

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 161 OF 2014

Kagal Taluka Kala Krida Shaikshanik
Va Sanskrutic Mandal, Kagal .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.P.D.Dalvi, for the Petitioner.
Mrs.R.M. Shinde, AGP for Respondent No.1 – State.
Mr.Amit B. Borkar, for Respondent No.2.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

**RESERVED ON : 11th JANUARY, 2019
PRONOUNCED ON : 28th JANUARY, 2019**

ORDER (PER M.S.KARNIK, J) :

. This Petition is filed under Article 226 of the Constitution of India challenging the order dated 02/06/2013 passed by respondent No.3 – Deputy Registrar, Affiliation Department, Shivaji University, Kolhapur.

2. By the impugned communication, the petitioner is

informed that its proposal for starting a new college for Arts and Commerce faculty cannot be accepted and no recommendations will be made by the management council to the government as there are deficiencies in the proposal. One of the ground on which the proposal is rejected is that the proposed land for College is agricultural land and as per G.R. dated 05/02/2011, agricultural land cannot be treated as a site for College. The other ground mentioned in the impugned communication is that the College building does not have water, electricity, wash-room facilities. It is mentioned that there is no sewerage line. Further it is stated that the minimum deposit of Rs. One lac is not made available in the account of Society as reserved fund for laboratory. Library facilities are inadequate for want of 500 books. There are no facilities available for the students for playing, canteen and health centre.

The brief facts of the Petition can be stated thus :

3. The petitioner is an educational institution registered under the Societies Registration Act, 1860 and Bombay Public Trusts Act, 1950. The petitioner is managing and running 6 secondary schools as well as primary schools. The petitioner has 18 years experience in the field of education and is imparting education in hilly areas.

4. The respondent No.2 - Shivaji University prepared master plan for starting new colleges for Arts, Science and Commerce Divisions within Kolhapur district. The proposals were called from educational institutions. The petitioner was interested to start a new College at Senapati Kapashi, Taluka Kagal, District Kolhapur. A proposal to respondent No.2 was submitted on 30/10/2012. The proposal stated that college was compliant in all respects to start Arts and Commerce courses and that the course is very much required in hilly and remote areas. Respondent No.2 – Shivaji University was prima facie satisfied with the proposal of the petitioner and therefore an expert committee was set up for visiting the site of the proposed

college for inspection of the existing facilities. By communication dated 13/03/2013 addressed to the petitioner, the respondent No.4 – the Director, Board of Colleges and University Development, Shivaji University informed that the proposal is accepted by the Vice-Chancellor for starting new College for Arts and Commerce faculty. It is also stated that prima facie, the petitioner has satisfied the criteria mentioned in the schedule of the statement and hence, the proposal be placed before University Management Council for further recommendations for enabling the respondent No.4 to send the proposal to respondent No.1 – State Government for final sanction.

5. By the impugned order dated 02/06/2013 the proposal was not accepted for the reasons which are already set out in paragraph 1 of this order. Learned Counsel for the petitioner pointed out that the impugned order is illegal and not sustainable for reasons more than one which are as under :-

i) The land where the proposed building of the petitioner's college is situated is not purely an agricultural land. It is wrongly held that the land is an agricultural land.

ii) The objections regarding lack of electricity, water, wash-room and sewerage facilities are unsustainable as the proposed building for College has all these facilities. At serial No. 12 in the Schedule, all these facilities are clearly mentioned. Moreover, G.R dated 30/10/2010 provides that so far as conditions no. 4, 6, 7, 8, 10, 11, 12 & 13 are concerned, even if some deficiencies are found, however, if the proposed College is in naxalite area, tribal area, hilly area and remote area, then in such a situation, despite some deficiencies, recommendations can be made for such a College. Learned Counsel submits that the petitioner's College is situated in hilly and remote area in Kolhapur district and by G.R. dated 30/10/2010, Kagal Taluka has been

included as a hilly area at serial No. 68. Thus G.R.dated 30/10/2010 is not considered in its letter and spirit while rejecting the proposal.

iii) Learned Counsel further submits the impugned decision is a clear instance of non-application of mind in as much as if the recommendations of Vice-Chancellor are perused it clearly states that proposal of the petitioner is recommended for Arts and Commerce College. Laboratory facilities in practice are required for Science faculty and not for Arts and Commerce. Rejection of the proposed College on the ground of want of reserved fund for laboratory is clearly unsustainable as there is no requirement of a laboratory for Arts and Commerce College.

iv) The 4th objection in respect of 500 books being deficient in the library is not correct as factually there are 500 books available with the petitioner College in its

library. According to the petitioner, the said objection is raised without physically verifying availability of books in the College.

v) Regarding canteen facilities, learned Counsel submitted that the petitioner undertakes to provide canteen facility if the proposal is accepted.

vi) Insofar as play ground & health-care facilities, according to the petitioner, they have sufficient place for playing and health care facilities.

6. Learned Counsel would further submit that the said order is passed without affording any opportunity of hearing to the petitioner. He submits that an expert committee appointed by Vice-Chancellor – respondent No.2 has recommended the petitioner's proposal for Arts and Commerce college to be accepted after visiting the site and after verifying the facilities proposed to be provided by the petitioner. Learned Counsel

would contend that due weightage ought to be given to G.R. dated 30/10/2010 as petitioner's College is situate in hilly and remote area.

7. On the other hand, learned Counsel for the respondent No.2 supported the impugned order and submitted that on account of the deficiencies as mentioned in the impugned order, the respondent No.2 is justified in rejecting the proposal.

8. We have considered the submissions made by the learned Counsel for parties. We find force in the submissions made by the learned Counsel for the petitioner. G.R. dated 30/10/2010 clearly provides that in respect of all proposed Colleges which are to be set up in remote and hilly areas, deficiencies to some extent, even if they exist, will not come in the way of accepting the proposal. The petitioner's College admittedly is in a remote and hilly area. It appears that the G.R. dated 30/10/2010 was not taken into consideration in its letter

and spirit before passing the impugned order.

9. We moreover find that an expert committee of the University had after visiting the proposed site in question recommended starting a new college for Arts and Commerce. No doubt, recommendations are not binding on the University Management Council, but the manner in which the impugned order is passed is obviously ignoring the relevant materials on record. The recommendations of respondent No.2 are for starting a new College for Arts and Commerce faculties. The impugned order stipulates that the College has not made the sum of Rs. 1 lakh available in the reserved fund for a laboratory. That there is no requirement of laboratory for starting an Arts and Commerce College is not controverted. Thus there is a complete non- application of mind while rejecting the proposal.

10. We are therefore of the view that the impugned order deserves to be quashed and set aside. We also find it appropriate in the facts of the present case and in the interest of justice for the petitioner to be given an opportunity of hearing

by the respondent No.3 upon fresh consideration of the proposal. Hence, the following order.

ORDER

- a) The impugned order dated 02/06/2013 passed by the respondent No.3 is quashed and set aside.
 - b) Respondent No.3 to consider the proposal of the petitioner for starting Arts and Commerce College afresh after giving opportunity of hearing to the petitioner.
 - c) It is made clear that respondent No.3 may consider the proposal of the petitioner on its own merits in accordance with law without being influenced by any observations made by us in this order as expeditiously as possible and in any event within a period of 12 weeks from today.
11. The Petition is partly allowed in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI)