

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

WRIT PETITION NO. 4672 OF 2019

LATE HARIWANSHRAI BACCHAN BAHU UDDESHIYA SEVABHAVI
SANSTHA PARADH BK. THROUGH ITS SECRETARY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. A. N. Nagargoje
AGP for Respondents No. 1 to 3 : Mr. P. S. Patil
Advocate for Respondent No. 4 : Mr. S. S. Tope
Advocate for Respondent No. 5 :
Mr. S. B. Rajebhosale
Advocate for Respondent No. 6 :
Mr. M. M. Dabholkar

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**CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE: 06th JANUARY, 2020

PER COURT:

1. Heard the learned counsel for respective parties.
2. The petitioner challenges the order granting Letter of Intent to respondent no. 5 to start Arts, Science and Commerce college at Village Aurala, Taluka Kannad, District Aurangabad.
3. It appears that the University recommended the proposal of the petitioner as well as

respondent no. 5 for start of Arts, Science and Commerce college at Village Aurala. The State Government granted Letter of Intent in favour of respondent no. 5.

4. *Prima donna* contention of the petitioner is that, the proposal of respondent no. 5 was not complete in all respects, the deficiencies existed, still the University recommended the proposal of respondent no. 5 along with the petitioner. The Government without considering the proposal on its own merits, granted Letter of Intent to respondent no. 5.

5. According to the petitioner, the petitioner did not have the fixed deposit amount in the Bank. The institute is required to possess fixed deposit receipt of Rs.7,00,000/- in the Bank account at the time of submitting the proposal. Respondent no. 5 had made a fixed deposit receipt of Rs.2,00,000/- on 27.11.2015 and withdrew the said fixed deposit receipt on 13.04.2016. The proposal was recommended by the University of the

petitioner and respondent no. 5 in November-2018. On the said date, respondent no. 5 had not deposited any amount as fixed deposit with the Bank. Respondent no. 5 produced a forged receipt to show that an amount of Rs.7,00,000/- is deposited in the fixed deposit with the Bank of Maharashtra on 27.09.2018. The same is forged receipt. The said fixed deposit was never created by respondent no. 5.

6. We had asked the Bank to place on record the date when respondent no. 5 had made fixed deposit with the Bank, the amount of the fixed deposit and the date when the fixed deposit amount is withdrawn. The affidavit is filed by the Bank Manger of Kannad Branch to the effect that respondent no. 5 had made a fixed deposit on 27.11.2015 of Rs.2,00,000/-. The same was withdrawn on 13.04.2016.

7. We asked Mr. Rajebhosale, learned counsel for respondent no. 5 about the genuineness of the certificate produced by respondent no. 5 along

with the proposal showing deposit of Rs.7,00,000/- with Bank of Maharashtra on 27.09.2018. Mr. Rajebhosale, the learned counsel, on instructions, fairly concedes that fixed deposit of Rs. 7,00,000/- was not made on 27.09.2018. The learned counsel further submits that the fixed deposit was made with the Bank of Maharashtra on 10.12.2019 for an amount of Rs. 7,00,000/-. According to the learned counsel, if the deposit is made subsequently the same can be considered. Respondent no. 5 has time up to 30.01.2020 for complying the deficiencies and within time respondent no. 5 has complied the deficiency by making the fixed deposit of Rs.7,00,000/- on 10.12.2019. The learned counsel to buttress his submission relies on the judgment of the Division Bench of this court dated 21.01.2019 in Writ Petition No. 106 of 2019.

8. Mr. Rajebhosale, the learned counsel further submits that this Court is only concerned with the due adherence to the decision making process and would not sit in appeal over the decision taken by

the State Government. The learned counsel relies on the judgment of the Division Bench of this Court in dated 11.10.2019 in Writ Petition No. 4113 of 2019.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. There cannot be any dispute with the proposition that in considering the legality of the order passed, this Court is basically concerned with the due adherence to the decision making process.

11. This Court cannot turn a blind eye to the fraud played by the party. It is trite that fraud vitiates every solemn act.

12. One of the condition for forwarding the proposal is that the institute seeking permission to open new Arts, Science and Commerce college is required to possess Rs.7,00,000/- in the fixed deposit. Respondent no. 5 submitted the document showing fixed deposit receipt issued by the Bank

of Maharashtra on 27.09.2018 for an amount of Rs.7,00,000/-. The said receipt is not a genuine receipt. The same is a forged receipt. It is not disputed by respondent no. 5 that the fixed deposit was not created on 27.09.2018 for an amount of Rs. 7,00,000/- with the Bank.

13. A party guilty of fraud and forgery cannot claim equity and contend that subsequently fixed deposit has been made and the same be accepted. One of the basic principle for claiming equity is that the party has to approach with clean hands and should not be guilty of illegal acts much less indulge in fraudulent acts. The University, it appears was guided by the forged certificate submitted by respondent no. 5 of creating fixed deposit for an amount of Rs.7,00,000/- in fixed deposit. Fraud was also played upon the University because of which positive recommendation was made in respect of the proposal of respondent no. 5 along with that of the petitioner. As Letter of Intent has been granted to respondent no. 5,

naturally the proposal of the petitioner is not dealt with on merits.

14. This Court cannot sustain an order obtained on the basis of forged document.

15. In light of the above, the impugned order issuing Letter of Intent in favour of respondent no. 5 is quashed and set aside.

16. The proposal of the petitioner is rejected on the ground that Letter of Intent is issued to respondent no. 5. As the Letter of Intent in favour of respondent no. 5 is set aside, the impugned order rejecting the proposal of the petitioner on the ground that respondent no. 5 is issued with Letter of Intent is also quashed and set aside. The State shall consider the proposal of the petitioner with other proposals, if any, on its own merits.

17. Writ Petition is accordingly disposed of. No costs.

[MANGESH S. PATIL, J.]
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[S. V. GANGAPURWALA, J.]