

wp-4113-19

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

WRIT PETITION NO.4113 OF 2019

Shri Gajanan Bahu-udeshiya
Sevabhavi Sanstha, Najik Pangri,
Taluka Badnapur, through its
President Kavita w/o Gajanan Walke

..Petitioner

Versus

The State of Maharashtra and ors.

..Respondents

Mr S.K. Kadam, Advocate for petitioner

Mr S.B. Yawalkar, A.G.P. for respondent no.1

Mr V.U. Pawar, Advocate h/f Mr S.S. Tope, Advocate for respondent
no.2

Mr K.D. Bade Patil, Advocate for respondent no.3

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 11.10.2019

ORAL ORDER :

1. The petitioner assails the permission granted to respondent no.3 to run the senior college of Arts and Science faculties.

2. Mr Kadam, learned Counsel for the petitioner submits that the petitioner had submitted proposal for start of Arts, Science and Commerce college at Tupewadi, Taluka Badnapur, District Jalna. The respondent no.3 also had submitted the proposal. The University recommended the proposal of respondent no.3. The proposal of the petitioner was recommended for Arts, Science and Commerce faculties, whereas the University recommended the proposal of respondent no.3 College for Arts and Science faculties. The State Government granted permission to respondent no. 3 to run Arts,

Commerce and Science college and the same is beyond the proposal of respondent no.3. On that count itself, the permission granted to respondent no.3 deserves to be rejected.

3. Mr Kadam, learned Counsel for the petitioner further submits that the proposal of respondent no.3 was deficient in many respects, (1) respondent no.3 did not have the fixed deposit of Rs.7 lakhs, as required. The respondent no.3 was required to submit fresh proposal. Fresh proposal was not submitted. The previous application was only considered. Respondent no.3 contended that the building will be used for senior college, but the same is used for junior college also. Learned Counsel submits that Section 109 of the Maharashtra Public Universities Act, 2016 has been flouted. (2) the permission has to be granted on or before 15th June. The same is granted on 24th June. The State Government would not have extended the period as provided under the Statute. Learned Counsel submits that the proposal of respondent no.3 was not as per the perspective plan. Perspective Plan was for Arts, Science and Commerce faculties. The proposal of respondent no.3 was only for Arts and Science faculties. For all these reasons the proposal would not have been considered. The proposal of the petitioner - institution was complete in all respects. The same was without any deficiencies.

4. Mr Bade, learned Counsel for respondent no.3 submits that respondent no.3 has the fixed deposit of more than Rs.10 lakhs.

Deposit was made, it was renewed on 27.12.2015 and thereafter renewed up to 27.12.2020. The Bank has also issued letter to that effect. Learned Counsel submits that the State Government erroneously granted permission for Arts, Science and Commerce faculties. Proposal of respondent no.3 was only for Arts and Science faculties. The Government has corrected the same by issuing corrigendum and the permission is only restricted to Arts and Science faculties.

5. The learned Counsel for petitioner submits that the petitioner has not used the building for any other faculty, but for only Arts and Science Senior College.

6. We have considered the submissions advanced by the respective parties and Mr Yawalkar, learned A.G.P. at length.

7. This Court, while exercising the jurisdiction under Article 226 of the Constitution of India, would not sit as an appellate authority over the decision taken by the State. However, would be more concern with the due adherence to the decision making process.

8. The proposal of the petitioner as well as respondent no.3 were positively recommended by the University. The State Government considered the proposal of respondent no.3 to be more appropriate and granted permission. Of course, proposal of respondent no.3 was for Arts and Science faculties only. The State Government granted

permission for Arts, Science and Commerce faculties to respondent no.3, same was improper. The said mistake was corrected by the State Government by issuing corrigendum and the permission to the respondent no.3 is restricted to Arts and Science faculties.

9. It has been stated by learned Advocate for University that the village Tupewadi does not find place under the perspective plan for the year 2020-2021. No other society would be permitted to put up the college for the year 2020-2021 or that the proposals would not be accepted.

10. As per Section 109 of the Maharashtra Public Universities Act, the permission is to be granted by the State Government prior to 15th June of the said academic year. In the present case, the permission has been granted on 24th June. The same appears to have been because of the interim order passed by this Court in the Writ Petition. This Court, on 12.6.2019 modified the interim order and allowed the State Government to take decision on its own merits with regard to grant or refusal of permission to respondent no.3. In view of that, it appears that the decision could not be taken by the State Government. The prohibitory orders were operating restricting the State Government of taking decision. The said order was operating up to 12.06.2019 and only thereafter, decision could be taken by the State Government. The respondent no.3 has fixed deposit of the required amount. In light of above, we do not find case for interference.

11. Mr Kadam, learned Counsel for petitioner submits that this Court under order dated 12.6.2019 had directed that if the permission is granted, the same would not take effect until further orders and respondent no.3 had committed contempt of the order of this Court and has started the college, so also, has admitted the students and University has granted affiliation.

12. The order of this Court dated 12.6.2019 is self-explanatory. If the said orders are flouted, the petitioner is at liberty to take appropriate proceedings.

13. With these observations, writ petition stands disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

vvr