

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6852 OF 2011**

The Konkan Muslim Education
Society of Thane District .. Petitioner

Versus

The Union of India and others .. Respondents

...

Mr.S.G. Kudle for the petitioner.
Mr.Jaydeep S. Deo with Mr.D.P. Singh for respondent no.1.
Mr.S.B. Kalel, AGP for respondent no.2.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON : 4th JULY 2018

PRONOUNCED ON : 7th SEPTEMBER 2018

JUDGMENT:- (Per SMT.BHARATI H. DANGRE, J)

1 Rule. Rule made returnable forthwith. Heard by
consent of the parties.

2 The writ jurisdiction of this Court is invoked by the petitioner which is an educational institution registered under the provisions of Bombay Public Trust Act, 1950 and also under the Societies Registration Act, praying for issuance of writ in the nature of mandamus and any other appropriate writ/direction to the State of Maharashtra to make provision for the purpose of construction of building of girls hostel at Bhiwandi under the scheme sanctioned by the Union of India. The petitioner is a minority institution and claims to be imparting education to the Economically Backward section of the minorities within the vicinity of Bhiwandi, District Thane. The petition impleads the State of Maharashtra as well as the Maharashtra Prathamik Shikshan Parishad, Mumbai through its Chief Engineer (Project) Mumbai as respondents along with the Union of India through Ministry of Human Resources Development, New Delhi.

3 The case of the petitioner as set out in the petition is that the respondent no.1 had flouted a scheme of Area Intensive Programme for educationally backward minority

through its Ministry, Human Resources Development, but it is the specific grievance of the petitioner that the State Government prohibited the implementation of the Scheme by not disbursing the amount allotted towards the petitioner institution for construction of girls hostel and caused delay in sanctioning the amount, resultantly, causing hike in the cost of construction and frustrating the whole purpose for which the scheme was floated.

The petitioner states that the institution run by the petitioner is situated at a distance of 50 kms from Mumbai and is established in the year 1927 and is engaged in making provision for quality education to the Muslims in Thane District. The petitioner Society claims to be managing seven high schools, two junior colleges, computer center along with Technical Institute and also a Women's College under the caption G.M.Momin's Women's College exclusively for women. It is the claim of the petitioner that the society is imparting the elementary and higher education to more than 5000 boys and girls and has been awarded with excellent performance award during the year 2008-09. The petitioner has referred to a

Scheme introduced by the Ministry of Minority Affairs, Government of India and which was described as 'Maulana Azad Education Foundation" which is a voluntary, non-political, non-profit making social service organization established to promote education among educationally backward sections of the society and it is funded by Ministry of Minority Affairs, Government of India. The petitioner has stated the eligibility criteria for grant of funds under the said scheme which included disbursement of funds to be released by the Human Resources Development under the scheme of Area Intensive Programme for Educationally Backward Minorities.

The petitioner has placed on record the Maulana Azad Educational Foundation, educational scheme introduced by the Ministry of Minority Affairs, Government of India and perusal of the said scheme would reveal that it includes the centrally sponsored scheme for hostel for girls in the Area Intensive Programme for educationally backward minorities. Perusal of the said scheme would reveal that a decision was taken to consider the institutions in Aurangabad, Malegaon and Bhiwandi for implementation of the Area Intensive Programme

and to build hostels for Muslim girls in private institutions. The Committee under the Chairmanship of State Project Director selected the institutes in the State of Maharashtra to be held eligible for availing the benefits under the Central Government sponsored Area Intensive Programme. The decision to that effect was taken by Government of Maharashtra on 31st March 2005 and permission was granted to the SHA RAIS High School and Junior College, Bhiwandi along with two other institutions located at Malegaon and Aurangabad respectively. All the three institutions were granted permission to build the girls hostel and an amount of Rs.1.10 crore came to be sanctioned for the said purpose. It is the case of the petitioner that the petitioner was intimated about the selection of the institution for being eligible for availing the benefits of the scheme for construction of one girls hostel by the State of Maharashtra and the said intimation was received by the petitioner on 2nd February 2005 and it was made subject to several terms and conditions.

4 It is the specific case of the petitioner that the petitioner entered into correspondence with the authorities and raised an objection in respect of the terms and conditions subject to which the Central Government Sponsored Area Intensive Programme included the petitioner institution for construction of a girls hostel. The objection was raised in respect of two conditions which, according to the petitioner society, were not practical to implement. One of the conditions being that the land on which the building will be constructed should be transferred in the name of the Government and the issue raised by the petitioner institution was the difficulty faced by a Charitable and Educational trust to transfer land as it would create some legal hassles in future. The second objection raised by the petitioner was in respect of construction to be carried out by government agency. The petitioner institution had expressed that in light of the known vested interest and involvement of corruption in the whole system, it would be difficult for the government agency to carry out the said construction and rather the minority institution itself can carry

out the said construction under the supervision of the agency and the amount may be disbursed to the institution step wise, taking into consideration the progress of the construction. The petitioner says that he repeatedly corresponded with various authorities in relation to relaxation of the conditions as the said conditions were very harsh and requested for relaxation of the conditions with a view to ensure that the sanctioned amount in question is utilized for a very laudable purpose for which it is granted. According to the petitioner, a meeting also was arranged with the State Minister of School Education. In the said meeting, the petitioner was made aware of a communication issued by the Secretary, Government of Maharashtra to the Director of Education (Secretary and Higher Secondary) Maharashtra State, Pune and also to the State Project Director, Maharashtra Primary Education Council, Jawahar, Bal Bhavan, Mumbai, informing that in pursuance of Government order dated 22nd October 2003 in respect of construction of girls hostel under the Centrally Sponsored Scheme, Area Intensive Programme for educationally backward minorities, an amount of Rs.2.90 crores have been sanctioned

for construction of girls hostel at Malegaon, District Nashik, Bhiwandi District Thane, and Aurgangabad and by an order dated 31st March 2005, an amount of Rs.1.10 crore has already been sanctioned. The authorities were directed to furnish the certificate in respect of appropriation of the said amount to the Government forthwith. The grievance of the petitioner is that despite the selection of the petitioner Society and sanction of substantial amount, it was not informed by the State Government till the communication dated 2nd March 2006 was issued and there was considerable delay in implementing the said project. The petitioner further states that despite the grant of the amount in the year 2003, the petitioners were kept in dark about the said amount being sanctioned in its favour and hurriedly the utilization of the amount was sought to be made. The petitioner was all the time objecting to the conditions subject to which the permission was granted and he had preferred representation at various levels. By a letter dated 6th December 2007 addressed to the petitioner by the State Project Director, the petitioner was informed that the Government of Maharashtra has approved the revised terms

and conditions in pursuance of the discussion and it was informed to the petitioner that the institution was granted an amount of Rs.1.10 crores. The petitioner is aggrieved by the delay in revising the terms and conditions and also disbursal of the amount, which according to the petitioner, is deliberate and willful attempt on the part of the bureaucrats had caused delay.

The petitioner then proceeds to refer to the correspondence which it had entered with the State Authorities and specifically refers to a letter dated 25th March 2010 whereby the petitioners were informed that in the event of non-submitting the proposal in question, the sanctioned amount will be treated as cancelled. According to the petitioner, there was no authority vested in the State Government to cancel the said amount since the scheme was floated by the Union of India through its Ministry of Human Resources Development and it was the State Government which was creating obstacles and causing delay in implementation of the said programme in the State, qua the petitioner institution.

5 The case of the petitioner is that the institution was unnecessarily being pressurized as several letters came to be issued to the petitioner on 20.7.2010, 25.8.2010, 1.9.2010, 16/10/2010, 1/11/2010 and 22/122010, thereby citing various reasons in not providing with the disbursal of the amount to the petitioner society. According to the petitioner, the tone and tenor of all the communications addressed to the petitioner was an attempt to deprive the minority institution from getting the sanctioned funds from the Union of India and to let the funds lapse, without the benefit being extended. The petitioner further proceeds to state that in a hope that there will be reimbursement in respect of the expenditure incurred already in respect of the construction of the project in question, the petitioners incurred an amount of Rs. 25 lakhs and it was duty of the respondent no.2 to reimburse the said amount by verifying the fact whether the construction had taken place or not. However, there was utter failure on the part of the respondent State authorities to do the necessary and on account of the delayed project in question, there was a substantial hike in the cost of construction and if the construction is to be

completed at this stage, it would incur an expenditure of Rs. One crore, as against the sanctioned amount of Rupees Forty Two lakhs by the Union of India a decade before and had the amount being disbursed earlier, the project, according to the petitioner, would have completed with that amount and the petitioner would have managed the expenditure over and above with the said amount. However, according to the petitioner, it is not possible to carry out the construction at this stage and the scheme floated by the Union of India has been completely defeated by a non-vigilant attitude on part of the State authorities. The petitioner, therefore, makes a claim that for completion of the project which had already commenced by the petitioner society, he would require an amount of Rs.1,00,00,000/-.

6 The petition was filed before this Court in the month of August 2011 and since then it is pending for adjudication. Notice was issued to respondent authorities on 20th September 2011. On 30th January 2013, this Court directed the Union of India to file an affidavit in reply, *inter*

alia, stating whether the Union of India specifically allocated the grant or a part thereof to the petitioner. On 22nd March 2013, this Court noted that the Union of India has filed this affidavit and furnished the details of the amount released by the Union of India to the Government of Maharashtra on 19th December 2001 and the purpose for which it was released thereupon, the State of Maharashtra was directed to file an affidavit furnishing the details as to how the amounts referred to in the affidavit of Union of India has been dealt by the State of Maharashtra. On 22nd June 2016, a statement was made on behalf of the State Government that for construction of hostel building in the year 2008, an amount of Rs. 30 lakhs is disbursed to the petitioner and a building has been constructed but it is not used for hostel purpose but it is used for running a college, school and a K.G/Nursery. The State Government was therefore, directed to file a detailed affidavit. In compliance of the directions issued by this Court from time to time, an affidavit is placed on record by the Chief Engineer, Maharashtra Prathamik Shikshan, Mumbai. In the said affidavit, it is stated that the proposal for construction of building for girls hostel

under Area Intensive Programme was sanctioned by the Union of India on 19th December 2001 and this included the Bhiwandi block of Thane District. The respondent no.2 issued directions to the respondent no.3 to formulate the terms and conditions for entering into an agreement in furtherance of the Area Intensive Programme for backward minorities implemented by the Central Government in wake of National Education Policy of 1992. On 31st March 2005, the School Education in Sports Department issued a resolution implementing the Area Intensive Programme and by selecting the different educational institutions in Malegaon, Aurangabad and Bhiwandi in the three blocks and three minority institutions were selected and granted permission for construction of one girls hostel and this included the name of the petitioner. An agreement incorporating the terms and conditions was also prepared. However, the petitioner refused to accept the terms and conditions, as according to him, they were oppressive. The respondent mentions about the correspondence and the discussion in the backdrop of the disagreement with the terms and conditions, and ultimately, a decision was taken by the

State Government on 12th September 2006 refusing to change the terms and conditions. The same was also intimated to the petitioner. It is the specific case put up by the respondents in their affidavit that several letters were issued to the petitioner to accept the terms and conditions and even meetings were arranged. It was ultimately on 3rd January 2009 that the petitioner submitted the registered agreement to the respondent no.3. However, after verifying the proposal, it was observed that the drawing was not approved by the concerned authorities and the NOC and the estimates were not attached with the proposal. Hence, the petitioner was intimated vide communication dated 18th May 2009 and 7th August 2008 to submit the proposal with necessary approvals as per clause (3) of the terms and conditions. However, the petitioner failed to submit the estimate and the requisite details were accordingly intimated to the Secretary, School Education Department with a recommendation to cancel the approved funds. It is further stated in the affidavit that by letter dated 3rd April 2010, the petitioner sought an extension of 15 days for submission of the estimate and proposed advertisement and approval in the office

of respondent no.3. It was intimated by the petitioner vide letter dated 5th July 2010 that they have published the tender notice for proposal for construction of hostel in a local newspaper. However, that was done without prior approval of respondent no.3. The respondent no.3 intimated to the petitioner that the Advertisement is to be published in a National as well as local leading newspaper. The petitioner started the work in November 2010 and as per the agreement clause 19, the petitioner had to spent extra amount i.e. the amount over and above the sanction costs and after that only, the first instalment was liable to be released. The respondent no.3 after verification about the compliance, sanctioned the first instalment of Rs.13,96,800/-.

However, on 3rd August 2011, a complaint was made against the petitioner by one Shakeel Fazal Madoo that the petitioner had already constructed a girls hostel in the campus of RAIS High School and the funds were taken from the Maulana Azad Foundation, New Delhi, on the pretext of it being a minority institute and still the funds are sought from respondent no.3. It was also alleged in the complaint that the

petitioner is not using the hostel for girls but it is conducting classes for local girls in the said area and it is an attempt to usurp the funds from respondent no.3. On receipt of such a complaint, the Deputy Director (Project) from the office of respondent no.3 visited the office of the petitioner, but the Chairman and the Head Master of the petitioner informed that the Secretary of the petitioner was not available and they would forward the requisite information when the office bearers of the petitioner are available. Along with the said affidavit, the respondent authority has placed on record the entire correspondence entered with the petitioner and also placed on record the complaint levelling allegations against the petitioner.

7 Another affidavit is placed on record by the Under Secretary Department of School Education which is dated 20th February 2013, wherein it is stated that the Central Grant-in-Aid Committee of the Area Intensive Programme for Educationally Backward Minority, Ministry of Human Resource Development approved an amount of Rs.636.76 lakhs to the

Government of Maharashtra and out of this amount, an amount of Rs.46.56 lakhs was approved for construction of hostel building attached to Urdu Medium Higher Secondary School for girls in the Bhiwandi Taluka, Thane district. It is also stated in the affidavit that an amount of Rs.4.00 crore was released to the Government of Maharashtra on 19th December 2011 as first instalment as against the approved costs of proposal amounting to Rs.636.76 lakhs. The release of the balance approved costs of the proposal was subject to receipt of 75% utilization of funds/physical progress of the work of the first instalment. The State Government made a categorical statement that it had released an amount of Rs.2,63,43,182/- for implementation of various schemes and it submitted an utilization certificate to that effect.

8 The last affidavit placed on record in pursuance of the directions issued by this Hon'ble Court is filed by the Chief Engineer (Project) of the Respondent no.3 on 17th May 2016 which gives the latest progress and position of the petitioner institute and the utilization of the amount. In the said affidavit,

it is stated that out of Rs.4 crores received by the Government of Maharashtra from the Government of India, it sanctioned an amount of Rs.2,90,00,000/- for construction of classrooms and toilets for blocks at Malegaon, Bhiwandi and Aurangabad and a sum of Rs.1,10,00,000/- for construction of girls hostel at Malegaon, Bhiwandi and Aurangabad. As far as the girls hostel building at Bhiwandi in Thane District is concerned, total amount of Rs.46,56,000/- was sanctioned by the Government of India vide letter dated 19th December 2001. It is stated that it was only after obtaining the approval from the Government of Maharashtra as regards the terms and conditions of the agreement, the respondent no.3 would enter into an agreement with the concerned institutions selected under the project for construction of girls hostel building under the programme. The petitioner was selected and informed about inclusion of its institute vide letter dated 21st December 2004 and an agreement was executed between respondent no.3 and the petitioner institution on 1st January 2009 on the terms and conditions mentioned therein. As per the terms and conditions, the respondent no.3 were to disburse the amount of

Rs.46,50,000/- subject to certain terms and conditions which are categorically stated in the affidavit. In pursuance to the agreement executed on 1st January 2009, the respondent no.3 was to release the sum of Rs.1,96,800/- to the petitioner institution. However, in view of the complaint being received from Shakeel Fazal Madoo where it was alleged that the petitioner is trying to wrongfully extract the amount from respondent no.3, the said amount was not released. In the affidavit, it is thereafter stated that as against the petitioner institute, though an amount of Rs.46.16 lakhs was sanctioned, the amount was not disbursed and rather the entire amount is shown as unutilized amount.

9 We have extensively heard Mr.Kudle, appearing for the petitioner and Mr.S.B. Kalel, AGP appearing on behalf of the State. Shri Kudle would invite our attention to the chronology of events and also the approach of the State Government in delaying the disbursement of the amount under the scheme of the Central Government, thereby depriving the petitioner which is a minority institution of its avowed purpose

of imparting education to the girls students and heavily prayed for release of the amount in favour of the petitioner society.

8 Perusal of the petition along with its annexures and on consideration of the submissions advanced by the learned counsel for the petitioner Shri S.G. Kudle, it is revealed that the Ministry of Minority Affairs, Government of India had established the Maulana Azad Foundation which is a voluntary, non-political, non-profit making service organizations established to promote education amongst educationally backward sections of the society. The entire funding under the said programme is by the Ministry of Minority Affairs, Government of India. The said foundation covers various educational schemes in the form of grant of financial assistance for construction/expansion of schools belonging to the educationally backward communities and arranging the financial assistance for several other programmes. The object of the scheme being to arrange for basic educational infrastructure and facilities in the areas of concentration of educationally backward minority which do not have sufficient provision for elementary, secondary and professional and

vocational training institutes. The applications are invited under the schemes and the ceiling limits have been fixed along with the detail procedure being carved out for sanctioning the financial assistance being extended under the said scheme. A detailed mechanism for selection of the institutes under the said scheme finds place as a part of the scheme and there is a provision for submission of only one proposal at a time, to be submitted by a minority institute. The perusal of the affidavits of the respondents would reveal that the petitioner was selected under an Area Intensive Programme for educationally backward minorities which is implemented by the Ministry of Human Resources Development. This is distinct and different from the programme run by the Ministry of Minority Affairs under the Maulana Azad Education Foundation. In the 14th meeting of the National Level Grant-In-aid Committee, (GIAC) which was held on 29th October 2001 to consider the proposals received from the State Government of Maharashtra, the approval of the Government of India was conveyed to certain proposals forwarded by the State of Maharashtra. The details of the proposals which were approved, are described below :

S.No.	Type of Proposal	Amount (Rs.In lakhs)
1	For construction of single room building for New Urdu 51 Primary Schools (6 in Daund blocks of Pune District; 6 in Malegaon block of Nasik district and 35, in Aurangabad block/districts)	124.70
2	194 Additional classroom and 87 toilets in existing primary/secondary schools	
	i) In Bhiwandi block of Thane districts	
	93 Class-room	134.85
	22 Toilets	2.20
	ii) In Malegaon block of Nasik Districts	116.80
	80 Class-room	5.40
	27 toilet	
	iii) In Aurangabad block of Aurangabad districts	30.45
	21 Class-room	1.20
	38 Toilet	
	For the construction for 6(100 bed) Hostel Buildings attached to Urdu Medium Higher Secondary Schools for Girls as follows :-	
	I) Daund block of Pune District	43.85
	ii) Malegaon block of Nasik District (2 hostels)	87.80
	iii) Bhiwandi Block of Thane District	46.56
	iv) Aurangabad block of Aurangabad district	43.85
	TOTAL	636.76

It is thus apparent that the Bhiwandi block of Thane district was selected under the Area Intensive Programme for Educationally Backward Minorities and approval was granted for construction of 6 hostel buildings attached to Urdu Medium

Higher Secondary School for girls. For Bhiwandi block of Thane district, an amount of Rs.46.56 lakhs came to be sanctioned. The total costs of proposals which were sanctioned for the State of Maharashtra was Rs.6,36,76,000/- only. It was also communicated to the State that an amount of Rs.4 crore is sanctioned as first instalment as against the approved costs of the proposal amounting to Rs.636.76 lakhs and the balance was to be released on receipt of 75% utilization of funds/physical progress of work of the first instalment released. The sanction of the State Project was with the stipulation that the State Government would take care of the maximum benefit of the girl students of the minority committee in implementing the approved proposals. It was also made imperative that the grant being released should be utilized only for construction of school building, for which it has been approved, in a time bound manner. Responsibility was given to the State Government to ensure proper utilization of the government funds.

10 In furtherance of the release of this grant by the Central Government, the State Government through the

Education Department issued a resolution on 22nd October 2003 and in order to effectively implement the Central Government Sponsored Scheme, covering 5 Tahsils of the State of Maharashtra i.e. Malegaon, Nashik, Bhiwandi, Thane and Aurangabad District for construction of girls hostel for the minority institute, an amount of Rs.1.10 crore came to be sanctioned. The respondent no.2 Maharashtra Primary Education Council came to be appointed as a Nodal Agency for implementing the scheme and for selecting the minority institutes who were entitled for building of girls hostel. The State of Maharashtra formulated the terms and conditions to be imposed on the institutions who were to be covered under the said Scheme and it was approved by the School Education Department. The State Government selected the petitioner under the said Scheme for construction of one girls hostel and necessary directions were issued to initiate the said process. The respondent no.3 addressed a communication to the petitioner on 2nd February 2005 intimating that under the Central Government Area Intensive Programme and upgradation of the Madrasa, the petitioner institute has been selected for

construction of a women's hostel and the terms and conditions subject to which the permission was granted, were also communicated to the petitioner. The State Government also issued a resolution to that effect on 31st March 2005 wherein it was resolved to include the petitioner institute along with two other institutes at Malegaon and Aurangabad for the Area Intensive Programme for Educationally Backward Minorities for construction of one women hostel and it approved an amount of Rs.1.10 crores for the said purpose. The perusal of the communications placed on record would reveal that the respondent no.3 corresponded with the petitioner and sought compliance for entering into an agreement and accepting the terms and conditions subject to which the permission was granted. However, the response from the petitioner institute was awaited. The petitioner had objected to the terms and conditions and had preferred several representations to the authorities. A High Power Committee was constituted under the Chairmanship of State Project Director who had formulated the guidelines for the details of construction and also the disbursal of the amount, including the preparation of estimates

and plans. The technical aspects were also formulated by the said Committee and the manner, mode and the stages of disbursement were also stipulated. In spite of repeated communications being addressed to the petitioner, the response of the petitioner was lukewarm and his insistence was on modification of the terms and conditions including the condition of transferring the land to the Government of Maharashtra and construction of the building by the petitioner themselves with an assurance that the building would be completed and constructed with lesser funds. Considering the approach of the petitioner, the respondent no.3 addressed a communication on 5th April 2007 to the Secretary, School Education Department informing the State about the approach of the petitioner in not agreeing to the terms and conditions and alleging that they were impracticable. It was also intimated that there was no response from the petitioner and the construction has not commenced since there was no consensus as regards the terms and conditions. The decision was also taken on behalf of the State Government not to modify the terms and conditions and it was intimated to the petitioner.

The State Government, however, modified certain terms and conditions and agreed that since the land where the hostel was to be constructed was belonging to the petitioner and the petitioner was not ready to hand over the said premises to the State Government, an agreement be executed to the effect that the construction would proceed without transferring the said land. It also agreed that the plans for construction of the hostel would be prepared by the Society and they would be approved by the respondent no.3 and thereafter, the Society would begin the construction activity under supervision of the Managing Committee which was re-constituted and the representative of the petitioner Society came to be included in the said Committee. This decision was taken on 20th September 2007. The condition as regards the handing over the hostel building after its construction to the State Government also came to be deleted and it came to be replaced by a condition to the following effect :-

“The assets, if any acquired wholly or substantially out of this grant shall not be disposed of without obtaining prior sanction of the Government of India or utilized for purposes other than those for which the grant has been sanctioned”.

11 The petitioner ultimately entered into an agreement with the respondent no.3 on 5th October 2009. On 13th January 2009, the State Government granted approval for disbursement of amount of Rs.46.56 lakhs in favour of petitioner society. The petitioner proceeded to prepare the estimates and maps and also published a tender notice in the local newspaper. The State Government was ready and willing to disburse an amount of Rs.14 lakhs for the work which was started by the petitioner and which was completed till plinth level and which came to be inspected by the Executive Engineer, Education Department, Zilla Parishad, Thane. The Executive Engineer certified that an amount of Rs.11,49,564/- has been spent on the construction completed till date and building material to the tune of Rs.55,000/- was available on the site and he certified that an amount of Rs.12.04 lakhs has been spent by the petitioner.

12 It is at this point of time a complaint was received from one Shakeel Fazal Madoo. He had alleged that the petitioner Society had already completed construction of its

hostel block from Maulana Azad Foundation in the premises of RAIS High School. He also complained that the hostel block was not inhabited by girls but it was put to use for conduct of M.Sc. classes. In light of this complaint, a fact finding inquiry was initiated and explanation was sought from the President of the petitioner society in the backdrop of the said complaint. The petitioner, however, avoided to respond to the same. In terms of the directions issued by this Court on 15th June 2016, the officials of the respondent no.3 visited the petitioner institution on 20th October 2016 to assess the factual position. In an affidavit filed by Rajendra Shahaje, the respondent no.3, on 7th July 2016, it is stated that during the visit of the institution, it is found that there are colleges, English medium schools, Urdu Medium Schools, K.G. School running in the campus of the petitioner institute, but there is no girls hostel being run in the campus. A copy of the site report dated 20th June 2016 has also been placed on record. In the affidavit, a categorical statement is made that in the year 2007-08, the petitioner institute had received an amount of Rs.30 lakhs for construction of girls hostel under the scheme 'Maulana Azad

Foundation', but in fact, no such hostel is being run and it is being used for some other educational purpose. On inspection of the site, it is reported by the respondent no.3 that the Urdu Bassera building which was constructed for accommodating girls students is being utilized for running Computer lab, K.G School and other school purposes. The respondent has also tendered on record the photographs of the building and the institution.

13 In the light of the aforesaid affidavit and the current position as on 2016 brought on record by the respondent authorities, it is clear that the petitioner had availed an amount from Maulana Azad Education Foundation for construction of hostel building for girls. However, as on date, that building is not put to use for stay of the girl students but is used for other educational purposes. No girls hostel is being run in the campus of the petitioner institute. Under the Area Intensive Programme – a Central Government Sponsored Scheme, the petitioner was sanctioned an amount of Rs.46.56 lakhs for construction of girls hostel in the same campus. However, this

amount has not been disbursed in favour of the petitioner and cannot be now disbursed since there is no hostel which is run by the petitioner society and the one which it had constructed on receipt of an amount of Rs.30 lakhs under the Maulana Azad Educational Foundation is also being put to use distinct from the purpose for which the amount was sanctioned.

14 The petitioner by the present petition has sought a specific relief of directing the respondent no.2 to make a provision of Rs.10 crores for the purposes of building the construction of girls hostel at Bhiwandi and proceeds on a footing that an amount of Rs.42 lakhs was sanctioned by the Union of India for construction of girls hostel for educationally backward community. He thus prays for enforcing the decision of the Union of India taken on 19th December 2001, wherein an amount of Rs.46.56 lakhs came to be sanctioned for construction of 100 Bed hostel building at Bhiwandi block of Thane district. In our opinion, the petitioner is not entitled for the said relief as he has misguided the authorities and also this Court. He had set out a specific case before this Court by

concealing the information that he had already availed the benefits under the Maulana Azad Foundation and had sought to give an impression to this Court that he is attempting to avail the benefits under the Area Intensive Programme for educational backward minorities and since the State Government has selected him under the said programme, he is entitled for the relief which he has sought. In light of the affidavits filed by the respondent no.3 and bringing on record the latest position and the fact that the hostel which has been constructed by the petitioner in the year 2006-07 from Maulana Azad Foundation is not being put to use as a hostel, we do not think that any equity weighs in favour of the petitioner and we would not exercise our discretionary jurisdiction to confer the same on him. Hence, we refuse the relief sought by the petitioner and dismiss the writ petition. No order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

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