

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

985 WRIT PETITION NO.6741 OF 2021

MAHATMA BASWESHWAR SHIKSHAN SANSTHA THROUGH
SECRETARY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. S.B. Rajebhosale
GP for Respondents 1 to 3 : Mr. D.R. Kale
Advocate for Respondent 4 : Mr. S.S. Tope
Advocate for Respondent 5 : Mr. S.S. Jadhavar
Advocate for Respondent 6 : Mr. Dabholkar

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**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : 18/08/2021.

PER COURT :

. We have heard Mr. S.B. Rajebhosale, learned advocate for the petitioner. Mr. Rajebhosale submits that petitioner and respondent No. 5, pursuant to the advertisement applied for permission to start new Senior College of Arts, Science and Commerce at village Gevrai, Taluka and District Aurangabad. The learned counsel submits that the proposal of the respondent No. 5 was negatively recommended by the University whereas the proposal of the petitioner is positively recommended. The learned counsel submits that along with the proposal respondent No. 5 did not deposit amount of Rs.7,00,000/-. The registration of the

respondent No. 5 is of the year 2017. It does not have experience of five years. The audit report is also blank. According to the learned counsel, the respondent No. 5 withdrew F.D. of Rs. 7,00,000/-. The same was in breach of section 108 of the Maharashtra Universities Act and the Government Resolution dated 15th September 2017.

2. Mr. Jadhavar, learned advocate for respondent No. 5 submits that the fixed deposit was made on 12th of January 2021. The fixed deposit was required to be withdrawn because entire family running institution was struck by Covid-19. Huge expenses were required. It was in extraordinary circumstances, the amount was required to be withdrawn. Subsequently, the same is again redeposited and now the fixed deposit continues. The learned advocate further submits that respondent No. 5 caters to all the required infrastructure. The petitioner's proposal was also negatively recommended. The learned counsel submits that five years audit report is not compulsory. The society was registered in the year 2017 and as such audit report of five years is not required and the audit report of 2017 onwards were submitted.

3. Mr. S.S. Tope, learned advocate for the University submits that the University has negatively recommended the proposals of the petitioner as well as respondent No. 5. Both these proposals lack necessary infrastructure. The requirement of sub clauses (d) and (e) of sub-section (1) of section 8 were not

complied by both these institutions. According to the learned advocate, respondent No. 5 has also given undertaking that the fixed deposit of Rs.7,00,000/- has been given as required under Annexure 'B' to the G.R. dated 15.9.2017. The undertaking further stated that without prior permission of the University the amount of Rs.7,00,000/- will not be withdrawn. The said undertaking is also not abided by the respondent. The learned advocate further submits that it is only in exceptional cases, the Government can grant permission though proposal is negatively recommended by the University, but for the same reasons are to be recorded. The learned counsel relies upon the proviso of Clause (f) of subsection (3) of section 109 of the Maharashtra University Act.

4. The petitioner as well as respondent No. 5 did not comply with the requirements of Annexures 'A' and 'B' of the Government Resolution dated 15.9.2017.

5. We have considered the submission.

6. It appears to be a matter of record that University has given negative recommendations to the proposals of the petitioner as well as respondent No. 5. The University has certainly considered the requirements not being fulfilled by the institution in the proposals.

7. Certainly the Government can grant permission in

spite of negative recommendation of the University, but same has to be in exceptional cases and that too for the reasons to be recorded in writing. Reference can be had to proviso (f) of sub-section (3) of section 109 of the Act, 2016.

8. The University is assisted by the experts to consider that the proposals of the institutions submitted for grant of permissions to open new college are fulfilled as required under section 108 of the Maharashtra University Act.

9. In the present case, the proposals are evaluated by the University with the assistance of the experts and thereafter, has given negative recommendations.

10. In the present case, the Government ignoring the negative recommendations of the University granted permission to respondent No. 5 institution. It appears that the respondent No. 5 institution is registered in the year 2017. The University had conducted survey through its experts.

11. It further appears that along with the proposals the petitioner has not deposited fixed deposit amount of Rs.7,00,000/- with the bank. The same was deposited on 12th of January 2021 whereas the proposal was submitted on 31st December 2020. Be that as it may, it appears that within a week the respondent withdrew the amount of fixed deposit of Rs.7,00,000/-. The

explanation is sought to be given by the respondent No. 5 that entire family being affected by Covid -19. The fixed deposit was of the society and not of the individual members. It is society's amount and it could not be used for the individual benefit. The respondent No. 5 had also given undertaking to the University that the amount shall not be withdrawn without prior permission of the University. The said undertaking is flouted. Permission of the University was not obtained before withdrawing the fixed deposit of Rs.7,00,000/-. The amount of Rs.7,00,000/- is deposited after receiving the notice of the present writ petition by the respondent No. 5. The amount of fixed deposit is required even as per the Annexure 'B' to the Government Resolution dated 15.9.2017, so also to verify the availability of financial resources of the college and institution as required under section 108 (1)(e). Section 108 (1)(e) provides that the financial resources of the college, of the institution shall be such as to make due provision for its continuous maintenance and working. The said provision was also flouted.

12. Considering the aforesaid matrix cumulatively, we do not find that the respondent No. 5 can be said to comply with the provision of section 108 (1)(e) of Maharashtra University Act. We are not entering into the discussion of other deficiencies pointing out in detail.

13. We are not inclined to pass any positive order in

favour of the petitioner. The learned counsel submits that the petitioner has given representation. It is for the parties to prosecute the same.

14. In the light of the above, writ petition is allowed in terms of prayer clause 'B'.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

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