 52 Social Work Colleges, in which presently two Social Work College namely Mahatma Jotiba Phule College of Social Work, old Jalna, and Jalna Social Work College, Jalna, are already existing in District Jalna. The distance between Jalna and Badnapur is near about 15 to 20 Km. Hence considering the said distance, there is no need of Social Work College in Badnapur, Dist. Jalna. As stated in earlier para, Respondent no.1 has taken policy decision not to grant permission to any of the institution to start new Social Work College and there is no change or revision in the said policy decision. Hence question does not arise to consider the need for starting Social Work College in any place including Badnapur, Dist. Jalna as per the demand of the Petitioner."

10. The learned AGP also placed heavy reliance on a policy decision reflected in the Government Notification dated 10.04.2001 to submit that the State Government took a policy decision not to grant permission to any institute for opening new college in Social Work from the year 2000-2001.

11. Considering these rival submissions of the learned counsel appearing for the respective parties, we are of the opinion that the order impugned in the petition is clearly unsustainable. At the cost of repetition, we state certain facts which are not dispute. The petitioner-institute submitted its proposal in the year 2008 by order dated 25.08.2014. The Division

Bench of this Court permitted the petitioner institute to submit a fresh proposal within stipulated period and directed the respondent authorities to decide the said proposal on its own merits. The proposal of the petitioner institute is rejected on the ground of Government Resolution dated 24.08.2004 and the other ground taken by the State Government to oppose the petition is that, if one department of the State Government, namely, Department of Higher and Technical Education granted permission to certain institutes to open Social Work College, the decision would not be applicable to other departments of the State Government mutatis-mutandis as these two departments are distinct and separate. The authority can exercise their powers to take different decision. Though the stand taken by the Government looks logical, but there is a fallacy in this stand. The State Government initially took a decision in the year 2001 and 2004 not to grant permission to the institutes to open new colleges of Social Work. On this backdrop if we peruse the order passed by the Division Bench at Nagpur certain facts emerge to state that how there is fallacy in the submission of the State Government.

12. The petitioners were before the Nagpur Bench with a prayer to issue directions to the authorities to consider the proposal. A similar stand was taken before the Division Bench by the State Government that there was a ban operating since year 2004. It would be useful for our purposes to refer to the observations of the Division Bench. These observations read thus:-

"Since 2004 there was a ban and hence such Colleges could not be started. It appears that on 17th October 2015, State Government sent a communication to all non-agricultural Universities in State of Maharashtra. In that communication, there is a reference to report prepared by Dr. Narendra Jadhav Committee on factors to be adhered to, while drawing a new perspective plan by University. This report, while noting prevailing facts at Page 8, also takes note of the ban imposed in 2004 and expressly points out that this ban applicable to establishment on new Social Work Colleges was still operating. The Committee report mentions and Government also reproduces that in changed situation, it was necessary to establish such new colleges."

13. Interestingly enough, while rejecting proposals, in the order the reason was assigned of the ban imposed vide Government Resolution dated 24.08.2004. The State Government took the very stand that two departments namely Social Welfare Department and the Higher and Technical Education Department are distinct entity and establishments, as such, the report is not binding on the State Government. Considering these

aspects the Division Bench found merit in the submissions of the petitioner by referring to Dr. Narendra Jadhav committee's report. The Division Bench was pleased to observe thus:-

6. "We find substance in contention of petitioners. Observations at Page 8 mentioned *supra*, clearly demonstrate that Social Work colleges were also within purview of Dr. Jadhav Committee and Committee has felt it necessary to provide new Colleges even for Social Work."

14. The Division Bench also took note of the fact that the perspective plan was then drawn. Public advertisement was published and the petitioners have participated in the process. There are no *mala fides*/motive on their part. The decision to fall back on the communication dated 24.08.2004 imposing ban, therefore appears to be unjustifiable.

15. Considering all these aspects the order impugned in the petition was set aside by the Division Bench and the respondents-authorities were directed to consider the proposal sent by the University within stipulated period as per law. The Division Bench then again made it clear that the time frame fixed by the Court with an object to see the need reconised by Dr. Jadhav Committee and by respondent University while

preparing perspective plan is remained uncatered in academic year 2016-17 and thereafter 2017-18.

16. The Division Bench then permitted an opportunity of hearing to the petitioner, if necessary. Then Division Bench made it clear that if the proposal of the petitioner is considered favourably, the same shall be operative for the academic year 2018-19.

17. On considering all these aspects, we failed to understand that how the State Government can take two diagonally opposite stands before two benches of this Court. If the Division Bench at Nagpur had an occasion to consider Dr. Narendra Jadhav Committee's report and also the State Government assigned reasons for opening new Social Work Colleges on a need base criteria and then the Division Bench also had an occasion to consider the stand taken by the State Government that, the two departments i.e. Higher and Technical Education Department and Social Welfare Department are distinct establishments and even by this ground, the Division Bench at Nagpur could not find favour with the State Government and the rejection order was resultantly set aside by directing the State Government to decide the

proposal of the petitioner afresh and in such a situation, the State Government is reiterating its stands before us in the affidavit without even referring to the order passed by the Division Bench at Nagpur.

18. The State Government is expected to be fair and unbiased and to put all the facts before the Court without any bias and put all the relevant facts before this Court, so as to assist this Court in arriving at a just and appropriate decision. The State Government cannot act as like some party interested in the matter and opposing the petitions on behalf of one authority for the sake of opposition.

19. In view of above, we partly allow the petition. The order impugned in the petition dated 22.08.2016 is quashed and set aside. The petitioner is permitted to submit fresh proposal to the State Government and the State Government to decide the proposal within two weeks from today. If the petitioner institute prays for hearing, the opportunity of hearing be extended to the petitioner.

20. We see no reason to take a different view than

the view taken by the Division Bench at Nagpur and we state that if the permission is granted to the petitioner institute the same shall operate from the academic year 2019-2020.

20. Petition is accordingly partly allowed and disposed of.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]