

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11579 OF 2019

Ashwamedh Bahuuddeshiya Shaikshnik
Va Samajik Sanstha, Osmanabad,
Through its Secretary,
Mr. Mahesh S/o Vijaykumar RajeNimbalkar,
Age : 42 years, Occu : Secretary/Service
Having office at Gat 102, Plot 13
Vaibhav HSG Soc, Datta Nagar, Osmanabad
Tq : Dist : Osmanabad

.. Petitioner

VERSUS

1] The State of Maharashtra,
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai

2] The State of Maharashtra
Through its Secretary
Higher and Technical Education Department,
Mantralaya, Mumbai

3] The Commissioner of Social Welfare,
Maharashtra State, Pune-1.

4] Dr. Babasaheb Ambedkar Marathwada
University, Through its Registrar,
Aurangabad

.. Respondents

WITH
WRIT PETITION NO. 10938 OF 2019

Disha Bahuuddeshiya Sevabhavi Sanstha,
Through its President,
Mrs. Sumanbai w/o. Bhagwanrao Borde,
Peoples Social Work College, (Shendra)
Having office at Shendra Parisar,
Aurangabad, Tq. Dist. Osmanabad

.. Petitioner

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai
- 2] The State of Maharashtra
Through its Secretary
Higher and Technical Education Department,
Mantralaya, Mumbai
- 3] The Commissioner of Social Welfare,
Maharashtra State, Pune-1.
- 4] Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad .. Respondents

AND

WRIT PETITION NO. 11581 OF 2019

Sant Tukaram Samajik Sanstha,
Through its Member,
Mr. Pravin Prabhakar Sonawane,
Age : 39 years, Occu : Member,
Having office at Sakri, Tq. : Sakri,
Dist : Dhule .. Petitioner

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai
- 2] The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai
- 3] The Commissioner of Social Welfare,
Maharashtra State, Dhule
- 4] North Maharashtra University
Through its Registrar,
Jalgaon .. Respondents

...
Mr. Shambhuraje V. Deshmukh, Advocate for petitioners in all WPs
Mr. S.S. Dande, AGP for respondent – State in all matters
Mr. K.M. Suryawanshi, Advocate for respondent no. 4 in
WP/11579/2019 and WP/10938/2019
None present for respondent no. 4 in writ
petition no. 11581 of 2019, though served
...

CORAM : SUNIL P. DESHMUKH &
M.G. SEWLIKAR, JJ.
DATE : 26-11-2020

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.
2. These petitions question propriety and validity of communications dated 27-08-2019 issued by respondent no. 1, refusing approval to the proposals of petitioners for establishment and running of unaided social work colleges.
3. Learned counsel for petitioners Mr. Shambhuraje Deshmukh refers to that pursuant to section 109 of the Maharashtra Public Universities Act, 2016 ("the Universities Act"), respondent no. 4 - the university had published perspective plan for establishment of new social work colleges on unaided basis at Shendra, Aurangabad, Osmanabad and Sakri taluka for the academic year 2018-19. Petitioners accordingly had moved proposals seeking permission for establishment of new social work

colleges at Osmanabad, Shendra, Aurangabad and Sakri taluka. As required, the university had constituted a committee for inspection and scrutiny. Finding that petitioners comply with all the requirements, the university had positively recommended respective proposals of petitioners.

4. The State government had not decided proposals of petitioners and petitioners had to approach this court under writ petitions wherein directions were issued to the State government to decide on the proposals and proposals of petitioners have been refused permissions referring to government resolution dated 24-8-2004 and, thus, the petitioners are before this court.

5. Learned counsel for petitioners goes on to submit that refusal to permit on the ground of government resolution dated 24-8-2004 is perfunctory and erroneous and absolutely is not a valid reason to negate proposals. The university - an expert academic body had, in the perspective plan, having regard to the need and also having regard to that Dr. Narendra Jadhav committee, proposed new social work colleges pursuant to provisions of statutory enactment - the Universities Act. Refusal has been a capricious and arbitrary act offending Article 14 of the Constitution of India.

6. In the present case, learned counsel Mr Deshmukh adverts to that situation will have to be viewed pursuant to the perspective plan for the year 2018-2019. He submits, a subsequent plan would not affect the subsisting need of social work colleges at Osmanabad, Shendra, Aurangabad and Sakri.

7. Learned counsel has made available copy of decision dated 07-11-2017 in writ petitions no. 2444 of 2017 and 4422 of 2017 wherein, it has been observed, thus;

“ 3. *The respondent-University, thereafter, has drawn a perspective plan for year 2016-17 and in it need of one Social Work College each for Bhandra and Wardha Districts, is identified. Public advertisement was being issued and petitioners submitted their proposals. In terms of policy, University recommended their proposals favourably for permitting them to start such Colleges on permanent no-grant basis. By identical order the proposals have been rejected. The reason given is ban imposed vide order dated 24.8.2004.*

4. *In reply-affidavit, defence of State Government is report of Dr. Jadhav Committee pertains to higher education or technical education. Social work education and social work department are distinct establishments and, therefore, said report is not binding on it.*

5. *The petitioners on the basis of the communication dated 17th October, 2015 sent by State Government to all Universities point out that Dr. Jadhav Committee has also considered the need of opening new Social Work colleges.*

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.*

7. *A perspective plan was then drawn. Public advertisement was published and petitioners have participated in the process. There are no mala fides or oblique motive on their part. The*

decision to fall back on communication dated 24.8.2004 imposing ban therefore appears to be unjustifiable.”

8. Mr Shambhuraje Deshmukh places strong reliance on decision dated 20-7-2018 in writ petitions no. 2440 of 2018 and 2573 of 2018 by division of this court which according to him had been required to be given in similar circumstances while permission had been refused referring to very same government resolution dated 24-08-2004. He purports to point out that taking stock of the situation, it had been observed, thus;

“ 2. The impugned order dated 16/03/2018 in both the matters is identical. It points out the ban imposed on 24th August, 2004 to reject permission to the petitioners to start new colleges. In reply filed before this Court non-availability of funds is the additional reason pressed into service by the respondent Nos. 1 to 3.

3. After hearing the respective counsel, we find that the petitioners do not seek any financial assistance from the respondent Nos. 1 to 3, as such the additional reason assigned in reply is irrelevant. Insofar as the reliance upon the earlier resolution and ban imposed on 24th August, 2004 is concerned, these petitioners only have approached this Court in Writ Petition Nos.2444 of 2017 and 4422 of 2017, respectively. This Court has disposed of those petitions on 7th November, 2017. In the process, this Court has found that the report of Dr. Narendra Jadhav Committee was in favour of the petitioners and recommended establishment of new colleges. This order has attained finality. In view of these observations those petitions were allowed and the respondents were asked to reconsider the proposals sent by the respective petitioners within next three months.

4. Accordingly, after reconsideration, in the impugned order again assigning same reason, permission has been declined by the respondent No.1.

5. The perspective plan prepared by the University brings on record the need and the orders of this Court dated 7th November, 2017 clearly show that the ban relied upon in the impugned order dated 16th March, 2018 is not relevant at all. This Court then found that the recourse to said ban dated 28/08/2004 unjustifiable. ”

9. Opposing the aforesaid submissions, it has been submitted that to construct new social work colleges, it would cause additional burden on the public exchequer and having regard to that students strength being fluctuating, it would not be appropriate to grant permission to start new social work colleges. While writ petitions are being resisted by the State, the university appears to be not so certain.

10. For the year 2018-2019, while the perspective plan had been in place, proposals had been positively recommended. Permissions are sought for establishing colleges not on grant-in-aid basis. Need of the colleges in 2018-19 at the places is not disputed. The matter ought to have been examined from that angle. Refusal with reference to government resolution dated 24-08-2004, in the circumstances and having regard to decision of division bench dated 20-07-2018 in writ petition no. 2440 of 2018 (supra) is unsustainable.

11. Having regard to aforesaid, we deem it appropriate to quash and set aside the impugned communications and direct respondent no. 1 to decide on the recommendation by university with reference to the perspective plan and the academic year, taking into account that proposals were pursuant to perspective plan for 2018-19 and the decision of division bench of this court in

writ petition no. 2440 of 2018 and not to reject proposals on the ground of government resolution dated 24-08-2004 and to pass appropriate orders within a period of six weeks from the date of receipt of writ of this order.

12. Writ petitions are disposed of accordingly. Rule is made absolute.

[M. G. SEWLIKAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/